



**SUGGESTED
STATE
LEGISLATION
2008
Volume 67**

Developed by the
Committee on Suggested State Legislation

The Council of State Governments
Lexington, Kentucky

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Lexington, KY 40578-1910

Manufactured in the United States of America

ISBN: 978-0-87292-845-9

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Sharing Capitol Ideas.

The Council of State Governments is the premier multibranch organization forecasting policy trends for the community of states, commonwealths and territories on a national and regional basis.

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

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Foreword

The Council of State Governments (CSG) is pleased to bring to you the **2008 *Suggested State Legislation*** volume, a valued series of compilations of draft legislation from state statutes on topics of current interest and importance to the states. The draft legislation found in this book represents many hours of work by The Council's Committee on Suggested State Legislation, CSG Policy Task Forces, and CSG staff.

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

The Council of State Governments
Lexington, Kentucky

Daniel M. Sprague
Executive Director



Suggested State Legislation

2008

Volume 67

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Introduction

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

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

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

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

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

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

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

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

All items selected for publication in SSL are presented in a general format as shown in the following ***Suggested State Legislation*** Style Manual and Sample Act. However, beginning with

the 1997 volume, items presented in *Suggested State Legislation* volumes more closely reflect the style and form as they were submitted to the program. Entries from the National Conference of Commissioners on Uniform State Laws are rarely changed from their submitted format.

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

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

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

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

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

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

SSL PROCESS

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

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

SSL Committee members, other state officials, and their staff, CSG Associates and CSG staff can submit legislation directly to the SSL Program. The 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 (1) A [rehabilitation research commission] is established to review, approve, and facilitate
12 research directed at the rehabilitation of delinquent and criminal offenders and to disseminate the
13 results of that research to correctional officials and other interested people and agencies.

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

16
17 ***

18
19 Section ... [*Severability.*] [Insert severability clause.]

20
21 Section ... [*Repealer.*] [Insert repealer clause.]

22
23 Section ... [*Effective Date.*] [Insert effective date.]

Allowing Unused or Unaccepted Drugs Donated to the Prescription Drug Repository Program to be Distributed to Out-of-State Charitable Repositories

This Act allows drugs donated to the state Prescription Drug Repository Program that are not used or accepted by any pharmacy, hospital, or nonprofit clinic in the state to be distributed to out-of-state charitable repositories.

Submitted as:

Missouri

HB 1687

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Permit Certain Donated
2 Drugs to be Distributed to Out-of-State Charitable Repositories.”

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

5 (1) “Health care professional,” means any of the following people licensed and authorized
6 to prescribe and dispense drugs and to provide medical, dental, or other health-related diagnoses,
7 care, or treatment:

8 (a) a licensed physician or surgeon;

9 (b) a registered nurse or licensed practical nurse;

10 (c) a physician assistant;

11 (d) a dentist;

12 (e) a dental hygienist;

13 (f) an optometrist;

14 (g) a pharmacist; and

15 (h) a podiatrist;

16 (2) “Hospital,” means [insert citation];

17 (3) “Nonprofit clinic,” means a facility organized as not for profit in which advice,
18 counseling, diagnosis, treatment, surgery, care, or services relating to the preservation or
19 maintenance of health are provided on an outpatient basis for a period of [less than twenty-four
20 consecutive hours] to people not residing or confined at such facility;

21 (4) “Out-of-state charitable repository,” means any of the following:

22 (a) A bona fide charitable, religious, or nonprofit organization, licensed or
23 registered in this state as an out-of-state wholesale drug distributor under [insert citation], and that
24 otherwise qualifies as an exempt organization under section 501(c)(3) of Title 26, United States
25 Code, as amended; or

26 (b) A foreign medical aid mission group that distributes pharmaceuticals and
27 healthcare supplies to needy people abroad; and

28 (5) “Prescription drug,” means a drug which may be dispensed only upon prescription by
29 an authorized prescriber and which is approved for safety and effectiveness as a prescription drug
30 under Section 505 or 507 of the Federal Food, Drug, and Cosmetic Act.

31

Section 3. *[Donating Prescription Drugs to Prescription Drug Repositories.]*

(1) Any person, including but not limited to a prescription drug manufacturer or health care facility, may donate prescription drugs to the prescription drug repository program. The drugs shall be donated at a pharmacy, hospital, or nonprofit clinic that elects to participate in the prescription drug repository program and meets the criteria for participation established by rule of the [department] pursuant to [insert citation]. Participation in the program by pharmacies, hospitals, and nonprofit clinics shall be voluntary. Nothing in [insert citation] shall require any pharmacy, hospital, or nonprofit clinic to participate in the program.

(2) A pharmacy, hospital, or nonprofit clinic which meets the eligibility requirements established in [insert citation] may dispense prescription drugs donated under the program to people who are residents of this state and who meet the eligibility requirements of the program, or to other governmental entities and nonprofit private entities to be dispensed to people who meet the eligibility requirements of the program. A prescription drug shall be dispensed only pursuant to a prescription issued by a health care professional who is authorized by statute to prescribe drugs. A pharmacy, hospital, or nonprofit clinic which accepts donated prescription drugs shall comply with all applicable federal and state laws dealing with the storage and distribution of dangerous drugs and shall inspect all prescription drugs prior to dispensing the prescription drugs to determine that they are not adulterated as described in [insert citation]. The pharmacy, hospital, or nonprofit clinic may charge people receiving donated prescription drugs a handling fee, not to exceed a maximum of [two hundred percent] of the Medicaid dispensing fee, established by rule of the [department] promulgated pursuant to [insert citation]. Prescription drugs donated to the program shall not be resold. Any individual who knowingly resells any donated prescription drugs pursuant to [insert citation] shall be guilty of a [class D felony].

(3) Drugs donated under this section that are not used or accepted by any pharmacy, hospital, or nonprofit clinic in this state may be distributed to out-of-state charitable repositories for use outside of this state. Such donated drugs may be repackaged in a manner appropriate for distribution by participating pharmacies, hospitals, and nonprofit clinics.

Section 4. *[Exemptions from Liability Relating to Donating Drugs to Prescription Drug Repositories.]*

(1) The following people and entities when acting in good faith shall not be subject to criminal or civil liability for injury, death, or loss to person or property, or professional disciplinary action for matters related to donating, accepting, or dispensing prescription drugs under the prescription drug repository program:

- (a) The [department of health and senior services];
- (b) The [director of the department of health and senior services];
- (c) Any prescription drug manufacturer, governmental entity, or person donating prescription drugs to the program;
- (d) Any pharmacy, hospital, nonprofit clinic, out-of-state charitable repository, or health care professional that prescribes, accepts or dispenses prescription drugs under the program; and
- (e) Any pharmacy, hospital, nonprofit clinic, or out-of-state charitable repository that employs or has a hospital medical staff affiliation with a health care professional who accepts or dispenses prescription drugs under the program.

(2) A prescription drug manufacturer shall not, in the absence of bad faith, be subject to criminal or civil liability for injury, death, or loss to person or property for matters related to the donation, acceptance, or dispensing of a prescription drug manufactured by the prescription drug manufacturer that is donated by any person under the program, including but not limited to liability for failure to transfer or communicate product or consumer information or the expiration date of the donated prescription drug.

82

83

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

84

85

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

86

87

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

Anti-Phishing

This Act makes it unlawful for any person to represent oneself, either directly or by implication, to be another person, without the authorization or permission of such other person, through the use of the Internet, electronic mail messages or any other electronic means, including wireless communication, and to solicit, request, or take any action to induce a resident of this state to provide identifying information or identification documents.

The Act makes it unlawful for any person without the authorization or permission of the person who is the subject of the identifying information, with the intent to defraud, for such person's own use or the use of a third person, or to sell or distribute the information to another, to:

(1) Fraudulently obtain, record or access identifying information that would assist in accessing financial resources, obtaining identification documents, or obtaining benefits of such other person;

(2) Obtain goods or services through the use of identifying information of such other person;

(3) Obtain identification documents in such other person's name.

The Act makes it unlawful for any person with the intent to defraud and without the authorization or permission of the person who is the owner or licensee of a Web page or Web site to:

(1) Knowingly duplicate or mimic all or any portion of the Web site or Web page;

(2) Direct or redirect an electronic mail message from the IP address of a person to any other IP address;

(3) Use any trademark, logo, name, or copyright of another person on a Web page; or

(4) Create an apparent but false link to a Web page of a person which is directed or redirected to a Web page or IP address other than that of the person represented.

This Act enables the following people to bring an action against a person who violates or the Act:

(1) A person who:

(A) Is engaged in the business of providing Internet access service to the public, owns a Web page, or owns a trademark; and

(B) Suffers ascertainable loss by a violation of this Act.

Submitted as:

Tennessee

Chapter 566, Public Acts of 2006

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as the “Anti-Phishing Act.”

2

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

4 (a) “Ascertainable loss” means an identifiable deprivation, detriment or injury arising
5 from the identity theft or from any unfair, misleading or deceptive act or practice even when the
6 precise amount of the loss is not known. Whenever a violation of this part has occurred, an
7 ascertainable loss shall be presumed to exist;

(b) “Division” means the [Division of Consumer Affairs of the Department of Commerce and Insurance];

(c) “Electronic mail message” means a message sent to a unique destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local part”) and a reference to an internet domain (commonly referred to as the “domain part”), whether or not displayed, to which an electronic message can be sent or delivered;

(d) “Identification documents” means any card, certificate or document which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be a driver license, nondriver identification cards, birth certificates, marriage certificates, divorce certificates, passports, immigration documents, social security cards, employee identification cards, cards issued by the government to provide benefits of any sort, health care benefit cards, or health benefit organization, insurance company or managed care organization cards for the purpose of identifying a person eligible for services;

(e) “Identifying information” means, with respect to an individual, any of the following:

(1) Social Security number;

(2) Driver’s license number;

(3) Bank account number;

(4) Credit card or debit card number;

(5) Personal identification number (PIN);

(6) Biometric data;

(7) Private medical information (PMI);

(8) Fingerprints;

(9) Account password; or

(10) Any other piece of information that can be used to access an individual’s financial accounts or obtain identification, act as identification, or obtain goods or services;

(f) “Internet” means the global information system that is logically linked together by a globally unique address space based on the Internet Protocol (IP), or its subsequent extensions, and that is able to support communications using the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols, and that provides, uses, or makes accessible, either publicly or privately, high level services layered on communications and related infrastructure;

(g) “Person” means a natural person, consumer, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized;

(h) [“State Consumer Protection Act”] means [insert citation] and related statutes. Related statutes specifically include any statute that indicates within the law, regulation or rule that a violation of that law, regulation or rule is a violation of the [“State Consumer Protection Act”]; and

(i) “Web page” means a location that has a single uniform resource locator or other single location with respect to the Internet.

Section 3. [*Fraudulently Obtaining Personal Identifying Information.*]

(a) It shall be unlawful for any person to represent oneself, either directly or by implication, to be another person, without the authorization or permission of such other person, through the use of the Internet, electronic mail messages or any other electronic means, including wireless communication, and to solicit, request, or take any action to induce a resident of this state to provide identifying information or identification documents.

(b) It shall be unlawful for any person without the authorization or permission of the person who is the subject of the identifying information, with the intent to defraud, for such person's own use or the use of a third person, or to sell or distribute the information to another, to:

(1) Fraudulently obtain, record or access identifying information that would assist in accessing financial resources, obtaining identification documents, or obtaining benefits of such other person;

(2) Obtain goods or services through the use of identifying information of such other person; or

(3) Obtain identification documents in such other person's name.

(c) It shall be unlawful for any person with the intent to defraud and without the authorization or permission of the person who is the owner or licensee of a Web page or Web site to:

(1) Knowingly duplicate or mimic all or any portion of the Web site or Web page;

(2) Direct or redirect an electronic mail message from the IP address of a person to any other IP address;

(3) Use any trademark, logo, name, or copyright of another person on a Web page; or

(4) Create an apparent but false link to a Web page of a person which is directed or redirected to a Web page or IP address other than that of the person represented.

(d) It shall be unlawful for any person to attempt to commit any of the offenses enumerated in this section.

Section 4. *[People Who May Bring Actions Against Violators of This Act.]*

(a) The following people may bring an action against a person who violates or is in violation of [Section 3] of this Act:

(1) A person who:

(A) Is engaged in the business of providing internet access service to the public, owns a Web page, or owns a trademark; and

(B) Suffers ascertainable loss by a violation of [Section 3] of this Act. An action brought under this subdivision may seek to recover the greater of actual damages or [five hundred thousand dollars (\$500,000)].

(2) An individual who suffers an ascertainable loss by a violation of [Section 3] of this Act may bring an action, but only against a person who has directly violated [Section 3] of this Act. An action brought under this subdivision may seek to enjoin further violations of [Section 3] of this Act and to recover the greater of [three (3) times] the amount of actual damages or [five thousand dollars (\$5,000)], per violation.

(b) The [attorney general] or a [district attorney] may bring an action against a person who violates or is in violation of [Section 3] of this Act to enjoin further violations of [Section 3] of this Act and to recover a civil penalty of up to [two thousand five hundred dollars (\$2,500)], per violation.

(c) In an action pursuant to this part, a court may, in addition, do either or both of the following:

(1) Increase the recoverable damages to an amount up to [three (3) times] the damages otherwise recoverable under subdivision (a) in cases in which the defendant has established a pattern and practice of violating [Section 3] of this Act; or

(2) Award costs of the suit and reasonable attorney's fees to a prevailing plaintiff.

(d) The remedies provided in this part do not preclude the seeking of remedies, including criminal remedies, under any other applicable provision of the law.

(e) For purposes of subdivision (1) of subsection (a), multiple violations of [Section 3] of this Act resulting from any single action or conduct shall constitute [one (1) violation].

(f) No provider of an interactive computer service may be held liable under this Act or any other provision of state law for identifying, removing, or disabling access to content that resides on an Internet Web page or other online location that such provider believes in good faith is used to engage in a violation of this Act.

Section 5. [*Violation of State Consumer Protection Act.*]

(a) A violation of this Act constitutes a violation of the [State Consumer Protection Act], compiled in [insert citation].

(b) For the purpose of application of the [State Consumer Protection Act], any violation of the provisions of this Act shall be construed to constitute an unfair or deceptive act or practice affecting trade or commerce and subject to the penalties and remedies as provided in that Act, in addition to the penalties and remedies set forth in this Act.

(c) If the [division] has reason to believe that any person has violated any provision of this Act, the [attorney general], at the request of the [division], may institute a proceeding under this Act.

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

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

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

Center for Diabetes Prevention

This Act establishes a Center for Diabetes Prevention and Health Improvement to provide grants to high schools through to be used exclusively for programs promoting the understanding and prevention of diabetes. Grant requests must specify how the school will spend the funds and how such spending promotes the understanding and prevention of diabetes. Grant recipients are required to provide quarterly reports to the center.

Under the Act, the Center can also provide grants to providers of primary and specialty health care services related to the treatment of pre-diabetes and diabetes. Any community and faith-based clinic, federally qualified health center ("FQHC"), county health department, hospital, or other health-related service provider would be eligible to apply.

The Act authorizes the Center to create or establish a nonprofit organization which would, like the center, be eligible to request and receive gifts, contributions, bequests, donations and grants from any legal and appropriate source to effectuate the center's purpose. If created, the nonprofit organization would be required to report its receipts and expenditures to the commissioner and the comptroller on an annual basis. The Center and any nonprofit organization created by the Center would be subject to examination and audit by the comptroller in the same manner as other state agencies.

Submitted as:

Tennessee

Section 1, Chapter 867, Public Acts of 2006

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as "The Diabetes Prevention and Health
2 Improvement Act."

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

5 (1) "Board" means the governing body of the [Center for Diabetes Prevention and Health
6 Improvement].

7 (2) "Center" means the [Center for Diabetes Prevention and Health Improvement].

8 (3) "Nonprofit organization" means an entity that is exempt from federal income taxation
9 under § 501(a) of the Internal Revenue Code as an organization described in § 501(c)(3) of the
10 Internal Revenue Code.

11
12 Section 3. [*Center for Diabetes Prevention and Health Improvement.*]

13 (a) The [Center for Diabetes Prevention and Health Improvement] is hereby established as
14 an agency of the state. The [Center] shall be attached to the [Department of Finance and
15 Administration] for administrative purposes.

16 (b) The purpose of the [Center] is to develop, implement and promote a statewide effort to
17 combat the proliferation of Type 2 diabetes.

18 (c) The duties of the [Center] shall be the following:

19 (1) The [Center] shall provide grants to high schools through the district office of
20 local education agencies across the state to be used exclusively for programs promoting the
21 understanding and prevention of diabetes. Grant requests must contain specific information about
22 how the school will spend the funds and how such spending promotes the understanding and

prevention of diabetes. Grant recipients shall be required to provide to the [Center] [quarterly] reports of the results of their program.

(2) The [Center] shall provide grants to providers of primary and specialty health care services related to the treatment of pre-diabetes and diabetes. Any community and faith-based clinic, federally qualified health center ("FQHC"), county health department, hospital, or other health-related service provider that is also a 501(c)(3) corporation, a 501(c)(6) entity whose membership consists entirely of 501(c)(3) corporations, or a public entity is eligible to apply in accordance with the provisions of this subdivision. In order to be eligible for a grant, an entity shall also have been in existence for [three (3) years], demonstrate evidence of financial stability, utilize evidence-based practices and show measurable results in its programs. The [Center] shall establish the grant criteria and make award decisions. In distributing such grants, the [Center] shall strive to create a coordinated, statewide set of resources to help the people of this state with their efforts to prevent or treat diabetes.

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

(a) The [Center] shall operate under the direction of a [seven (7)]-member [board of directors]. [Five (5) members shall be appointed by the governor. One (1) member shall be appointed by the Speaker of the Senate and one (1) member shall be appointed by the Speaker of the House of Representatives of the General Assembly].

(b) The [governor], in making appointments to the [board], shall strive to ensure that the membership of the [board] is representative of the state's geographic and demographic composition with appropriate attention to the representation of women and minorities. The appointments made by the [governor] shall include [one (1) member who is a physician licensed in this state, one (1) member who is a registered nurse licensed in this state, one (1) member who is a dietitian licensed in this state, and one (1) member who represents a human resources management or business perspective].

(c) The [Commissioner of Health, the Commissioner of Education and the Commissioner of Agriculture, or their designees, and the respective chairs of the House and Senate Education Committees and the chairs of the House Health and Human Resources Committee and the Senate General Welfare, Health and Human Resources Committee] shall serve as ex-officio, non-voting members of the [board].

(d) The [governor] shall appoint a chairperson from the members appointed pursuant to subsection (a), who shall serve a [two (2)]-year, renewable term as chairperson.

(e) Trustees appointed by the [governor] shall serve [four (4)]-year, renewable terms; provided that of the initial trustees appointed:

(1) [Two (2)] trustees appointed by the [speakers of each house of the general assembly] shall be appointed for an initial term of [four (4) years];

(2) [Two (2)] trustees shall be appointed for an initial term of [three (3) years];

(3) [Two (2)] trustees shall be appointed for an initial term of [two (2) years]; and

(4) [One (1)] trustee shall be appointed for an initial term of [one (1) year].

(f) Should a [board] position become vacant through resignation, removal, or other cause, the appointing authority for the position shall appoint a new member to serve the unexpired term. Trustees shall continue to serve on the [board] after the expiration of their term until a new trustee is appointed.

(g) A quorum of the [board] shall be [four (4) trustees].

(h) Trustees shall receive no compensation for their service on the [board], but may be reimbursed for those expenses allowed by the provisions of the comprehensive travel regulations as promulgated by the [Department of Finance and Administration] and approved by the [attorney general and reporter].

(i) The [board] shall adopt and implement a policy related to conflicts of interest to ensure that all trustees avoid any situation that creates an actual or perceived conflict of interest related to the work of the [Center].

(j) There shall be no liability on the part of, and no cause of action of any nature shall arise against [board] members, or any of their employees or agents, for any omission or any action taken by them within the scope of their duties arising from this part, except for willful, malicious or criminal acts or omissions done for personal gain.

(k) The [board] shall submit an annual report to the [governor, Speaker of the House and Speaker of the Senate by June 30 of each year]. Such report shall include detailed information on the operation and financial status of the [Center].

Section 5. *[Center Appropriations.]*

(a) Moneys appropriated to the [Center] shall be invested by the [state treasurer] in accordance with applicable general law, except as qualified by this part. Such moneys shall be held separate and apart from all other moneys, funds, and accounts in a special agency account within the state [general fund].

(b) Any balance remaining unexpended at the end of a fiscal year in such account shall be carried forward into the subsequent fiscal year.

(c) Investment earnings credited to the assets of such account, including, but not limited to, interest, shall be carried forward into the subsequent fiscal year.

(d) The [Center] is authorized to request and receive gifts, contributions, bequests, donations and grants from any legal and appropriate source to effectuate its purpose. Any such funds received shall be deposited into the special agency account created pursuant to subsection (a).

(e) Moneys in the special agency account shall be expended only in accordance with, and for the purposes stated in, the provisions of this part. No part of this account shall be diverted to the [general fund] or any other public fund for any purpose whatsoever.

Section 6. *[Center Authorization to Establish a Nonprofit Organization.]* The [Center] is authorized to create or establish a nonprofit organization which shall also be eligible to request and receive gifts, contributions, bequests, donations and grants from any legal and appropriate source to effectuate the [Center's] purpose. Such nonprofit organization, if created, shall report its receipts and expenditures on an annual basis to the [commissioner and the comptroller of the treasury].

Section 7. *[Center Authorization to Promulgate Rules.]* The [Center] is authorized to promulgate any rules necessary to carry out the proper administration of this part. Such rules shall be promulgated in accordance with the provisions of the [Uniform Administrative Procedures Act], compiled in [insert citation].

Section 8. *[Center Oversight.]* The [Center] and any nonprofit organization created under this Act shall be subject to examination and audit by the [comptroller of the treasury] in the same manner as prescribed for departments and agencies of the state.

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

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

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

(Chesapeake Bay) Watershed Nutrient Credit Exchange

This Act establishes a nutrient exchange or trading program to allow point source dischargers to achieve and maintain compliance with the waste load cap allocations for nitrogen and phosphorus delivered to the Chesapeake Bay and its tidal tributaries. It requires the state Water Control Board to issue a general permit under a state Pollutant Discharge Elimination System to eligible point source dischargers of nitrogen and phosphorus. The facilities that obtain such a permit, and which are interested in participating in the trading program, must be identified with their individual load cap allocations and trading ratios.

A trading association authorized by the bill provides the mechanism by which those permittees under the general permit are matched with nutrient trading partners. Within nine months of the issuance of the general permit, the permittees either individually or through the trading association, must submit compliance plans to the state department of environmental quality. The compliance plans must include any capital projects and implementation schedules to achieve the nitrogen and phosphorus reductions to comply with the waste load allocations for all the permittees in a particular tributary.

Submitted as:

Virginia

Chapter 710 of 2005

Status: Enacted into law in 2005.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as a “Watershed Nutrient Credit Exchange
2 Program.”

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

5 “Annual mass load of total nitrogen” (expressed in pounds per year) means the daily total
6 nitrogen concentration (expressed as mg/L to the nearest 0.01 mg/L) multiplied by the flow
7 volume of effluent discharged during the 24-hour period (expressed as MGD to the nearest 0.01
8 MGD), multiplied by 8.34 and rounded to the nearest whole number to convert to pounds per day
9 (lbs/day) units, then totaled for the calendar month to convert to pounds per month (lbs/mo) units,
10 and then totaled for the calendar year to convert to pounds per year (lbs/yr) units.

11 “Annual mass load of total phosphorus” (expressed in pounds per year) means the daily
12 total phosphorus concentration (expressed as mg/L to the nearest 0.01mg/L) multiplied by the
13 flow volume of effluent discharged during the 24-hour period (expressed as MGD to the nearest
14 0.01 MGD) multiplied by 8.34 and rounded to the nearest whole number to convert to pounds per
15 day (lbs/day) units, then totaled for the calendar month to convert to pounds per month (lbs/mo)
16 units, and then totaled for the calendar year to convert to pounds per year (lbs/yr) units.

17 “Association” means the [Nutrient Credit Exchange Association] authorized by this Act.

18 “Attenuation” means the rate at which nutrients are reduced through natural processes
19 during transport in water.

20 “Biological nutrient removal technology” means (i) technology that will achieve an annual
21 average total nitrogen effluent concentration of eight milligrams per liter and an annual average

total phosphorus effluent concentration of one milligram per liter, or (ii) equivalent reductions in loads of total nitrogen and total phosphorus through the recycle or reuse of wastewater as determined by the [Department].

“Board” means the [State Water Control Board] as established by [insert citation].

“Delivered total nitrogen load” means the discharged mass load of total nitrogen from a point source that is adjusted by the delivery factor for that point source.

“Delivered total phosphorus load” means the discharged mass load of total phosphorus from a point source that is adjusted by the delivery factor for that point source.

“Delivery factor” means an estimate of the number of pounds of total nitrogen or total phosphorus delivered to tidal waters for every pound discharged from a permitted facility, as determined by the specific geographic location of the permitted facility, to account for attenuation that occurs during riverine transport between the permitted facility and tidal waters. Delivery factors shall be calculated using the [Chesapeake Bay Program Watershed model].

“Department” means the [Department of Environmental Quality].

“Equivalent load” means 2,300 pounds per year of total nitrogen and 300 pounds per year of total phosphorus at a flow volume of 40,000 gallons per day; 5,700 pounds per year of total nitrogen and 760 pounds per year of total phosphorus at a flow volume of 100,000 gallons per day; and 28,500 pounds per year of total nitrogen and 3,800 pounds per year of total phosphorus at a flow volume of 500,000 gallons per day.

“Facility” means a point source discharging or proposing to discharge total nitrogen or total phosphorus to the [Chesapeake Bay] or its tributaries. This term does not include confined animal feeding operations, discharges of stormwater, return flows from irrigated agriculture, or vessels.

“General Permit” means the [General Permit] authorized by this Act.

“Permitted facility” means a facility authorized by the [General Permit] to discharge total nitrogen or total phosphorus.

“Permittee” means a person authorized by the [General Permit] to discharge total nitrogen or total phosphorus.

“Point source nitrogen credit” means the difference between (i) the waste load allocation for a permitted facility specified as an annual mass load of total nitrogen, and (ii) the monitored annual mass load of total nitrogen discharged by that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total nitrogen load.

“Point source phosphorus credit” means the difference between (i) the waste load allocation for a permitted facility specified as an annual mass load of total phosphorus, and (ii) the monitored annual mass load of total phosphorus discharged by that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total phosphorus load.

“Pollutant Discharge Elimination System Permit” means a permit authorized by [insert citation].

“State-of-the-art nutrient removal technology” means (i) technology that will achieve an annual average total nitrogen effluent concentration of three milligrams per liter and an annual average total phosphorus effluent concentration of 0.3 milligrams per liter, or (ii) equivalent load reductions in total nitrogen and total phosphorus through recycle or reuse of wastewater as determined by the [Department].

“Tributaries” means those river basins for which separate tributary strategies were prepared pursuant to [insert citation] and includes the [Potomac, Rappahannock, York, and James River Basins, and the Eastern Coastal Basin, which encompasses the creeks and rivers of the Eastern Shore of Virginia that are west of Route 13 and drain into the Chesapeake Bay].

71 “Waste load allocation” means (i) the water quality-based annual mass load of total
72 nitrogen or annual mass load of total phosphorus allocated to individual facilities pursuant to the
73 [insert citation], (ii) the water quality-based annual mass load of total nitrogen or annual mass
74 load of total phosphorus acquired pursuant to [Section 4] of this Act for new or expanded
75 facilities, or (iii) applicable total nitrogen or total phosphorus total maximum daily loads to
76 restore or protect the water quality and beneficial uses of the [Chesapeake Bay or its tidal
77 tributaries].
78

79 Section 3. *[Watershed General Permit for Nutrients.]*

80 A. By [insert date] or as soon thereafter as possible, the [state Water Control Board] shall
81 issue a [General Watershed Pollutant Discharge Elimination System Permit], hereafter referred to
82 as the [General Permit], authorizing point source discharges of total nitrogen and total phosphorus
83 to the waters of the [Chesapeake Bay and its tributaries]. Except as otherwise provided in this
84 Act, the [General Permit] shall control in lieu of technology-based, water quality-based, and best
85 in professional judgment, interim or final effluent limitations for total nitrogen and total
86 phosphorus in [Individual Pollutant Discharge Elimination System Permits] for facilities covered
87 by the [General Permit] where the effluent limitations for total nitrogen and total phosphorus in
88 the individual permits are based upon standards, criteria, waste load allocations, policy, or
89 guidance established to restore or protect the water quality and beneficial uses of the [Chesapeake
90 Bay or its tidal tributaries].

91 B. This section shall not be construed to limit or otherwise affect the [Board’s] authority
92 to establish and enforce more stringent water quality-based effluent limitations for total nitrogen
93 or total phosphorus in individual permits where those limitations are necessary to protect local
94 water quality. The exchange or acquisition of credits pursuant to this Act shall not affect any
95 requirement to comply with such local water quality-based limitations.

96 C. The [General Permit] shall contain the following:

97 1. Waste load allocations for total nitrogen and total phosphorus for each permitted
98 facility expressed as annual mass loads. The allocations for each permitted facility shall reflect
99 the applicable individual water quality-based total nitrogen and total phosphorus waste load
100 allocations. An owner or operator of two or more facilities located in the same tributary may
101 apply for and receive an aggregated waste load allocation for total nitrogen and an aggregated
102 waste load allocation for total phosphorus for multiple facilities reflecting the total of the water
103 quality-based total nitrogen and total phosphorus waste load allocations established for such
104 facilities individually;

105 2. A schedule requiring compliance with the combined waste load allocations for
106 each tributary as soon as possible taking into account (i) opportunities to minimize costs to the
107 public or facility owners by phasing in the implementation of multiple projects; (ii) the
108 availability of required services and skilled labor; (iii) the availability of funding from a [Water
109 Quality Improvement Fund] as established in [insert citation], a [Water Facilities Revolving
110 Fund] as established in [insert citation] and other financing mechanisms; (iv) water quality
111 conditions; and (v) other relevant factors. Following receipt of the compliance plans required by
112 subdivision C 3, the [Board] shall reevaluate the schedule taking into account the information in
113 the compliance plans and the factors in this subdivision, and may modify the schedule as
114 appropriate;

115 3. A requirement that within [nine months after] the initial effective date of the
116 [General Permit], the permittees shall either individually or through the [Association] submit
117 compliance plans to the [Department] for approval. The compliance plans shall contain, at a
118 minimum, any capital projects and implementation schedules needed to achieve total nitrogen and
119 phosphorus reductions sufficient to comply with the individual and combined waste load
120 allocations of all the permittees in the tributary. The compliance plans may rely on the exchange

of point source credits in accordance with this Act, but not the acquisition of credits through payments authorized by Section 7 of this Act, to achieve compliance with the individual and combined waste load allocations in each tributary. The compliance plans shall be updated annually and submitted to the [Department] no later than [February 1] of each year;

4. Such monitoring and reporting requirements as the [Board] deems necessary to carry out the provisions of this Act;

5. A procedure that requires every owner or operator of a facility authorized by a [Pollutant Discharge Elimination System Permit] to discharge 100,000 gallons or more per day, or an equivalent load, directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load, directly into nontidal waters, to secure [General Permit] coverage by filing a registration statement with the [Department] within a specified period after each effective date of the [General Permit]. The procedure shall also require any owner or operator of a facility authorized by a [Pollutant Discharge Elimination System Permit] to discharge 40,000 gallons or more per day, or an equivalent load, directly into tidal or nontidal waters to secure [General Permit] coverage by filing a registration statement with the [Department] at the time he makes application with the [Department] for a new discharge or expansion that is subject to an offset or technology-based requirement in Section 4 of this Act, and thereafter within a specified period of time after each effective date of the [General Permit]. The [General Permit] shall provide that any facility authorized by a [Pollutant Discharge Elimination System Permit] and not required by this subdivision to file a registration statement shall be deemed to be covered under the [General Permit] at the time it is issued, and shall file a registration statement with the [Department] when required by this section. Owners or operators of facilities that are deemed to be permitted under this section shall have no other obligation under the [General Permit] prior to filing a registration statement and securing coverage under the [General Permit] based upon such registration statement;

6. A procedure for efficiently modifying the lists of facilities covered by the [General Permit] where the modification does not change or otherwise alter any waste load allocation or delivery factor adopted pursuant to a [Water Quality Management Planning Regulation] as defined under [insert citation] or its successor, or an applicable total maximum daily load. The procedure shall also provide for modifying or incorporating new waste load allocations or delivery factors, including the opportunity for public notice and comment on such modifications or incorporations; and

7. Such other conditions as the [Board] deems necessary to carry out the provisions of this Act and Section 402 of the federal Clean Water Act (33 U.S.C. § 1342).

D. The [Board] shall maintain and make available to the public a current listing, by tributary, of all permittees and permitted facilities under the [General Permit], together with each permitted facility's total nitrogen and total phosphorus waste load allocations, and total nitrogen and total phosphorus delivery factors.

E. Except as otherwise provided in this Act, in the event that there are conflicting or duplicative conditions contained in the [General Permit] and an individual [Pollutant Discharge Elimination System Permit], the conditions in the [General Permit] shall control.

Section 4. *[New or Expanded Facilities.]*

A. An owner or operator of a new or expanded facility shall comply with the applicable requirements of this section as a condition of the facility's coverage under the [General Permit].

1. An owner or operator of a facility authorized by a [Pollutant Discharge Elimination System Permit] first issued before [July 1, 2005], that expands his facility to discharge [100,000 gallons or more] per day, or an equivalent load directly into tidal waters, or [500,000 gallons or more] per day, or an equivalent load, directly into nontidal waters shall demonstrate to the [Department] that he has acquired waste load allocations sufficient to offset

any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his waste load allocations or permitted design capacity as of [July 1, 2005], and will install state-of-the-art nutrient removal technology at the time of the expansion.

2. An owner or operator of a facility authorized by a [Pollutant Discharge Elimination System Permit] first issued before [July 1, 2005], that expands his facility to discharge [100,000 gallons or more] per day up to and including [499,999 gallons] per day, or an equivalent load, directly into nontidal waters, shall demonstrate to the [Department] that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of [July 1, 2005], and will install, at a minimum, biological nutrient removal technology at the time of the expansion.

3. An owner or operator of a facility authorized by a [Pollutant Discharge Elimination System Permit] first issued before [July 1, 2005], that expands his facility to discharge [40,000 gallons] or more per day up to and including [99,999 gallons] per day, or an equivalent load, directly into tidal or nontidal waters, shall demonstrate to the [Department] that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of [July 1, 2005].

4. An owner or operator of a facility authorized by a [Pollutant Discharge Elimination System Permit] first issued on or after [July 1, 2005], to discharge [40,000 gallons] or more per day, or an equivalent load, shall demonstrate to the [Department] that he has acquired waste load allocations sufficient to offset his delivered total nitrogen and delivered total phosphorus loads, and will install at a minimum, biological nutrient removal technology at any facility authorized to discharge up to and including [99,999 gallons] per day, or an equivalent load, directly into tidal and nontidal waters, or up to and including [499,999 gallons] per day, or an equivalent load, to nontidal waters; and state-of-the-art nutrient removal technology at any facility authorized to discharge [100,000 gallons] or more per day, or an equivalent load, directly into tidal waters, or [500,000 gallons] or more per day, or an equivalent load, directly into nontidal waters.

B. Waste load allocations required by this section to offset new or increased delivered total nitrogen and delivered total phosphorus loads shall be acquired in accordance with this subsection.

1. Such allocations may be acquired from one or a combination of the following:

a. Acquisition of all or a portion of the waste load allocations from [one] or more permitted facilities in the same tributary;

b. Acquisition of nonpoint source load allocations through the use of best management practices acquired through a public or private entity acting on behalf of the land owner. Such best management practices shall achieve reductions beyond those already required by or funded under federal or state law, or [state] tributaries strategies plans, and shall be installed in the same tributary in which the new or expanded facility is located and included as conditions of the facility's [Pollutant Discharge Elimination System Permit]; or

c. Acquisition of allocations in accordance with the terms of the [General Permit] or through such other means as may be approved by the [Department] on a case-by-case basis.

2. The [Board] shall give priority to allocations acquired in accordance with subdivisions B 1 a and B 1 b. The [Board] shall approve allocations acquired in accordance with subdivision B 1 c only after the owner or operator has demonstrated that he has made a good faith effort to acquire sufficient allocations in accordance with subdivisions B 1 a and B 1 b and that such allocations are not reasonably available taking into account timing, cost, and other relevant factors.

C. Until such time as the [Board] finds that no allocations are reasonably available in an individual tributary, the [General Permit] shall provide for the acquisition of allocations through payments into the [Water Quality Improvement Fund] established under [insert citation]. Such payments shall be promptly applied to achieve equivalent point or nonpoint source reductions in the same tributary beyond those reductions already required by or funded under federal or state law or the [state] tributaries strategies plans. The [General Permit] shall base the cost of each pound of allocation on the estimated cost of achieving a reduction of one pound of nitrogen or phosphorus at the facility that is securing the allocation, or comparable facility, for each pound of allocation acquired; or the average cost of reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each pound of allocation acquired, whichever is higher. Upon each reissuance of the [General Permit], the [Board] may adjust the cost of each pound of allocation based on current costs and cost estimates.

Section 5. *[Technology-Based Standards and Effluent Limitations.]*

A. The [Board] may establish a technology-based standard less stringent than the applicable standard specified in [Section 4] of this Act based on a demonstration by an owner or operator that the specified standard is not technically or economically feasible for the affected facility or that the technology-based standard would require the owner or operator to construct treatment facilities not otherwise necessary to comply with his waste load allocation without reliance on nutrient credit exchanges pursuant to [Section 7] of this Act.

B. The [Board] may include technology-based effluent concentration limitations in the individual permit for any facility that has installed technology for the control of nitrogen and phosphorus whether by new construction, expansion, or upgrade. Such limitations shall be based upon the technology installed by the facility and shall be expressed as annual average limitations. Such limitations shall not affect the generation, acquisition, or exchange of allocations or credits pursuant to this Act.

Section 6. *[Nutrient Credit Exchange Association Authorized; Duties; Composition; Appointment; Terms]*

A. The permittees under the [General Permit] may establish a nonstock corporation under [insert citation], to be known as the state [Nutrient Credit Exchange Association], to coordinate and facilitate participation in the nutrient credit exchange program by its members. The [Nutrient Credit Exchange Association], which is hereafter referred to as the Association, may (i) submit on behalf of the permittees the compliance plans required by [Section 7] of this Act, (ii) develop a standard form of agreement for use by permittees when buying and selling nitrogen and phosphorus allocations and credits, (iii) assist permittees in identifying buyers and sellers of nitrogen and phosphorus allocations and credits, (iv) coordinate planning to ensure that to the extent possible, sufficient credits are available each year to achieve full compliance with the [General Permit], (v) assist individual municipal permittees in using public-private partnerships and other innovative measures to achieve the State's water quality goals, and (vi) perform such other duties and functions as may be necessary to the effective and efficient implementation of the credit exchange program. The Association shall not assume any of the permittees' compliance obligations under the [General Permit].

B. Only permittees under the [General Permit] may become members of the Association. The Association shall operate through a [board of directors], which shall consist of 10 members and be representative of the membership in the Association. Association [board] members shall be employees of Association members, shall be elected by the Association membership at the beginning of each term of the [General Permit], and shall serve through the end of the permit term to which they were elected. Vacancies for unexpired Association [board] terms shall be filled in the same manner in which members are originally elected to the Association [board].

C. The Association [board] shall elect a president, vice president, secretary, and treasurer from among its members at the beginning of each permit term. Officers and Association [board] members shall receive no compensation for their services as officers and [board] members of the Association.

Section 7. *[Nutrient Allocation Compliance and Reporting.]*

A. Each permitted facility shall be in compliance with its individual waste load allocations if: (i) its annual mass load is less than the applicable waste load allocation assigned to the facility in the [General Permit]; (ii) the permitted facility acquires sufficient point source nitrogen or phosphorus credits in accordance with subdivision A 1; or (iii) in the event it is unable to meet the individual waste load allocation pursuant to clauses (i) or (ii), the permitted facility acquires sufficient nitrogen or phosphorus credits through payments made in accordance with subdivision A 2; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual waste load allocations for each permitted facility.

1. A permittee may acquire point source nitrogen or phosphorus credits from one or more permitted facilities only if (i) the credits are generated and applied to a compliance obligation in the same calendar year, (ii) the credits are generated by one or more permitted facilities in the same tributary, (iii) the credits are acquired no later than [June 1] immediately following the calendar year in which the credits are applied, and (iv) no later than [June 1] immediately following the calendar year in which the credits are applied, the permittee certifies on a form supplied by the [Department] that he has acquired sufficient credits to satisfy his compliance obligations.

2. A permittee may acquire nitrogen or phosphorus credits through payments made into a [Water Quality Improvement Fund] established by [insert citation] only if, no later than [June 1] immediately following the calendar year in which the credits are applied, the permittee certifies on a form supplied by the [Department] that he has diligently sought, but has been unable to acquire, sufficient credits to satisfy his compliance obligations through the acquisition of point source nitrogen or phosphorus credits with other permitted facilities in the same tributary, and that he has acquired sufficient credits to satisfy his compliance obligations through one or more payments made in accordance with the terms of the [General Permit].

B. Until such time as the [Board] finds that no credits are reasonably available in an individual tributary, the [General Permit] shall provide for the acquisition of nitrogen and phosphorus credits through payments into the [Water Quality Improvement Fund] in accordance with subdivision A. Such payments shall be promptly applied to achieve equivalent point or nonpoint source reductions in the same tributary beyond those reductions already required by or funded under federal or state law, or the [state tributaries strategies plans]. The [General Permit] shall base the cost of each nitrogen or phosphorus credit on the average cost of reducing one pound of nitrogen or phosphorus from publicly owned wastewater treatment facilities for each credit acquired. Upon each reissuance of the [General Permit], the [Board] may adjust the cost of each nitrogen and phosphorus credit based on (i) the current average cost of reducing a pound of nitrogen or phosphorus from publicly owned wastewater treatment facilities for each credit acquired and (ii) any additional incentives reasonably necessary to ensure that there is timely and continuing progress toward attaining and maintaining each tributary's combined waste load allocation.

C. On or before [February 1, annually], each permittee shall either individually or through the Association file a report with the [Department]. The report shall identify (i) the annual mass load of total nitrogen and the annual mass load of total phosphorus discharged by each permitted facility during the previous calendar year, (ii) the delivered total nitrogen load and delivered total phosphorus load discharged by each permitted facility during the previous year, and (iii) the

number of total nitrogen and total phosphorus credits for the previous calendar year to be purchased or sold by the permittee. The report shall contain the certification required by federal and state law and be signed by each permittee for each of the permittee's facilities covered by the [General Permit].

D. On or before [April 1, annually], the [Department] shall prepare a report containing the annual mass load of total nitrogen and annual mass load of total phosphorus discharged by each permitted facility, the number of point source nitrogen and phosphorus credits for the previous calendar year for sale or purchase by each such facility, and to the extent there are insufficient point source credits available for exchange to provide for full compliance by every permittee, the number of credits to be purchased pursuant to this section. Upon completion of the report, the [Department] shall promptly publish notice of the report and make the report available to any person requesting it.

E. On or before [July 1, annually], the [Department] shall publish notice of all nitrogen and phosphorus credit exchanges and purchases for the previous calendar year and make all documents relating to the exchanges and purchases available to any person requesting them.

Section 8. [*Program Audits.*]

1. In addition to its permit compliance and enforcement authority, the [Department] is authorized to conduct such audits of the Association and permittees as it deems necessary to ensure that the reports and data received from permittees and the Association are complete and accurate. The Association and permittees under the [General Permit] shall cooperate with the [Department] in the conduct of such audits and provide the [Department] with such information as the [Department] may require to fulfill its responsibilities under this Act.

2. Any rights, claims, or defenses arising out of the [General Permit] authorized under this Act shall not be applicable to, raised nor asserted in any judicial proceeding, or appeals therefrom, that relate to [Pollutant Discharge Elimination System Permits] issued by the [Board] on [June 17, 2004].

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

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

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

Competitive Emerging Communications Technologies

This Act expressly removes the power of the state Public Service Commission to set the rates and the terms and conditions for the offering of emerging communications technologies of broadband service, voice over Internet protocol, and wireless service within the state.

Submitted as:

Georgia

SB 120

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as the “Competitive Emerging
2 Communications Technologies Act.”
3

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

5 (1) it is in the public interest to encourage deployment of the emerging communications
6 technologies of broadband service, voice over Internet protocol, and wireless service by expressly
7 removing any power the state [Public Service Commission] may have to set the rates and the
8 terms and conditions for the offering of such services within this state;

9 (2) that market based competition is the best mechanism for the selection and setting of
10 such rates, terms, and conditions for such emerging communications technologies and to
11 encourage the adoption and use of such services by consumers; and

12 (3) that consumers need timely and accurate information as to the actual cost and levels of
13 delivered service in order to make informed market based choices among competing offerings of
14 such emerging communications technologies.
15

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

17 (1) ‘Broadband service’ means a service that consists of the capability to transmit at a rate
18 not less than [200 kilobits] per second in either the upstream or downstream direction and in
19 combination with such service provide either:

20 (A) access to the Internet; or

21 (B) computer processing, information storage, or protocol conversion.

22 For the purposes of this Act, broadband service does not include any information content or
23 service applications provided over such access service nor any intrastate service that was subject
24 to a tariff in effect as of [insert date].

25 (2) ‘VoIP’ means voice over Internet protocol services offering real time multidirectional
26 voice functionality utilizing any Internet protocol.

27 (3) ‘Wireless service’ means commercial mobile radio service carried on between mobile
28 stations or receivers and land stations and by mobile stations communicating among themselves.
29

30 Section 4. [*Restricting Public Service Commission Powers over Broadband Service, VoIP,*
31 *or Wireless Service.*]

32 (a) The state [Public Service Commission] shall not have any jurisdiction, right, power,
33 authority, or duty to impose any requirement or regulation relating to the setting of rates or terms
34 and conditions for the offering of broadband service, VoIP, or wireless service.

35 (b) This section shall not be construed to affect:
36 (1) state laws of general applicability to all businesses, including, without
37 limitation, consumer protection laws and laws relating to restraint of trade;
38 (2) any authority of the [Public Service Commission] with regard to consumer
39 complaints; or
40 (3) any authority of the [Public Service Commission] to act in accordance with
41 federal laws or regulations of the Federal Communications Commission, including, without
42 limitation, jurisdiction granted to set rates, terms, and conditions for access to unbundled network
43 elements and to arbitrate and enforce interconnection agreements.
44 (c) Except as otherwise expressly provided in this section, nothing in this section shall be
45 construed to restrict or expand any other authority or jurisdiction of the [state Public Service
46 Commission].
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.]

Dementia-Specific Service Disclosure

This Act requires facilities which secure, segregate, or provide special programs or units for people with Alzheimer's disease or related disorders to provide written disclosure of what the dementia-specific care includes.

Submitted as:

Minnesota

Chapter 325F.72

Status: Enacted into law in 2001 as part of an omnibus health and human services bill.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Require Organizations that
2 Provide or Promote Special Services to People with Alzheimer’s or Related Diseases to Disclose
3 Certain Information about Those Services to Certain State Agencies and Consumers.”

4
5 Section 2. [*Required Disclosure for Organizations that Offer “Special Care” to People
6 with Alzheimer’s or Related Disorders.*]

7 (A) Housing with services establishments, as defined in [insert citation] that secure,
8 segregate, or provide a special program or special unit for residents with a diagnosis of probable
9 Alzheimer’s disease or a related disorder or that advertise, market, or otherwise promote the
10 establishment as providing specialized care for Alzheimer’s disease or a related disorder are
11 considered a “special care unit.”

12 (B) All special care units shall provide a written disclosure to the following:

13 (1) the [commissioner of health], if requested;
14 (2) the [office of Ombudsman for older state residents]; and
15 (3) each person seeking placement within a residence, or the person’s authorized
16 representative, before an agreement to provide the care is entered into.

17 (C) Written disclosure shall include, but is not limited to, the following:

18 (1) a statement of the overall philosophy and how it reflects the special needs of
19 residents with Alzheimer’s disease or other dementias;

20 (2) the criteria for determining who may reside in the special care unit;

21 (3) the process used for assessment and establishment of the service plan or
22 agreement, including how the plan is responsive to changes in the resident’s condition;

23 (4) staffing credentials, job descriptions, and staff duties and availability, including
24 any training specific to dementia;

25 (5) physical environment as well as design and security features that specifically
26 address the needs of residents with Alzheimer’s disease or other dementias;

27 (6) frequency and type of programs and activities for residents of the special care
28 unit;

29 (7) involvement of families in resident care and availability of family support
30 programs;

31 (8) fee schedules for additional services to the residents of the special care unit;
32 and

33 (9) a statement that residents will be given a written notice [30 days] prior to
34 changes in the fee schedule.

35 (D) Substantial changes to disclosures must be reported to the parties listed in subdivision
36 (B) of this section at the time the change is made.

37 (E) The [attorney general] may seek the remedies set forth in [insert citation] for repeated
38 and intentional violations of this section. However, no private right of action may be maintained
39 as provided under [insert citation].

40
41 Section 3. [*Severability*.] [Insert severability clause.]

42
43 Section 4. [*Repealer*.] [Insert repealer clause.]

44
45 Section 5. [*Effective Date*.] [Insert effective date.]

Dementia-Specific Training

This Act requires the state agency responsible for regulating long-term care industries to establish minimum dementia-specific training requirements for employees who are employed by:

- skilled nursing facilities;
- intermediate care facilities;
- residential care facilities (assisted living);
- agencies providing in-home care services;
- adult day care programs;
- independent contractors providing direct care to people with Alzheimer’s disease or related dementias;
- hospice programs; and
- the state division of aging.

Submitted as:

Missouri

SB 449

Status: Enacted into law in 2001.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act Requiring Dementia-Specific
2 Training for Employees Who Care for People with Alzheimer’s and Dementia-Related Diseases.”
3

4 Section 2. [*Alzheimer’s Awareness Day.*] The [governor] shall annually issue a
5 proclamation setting apart the [first Tuesday in March] as “Alzheimer’s Awareness Day,” and
6 recommending to the people of the state that the day be appropriately observed through activities
7 which will increase awareness of Alzheimer’s disease and related dementias.
8

9 Section 3. [*Information and Technical Assistance about Alzheimer’s and Related*
10 *Dementia Diseases and Programs.*] The [state division of aging] shall maintain and provide up-
11 to-date information and technical assistance related to the needs and interests of elderly people
12 and people with Alzheimer’s disease or related dementias, including information on the [state
13 care options program], dementia-specific training materials and dementia-specific trainers. Such
14 dementia-specific information and technical assistance shall be maintained and provided in
15 consultation with agencies, organizations and/or institutions of higher learning with expertise in
16 dementia care.
17

18 Section 4. [*Dementia-Specific Training for Employees Who Care for People with*
19 *Alzheimer’s and Dementia-Related Diseases.*]

20 (A) The [state division of aging] shall, by [insert date], establish minimum dementia-
21 specific training requirements for employees involved in the delivery of care to people with
22 Alzheimer’s disease or related dementias who are employed by skilled nursing facilities,
23 intermediate care facilities, residential care facilities, agencies providing in-home care services,
24 adult daycare programs, independent contractors providing direct care to people with Alzheimer’s
25 disease or related dementias, hospice programs and the [division of aging]. Such training shall be

26 incorporated into new employee orientation and on-going in-service curricula for all employees
27 involved in the care of people with dementia, including, at a minimum, the following:

28 (1) For employees providing direct care to people with Alzheimer’s disease or
29 related dementias, the training shall include an overview of Alzheimer’s disease and related
30 dementias, communicating with people with dementia, behavior management, promoting
31 independence in activities of daily living, and understanding and dealing with family issues;

32 (2) For other employees who do not provide direct care for, but may have contact
33 with, people with Alzheimer’s disease or related dementias, the training shall include an overview
34 of dementias and communicating with people with dementia.

35 (B) As used in this section, the term “employee” includes people hired as independent
36 contractors. The training requirements of this section shall not be construed as superseding any
37 other laws or rules regarding dementia-specific training.

38
39 Section 5. [*Severability.*] [Insert severability clause.]

40
41 Section 6. [*Repealer.*] [Insert repealer clause.]

42
43 Section 7. [*Effective Date.*] [Insert effective date.]

Denying Professional and Commercial Licenses to People Who are Unlawfully Present in the United States

Subject to exemptions and definitions found in federal law, this Act requires local governments and divisions, boards, and agencies of the department of regulatory agencies to issue and renew licenses, permits, registrations, certificates, charters, memberships, or similar authorizations to a person only if the person is lawfully present in the United States and to deny any such authorization, including a renewal thereof, upon determining that the person is unlawfully present in the United States. It also requires a person to prove his or her identity with a secure and verifiable document.

Submitted as:

Colorado

HB 1009

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Deny State Licenses and
2 Certain Benefits to People Who are Unlawfully Present in the United States.”
3

4 Section 2. [*Applications for Licenses - Authority to Suspend Licenses - Rules.*]

5 (a) Every application by an individual for a license issued pursuant to the authority set
6 forth in [insert citation] by any division, board, or agency of this state shall require the applicant’s
7 name, address, and social security number. Subject to the exemptions found in 8 U.S.C. Sec. 1621

8 (c) (2), to the extent that any such license constitutes a professional license or commercial license
9 regulated by 8 U.S.C. Sec. 1621, such division, board, or agency may issue or renew any such
10 license to an individual only if the individual is lawfully present in the United States, and shall
11 immediately deny any such license or renewal thereof upon determining that the individual is
12 unlawfully present in the United States. The individual shall prove his or her identity with a
13 secure and verifiable document, as that term is defined in [insert citation]. The division, board, or
14 agency shall not sell or use for any purpose other than those specified in law the information
15 contained in the secure and verifiable document, and shall keep such information confidential
16 unless disclosure is required by law; except that nothing in this paragraph (a) shall be construed to
17 limit public access to records that are available for public inspection pursuant to [insert citation].

18 (b) For purposes of this section, an individual is unlawfully present in the United States if
19 the individual is an alien who is not:

20 (i) a qualified alien as defined in 8 U.S.C. Sec. 1641;

21 (ii) a nonimmigrant under the “Immigration and Nationality Act,” Federal Public
22 Law 82-414, as amended; or

23 (iii) an alien who is paroled into the United States under 8 U.S.C. Sec. 1182 (d) (5)
24 for less than one year.

25 (c) This section shall be enforced without regard to race, religion, gender, ethnicity, or
26 national origin.
27

28 Section 3. [*General Regulations.*]

(a) Subject to the exemptions found in 8 U.S.C. Sec. 1621 (c) (2), to the extent that a license, permit, certificate, or other authorization to conduct business issued by a county constitutes a professional license or commercial license regulated by 8 U.S.C. Sec. 1621, a county may issue such authorization to an individual only if the individual is lawfully present in the United States, and shall immediately deny any such authorization or renewal thereof upon determining that the individual is unlawfully present in the United States. The individual shall prove his or her identity with a secure and verifiable document, as that term is defined in [insert citation]. A county shall not sell or utilize for any purpose other than those specified in law the information contained in the secure and verifiable document, and shall keep such information confidential unless disclosure is required by law; except that nothing in this paragraph (a) shall be construed to limit public access to records that are available for public inspection pursuant to [insert citation].

(b) For purposes of this section, an individual is unlawfully present in the United States if the individual is an alien who is not:

(i) a qualified alien as defined in 8 U.S.C. Sec. 1641;

(ii) a nonimmigrant under the “Immigration and Nationality Act,” Federal Public Law 82-414, as amended; or

(iii) an alien who is paroled into the United States under 8 U.S.C. Sec. 1182 (d) (5) for less than one year.

(c) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

Section 4. [*Powers to Regulate Businesses.*]

(a) Subject to the exemption as found in 8 U.S.C. Sec. 1621 (c) (2), to the extent that any license, permit, certificate, or other authorization to conduct business issued by a municipality constitutes a professional license or commercial license regulated by 8 U.S.C. Sec. 1621, the governing body of a municipality may issue such authorization to an individual only if the individual is lawfully present in the United States, and shall immediately deny any such authorization or renewal thereof upon determining that the individual is unlawfully present in the United States. The individual shall prove his or her identity with a secure and verifiable document, as that term is defined in [insert citation]. A municipality shall not sell or utilize for any purpose other than those specified in law the information contained in the secure and verifiable document, and shall keep such information confidential unless disclosure is required by law; except that nothing in this paragraph (a) shall be construed to limit public access to records that are available for public inspection pursuant to [insert citation].

(b) For purposes of this subsection, an individual is unlawfully present in the United States if the individual is an alien who is not:

(i) a qualified alien as defined in 8 U.S.C. Sec. 1641;

(ii) a nonimmigrant under the “Immigration and Nationality Act,” Federal Public Law 82-414, as amended; or

(iii) an alien who is paroled into the United States under 8 U.S.C. Sec. 1182 (d) (5) for less than one year.

(c) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

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

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

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

Disclosing Candidate-Specific Communications

This Act requires every individual, committee, association, or any other organization or group of people that incurs an expense for the direct costs of producing or airing candidate-specific communications in an aggregate amount in excess of ten thousand dollars during any calendar year shall, within 24 hours of each disclosure date, file with the state board of elections a statement identifying the entities incurring the expense, the custodian of the books and accounts of the entity incurring the expense, the principal place of business of the entity incurring the expense and identifying the candidates in the candidate-specific communications.

Submitted as:

North Carolina

Session Law 2006-233

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Provide for the Disclosure of
2 Candidate-Specific Communications.”

3
4 Section 2. [*Candidate-Specific Communication: Definitions.*] As used in Sections 1
5 through 4 of this Act:

6 (1) The term “candidate-specific communication” means any broadcast, cable, or satellite
7 communication that has all the following characteristics:

8 a. refers to a clearly identified candidate for a statewide office or the [General
9 Assembly].

10 b. is made in an even-numbered year after the final date on which a Notice of
11 Candidacy can be filed for the office, pursuant to [insert citation], and through the day on which
12 the general election is conducted, excluding the time period set in the definition for
13 [“electioneering communication”] in [insert citation].

14 c. is targeted to the relevant electorate.

15 (2) The term “candidate-specific communication” does not include any of the following:

16 a. a communication appearing in a news story, commentary, or editorial distributed
17 through the facilities of any broadcasting station, unless those facilities are owned or controlled
18 by any political party, political committee, or candidate.

19 b. a communication that constitutes an expenditure or independent expenditure
20 under [insert citation].

21 c. a communication that constitutes a candidate debate or forum conducted
22 pursuant to rules adopted by the [Board] or that solely promotes that debate or forum and is made
23 by or on behalf of the person sponsoring the debate or forum.

24 d. a communication made while the [General Assembly] is in session which,
25 incidental to advocacy for or against a specific piece of legislation pending before the [General
26 Assembly], urges the audience to communicate with a member or members of the [General
27 Assembly] concerning that piece of legislation.

28 e. an [“electioneering communication”] as defined in [insert citation].

29 (3) The term “disclosure date” means either of the following:

30 a. the first date during any calendar year when a candidate-specific communication
31 is aired after an entity has incurred expenses for the direct costs of producing or airing candidate-
32 specific communications aggregating in excess of [ten thousand dollars (\$10,000)].

33 b. any other date during that calendar year by which an entity has incurred
34 expenses for the direct costs of producing or airing candidate-specific communications
35 aggregating in excess of [ten thousand dollars (\$10,000)] since the most recent disclosure date for
36 that calendar year.

37 (4) The term “targeted to the relevant electorate” means a communication which refers to
38 a clearly identified candidate for statewide office or the [General Assembly] and which can be
39 received by [50,000 or more] people in the state in the case of a candidacy for statewide office
40 and [2,500 or more] people in the [district] in the case of a candidacy for [General Assembly].

41 (5) The term “Board” means the [state board of elections] defined in [insert citation].
42

43 Section 3. [*Disclosing Candidate-Specific Communications.*]

44 (1) Statement Required. – Every individual, committee, association, or any other
45 organization or group of people that incurs an expense for the direct costs of producing or airing
46 candidate-specific communications in an aggregate amount in excess of [ten thousand dollars
47 (\$10,000)] during any calendar year shall, within [24 hours] of each disclosure date, file with the
48 [state board of elections] a statement containing the information described in subsection (2) of
49 this section.

50 (2) Contents of Statement. – Each statement required to be filed by this section shall be
51 made under the penalty of perjury as defined in [insert citation] and shall contain the following
52 information:

53 a. the identification of the entity incurring the expense, of any entity sharing or
54 exercising direction or control over the activities of that entity, and of the custodian of the books
55 and accounts of the entity incurring the expense;

56 b. the principal place of business of the entity incurring the expense if the entity is
57 not an individual;

58 c. the amount of each expense incurred of more than [one thousand dollars
59 (\$1,000)] during the period covered by the statement and the identification of the entity to whom
60 the expense was incurred;

61 d. the candidates in the candidate-specific communications that are identified or
62 are to be identified;

63 e. the identity of every provider of funds or anything of value whatsoever to the
64 entity, providing an amount in excess of [one thousand dollars (\$1,000)]. If the provider is an
65 individual, the statement shall also contain the principal occupation of the provider. The
66 “principal occupation of the provider” shall mean the same as the “principal occupation of the
67 contributor” in [insert citation].

68 (3) Creating Multiple Organizations. – It shall be unlawful for any person or entity to
69 create, establish, or organize more than [one] political organization (as defined in section
70 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the reporting
71 requirements contained in this Act.
72

73 Section 4. [*Penalties.*] The [state board of elections] has the same authority to compel
74 from any organization covered by this Act the disclosures required by this Act that the [Board]
75 has to compel from a political committee the disclosures required by [insert citation]. The civil
76 penalties and remedies in [insert citation] shall apply to violations of this Act.
77

78 Section 5. [*Candidate-Specific Communications: Mass Mailings and Telephone Banks.*]
79 As used in Sections 5 through 10 of this Act, the following terms have the following definitions:

(1) The term “candidate-specific communication” means any mass mailing or telephone bank that has all the following characteristics:

a. refers to a clearly identified candidate for a statewide office or the [General Assembly];

b. is made in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to [insert citation], and through the day on which the general election is conducted, excluding the time period set in the definition for “electioneering communication” as defined in [insert citation].

c. is targeted to the relevant electorate.

(2) The term “candidate-specific communication” does not include any of the following:

a. a communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.

b. a communication that constitutes an expenditure or independent expenditure under [insert citation].

c. a communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the [Board] or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. a communication that is distributed by a corporation solely to its shareholders or employees or by a labor union or professional association solely to its members.

e. a communication made while the [General Assembly] is in session which, incidental to advocacy for or against a specific piece of legislation pending before the [General Assembly], urges the audience to communicate with a member or members of the [General Assembly] concerning that piece of legislation.

f. an electioneering communication as defined in [insert citation].

g. a public opinion poll conducted by a newspaper, periodical, or other news gathering organization.

(3) The term “disclosure date” means either of the following:

a. the first date during any calendar year when a candidate-specific communication is transmitted after an entity has incurred expenses for the direct costs of producing or transmitting candidate-specific communications aggregating in excess of [ten thousand dollars (\$10,000)].

b. any other date during that calendar year by which an entity has incurred expenses for the direct costs of producing or transmitting candidate-specific communications aggregating in excess of [ten thousand dollars (\$10,000)] since the most recent disclosure date for that calendar year.

(4) The term “mass mailing” means any mailing by United States mail or facsimile or as defined under [insert citation].

(5) The term “race” means a ballot item, as defined in [insert citation], in which the voters are to choose between or among candidates.

(6) The term “targeted to the relevant electorate” means:

a. with respect to a statewide race:

1. transmitting, by mail or facsimile to a cumulative total of [50,000 or more] addresses in the State, items identifying one or more candidates in the same race within any [30-day] period; or

2. making a cumulative total of [50,000 or more] telephone calls in the State identifying one or more candidates in the same race within any [30-day] period.

b. with respect to a race for the [General Assembly]:

1. transmitting, by mail or facsimile to a cumulative total of [2,500 or more] addresses in the [district], items identifying one or more candidates in the same race within any [30-day] period; or

2. making a cumulative total of [2,500 or more] telephone calls in the district identifying one or more candidates in the same race within any [30-day] period.

(7) The term “telephone bank” means telephone calls that are targeted to the relevant electorate, except when those telephone calls are made by volunteer workers, whether or not the design of the telephone bank system, development of calling instructions, or training of volunteers was done by paid professionals.

(8) The term “Board” means the [state board of elections] defined in [insert citation].

Section 6. *[Disclosure of Candidate-Specific Communications.]*

(1) Statement Required. – Every individual, committee, association, or any other organization or group of people that incurs an expense for the direct costs of producing or transmitting candidate-specific communications in an aggregate amount in excess of [ten thousand dollars (\$10,000)] during any calendar year shall, within [24 hours] of each disclosure date, file with the [Board] a statement containing the information described in subsection (2) of this section.

(2) Contents of Statement. – Each statement required to be filed by this section shall be made under the penalty of perjury as defined in [insert citation] and shall contain the following information:

a. the identification of the entity incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity incurring the expense;

b. the principal place of business of the entity incurring the expense if the entity is not an individual;

c. the amount of each expense incurred of more than [one thousand dollars (\$1,000)] during the period covered by the statement and the identification of the entity to whom the expense was incurred;

d. the candidates in the candidate-specific communications that are identified or are to be identified;

e. the identity of every provider of funds or anything of value whatsoever to the entity, providing an amount in excess of [one thousand dollars (\$1,000)]. If the provider is an individual, the statement shall also contain the principal occupation of the provider. The “principal occupation of the provider” shall mean the same as the “principal occupation of the contributor” in [insert citation].

(3) Creating Multiple Organizations. – It shall be unlawful for any person or entity to create, establish, or organize more than [one] political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the reporting requirements contained in this Act.

Section 7. *[Penalties.]* The [state board of elections] has the same authority to compel from any organization covered by this Act the disclosures required by this Act that the [Board] has to compel from a political committee the disclosures required by [insert citation]. The civil penalties and remedies in [insert citation] shall apply to violations of this Act.

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

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

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

Discounted Computers and Internet Access for Students

This Act creates a program to offer discounted computers and Internet access to public school students and students in home education programs in grades 5 through 12. It requires the state department of education to negotiate terms with computer manufacturers, certain nonprofit corporations, and broadband Internet access providers. It requires the state board of education to adopt rules, including rules for provision of technical training to students. The Act directs a state digital divide council to implement a pilot project to assist low income students with purchasing discounted computers and Internet access services. It requires the council to identify eligibility criteria for participation in the pilot project; and provides for funding and authorizing the council to accept grants to implement the pilot project.

Submitted as:

Florida

Chapter 137 of 2006

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act Relating to Discounted
2 Computers and Internet Access for Students.”
3

4 Section 2. [*Program to Offer Discounted Computers and Internet Access for Students.*]

5 (1) There is created a program to offer computers and Internet access at a discounted price
6 to students enrolled in grades 5 through 12 in a public school, including a charter school, or a
7 home education program in the state.

8 (2) The [department of education] shall negotiate with computer manufacturers and with
9 nonprofit corporations that obtain reconditioned computer hardware concerning:

10 (a) the prices of discounted computers and whether computer accessories such as
11 printers or scanners will be offered to the students at reduced prices.

12 (b) specialized software and hardware packages, including, but not limited to:

13 i. a word processor.

14 ii. software and hardware necessary to enable broadband Internet access.

15 iii. an operating system.

16 (c) the type of warranty that is to be provided to the students and whether an
17 extended warranty will be available to the students and under what terms.

18 (3) The [department of education] shall negotiate with broadband Internet access
19 providers concerning the prices of discounted broadband Internet access packages. In areas in
20 which broadband Internet access is not currently available, the [department] shall negotiate with
21 non-broadband Internet access providers.

22 (4) The [state board of education] shall adopt rules concerning:

23 (a) how to integrate into this program the provision of computer or technical
24 training to students in their respective school districts.

25 (b) how to notify parents and students about the discounted computers and Internet
26 access availability.

27 (c) the distribution of eligibility certificates to the students, the locations at which
28 discounted computers and Internet access services are available for purchase, and how students
29 may obtain and pay for the equipment and services covered by this program.

30
31 Section 3. [*Pilot Project: Discounted Computers and Internet Access for Low-Income*
32 *Students.*]

33 (1) A [Digital Divide Council] established under [insert citation], in consultation with the
34 [department of education], shall implement a pilot project to assist low-income students to
35 purchase discounted computers and Internet access services as negotiated by the [department].
36 The [Council] shall identify counties, grade levels, and low income eligibility criteria for
37 participation in the pilot project.

38 (2) The pilot project shall be funded in an amount to be determined in the [General
39 Appropriations Act]. The [Digital Divide Council] is authorized to accept grants from additional
40 public and private sources to implement the pilot project.

41
42 Section 4. [*Severability.*] [Insert severability clause.]

43
44 Section 5. [*Repealer.*] [Insert repealer clause.]

45
46 Section 6. [*Effective Date.*] [Insert effective date.]

Electronic Mail Fraud

This Act directs that no person may solicit, request or take any action to induce another person to provide personally identifying information by means for a web page, electronic mail message or otherwise using the Internet, by representing oneself, either directly or by implication, to be a business or individual, without the authority or approval of such business or individual. No person may conspire with another person to engage in any act that violates the provisions of this Act.

Submitted as:
Rhode Island
Chapter 628 of 2006
Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as the “Electronic Mail Fraud Regulatory
2 Act.”

3
4 Section 2. [*Legislative Findings.*] Consumers are bombarded with electronic
5 communications, often times in a fraudulent attempt to solicit personal and private information. In
6 the interest of protecting the citizens of this state, it is imperative that the [general assembly]
7 establish safeguards against such practices. Notwithstanding any provision of the general or
8 public law, rule or regulation, the [general assembly] shall establish regulations pertaining to the
9 prevention of electronic mail fraud.

10
11 Section 3. [*Definitions.*] As used in this Act:

12 (1) “Assist the transmission” means actions taken by a person to provide substantial
13 assistance or support which enables any person to formulate, compose, send, originate, initiate or
14 transmit a commercial electronic mail message or a commercial electronic text message when the
15 person providing the assistance knows that the initiator of the commercial electronic mail
16 message or the commercial electronic text message is engaged, or intends to engage, in any
17 practice that violates the [state Consumer Protection Act].

18 (2) “Commercial electronic mail message” means an electronic mail message sent for the
19 purpose of promoting real property, goods or services for sale or lease. It does not mean an
20 electronic mail message to which an interactive computer service provider has attached an
21 advertisement in exchange for free use of an electronic mail account, when the sender has agreed
22 to such an arrangement.

23 (3) “Commercial electronic text message” means an electronic text message sent to
24 promote real property, goods or services for sale or lease.

25 (4) “Electronic mail address” means a destination, commonly expressed as a string of
26 characters, to which electronic mail may be sent or delivered.

27 (5) “Electronic mail message” means an electronic message sent to an electronic mail
28 address and a reference to an internet domain, whether or not displayed, to which an electronic
29 mail message can be sent or delivered.

(6) “Electronic text message” means a text message sent to a cellular telephone or pager equipped with short message service or any similar capability, whether the message is initiated as a short message service message or as an electronic mail message.

(7) “Initiate the transmission” refers to the action by the original sender of an electronic mail message or an electronic text message, not to the action by any intervening interactive computer service or wireless network that may handle or retransmit the message, unless such intervening interactive computer service assists in the transmission of an electronic mail message when it knows that the person initiating the transmission is engaged, or intends to engage, in any act or practice that violates the [state Consumer Protection Act].

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

(9) “Internet” means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected world wide network of networks that employ the transmission control protocol/internet protocol or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(10) “Internet domain name” refers to globally unique, hierarchical reference to an Internet host or service, assigned through centralized internet naming authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

(11) “Person” means a person, corporation, partnership or association.

(12) “Personally identifying information” means an individual’s:

- (a) social security number;
- (b) driver’s license number;
- (c) bank account number;
- (d) credit or debit card number;
- (e) personal identification number;
- (f) automated or electronic signature;
- (g) unique biometric data;
- (h) account passwords; or
- (i) any other piece of information that can be used to access an individual’s financial accounts or to obtain goods or services.

(13) “Web page” means a location, with respect to the world wide web, that has a single uniform resource locator or other single location with respect to the Internet.

Section 4. [*Prohibited Activity.*] No person may solicit, request or take any action to induce another person to provide personally identifying information by means of a Web page, electronic mail message or otherwise using the Internet in a manner as previously defined in [insert citation], by representing oneself, either directly or by implication, to be a business or individual, without the authority or approval of such business or individual. No person may conspire with another person to engage in any act that violates the provisions of this Act.

Section 5. [*Damages.*]

(a) Damages to a consumer resulting from the practices prohibited by this Act are up to [five hundred dollars (\$500)] per violation, or actual damages, whichever is greater.

(b) A person engaged in the business of providing Internet access service to the public, an owner of a Web page, or trademark owner who is adversely affected by reason of a violation of this Act, may bring an action against a person who violates this Act to:

80 (1) enjoin further violations of this Act; and
81 (2) recover the greater of actual damages or [five thousand dollars (\$5,000)] per
82 violation of this Act.

83 (c) The court may increase the damages up to [three (3)] times the damages allowed by
84 this section if the defendant has engaged in a pattern and practice of violating this Act. The court
85 may award costs and reasonable attorneys' fees to a prevailing party.

86
87 Section 6. [*Severability*.] [Insert severability clause.]

88
89 Section 7. [*Repealer*.] [Insert repealer clause.]

90
91 Section 8. [*Effective Date*.] [Insert effective date.]

Energy Conservation

This Act enables the state development finance authority to enter into agreements with federal agencies to finance energy conservation measures. An energy conservation measure is an improvement or equipment that would create operational or energy cost savings.

Submitted as:

Kansas

HB 2169

Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Permit State and Federal
2 Agencies to Finance Energy Conservation Measures.”

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

5 (A) “Authority” means the [state development finance authority] created by [insert
6 citation].

7 (B) “Bonds” means any bonds, notes, debentures, interim certificates, grant and revenue
8 anticipation notes, interest in a lease, lease certificate of participation or other evidences of
9 indebtedness, whether or not the interest on which is subject to federal income taxation, issued by
10 the [Authority] pursuant to this Act.

11 (C) “Energy conservation measure” means an energy study, audit, improvement or
12 equipment which is designed to provide energy and operational cost savings at least equivalent to
13 the amount expended by a participating state or federal agency for such energy study, audit,
14 improvement or equipment over a period of not more than [30 years] after the date such
15 improvement or equipment is installed or becomes operational, as the case may be.

16 (D) “Federal entity” means the government of the United States of America or any
17 bureau, department, instrumentality or other agency of the federal government.
18

19 Section 3. [*State Development Finance Authority Permitted to Contract or Enter*
20 *Agreement with a Federal Entity to Implement Energy Conservation Measures.*]

21 (A) The [state development finance authority] is authorized to contract or enter into a
22 finance, pledge, loan or lease-purchase agreement with a federal entity for an energy conservation
23 measure as defined in [Section 2] of this Act to facilitate the financing thereof or to provide
24 security for the repayment of bonds authorized under this Act.

25 (B) Before executing any contract or finance, pledge, loan or lease-purchase agreement
26 under this section, the affiliated energy conservation contractor shall provide to the participating
27 federal and state agencies and the [state development finance authority] plans for the proposed
28 energy conservation measures prepared by an engineer licensed to practice in this state. The
29 energy conservation contractor shall also provide a report of the calculations showing the
30 estimated energy and operational cost savings that would result from the proposed energy
31 conservation measures.

32 (C) The [state development finance authority] is hereby authorized to issue revenue bonds
33 in amounts sufficient to pay the costs of energy conservation measures as defined in this Act for
34 or on behalf of federal entities for facilities located in the state, and to contract with federal

35 entities with respect to such energy conservation measures and such revenue bonds. The bonds,
36 and interest thereon, issued pursuant to this section shall be payable from revenues derived from
37 the use, lease, occupation or operation of the facilities for which such energy conservation
38 measures are undertaken; any other revenues, appropriations, grants or moneys of a federal entity
39 available therefore; or any combination thereof.

40 (D) Revenue bonds, including refunding revenue bonds, issued under this section shall
41 not be an obligation of the state of this state and shall not constitute an indebtedness of the state,
42 nor shall those constitute indebtedness within the meaning of any constitutional or statutory
43 provision limiting the incurring of indebtedness.

44 (E) Revenue bonds, including refunding revenue bonds, issued under this section and the
45 income derived therefrom are and shall be exempt from all state, county and municipal taxation in
46 the state except state estate taxes.

47 (F) The total costs of energy conservation measures for state facilities initiated by state
48 agencies under this Act, for any fiscal year, exclusive of financing costs, shall not exceed the
49 amounts approved for such energy conservation measures by the [state corporation commission].

50 (G) The [state corporation commission] is authorized to provide administrative support
51 and resources available as requested by federal entities developing energy conservation measures
52 under this Act. The [state corporation commission] may fix, charge and collect reasonable fees
53 for any administrative support and resources or other services provided to the parties developing
54 energy conservation measures under this Act.

55
56 Section 4. [*Severability.*] [Insert severability clause.]

57
58 Section 5. [*Repealer.*] [Insert repealer clause.]

59
60 Section 6. [*Effective Date.*] [Insert effective date.]

Expressions of Apology, Condolences and Sympathy by Health Care Professionals

This Act makes statements of apology and explanation made by a health care professional following an unintended outcome of medical care inadmissible in a malpractice action.

Submitted as:

Idaho

HB 634

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act is entitled “An Act to Address the Admissibility of
2 Expressions of Apology, Condolence and Sympathy by Health Care Professionals.”

3
4 Section 2. [*Definitions.*]

5 For the purposes of this Act:

6 (1) “Health care professional” means any person licensed, certified, or registered by this
7 state to deliver health care and any clinic, hospital, nursing home, ambulatory surgical center or
8 other place in which health care is provided. The term also includes any professional corporation
9 or other professional entity comprised of such health care professionals as permitted by the laws
10 of this state.

11 (2) “Unanticipated outcome” means the outcome of a medical treatment or procedure that
12 differs from an expected, hoped for, or desired result.

13
14 Section 3. [*Admissibility of Expressions of Apology, Condolence and Sympathy.*]

15 (1) In any civil action brought by or on behalf of a patient who experiences an
16 unanticipated outcome of medical care, or in any arbitration proceeding related to, or in lieu of,
17 such civil action, all statements and affirmations, whether in writing or oral, and all gestures or
18 conduct expressing apology, explanation, sympathy, commiseration, condolence, compassion, or
19 a general sense of benevolence which are made by a health care professional or an employee of a
20 health care professional, which relate to the care provided to the patient, or which relate to the
21 discomfort, pain, suffering, injury, or death of the patient as the result of the unanticipated
22 outcome of medical care shall be inadmissible as evidence for any reason including, but not
23 limited to, as an admission of liability or as evidence of an admission against interest.

24 (2) A statement of fault which is part of or in addition to a statement identified in
25 subsection (1) of this section shall not be inadmissible pursuant to this section.

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

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

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

Foreclosure Protection

This Act requires all transactions between homeowners and foreclosure consultants or equity purchasers be in writing, prohibits consultants who provide advice or assistance from acquiring any interest in the homeowner's property, and calls for a three-day "cooling off" period, during which an equity purchaser may not record any deed or in any way transfer or encumber the homeowner's property.

Submitted as:

Colorado

SB 06-71

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as "The Foreclosure Protection Act."

2
3 Section 2. [*Legislative Findings.*] The [legislature] hereby finds, determines, and declares
4 that home ownership and the accumulation of equity in one's home provide significant social and
5 economic benefits to the state and its citizens. Unfortunately, too many home owners in financial
6 distress, especially the poor, elderly, and financially unsophisticated, are vulnerable to a variety of
7 deceptive or unconscionable business practices designed to dispossess them or otherwise strip the
8 equity from their homes. There is a compelling need to curtail and to prevent the most deceptive
9 and unconscionable of these business practices, to provide each home owner with information
10 necessary to make an informed and intelligent decision regarding transactions with certain
11 foreclosure consultants and equity purchasers, to provide certain minimum requirements for
12 contracts between such parties, including statutory rights to cancel such contracts, and to ensure
13 and foster fair dealing in the sale and purchase of homes in foreclosure. Therefore, it is the intent
14 of the [legislature] that all violations of this Act have a significant public impact and that the
15 terms of this Act be liberally construed to achieve these purposes.

16
17 Section 3. [*Definitions.*] As used in this Act:

18 (1) "associate" means a partner, subsidiary, affiliate, agent, or any other person working in
19 association with a foreclosure consultant or an equity purchaser; except that the term "associate"
20 does not include a person who is excluded from the definition of an "equity purchaser" or a
21 "foreclosure consultant."

22 (2) "equity purchaser" means a person who, in the course of the person's business,
23 vocation, or occupation, acquires title to a residence in foreclosure; except that the term does not
24 include a person who acquires such title:

25 (a) for the purpose of using such property as his or her personal residence for at
26 least [one year];

27 (b) by a deed in lieu of foreclosure to the holder of an evidence of debt, or an
28 associate of the holder of an evidence of debt, of a consensual lien or encumbrance of record if
29 such consensual lien or encumbrance is recorded in the real property records of the [clerk and
30 recorder] of the county where the residence in foreclosure is located prior to the recording of the
31 notice of election and demand for sale required under [insert citation];

32 (c) by a deed from the [public trustee or a county sheriff] as a result of a
33 foreclosure sale conducted pursuant to [insert citation];

34 (d) at a sale of property authorized by statute;

35 (e) by order or judgment of any court;

36 (f) from the person's spouse, relative, or relative of a spouse, by the half or whole
37 blood or by adoption, or from a guardian, conservator, or personal representative of a person
38 identified in this paragraph (f); or

39 (g) while performing services as a part of a person's normal business activities
40 under any law of this state or the United States that regulates banks, trust companies, savings and
41 loan associations, credit unions, insurance companies, title insurers, insurance producers, or
42 escrow companies authorized to conduct business in the state, an affiliate or subsidiary of such
43 person, or an employee or agent acting on behalf of such person.

44 (3) "evidence of debt" means a writing that evidences a promise to pay or a right to the
45 payment of a monetary obligation, such as a promissory note, bond, negotiable instrument, a loan,
46 credit, or similar agreement, or a monetary judgment entered by a court of competent jurisdiction.

47 (4) (a) "foreclosure consultant" means a person who does not, directly or through an
48 associate, take or acquire any interest in or title to the residence in foreclosure and who, in the
49 course of such person's business, vocation, or occupation, makes a solicitation, representation, or
50 offer to a home owner to perform, in exchange for compensation from the home owner or from
51 the proceeds of any loan or advance of funds, a service that the person represents will do any of
52 the following:

53 (i) stop or postpone a foreclosure sale;
54 (ii) obtain a forbearance from a beneficiary under a deed of trust,
55 mortgage, or other lien;

56 (iii) assist the home owner in exercising a right to cure a default as
57 provided in [insert citation];

58 (iv) obtain an extension of the period within which the home owner
59 may cure a default as provided in [insert citation];

60 (v) obtain a waiver of an acceleration clause contained in an
61 evidence of debt secured by a deed of trust, mortgage, or other lien on a residence in foreclosure
62 or contained in such deed of trust, mortgage, or other lien;

63 (vi) assist the home owner to obtain a loan or advance of funds;

64 (vii) avoid or reduce the impairment of the home owner's credit
65 resulting from the recording of a notice of election and demand for sale, commencement of a
66 judicial foreclosure action, or due to any foreclosure sale or the granting of a deed in lieu of
67 foreclosure or resulting from any late payment or other failure to pay or perform under the
68 evidence of debt, the deed of trust, or other lien securing such evidence of debt;

69 (viii) in any way delay, hinder, or prevent the foreclosure upon the
70 home owner's residence; or

71 (ix) assist the home owner in obtaining from the beneficiary,
72 mortgagee, or grantee of the lien in foreclosure, or from counsel for such beneficiary, mortgagee,
73 or grantee, the remaining or excess proceeds from the foreclosure sale of the residence in
74 foreclosure.

75 (b) the term "foreclosure consultant" does not include:

76 (i) a person licensed to practice law in this state, while performing
77 any activity related to the person's attorney-client relationship with a home owner or any activity
78 related to the person's attorney-client relationship with the beneficiary, mortgagee, grantee, or
79 holder of any lien being enforced by way of foreclosure;

80 (ii) a holder or servicer of an evidence of debt or the attorney for
81 the holder or servicer of an evidence of debt secured by a deed of trust or other lien on any

82 residence in foreclosure while the person performs services in connection with the evidence of
83 debt, lien, deed of trust, or other lien securing such debt;

84 (iii) a person doing business under any law of this state or the
85 United States, which law regulates banks, trust companies, savings and loan associations, credit
86 unions, insurance companies, title insurers, insurance producers, or escrow companies authorized
87 to conduct business in the state, while the person performs services as part of the person's normal
88 business activities, an affiliate or subsidiary of any of the foregoing, or an employee or agent
89 acting on behalf of any of the foregoing;

90 (iv) a person originating or closing a loan in a person's normal
91 course of business if, as to that loan:

92 (A) the loan is subject to the requirements of the federal
93 "Real Estate Settlement Procedures Act," 12 U.S.C. sec. 2601 to 2617; or

94 (B) with respect to any second mortgage or home equity line
95 of credit, the loan is subordinate to and closed simultaneously with a qualified first mortgage loan
96 under sub-paragraph (A) of this subparagraph (iv) or is initially payable on the face of the note
97 or contract to an entity included in subparagraph (iii) of this paragraph (b);

98 (v) a judgment creditor of the home owner, if the judgment is
99 recorded in the real property records of the clerk and recorder of the county where the residence
100 in foreclosure is located and the legal action giving rise to the judgment was commenced before
101 the notice of election and demand for sale required under [insert citation];

102 (vi) a title insurance company or title insurance agent authorized to
103 conduct business in this state, while performing title insurance and settlement services;

104 (vii) a person licensed as a real estate broker or real estate
105 salesperson under [insert citation], while the person engages in any activity for which the person
106 is licensed; or

107 (viii) a nonprofit organization that solely offers counseling or
108 advice to home owners in foreclosure or loan default, unless the organization is an associate of
109 the foreclosure consultant.

110 (5) "foreclosure consulting contract" means any agreement between a foreclosure
111 consultant and a home owner.

112 (6) "holder of evidence of debt" means the person in actual possession of or otherwise
113 entitled to enforce an evidence of debt; except that "holder of evidence of debt" does not include
114 a person acting as a nominee solely for the purpose of holding the evidence of debt or deed of
115 trust as an electronic registry without any authority to enforce the evidence of debt or deed of
116 trust. The following people are presumed to be the holder of evidence of debt:

117 (a) the person who is the obligee of and who is in possession of an original
118 evidence of debt;

119 (b) the person in possession of an original evidence of debt together with the
120 proper indorsement or assignment thereof to such person in accordance with [insert citation];

121 (c) the person in possession of a negotiable instrument evidencing a debt, which
122 has been duly negotiated to such person or to bearer or indorsed in blank; or

123 (d) the person in possession of an evidence of debt with authority, which may be
124 granted by the original evidence of debt or deed of trust, to enforce the evidence of debt as agent,
125 nominee, or trustee or in a similar capacity for the obligee of the evidence of debt.

126 (7) "home owner" means the owner of a residence in foreclosure, including a vendee
127 under a contract for deed to real property, as that term is defined in [insert citation].

128 (8) "residence in foreclosure" means a residence or dwelling as defined in [insert citation]
129 that is occupied as the home owner's principal place of residence and against which any type of
130 foreclosure action has been commenced.

Section 4. [*Foreclosure Consulting Contract.*]

(1) A foreclosure consulting contract shall be in writing and provided to and retained by the home owner, without changes, alterations, or modifications, for review at least [twenty-four hours] before it is signed by the home owner.

(2) a foreclosure consulting contract shall be printed in at least [twelve-point type] and shall include the name and address of the foreclosure consultant to which a notice of cancellation can be mailed and the date the home owner signed the contract.

(3) a foreclosure consulting contract shall fully disclose the exact nature of the foreclosure consulting services to be provided and the total amount and terms of any compensation to be received by the foreclosure consultant or associate.

(4) a foreclosure consulting contract shall be dated and personally signed, with each page being initialed, by each home owner of the residence in foreclosure and the foreclosure consultant and shall be acknowledged by a notary public in the presence of the home owner at the time the contract is signed by the home owner.

(5) A foreclosure consulting contract shall contain the following notice, which shall be printed in at least [fourteen-point bold-faced type], completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the home owner's signature:

FORECLOSURE CONSULTING CONTRACT NOTICE

_____ (Name) or (his/her/its) associate cannot ask you to sign or have you sign any document that transfers any interest in your home or property to (him/her/it) or (his/her/its) associate.

_____ (Name) or (his/her/its) associate cannot guarantee you that they will be able to refinance your home or arrange for you to keep your home.

You may, at any time, cancel this contract, without penalty of any kind. If you want to cancel this contract, mail or deliver a signed and dated copy of this notice of cancellation, or any other written notice, indicating your intent to cancel to _____ (name and address of foreclosure consultant) at _____ (address of foreclosure consultant, including facsimile and electronic mail address).

As part of any cancellation, you (the home owner) must repay any money actually spent on your behalf by _____ (name of foreclosure consultant) prior to receipt of this notice and as a result of this agreement, within sixty days, along with interest at the prime rate published by the Federal Reserve plus two percentage points, with the total interest rate not to exceed eight percent per year.

This is an important legal contract and could result in the loss of your home. Contact an attorney or a housing counselor approved by the federal Department of Housing and Urban Development before signing.

(6) A completed form in duplicate, captioned "Notice of Cancellation" shall accompany the foreclosure consulting contract. The notice of cancellation shall:

- (a) be on a separate sheet of paper attached to the Contract;
- (b) be easily detachable; and
- (c) contain the following statement, printed in at least [fourteen-point type]:

**FORECLOSURE CONSULTING CONTRACT
NOTICE OF CANCELLATION**

(Date of contract)

To: (name of foreclosure consultant)

(address of foreclosure consultant, including Facsimile and electronic mail)

I hereby cancel this contract.

_____ (date)

_____ (home owner's signature)

(7) the foreclosure consultant shall provide to the home owner a signed, dated, and acknowledged copy of the foreclosure consulting contract and the attached notice of cancellation immediately upon execution of the contract.

(8) the time during which the home owner may cancel the foreclosure consulting contract does not begin to run until the foreclosure consultant has complied with this section.

Section 5. [Foreclosure Consulting Contract Right of Cancellation.]

(1) In addition to any right of rescission available under state or federal law, the home owner has the right to cancel a foreclosure consulting contract at any time.

(2) Cancellation occurs when the home owner gives written notice of cancellation of the foreclosure consulting contract to the foreclosure consultant at the address specified in the contract or through any facsimile or electronic mail address identified in the contract or other materials provided to the home owner by the foreclosure consultant.

(3) Notice of cancellation, if given by mail, is effective when deposited in the United States Mail, properly addressed, with postage prepaid.

(4) Notice of cancellation need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the home owner to cancel the foreclosure consulting contract.

(5) As part of the cancellation of a foreclosure consulting contract, the home owner shall repay, within [sixty days after] the date of cancellation, all funds paid or advanced in good faith prior to the receipt of notice of cancellation by the foreclosure consultant or associate under the terms of the foreclosure consulting contract, together with interest at the prime rate published by

the Federal Reserve plus two percentage points, with the total interest rate not to exceed eight percent per year, from the date of expenditure until repaid by the home owner.

(6) The right to cancel may not be conditioned on the repayment of any funds.

Section 6. [*Foreclosure Consulting Contract Waiver of Rights - Void.*]

(1) A provision in a foreclosure consulting contract is void as against public policy if the provision attempts or purports to:

(a) waive any of the rights specified in [Sections 4 through 10] of this Act or the right to a jury trial;

(b) consent to jurisdiction for litigation or choice of law in a state other than this state;

(c) consent to venue in a county other than the county in which the property is located; or

(d) impose any costs or fees greater than the actual costs and fees.

Section 7. [*Foreclosure Consulting Contract Prohibited Acts.*]

(1) A foreclosure consultant may not:

(a) claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;

(b) claim, demand, charge, collect, or receive any interest or any other compensation for a loan that the foreclosure consultant makes to the home owner that exceeds the prime rate published by the Federal Reserve at the time of any loan plus two percentage points, with the total interest rate not to exceed eight percent per year;

(c) take a wage assignment, lien of any type on real or personal property, or other security to secure the payment of compensation;

(d) receive any consideration from a third party in connection with foreclosure consulting services provided to a home owner unless the consideration is first fully disclosed in writing to the home owner;

(e) acquire an interest, directly, indirectly, or through an associate, in the real or personal property of a home owner with whom the foreclosure consultant has contracted;

(f) obtain a power of attorney from a home owner for any purpose other than to inspect documents as provided by law; or

(g) induce or attempt to induce a home owner to enter into a foreclosure consulting contract that does not comply in all respects with this subpart.

Section 8. [*Foreclosure Consulting Contract Criminal Penalties.*] A person who violates [Section 7] of this Act is guilty of a [misdemeanor], as defined in [insert citation], and shall be subject to imprisonment in county jail for up to [one year], a fine of up to [twenty-five thousand dollars], or both.

Section 9. [*Foreclosure Consulting Contract Unconscionability.*]

(1) A foreclosure consultant or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.

(2) (a) If a court, as a matter of law, finds a foreclosure consultant contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.

(b) When it is claimed or appears to the court that a foreclosure consultant contract or any clause of such contract may be unconscionable, the parties shall be afforded a reasonable

272 opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court
273 in making the determination.

274 (c) In order to support a finding of unconscionability, there must be evidence of
275 some bad faith overreaching on the part of the foreclosure consultant or associate such as that
276 which results from an unreasonable inequality of bargaining power or other circumstances in
277 which there is an absence of meaningful choice for one of the parties, together with contract terms
278 that are, under standard industry practices, unreasonably favorable to the foreclosure consultant or
279 associate.

280
281 Section 10. [*Foreclosure Consulting Contract Language.*] A foreclosure consulting
282 contract, and all notices of cancellation provided for therein, shall be written in English and shall
283 be accompanied by a written translation from English into any other language principally spoken
284 by the home owner, certified by the person making the translation as a true and correct translation
285 of the English version. The translated version shall be presumed to have equal status and
286 credibility as the English version.

287
288 Section 11. [*Equity Purchases: Written Contract Required.*]
289 (1). Every contract shall be written in at least [twelve-point bold-faced type] and fully
290 completed, signed, and dated by the home owner and equity purchaser prior to the execution of
291 any instrument quit-claiming, assigning, transferring, conveying, or encumbering an interest in
292 the residence in foreclosure.

293
294 Section 12. [*Equity Purchases: Written Contract - Contents - Notice.*]
295 (1) Every contract shall contain the entire agreement of the parties and shall include the
296 following terms:

- 297 (a) the name, business address, and telephone number of the equity purchaser;
298 (b) the street address and full legal description of the residence in foreclosure;
299 (c) clear and conspicuous disclosure of any financial or legal obligations of the
300 home owner that will be assumed by the equity purchaser. If the equity purchaser will not be
301 assuming any financial or legal obligations of the home owner, the equity purchaser shall provide
302 to the home owner a separate written disclosure that substantially complies with [insert citation].
303 (d) the total consideration to be paid by the equity purchaser in connection with or
304 incident to the acquisition by the equity purchaser of the residence in foreclosure;
305 (e) the terms of payment or other consideration, including, but not limited to, any
306 services of any nature that the equity purchaser represents will be performed for the home owner
307 before or after the sale;
308 (f) the date and time when possession of the residence in foreclosure is to be
309 transferred to the equity purchaser;
310 (g) the terms of any rental agreement or lease;
311 (h) the specifications of any option or right to repurchase the residence in
312 foreclosure, including the specific amounts of any escrow deposit, down payment, purchase price,
313 closing costs, commissions, or other fees or costs;
314 (i) a notice of cancellation as provided in [Section 14] of this Act; and
315 (j) the following notice, in at least [fourteen-point bold-faced type], and completed
316 with the name of the equity purchaser, immediately above the statement required by [Section 14]
317 of this Act.

318
319 **EQUITY PURCHASE CONTRACT NOTICE**
320

321 **Until your right to cancel this contract has ended, (name) or anyone**
322 **working for _____ (name) cannot ask you to sign or have you sign**
323 **any deed or any other document. The contract required by this section**
324 **survives delivery of any instrument of conveyance of the residence in**
325 **foreclosure, but does not have any effect on people other than the parties to the**
326 **contract or affect title to the residence in foreclosure.**
327

328
329 Section 13. [*Equity Purchase: Right to Cancel Contract.*]

330 (1) In addition to any right of rescission available under state or federal law, the home
331 owner has the right to cancel a contract with an equity purchaser until [12 midnight of the third
332 business day] following the day on which the home owner signs a contract that complies with this
333 section or until [12 noon on the day] before the foreclosure sale of the residence in foreclosure,
334 whichever occurs first.

335 (2) Cancellation occurs when the home owner personally delivers written notice of
336 cancellation to the address specified in the contract or upon deposit of such notice in the United
337 States mail, properly addressed, with postage prepaid.

338 (3) A notice of cancellation given by the home owner need not take the particular form as
339 provided with the contract and, however expressed, is effective if it indicates the intention of the
340 home owner not to be bound by the contract.

341 (4) In the absence of any written notice of cancellation from the home owner, the
342 execution by the home owner of a deed or other instrument of conveyance of an interest in the
343 residence in foreclosure to the equity purchaser after the expiration of the rescission period
344 creates a rebuttable presumption that the home owner did not cancel the contract with the equity
345 purchaser.
346

347 Section 14. [*Equity Purchase Contract: Notice of Cancellation.*]

348 (1) (a) The contract shall contain, as the last provision before the space reserved for
349 the home owner's signature, a conspicuous statement in at least [twelve-point bold-faced type], as
350 follows:
351

352
353 **You may cancel this contract for the sale of your house without any penalty or obligation at**
354 **any time before _____(date and time of day). See the attached notice of**
355 **cancellation form for an explanation of this right.**
356

357
358 (b) The equity purchaser shall accurately specify the date and time of day on
359 which the cancellation right ends.

360 (2) The contract shall be accompanied by duplicate completed forms, captioned "notice of
361 cancellation" in at least [twelve-point bold-faced type] if the contract is printed or in [capital
362 letters] if the contract is typed, followed by a space in which the equity purchaser shall enter the
363 date on which the home owner executed the contract. Such form shall:

364 (a) be attached to the contract;

365 (b) be easily detachable; and

366 (c) contain the following statement, in at least [ten-point type] if the contract is
367 printed or in [capital letters] if the contract is typed:
368

**EQUITY PURCHASE
NOTICE OF CANCELLATION**

_____(enter date contract signed). You may cancel this contract for the sale of your house, without any penalty or obligation any time before _____ (enter date and time of day). To cancel this transaction, personally deliver a signed and dated copy of this notice of cancellation in the United States mail, postage prepaid, to _____, (name of purchaser) at _____ (street address of purchaser's place of business) not later than _____ (enter date and time of day).

I hereby cancel this transaction _____ (date)
_____(seller's signature)

(3) The equity purchaser shall provide the home owner with a copy of the contract and the attached notice of cancellation.

(4) Until the equity purchaser has complied with this section, the home owner may cancel the contract.

Section 15. [Options Through Reconveyances.]

(1) A transaction in which a home owner purports to grant a residence in foreclosure to an equity purchaser by an instrument that appears to be an absolute conveyance and reserves to the home owner or is given by the equity purchaser an option to repurchase shall be permitted only where all of the following conditions have been met:

(a) the reconveyance contract complies in all respects with [Section 12] of this Act;

(b) the reconveyance contract provides the home owner with a nonwaivable [thirty-day] right to cure any default of said reconveyance contract and specifies that the home owner may exercise this right to cure on at least [three] separate occasions during such reconveyance contract;

(c) the equity purchaser fully assumes or discharges the lien in foreclosure as well as any prior liens that will not be extinguished by such foreclosure, which assumption or discharge shall be accomplished without violation of the terms and conditions of the liens being assumed or discharged;

(d) the equity purchaser verifies and can demonstrate that the home owner has or will have a reasonable ability to make the lease payments and to repurchase the residence in foreclosure within the term of the option to repurchase under the reconveyance contract. For purposes of this section, there is a rebuttable presumption that the home owner has a reasonable ability to make lease payments and to repurchase the residence in foreclosure if the home owner's payments for primary housing expenses and regular principal and interest payments on other personal debt do not exceed sixty percent of the home owner's monthly gross income; and

(e) the price the home owner must pay to exercise the option to repurchase the residence in foreclosure is not unconscionable.

(2) Without limitation on available claims under [Section 19] of this Act, a repurchase price exceeding [twenty-five percent] of the price at which the equity purchaser acquired the residence in foreclosure creates a rebuttable presumption that the reconveyance contract is unconscionable. The acquisition price paid by the equity purchaser may include any actual costs incurred by the equity purchaser in acquiring the residence in foreclosure.

Section 16. [*Waiver of Rights in Contracts Between Equity Purchasers and Home Owners - Void.*]

(1) A provision in a contract between an equity purchaser and home owner is void as against public policy if it attempts or purports to:

(a) waive any of the rights specified in [Sections 11 through 20] of this Act this or the right to a jury trial;

(b) consent to jurisdiction for litigation or choice of law in a state other than this state;

(c) consent to venue in a county other than the county in which the property is located; or

(d) impose any costs or fees greater than the actual costs and fees.

Section 17. [*Prohibited Conduct of Equity Purchasers.*]

(1) The contract provisions required by [Sections 11 to 14] of this Act shall be provided and completed in conformity with such sections by the equity purchaser.

(2) Until the time within which the home owner may cancel the transaction has fully elapsed, the equity purchaser shall not do any of the following:

(a) accept from a home owner an execution of, or induce a home owner to execute, an instrument of conveyance of any interest in the residence in foreclosure;

(b) record with the county recorder any document, including, but not limited to, the contract or any lease, lien, or instrument of conveyance, that has been signed by the home owner;

(c) transfer or encumber or purport to transfer or encumber an interest in the residence in foreclosure to a third party; or

(d) pay the home owner any consideration.

(3) Within [ten days] following receipt of a notice of cancellation given in accordance with [Sections 13 and 14] of this Act, the equity purchaser shall return without condition the original contract and any other documents signed by the home owner.

(4) An equity purchaser shall make no untrue or misleading statements of material fact regarding the value of the residence in foreclosure, the amount of proceeds the home owner will receive after a foreclosure sale, any contract term, the home owner's rights or obligations incident to or arising out of the sale transaction, the nature of any document that the equity purchaser induces the home owner to sign, or any other untrue or misleading statement concerning the sale of the residence in foreclosure to the equity purchaser.

Section 18. [*Criminal Penalties.*] A person who violates [Section 17 (2) or (3)] of this Act or who intentionally violates [Section 17 (4)] of this Act is guilty of a [misdemeanor], as defined in [insert citation], and shall be subject to imprisonment in county jail for up to [one year], a fine of up to [twenty-five thousand dollars], or both.

Section 19. [*Unconscionable Behavior of Equity Purchasers.*]

(1) An equity purchaser or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.

(2) (a) If a court, as a matter of law, finds an equity purchaser contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.

(b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present

evidence as to its commercial setting, purpose, and effect, to aid the court in making the determination.

(c) In order to support a finding of unconscionability, there must be evidence of some bad faith overreaching on the part of the equity purchaser or associate such as that which results from an unreasonable inequality of bargaining power or under other circumstances in which there is an absence of meaningful choice for one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the equity purchaser or associate.

Section 20. [*Language of Equity Purchase Contracts.*] Any contract, rental agreement, lease, option or right to repurchase, and any notice, conveyance, lien, encumbrance, consent, or other document or instrument signed by a home owner, shall be written in [English] and shall be accompanied by a written translation from [English] into any other language principally spoken by the home owner, certified by the person making the translation as a true and correct translation of the [English] version. The translated version shall be presumed to have equal status and credibility as the [English] version.

Section 21. [*Deceptive Trade Practices.*] A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person violates any provision of this Act.

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

Section 23. [*Repealer.*] [Insert repealer clause.]

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

Health Care Access and Affordability Statement

According to a Massachusetts legislative committee report, Massachusetts Act 58 of 2006 redeploys public funds to more effectively cover uninsured low-income populations and makes quality health coverage more affordable for all residents of the Commonwealth. The bill promotes individual responsibility by creating a requirement that everyone who can afford health insurance obtain it, while also responding to concerns about barriers to health care access. Provisions in the bill aim at achieving nearly universal health insurance coverage, but also maintain a strong safety net that has historically distinguished the state. The bill also ensures that the Massachusetts Medicaid program complies with the terms of a federal waiver in order to maintain continued receipt of annual payments from the federal Medicaid program.

This Act creates a Commonwealth Health Insurance Connector to connect people and small businesses with health insurance products. The Connector certifies and offers products of high value and good quality. People who are employed are able to purchase insurance using pre-tax dollars. The Connector allows for portability of insurance as people move from job to job, and permits more than one employer to contribute to an employee's health insurance premium. The Connector is to be operated as an authority under the Department of Administration and Finance and overseen by a separate, appointed Board of private and public representatives.

The bill merges the non- and small-group markets in July 2007, a provision that will produce an estimated drop of 24% in non-group premium costs. An actuarial study of the merging of the two insurance markets will be completed before the merger to assist insurers in planning for the transition. The bill also enables HMOs to offer coverage plans that are linked to Health Savings Accounts, reducing costs for those who enroll in such plans. Young adults will be able to stay on their parents' insurance plans for two years past the loss of their dependent status, or until they turn 25 (whichever occurs first), and 19-26 year-olds will be eligible for lower-cost, specially designed products offered through the Connector.

The bill imposes a moratorium on the creation of new health insurance mandated benefits through 2008.

This legislation creates a subsidized insurance program called the Commonwealth Care Health Insurance Program. People who earn less than 300% Federal Poverty Level (FPL) (\$9,600/yr) and are ineligible for MassHealth will qualify for coverage. Premiums for the program will be set on a sliding scale based on household income, and no plans offered through this program will have deductibles. The program will be operated through the Connector, and retain any employer contribution to an employee's health insurance premium. The subsidized products must be certified by the Connector as being of high value and good quality.

For people who earn less than 100% of the FPL, special protections in this bill provide for subsidized insurance products with comprehensive benefits, and waive any premiums. Currently, most childless adults are not eligible for MassHealth at any income level, unless they are disabled or have very little history of employment.

Insurance Partnership Program

The bill expands eligibility for employee participation in the current Insurance Partnership program from 200% to 300% FPL, in order to provide another option for small businesses who want to offer health care to their employees.

The Medicaid Waiver

By shifting significant federal resources from supporting individual hospitals to funding health insurance coverage for uninsured people, and by living within a lifetime spending ceiling

for waiver services, the bill meets the terms set by the Centers for Medicare and Medicaid for renewal of a 1115(a) MassHealth Demonstration Waiver.

Medicaid Expansions, Restorations, Enhancements

The bill expands Medicaid coverage of the uninsured by providing \$3M for comprehensive community-based outreach programs to reach who are eligible for Medicaid but not yet enrolled, and by expanding eligibility for children. Currently, children in families who earn up to 200% of the FPL are eligible for MassHealth. The bill increases eligibility to children in families earning up to 300% FPL (\$38,500/yr for a family of 2).

The bill also restores all MassHealth benefits that were cut in 2002, including dental and vision services, and creates a 2-year pilot program for smoking cessation treatment for MassHealth enrollees.

In response to concern that Medicaid has underpaid many of its providers in recent years, the bill includes \$90 million in rate relief for Fiscal Years 2007, 2008 and 2009. It does this while keeping within the budget neutrality limits of federal financing under the Medicaid waiver. The bill also establishes, for the first time, a process of tying rate increases to specific performance goals related to quality, efficiency, the reduction of racial and ethnic disparities, and improved outcomes for patients.

Individual Responsibility for Health Care

The bill requires as of July 1, 2007, all residents of Massachusetts to obtain health insurance coverage. People for whom there are not affordable products available will not be penalized for not having insurance coverage. A sliding “affordability scale” will be set annually by the Board of the Connector.

Residents will confirm that they have health insurance coverage on their state income tax forms filed in 2008. Coverage will be verified through a database of insurance coverage for all people. The Department of Revenue will enforce this provision with financial penalties beginning with a loss of the personal exemption for tax year 2007 and then increasing to a portion of what an individual would have paid toward an affordable premium for subsequent years.

Employer Responsibility for Health Care - Fair Share Contribution

The bill creates a “Fair Share Contribution” that will be paid by employers who do not provide health insurance for their employees and make a fair and reasonable contribution to its cost. The contribution, estimated to be approximately \$295 per full time employee (FTE) per year, will be calculated to reflect a portion of the cost paid by the state for free care used by workers whose employers do not provide insurance.

Currently, a portion of the payments made by employers who do provide health coverage go towards free care costs, and this new contribution will help level the playing field. The Fair Share Contribution requirement will only apply to employers with 11 or more employees who do not provide health insurance or contribute to it, as defined by the Division of Health Care Finance and Policy, and will be pro-rated for employers with seasonal or part-time employees.

Free Rider Surcharge

The Free Rider surcharge will be imposed on employers who do not provide health insurance and whose employees use free care. Imposition of the surcharge will be triggered when an employee receives free care more than three times, or a company has five or more instances of employees receiving free care in a year. The surcharge will range from 10% to 100% of the

state's costs of services provided to the employees, with the first \$50,000 per employer exempted. Revenue gained from the surcharge will be deposited in a Commonwealth Care Trust Fund.

Mandatory Offer of Section 125 Plans

Section 125 plans or "cafeteria plans" allow an employer to offer health insurance and other programs such as day care funding to employees on a pre-tax basis. Because of the significant savings which result from pre-tax insurance purchase, employers with more than 10 employees will be required to offer this pre-tax benefit to employees.

Reduction of Racial and Ethnic Health Disparities

The bill aims to reduce racial and ethnic health disparities by requiring hospitals to collect and report on health care data related to race, ethnicity and language. Medicaid rate increases in the bill are made contingent upon providers meeting performance benchmarks, including in the area of reducing racial and ethnic disparities. The bill creates a study of a sustainable Community Health Outreach Worker Program to target vulnerable populations in an effort to eliminate health disparities and remove linguistic barriers to health access. Finally, the bill creates a Health Disparities Council, to continue the work of the Special Commission on Racial and Ethnic Health Disparities by recommending appropriate Legislative steps to reduce ethnic health disparities.

Health Safety Net Office and Fund

Many recommendations of the Inspector General's Office regarding the management of the Uncompensated Care Pool are included in the bill. Effective October 1, 2007, the current Uncompensated Care Pool is eliminated, replaced by the Health Safety Net Fund. The Fund will be administered by a newly-created Health Safety Net Office (HSN) located within the Office of Medicaid. The HSN Office will develop a new standard fee schedule for hospital reimbursements, replacing the current charges-based payment system. The plan anticipates the transfer of funds to the Commonwealth Care Health Insurance Program as free care use declines.

Funding

The plan leverages federal dollars to enhance and match state spending, and uses revenue generated by employer contributions to fund health insurance coverage.

Submitted as
Massachusetts
Chapter 58 of the Acts of 2006
Status: Enacted into law in 2006.

Health Insurance Balance Billing

This Act requires health insurers to cover services that are provided at an in-network facility, including services provided by an out-of-network provider, at no greater cost to the covered person than if the services were from an in-network provider.

Submitted as:

Colorado

SB 213

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This Act shall be cited as “An Act to Address Payments from
2 Health Insurance Companies for Out-of-Network Providers Who Provide Services at In-Network
3 Health Care Facilities.”

4
5 Section 2. [*Legislative Findings*.]

6 (1) The [general assembly] hereby finds, determines, and declares that there are situations
7 in which insured consumers receive health care services, including procedures approved by their
8 insurance carrier, in a network facility, with a primary provider that is a network provider, but in
9 which other health care professionals assisting with such procedures may not be in-network
10 providers. In such situations, the consumer is not aware that the assisting providers are out-of-
11 network providers. Further, the consumer may have little or no direct contact with the assisting
12 health care professionals. The state [division of insurance] has interpreted the relationship
13 between an insurer and a health care provider as defined in [insert citation], to mean holding the
14 consumer harmless for additional charges from out-of-network providers for care rendered in a
15 network facility.

16 (2) The [general assembly] finds, determines, and declares that the [division of insurance]
17 has correctly interpreted the provisions of [insert citation] to protect the insured from the
18 additional expense charged by an assisting provider who is an out-of-network provider, and has
19 properly required insurers to hold the consumer harmless. The [division of insurance] does not
20 have regulatory authority over all health plans. Some consumers are enrolled in self-funded health
21 insurance programs that are governed under the federal “Employee Retirement Income Security
22 Act.” Therefore, the [general assembly] encourages health care facilities, carriers, and providers
23 to provide consumers disclosure about the potential impact of receiving services from an out-of-
24 network provider.

25 (3) The [general assembly] finds, determines, and declares that some consumers
26 intentionally use out-of-network providers, which is the consumers’ prerogative under certain
27 health benefit plans. When consumers intentionally use an out-of-network provider, the consumer
28 is only entitled to benefits at the out-of-network rate and may be subject to balance billing by the
29 out-of-network provider.

30 (4) Therefore, the [general assembly] finds, determines, and declares that the purpose of
31 this Act is to codify the interpretation of the [division of insurance] that holds consumers
32 harmless for charges over and above the in-network rates for services rendered in a network
33 facility.
34

35 Section 3. [*Reconciling Health Insurance Coverage for Services and Treatment at In-*
36 *Network Facilities Which are Performed by Out-of-Network Providers.*]

37 (1) When a covered person receives services or treatment in accordance with plan
38 provisions at a network facility, the benefit level for all covered services and treatment received
39 through the facility shall be the in-network benefit. Covered services or treatment rendered at a
40 network facility, including covered ancillary services or treatment rendered by an out-of-network
41 provider performing the services or treatment at a network facility, shall be covered at no greater
42 cost to the covered person than if the services or treatment were obtained from an in-network
43 provider.

44 (2) This [Section 3] of this Act is repealed, effective [July 1, 2010].

45 (3) Prior to such repeal, the [division of insurance] shall conduct an evaluation to include,
46 but not be limited to, the following:

47 (a) the effects of this [Section 3] of this Act on network adequacy;

48 (b) the frequency that nonparticipating providers submit more than network
49 reimbursement rates for services rendered in an in-network facility compared to the carrier's book
50 of business for that line of insurance;

51 (c) the amounts paid by carriers to nonparticipating providers; and

52 (d) the impact of this [Section 3] of this Act on consumers.

53 (4) The [division of insurance] shall complete the evaluation on or before [January 15,
54 2010], and shall report its findings to the [senate health and human services committee and the
55 house of representatives business affairs and labor committee, or any successor committees]. The
56 legislative staff for such committees shall notify the [committee chairs] of the expectation of the
57 evaluation and the repeal of this [Section 3] of this Act on or before [July 1, 2009].

58

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

60

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

62

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

Human Papillomavirus Vaccine

The bill requires females to receive three properly spaced doses of human papillomavirus (HPV) vaccine. The first dose shall be administered before a child enters the sixth grade. After having reviewed materials describing the link between the human papillomavirus and cervical cancer approved for such use by the state board of health, a parent or guardian may elect for their daughter not to receive this vaccine.

Submitted as:

Virginia

HB 2035 (enrolled version)

Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Mandate Immunization
2 Against Human Papillomavirus (HPV).”
3

4 Section 2. [*Immunization Against Human Papillomavirus (HPV).*]

5 A. The parent, guardian or person standing in loco parentis of each female child within
6 this state shall cause such child to be immunized in accordance with the Immunization Schedule
7 developed and published by the Centers for Disease Control and Prevention (CDC), Advisory
8 Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and
9 the American Academy of Family Physicians (AAFP). The required immunizations for
10 attendance at a public or private elementary, middle or secondary school, child care center,
11 nursery school, family day care home or developmental center shall be those set forth in the [state
12 board of health] [Regulations for the Immunization of School Children]. The parent, guardian or
13 person standing in loco parentis may have such female child immunized by a physician or
14 registered nurse or may present the child to the appropriate local health department, which shall
15 administer the vaccines required by the [state board of health] [Regulations for the Immunization
16 of School Children] without charge. The [state board of health’s] regulations shall at a minimum
17 require:

18 1. Three doses of properly spaced Human Papillomavirus (HPV) vaccine for
19 females. The first dose shall be administered before the female child enters the sixth grade.

20 B. A physician, registered nurse or local health department administering a vaccine
21 required by this section shall provide to the person who presents the female child for
22 immunizations a certificate that shall state the diseases for which the child has been immunized,
23 the numbers of doses given, the dates when administered and any further immunizations
24 indicated.

25 C. The vaccines required by this section shall meet the standards prescribed in, and be
26 administered in accordance with, regulations of the [state board of health].

27 D. The provisions of this Act shall not apply if:

28 1. The parent or guardian of the female child objects thereto on the grounds that
29 the administration of immunizing agents conflicts with his religious tenets or practices, unless an
30 emergency or epidemic of disease has been declared by the [state board of health], or;

31 2. The parent or guardian presents a statement from a physician licensed to
32 practice medicine in this state or a licensed nurse practitioner, that states that the physical

condition of the female child is such that the administration of one or more of the required immunizing agents would be detrimental to the health of the child; or

3. Because the Human Papillomavirus is not communicable in a school setting, a parent or guardian, at the parent or guardian's sole discretion, may elect for their female child not to receive the Human Papillomavirus vaccine, after having reviewed materials describing the link between the Human Papillomavirus and cervical cancer approved for such use by the [state board of health].

E. For the purpose of protecting the public health by ensuring that each child receives age-appropriate immunizations, any physician, physician assistant, nurse practitioner, licensed institutional health care provider, local or district health department, the [state Immunization Information System], and the [state department of health] may share immunization and patient locator information without parental authorization, including, but not limited to, the month, day, and year of each administered immunization; the patient's name, address, telephone number, birth date, and social security number; and the parents' names. The immunization information; the patient's name, address, telephone number, birth date, and social security number; and the parents' names shall be confidential and shall only be shared for the purposes set out in this subsection.

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

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

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

Licensing and Regulating Cable Television Systems

This Act establishes a procedure by which cable operators may obtain authorization to operate cable systems in localities. The new procedure provides for localities to grant ordinance cable franchises as an alternative to negotiated cable franchises. Ordinance cable franchises may be requested by certified providers of telecommunications services with previous consent to use a locality's rights-of-way, after requesting to negotiate a cable franchise agreement. Upon receipt of an application for an ordinance cable franchise, the locality shall adopt necessary ordinances within 120 days. A locality granting an ordinance franchise may, if it currently has fewer than three public, educational or governmental (PEG) channels, obtain up to three PEG channels from all cable operators. A locality that has approved a cable franchise in the 12 months preceding July 1, 2006, is exempted from provisions of this measure until an existing franchise expires.

Submitted as:

Virginia

Chapter 73 of the 2006 Session

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act is entitled “An Act Relating to Licensing And
2 Regulating Cable Television Systems.”

3
4 Section 2. [*Definitions.*]

5 (A) As used in this Act:

6 “Act” means the Communications Act of 1934.

7 “Affiliate,” in relation to any person, means another person who owns or controls, is
8 owned or controlled by, or is under common ownership or control with, such person.

9 “Basic service tier” means the service tier that includes the retransmission of local
10 television broadcast channels and public, educational, and governmental channels required to be
11 carried in the basic tier.

12 “Cable operator” means any person or group of people that provides cable service over a
13 cable system and directly or through one or more affiliates owns a significant interest in such
14 cable system or otherwise controls or is responsible for, through any arrangement, the
15 management and operation of a cable system. Cable operator does not include a provider of
16 wireless or direct-to-home satellite transmission service.

17 “Cable service” means the one-way transmission to subscribers of video programming or
18 other programming service, and subscriber interaction, if any, which is required for the selection
19 or use of such video programming or other programming service. Cable service does not include
20 any video programming provided by a commercial mobile service provider defined in 47 U.S.C. §
21 332(d).

22 “Cable system” or “cable television system” means any facility consisting of a set of
23 closed transmission paths and associated signal generation, reception, and control equipment that
24 is designed to provide cable service that includes video programming and that is provided to
25 multiple subscribers within a community, except that such definition shall not include

26 (i) a system that serves fewer than [20] subscribers;

27 (ii) a facility that serves only to retransmit the television signals of [one or more]
28 television broadcast stations;

(iii) a facility that serves only subscribers without using any public right-of-way;
(iv) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(v) any facilities of any electric utility used solely for operating its electric systems;

(vi) any portion of a system that serves fewer than [50] subscribers in any locality, where such portion is a part of a larger system franchised in an adjacent locality; or an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573.

“Certificated provider of telecommunications services” means a person holding a certificate issued by the [State Corporation Commission] to provide local exchange telephone service.

“Franchise” means an initial authorization, or renewal thereof, issued by a franchising authority, including a locality or the [Commonwealth Transportation Board], whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction or operation of a cable system, a telecommunications system, or other facility in the public rights-of-way. A negotiated cable franchise is granted by a locality after negotiation with an applicant pursuant to section 3 of this Act. An ordinance cable franchise is granted by a locality when an applicant provides notice pursuant to section 4 of this Act that it will provide cable service in the locality.

“Force majeure” means an event or events reasonably beyond the ability of cable operator to anticipate and control. “Force majeure” includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which cable operator's facilities are attached or to be attached or conduits in which cable operator's facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.

“Gross revenue” means all revenue, as determined in accordance with Generally Accepted Accounting Principles, that is actually received by the cable operator and derived from the operation of the cable system to provide cable services in the franchise area; however, in an ordinance cable franchise “gross revenue” shall not include:

(i) refunds or rebates made to subscribers or other third parties;
(ii) any revenue which is received from the sale of merchandise over home shopping channels carried on the cable system, but not including revenue received from home shopping channels for the use of the cable service to sell merchandise;

(iii) any tax, fee, or charge collected by the cable operator and remitted to a governmental entity or its agent or designee, including without limitation a local public access or education group;

(iv) program launch fees;

(v) directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing;

(vi) a sale of cable service for resale or for use as a component part of or for the integration into cable services to be resold in the ordinary course of business, when the reseller is required to pay or collect franchise fees or similar fees on the resale of the cable service;

(vii) revenues received by any affiliate or any other person in exchange for supplying goods or services used by the cable operator to provide cable service; and

(viii) revenue derived from services classified as noncable services under federal law, including, without limitation, revenue derived from telecommunications services and information services, and any other revenues attributed by the cable operator to noncable services in accordance with rules, regulations, standards, or orders of the Federal Communications Commission.

“Interactive on-demand services” means a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider.

“Ordinance” includes a resolution.

“Transfer” means any transaction in which:

(i) an ownership or other interest in the cable operator is transferred, directly or indirectly, from one person or group of people to another person or group of people, so that majority control of the cable operator is transferred; or

(ii) the rights and obligations held by the cable operator under the cable franchise granted under this Act are transferred or assigned to another person or group of people. However, notwithstanding clauses (i) and (ii) of the preceding sentence, a transfer of the cable franchise shall not include:

(a) transfer of an ownership or other interest in the cable operator to the parent of the cable operator or to another affiliate of the cable operator;

(b) transfer of an interest in the cable franchise granted under this Act or the rights held by the cable operator under the cable franchise granted under this Act to the parent of the cable operator or to another affiliate of the cable operator;

(c) any action that is the result of a merger of the parent of the cable operator;

(d) any action that is the result of a merger of another affiliate of the cable operator; or

(e) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the cable operator in the cable franchise or the system used to provide cable in order to secure indebtedness.

“Video programming” means programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

(B) All terms used herein, unless otherwise defined, shall have the same meaning as set forth in Title VI of the Communications Act of 1934, 47 U.S.C. § 521 et seq. In addition, references in this Act to any federal law shall include amendments thereto as enacted.

Section 3. *[Authority to Grant Negotiated Cable Franchises and Regulate Cable Systems.]*

(A) A locality may grant a negotiated cable franchise in accordance with Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 521 et seq., and this Act.

(B) A locality may, by ordinance, exercise all regulatory powers over cable systems granted by the Communications Act of 1934, except as limited by this Act. These regulatory powers shall include the authority:

(i) to enforce customer service standards in accordance with the Act;

(ii) to enforce more stringent standards as agreed upon by the cable operator through the terms of a negotiated cable franchise; and

(iii) to regulate the rates for basic cable service in accordance with the Act.

(C) A locality, however, shall not regulate cable operators, cable systems, or other facilities used to provide video programming through the adoption of ordinances or regulations:

(i) that are more onerous than ordinances or regulations adopted for existing cable operators;

- 128 (ii) that unreasonably prejudice or disadvantage any cable operator, whether
129 existing or new; or
130 (iii) that are inconsistent with any provision of federal law or this Act.
131

132 Section 4. [*Ordinance Cable Franchises.*]

133 (A) This section shall govern the procedures by which a locality may grant ordinance
134 cable franchises.

135 (B) An Ordinance Cable Franchise, which shall have a term of [15] years, may be
136 requested by:

137 (i) a certificated provider of telecommunications services with previous consent to
138 use the public rights-of-way in a locality through a franchise;

139 (ii) a certificated provider of telecommunications services that lacked previous
140 consent to provide cable service in a locality but provided telecommunications services over
141 facilities leased from an entity having previous consent to use of the public rights-of-way in such
142 locality through a franchise; or

143 (iii) a cable operator with previous consent to use the public rights-of-way to
144 provide cable service in a locality through a franchise and who seeks to renew its existing cable
145 franchise pursuant to section 13 of this Act as an Ordinance Cable Franchise. A cable operator
146 with previous consent to use the public rights-of-way to provide cable service in a locality
147 through a franchise may opt into the new terms of an Ordinance Cable Franchise under section 9
148 of this Act.

149 (C) In order to obtain an Ordinance Cable Franchise, an applicant shall first file with the
150 chief administrative officer of the locality from which it seeks to receive such Ordinance Cable
151 Franchise a request to negotiate the terms and conditions of a negotiated cable franchise under
152 section 3 of this Act. An applicant shall request and make itself available to participate in cable
153 franchise negotiations with the locality from which it seeks to receive negotiated cable franchise
154 at least [45] calendar days prior to filing a notice electing an Ordinance Cable Franchise; this
155 prerequisite shall not be applicable if a locality refuses to engage in negotiations at the request of
156 an applicant or if the applicant already holds a negotiated cable franchise from the locality.
157 Thereafter, an applicant, through its president or chief executive officer, shall file notice with the
158 locality that it elects to receive an Ordinance Cable Franchise at least [30] days prior to offering
159 cable in such locality. The notice shall be accompanied by a map or boundary description
160 showing the initial service area in which the cable operator intends to provide cable service in the
161 locality within the [three-year] period required for an initial service area and the area in the
162 locality in which the cable operator has its telephone facilities. The map or boundary description
163 of the initial service areas may be amended by the cable operator by filing with the locality a new
164 map or boundary description of the initial service area.

165 (D) The cable operator shall assure that access to cable services is not denied to any group
166 of potential residential cable subscribers because of the income of the residents of the local area
167 in which such group resides. The local franchising authority shall have the right to monitor and
168 inspect the deployment of cable services and the cable operator shall submit [semiannual]
169 progress reports detailing the current provision of cable services in accordance with the
170 deployment schedule and its new service area plans for the next [six] months. The failure to
171 correct or remedy any material deficiencies shall be subject to the same remedies as contained in
172 the cable television franchise of the existing cable operator as that franchise existed at the time of
173 the grant of the ordinance franchise.

174 (E) The locality from which the applicant seeks to receive an ordinance cable franchise
175 shall adopt any ordinance requiring adoption under this Act within [120 days] of the applicant
176 filing the notice required in subsection C. Any ordinance adopted under this section that relates to

a cable operator's provision of cable service shall apply to such cable operator retroactively to the date on which the cable operator began to offer cable service in the locality pursuant to this Act.

(F) Notice of any ordinance that requires a public hearing shall be advertised once a week for two successive weeks in a newspaper having general circulation in the locality. The advertisement shall include a statement that a copy of the full text of the ordinance is on file in the office of the clerk of the locality. All costs of such advertising shall be assessed against the operator or applicant.

(G) If the governing body of any town adopts an ordinance pursuant to the provisions of this Act, such town shall not be subject to any ordinance adopted by the county within which such town lies.

Section 5. *[Regulating Fees, Rates And Services; Penalties.]*

(A) Upon receiving a notice requesting an ordinance cable franchise pursuant to section 4 of this Act, a locality shall adopt or maintain one or more ordinances that govern a cable operator who provides cable service under an ordinance cable franchise. The requirements of any specific provision in any such ordinance shall not exceed the requirements imposed in the same provision, if any, in any existing cable franchise within the locality. Such ordinance or ordinances, which shall be adopted after a public hearing, shall:

(i) Require a cable operator to provide the locality with access to a number of public, educational, and governmental access channels, [equal to the lowest number of such channels provided by any other cable operator in the same franchise area of the locality]. If the existing cable operator provides less than [three] such public, educational, and governmental access channels pursuant to a franchise agreement, the locality may require each cable operator to provide up to [three] such channels. Any additional channels provided subject to this provision shall be subject to the reclamation formula set forth below. In addition, a locality may, by ordinance adopted after a public hearing, require a cable operator to interconnect with any other cable operator to ensure the carriage of required public, educational, and governmental access channels; if the new cable operator and all existing cable operators cannot agree to an interconnection agreement within [180] days of a request to interconnect by the new cable operator, then the locality is authorized to determine an interconnection point. The locality or its designee shall assume responsibility for management, operation, and programming of such channels. A locality that substantially utilizes its existing public, educational, and governmental access channels may require a reasonable number of additional public, educational, and governmental access channels by the enactment of an ordinance, after a public hearing, so long as the ordinance applies equally to all providers of cable service within a franchise area, the total number of additional public, educational, and governmental access channels does not exceed [three] channels in the basic service tier, and the total number of public, educational, and governmental access channels shall not exceed [seven] channels in the aggregate. Notwithstanding the foregoing, but consistent with federal law, the locality and a cable operator may enter into written agreements for the carriage of additional public, educational, and governmental access channels, including other arrangements for the carriage of such programming. Any additional public, educational, and governmental access channel provided pursuant to this Act that is not utilized by the locality for at least [eight] hours a day shall no longer be made available to the locality, but may be programmed at the cable operator's discretion. At such time as the locality can certify to the cable operator a schedule for at least [eight] hours of daily programming for a period of [three] months, the cable operator shall restore the previously re-allocated channel. For purposes of this subdivision, a public, educational, and governmental access channel shall be considered to be substantially utilized when [12] hours are programmed on that channel each calendar day; in addition, at least [33%] of the [12] hours of programming for each business day on average over each calendar quarter must be nonrepeat

programming. For purposes of this subdivision, nonrepeat programming shall include the first three videocastings of a program and shall include programming on other public, educational, and governmental access channels in that locality. Programming for purposes of determining substantial utilization shall not include an alphanumeric scroll, except that for purposes of requiring one or more additional public, educational, and governmental access channels, an alphanumeric scroll shall be included as programming on not more than one channel;

(ii) Require a cable operator to pay a franchise fee, remitted on the same schedule as the least frequent schedule of an existing cable operator, but no more frequently than [quarterly], calculated by multiplying a franchise fee percentage rate by the cable operator's gross revenues in such franchise area for the remittance period; however, the franchise fee rate shall not exceed [5%] of such gross revenues and not exceed the lowest franchise fee rate paid or provided by an existing cable operator in the locality. The locality may further require that the cable operator make the franchise fee payments to the locality no later than [45] days following the end of the remittance period and require that the franchise fee payment be submitted with a brief report prepared by a duly authorized representative of the cable operator showing the basis for the computation. The locality shall have the right to reasonably require further supporting information that does not exceed the information required to be provided by existing cable operators in the locality;

(iii) Require a cable operator to pay a recurring fee, hereafter referred to as the PEG Capital Fee, to support the capital costs of public, educational, and governmental channel facilities, including institutional networks, provided that the PEG Capital Fee is equal to the lowest recurring fee imposed on a per subscriber or a percentage of gross revenue basis and paid by any existing cable operator in the locality to support the capital costs of such facilities. The PEG Capital Fee shall only be imposed on a per subscriber or a percentage of gross revenue basis. If the existing cable operator has paid a lump sum capital grant at award or renewal of its current franchise, or is providing in-kind equipment in lieu of such a capital grant, to support public, educational, and governmental channel facilities, including institutional networks, the locality, by ordinance adopted after a public hearing, shall also impose an additional monthly recurring fee to be known as the PEG Capital Grant Surcharge Fee on the new cable operator equal to the lower of [1.5%] of the new cable operator's gross revenues derived from the operation of its cable system in that locality or the lowest amount of capital contribution paid or provided in-kind, as shown on the books of the cable operator, by an existing cable operator in the locality when such capital contribution is amortized over the term of the existing cable operator's franchise and divided by the number of subscribers or annual gross revenue of the existing cable operator as shown on its most recent report to the locality, depending on recovery methodology chosen by the locality. Both the PEG Capital Fee and the PEG Capital Grant Surcharge Fee may only be collected by the locality for the remainder of the shortest remaining franchise term of any existing cable operator in the locality; however, at the end of such term the locality may negotiate with all cable operators to set a new, recurring fee to support the reasonable and necessary capital costs of public, educational, and governmental channel facilities, including institutional networks, that shall be imposed on all cable operators such that the fee applies equally to all of the customers of all cable operators in the locality. At the end of such term, no cable operator shall be required to provide any further in-kind public, educational, and governmental access channels, including institutional network, support. If the cable operators and the locality cannot agree on such a recurring capital cost fee, the locality, by ordinance adopted after a public hearing, may impose a recurring fee, calculated on a per subscriber or percentage of gross revenue basis, to support the reasonable and necessary capital costs of public, educational, and governmental channel facilities, including institutional networks; however, such fee may not exceed the PEG Capital Fee previously imposed on cable operators by the locality. Any and all fees permitted under this subdivision shall be paid by the cable operator to the locality on the same schedule as franchise

fees are paid. Nothing in this subdivision shall be construed to permit a locality to require cable operators to pay capital grants at the time of the grant or renewal of a franchise or otherwise except for the PEG Capital Grant Surcharge Fee specifically provided in this subdivision;

(iv) Require a cable operator to comply with the customer service requirements imposed by the locality pursuant to 47 U.S.C. § 552(a)(1) and this Act through the adoption of an ordinance after a public hearing. Any customer service requirements imposed by the locality that exceed the requirements established by the Federal Communications Commission under 47 U.S.C. § 552(b) shall not be designed so that the cable operator cannot also comply with any other customer service requirements under state or federal law or regulation applicable to the cable operator in its provision of other services over the same network used to provide cable service, be no more stringent than the customer service requirements applied to other cable operators in the franchise area, and be reasonably tailored to achieve appropriate customer service goals based on the technology used by the cable operator to provide cable service;

(v) Adopt procedures by which it will enforce the provisions of this Act and the applicable mandatory requirements of 47 U.S.C. §§ 521-573 and the regulations promulgated thereunder. Such procedures shall require the locality to: (i) informally discuss the matter with the cable operator in the event that the locality believes that a cable operator has not complied with this Act or the applicable mandatory requirements of 47 U.S.C. §§ 521-573 and notify the cable operator in writing of the exact nature of the alleged noncompliance if the discussions described in the foregoing clause (i) do not lead to resolution of the alleged noncompliance. The cable operator shall have [15] days from receipt of this written notice to:

(a) respond to the locality, if the cable operator contests, in whole or in part, the assertion of noncompliance;

(b) cure such default; or

(c) in the event that, by the nature of default, such default cannot be cured within the [15-day period], initiate reasonable steps to remedy such default and notify the locality of the steps being taken and the projected date that they will be completed. The locality shall schedule a public hearing in the event that the cable operator fails to respond to the written notice pursuant to these procedures or in the event that the alleged default is not remedied within [30] days of the date projected above if the locality intends to continue its investigation into the default. The locality shall provide the cable operator at least [30] business days prior written notice of such hearing, which will specify the time, place, and purpose of such hearing, and provide the cable operator the opportunity to be heard;

(vi) Adopt a schedule of uniform penalties or liquidated damages that it may impose upon any cable operator with an ordinance cable franchise when the locality determines that the cable operator has failed to materially comply with customer service standards; carriage of public, educational, and governmental channels; reporting requirements; or timely and full payment of the franchise fee or the fee assessed for the provision of public, educational, or governmental access channels, including institutional networks. Any penalty or liquidated damage for any of the foregoing violations shall be the same penalty or liquidated damage already established for a cable operator in the same franchise area, if any. In addition, a locality shall not impose any penalty or liquidated damage adopted pursuant to this subdivision until the cable operator has been afforded a reasonable cure period between the time the cable operator is notified of the violation and the penalty or liquidated damage is imposed. A separate violation for purposes of this Act and the ordinances passed to implement this Act as it pertains to customer service standards shall be deemed to occur whenever the locality reasonably determines that a separate customer service standard violation has occurred on one day; however, the cable operator shall not be charged with multiple violations for a single act or event affecting one or more subscribers on the same day. The locality may charge interest at the legal rate as set forth in

[insert citation] for any amounts due the locality by the cable operator in clause (iv) of this subdivision that remain unpaid and undisputed;

(vii) Adopt procedures under which the locality may inspect and audit, upon [30] days prior written notice, the books and records of the cable operator and recompute any amounts determined to be payable under the ordinances adopted pursuant to this Act. The procedures adopted by the locality shall not exceed the following requirements:

(a) the locality may require the cable operator to make available to the locality all records reasonably necessary to confirm the accurate payment of fees;

(b) the locality may require the cable operator to bear the locality's reasonable out-of-pocket audit expenses if the audit discloses an underpayment of more than [3%] of any quarterly payment, but not less than [\$5,000];

(c) the locality may require the cable operator to pay any additional undisputed amounts due to the locality as a result of the audit within [30] days following written notice by the locality to the cable operator;

(d) in the event the cable operator disputes any underpayment discovered as the result of an audit conducted by the locality, the locality shall work together with the cable operator in good faith to promptly resolve such dispute;

(e) the locality shall provide that the cable operator and the locality maintain all rights and remedies available at law regarding any disputed amounts;

(f) the locality shall have no more than [three] years from the time the cable operator delivers a payment to provide a written, detailed objection to or dispute of that payment, and if the locality fails to object to or dispute the payment within that time period, the locality shall be barred from objecting to or disputing it after that time period; and

(g) the locality shall not audit a cable operator more frequently than every [24] months;

(viii) Adopt reasonable reporting requirements for annual financial information and quarterly customer service information that must be provided by a cable operator to the locality so long as such information does not exceed the reporting requirements for any existing cable operator in that locality;

(ix) Require cable operators to provide, without charge, within the area actually served by the cable operator, one cable service outlet activated for basic cable service to each fire station, public school, police station, public library, and any other local government building. The ordinance shall apply equally to all providers of cable services in the locality, but shall not apply in cases where it is not technically feasible for a cable operator to comply;

(x) Subject to section 7 of this Act, adopt requirements and procedures for the management of the public rights-of-way that do not exceed the standards set forth in [insert citation] and the construction of a cable system in the public rights-of-way;

(xi) Adopt the following allocation procedure if cable services subject to a franchise fee, or any other fee determined by a percentage of the cable operator's gross revenues in a locality, are provided to subscribers in conjunction with other services: the fee shall be applied only to the value of these cable services, as reflected on the books and records of the cable operator in accordance with rules, regulations, standards, or orders of the Federal Communications Commission or the [State Corporation Commission], or generally accepted accounting principles. Any discounts resulting from purchasing the services as a bundle shall be reasonably allocated between the respective services that constitute the bundled transaction; and

(xii) Require cable operators to make cable service available to up to all of the occupied residential dwelling units in the initial service area selected by cable operator within no less than [three] years of the date of the grant of the franchise and no more than [65%] of the residential dwelling units in the area in the locality in which the cable operator has its telephone facilities, within no less than [seven] years of the date of the grant of the franchise.

Notwithstanding the foregoing provision, a cable operator shall not be required to make cable service available:

- (a) for periods of force majeure;
- (b) for periods of delay caused by the locality;
- (c) for periods of delay resulting from the cable operator's inability to obtain authority to access rights-of-way in the service area;
- (d) in areas where developments or buildings are subject to claimed exclusive arrangements;
- (e) in developments or buildings that the cable operator cannot access under industry standard terms and conditions after good faith negotiation;
- (f) in developments or buildings that the cable operator is unable to provide cable service for technical reasons or that require facilities that are not available or cannot be deployed on a commercially reasonable basis;
- (g) in areas where it is not technically feasible to provide cable service due to the technology used by the cable operator to provide cable service;
- (h) in areas where the average occupied residential household density is less than [30] occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the cable operator's active cable system (or such higher average density number as may be contained in an existing cable operator's cable franchise); and
- (i) when the cable operator's prior service, payment, or theft of service history with a subscriber or potential subscriber has been unfavorable. Should, through new construction, an area within the cable operator's service area meet the density requirement, a cable operator shall, subject to the exclusions in this subdivision, provide cable service to such area within [six] months of receiving notice from the locality that the density requirements have been met. A locality may not require a cable operator using its telephone facilities to provide cable service to provide any cable service outside of the area in the locality in which the cable operator has its telephone facilities. During the [12-month] period commencing after the [seventh-year anniversary date] of the grant of the franchise, a locality may, by ordinance adopted after a public hearing in which the locality specifically finds that such a requirement is necessary to promote competition in cable services within the locality, require the cable operator to make service available to no more than [80%] of the residential dwelling units in the area in the locality in which the cable operator has its telephone facilities within no less than [10] years of the date of the grant of the franchise, subject to the exclusions in clauses (a) through (i) of this subdivision. If the cable operator notifies the locality that it is unwilling to accept this additional service availability requirement, the locality may, after notice and public hearing, terminate the cable operator's ordinance cable franchise. The cable operator shall file a certificate at its [third and seventh, and if applicable, tenth, anniversary dates] certifying its compliance with the foregoing service requirements. For purposes of an ordinance cable franchise, the date of the grant of the franchise shall be the date the notice required by section 4 of this Act is filed with the locality. For purposes of a negotiated cable franchise, the date of the grant of the franchise shall be the date the respective locality has granted a negotiated cable franchise pursuant to section 3 of this Act.

Section 6. *[Regulation of Rights-of-Way; Fees.]*

(A) To the extent that a franchised cable operator has been authorized to use the public rights-of-way in a locality and is obligated to pay a franchise fee to such locality, such cable operator shall not be subject to any occupancy, use, or similar fee, with respect to its use of such rights-of-way, by the locality or the state [Transportation Board] except to the extent that such cable operator is also a certificated provider of telecommunications services and subject to the public rights-of-way use fee under [insert citation] of this Act. The state [Transportation Board]

may charge, on a nondiscriminatory basis, fees to recover the approximate actual cost incurred for the issuance of a permit to perform work within the rights-of-way and for inspections to ensure compliance with the conditions of the permit, as such fees shall be established by regulations adopted under the state [Administrative Process Act]; however, such fees may not apply to certificated providers of telecommunications services except to the extent permitted under [insert citation].

(B) A locality may charge, on a nondiscriminatory basis, fees to recover the approximate actual cost incurred for the issuance of a permit to perform work within the rights-of-way and for inspections to ensure compliance with the conditions of the permit, as such fees existed on [February 1, 1997], or as subsequently modified by ordinance; however, such fees may not apply to certificated providers of telecommunications services except to the extent permitted under [insert citation]. The limitation as to fees charged for the use of the public rights-of-way shall not be applicable to pole attachments and conduit occupancy agreements between a franchised cable operator and a locality or its authority or commission, which permits such operator to use the public poles or conduits.

(C) Except as provided in [insert citation] and in any rules adopted by the [Commonwealth Transportation Board] under [insert citation] cable franchise granted hereunder supersedes and replaces any and all other requirements and fees in local laws and the laws of the state relating to the use of the public rights-of-way by a cable system or other facilities for the provision of cable service, whether such other authorizations are designated as franchises, permits, consents, ordinances, or otherwise. No cable operator that is a certificated provider of telecommunications services that has previous consent to use the public rights-of-way in a locality through a franchise or a certificated provider of telecommunications services that lacked prior consent to provide cable service in a locality but provided telecommunications service over facilities leased from an entity having previous consent to use the public rights-of-way in such locality through a franchise and granted a franchise and paying fees pursuant to this section shall be required, in order to develop or operate a cable system or other facilities to provide video services, to obtain consent in accordance with [insert citation], except for permits or other permission to open streets and roads, or submit bids, bonds or applications in accordance with [insert citation], except for reasonable performance bonds or letters of credit not in excess of [\$50,000]. The restrictions in [insert citation], including but not limited to the advertisement and receipt of bids for franchises, shall not apply to a cable system or other facilities used to provide cable services by cable operator that is a certificated provider of telecommunications services with previous consent to use the public rights-of-way in a locality through a franchise, including the provision of telecommunications services over facilities leased from an entity with previous consent to use the public rights-of-way in a locality through a franchise, but without previous consent to provide cable service in that locality.

Section 7. *[Regulation of Facility Construction or Rights-of-Way Management Requirements for Certain Cable Operators.]* A locality shall not impose through a franchise to provide cable service, whether by negotiation or by ordinance, any facility construction or rights-of-way management requirements on a cable operator that is a certificated provider of telecommunications services that has a franchise to use the public rights-of-way in a locality or a certificated provider of telecommunications services that lacked prior consent to provide cable service in a locality but provided telecommunications services over facilities leased from an entity having a franchise to use the public rights-of-way in such locality, except that a municipality must meet the requirements of section 18 of this Act or otherwise be authorized to provide cable service.

475 Section 8. [*Itemization.*] A cable operator providing cable service may identify as a
476 separate line item on each regular bill of each subscriber the amount of the total bill assessed as a
477 franchise fee, or any equivalent fee, and the locality to which such fee is paid; the amount of the
478 total bill assessed to satisfy any requirements imposed on the cable operator, including those to
479 support public, educational, or governmental access facilities, including institutional networks;
480 and the amount of any other fee, tax, assessment, or charge of any kind imposed by any
481 governmental entity on the transaction between the cable operator and the subscriber.
482

483 Section 9. [*Reciprocity.*] Upon the request by an existing cable operator in the locality, a
484 locality that has negotiated and granted a cable franchise to a new cable provider through
485 negotiation, whether before or after [July 1, 2006], shall make available to that existing cable
486 operator the applicable terms and conditions that such locality provides to a new cable operator,
487 by an amendment and restatement in lieu of its existing franchise document. In addition, upon the
488 request by an existing cable operator in the locality, a locality adopting an ordinance under this
489 Act shall make available to that existing cable operator the applicable terms and conditions from
490 any such ordinance by opting into an ordinance cable franchise. In either such event, the existing
491 cable operator may accept all applicable terms and conditions only in their entirety and in lieu of
492 its existing franchise document and without the ability to accept specific terms and conditions.
493 The locality and the existing cable operator shall amend the cable franchise of the existing cable
494 operator to substitute the new, applicable terms and conditions upon notice of acceptance from
495 the existing cable operator. An existing cable provider in a locality shall have an enforceable right
496 to require that its cable franchise be amended and restated within [90] days of its request to
497 substitute the new, applicable terms and conditions of the new negotiated franchise or new
498 ordinance cable franchise granted to a new cable franchisee. Notwithstanding any other provision
499 in this Act, no existing cable operator shall reduce the geographic area in which it actually
500 provides cable service as of [July 1, 2006], by the exercise of its rights under this Act, but its
501 service obligations within such service areas shall be subject to the service exclusions set forth in
502 section 5 of this Act and the provisions of this section shall not alter the time period remaining in
503 any unexpired, existing franchise.
504

505 Section 10. [*Modification.*] No locality, without the consent of the franchisee, shall
506 accelerate the term of, require the renegotiation of, or otherwise modify in any way, an agreement
507 with any entity or a franchise, ordinance, permit, consent, or other authorization for such entity to
508 use the public rights-of-way because such entity has been granted a cable franchise under this Act
509 to use the public rights-of-way for the development and operation of a cable system.
510

511 Section 11. [*Transfer.*] No transfer of any franchise granted under this Act shall occur
512 without the prior consent of the locality, provided that such locality shall not unreasonably
513 withhold, delay, or condition such consent. No transfer shall be made to a person, group of people
514 or affiliate that is not legally, technically, and financially qualified to operate the cable system and
515 satisfy the franchise obligations.
516

517 Section 12. [*Surrender.*] Notwithstanding the provisions of this Act, a new cable
518 franchisee that considers, within [three years] after the grant of a cable franchise under this Act,
519 that its provision of cable services within the locality is no longer economically feasible may
520 notify the locality and surrender its cable franchise for the entire locality without liability to such
521 locality. If a new cable franchisee surrenders its cable service franchise, it shall not be eligible to
522 obtain a new cable service franchise within such locality until after the normal expiration date of
523 the franchise that such franchisee surrendered. Such surrender of a cable franchise shall have no

524 impact on other franchises held by the new cable franchisee or noncable services offered by the
525 new cable franchisee.
526

527 Section 13. [*Renewal.*] A cable operator electing to renew its cable franchise shall do so
528 pursuant to the renewal procedures in 47 U.S.C. § 546 or by providing notice to the locality that it
529 will opt into an Ordinance Cable Franchise pursuant to this Act. A cable operator may file such
530 notification that its cable franchise will be renewed by an Ordinance Cable Franchise not more
531 than [one] year in advance of the expiration date of the existing franchise or by a renewal
532 certification filed within [90] days after the effective date of this Act in the case of a current cable
533 franchise whose original, renewal, or extension term has expired. Except as provided by federal
534 law, the restrictions in [insert citation], including, but not limited to, the advertisement and receipt
535 of bids for cable franchises, shall not apply to renewal certifications except where a renewal
536 would result in a city or town having granted a cable franchise and a renewal with combined
537 terms in excess of [40] years.
538

539 Section 14. [*Act Construed.*] The fact that any person obtains a negotiated franchise or
540 ordinance cable franchise to provide cable services shall not create any presumption that such
541 person is providing cable services, is controlling or responsible for the management and operation
542 of a cable system, or is a cable operator, for purposes of federal law.
543

544 Section 15. [*Provision of Telecommunications Services.*]

545 (A) Any locality that operates an electric distribution system may provide
546 telecommunications services, including local exchange telephone service as defined in [insert
547 citation], within or outside its boundaries if the locality obtains a certificate pursuant to section 16
548 of this Act. Such locality may provide telecommunications services within any locality in which it
549 has electric distribution system facilities as of [March 1, 2002]. Any locality providing
550 telecommunications services on [March 1, 2002], may provide such telecommunications, Internet
551 access, broadband, information, and data transmission services within any locality within [75]
552 miles of the geographic boundaries of its electric distribution system as such system existed on
553 [March 1, 2002].

554 (B) A locality that has obtained a certificate pursuant to section 16 of this Act shall:

555 (i) comply with all applicable laws and regulations for the provision of
556 telecommunications services;

557 (ii) make a reasonable estimate of the amount of all federal, state, and local taxes
558 (including income taxes and consumer utility taxes) that would be required to be paid or collected
559 for each fiscal year if the locality were a for-profit provider of telecommunications services,

560 (iii) prepare reasonable estimates of the amount of any franchise fees and other
561 state and local fees (including permit fees and pole rental fees), and right-of-way charges that
562 would be incurred in each fiscal year if the locality were a for-profit provider of
563 telecommunications services,

564 (iv) prepare and publish annually financial statements in accordance with
565 generally accepted accounting principles showing the results of operations of its provision of
566 telecommunications services, and

567 (v) maintain records demonstrating compliance with the provisions of this section
568 that shall be made available for inspection and copying pursuant to the state [Freedom of
569 Information Act].

570 (C) Each locality that has obtained a certificate pursuant to section 16 of this Act shall
571 provide nondiscriminatory access to for-profit providers of telecommunications services on a
572 first-come, first-served basis to rights-of-way, poles, conduits or other permanent distribution

573 facilities owned, leased or operated by the locality unless the facilities have insufficient capacity
574 for such access and additional capacity cannot reasonably be added to the facilities.

575 (D) The prices charged and the revenue received by a locality for providing
576 telecommunications services shall not be cross-subsidized by other revenues of the locality or
577 affiliated entities, except in areas where no offers exist from for-profit providers of such
578 telecommunications services, or as permitted by the provisions [insert citation]. The provisions of
579 this subsection shall not apply to Internet access, broadband, information, and data transmission
580 services provided by any locality providing telecommunications services on [March 1, 2002].

581 (E) No locality providing such services shall acquire by eminent domain the facilities or
582 other property of any telecommunications service provider to offer cable, telephone, data
583 transmission or other information or online programming services.

584 (F) Public records of a locality that has obtained a certificate pursuant to section 16 of this
585 Act, which records contain confidential proprietary information or trade secrets pertaining to the
586 provision of telecommunications service, shall be exempt from disclosure under the state
587 [Freedom of Information Act]. As used in this subsection, a public record contains confidential
588 proprietary information or trade secrets if its acquisition by a competing provider of
589 telecommunications services would provide the competing provider with a competitive benefit.
590

591 Section 16. [*Certificate to Operate as a Telephone Utility.*]

592 (A) The [Commission] may grant certificates to competing telephone companies, or any
593 county, city or town that operates an electric distribution system, for interexchange service where
594 it finds that such action is justified by public interest, and is in accordance with such terms,
595 conditions, limitations, and restrictions as may be prescribed by the [Commission] for
596 competitive telecommunications services. A certificate to provide interexchange services shall not
597 authorize the holder to provide local exchange services. The [Commission] may grant a certificate
598 to a carrier, or any county, city or town that operates an electric distribution system, to furnish
599 local exchange services as provided in subsection B.

600 (B) After notice to all local exchange carriers certificated in the state and other interested
601 parties and following an opportunity for hearing, the [Commission] may grant certificates to any
602 telephone company, or any county, city or town that operates an electric distribution system,
603 proposing to furnish local exchange telephone service in the state. In determining whether to
604 grant a certificate under this subsection, the state may require that the applicant show that it
605 possesses sufficient technical, financial, and managerial resources. Before granting any such
606 certificate, the [Commission] shall:

607 (i) consider whether such action reasonably protects the affordability of basic local
608 exchange telephone service, as such service is defined by the [Commission], and reasonably
609 assures the continuation of quality local exchange telephone service; and

610 (ii) find that such action will not unreasonably prejudice or disadvantage any class
611 of telephone company customers or telephone service providers, including the new entrant and
612 any incumbent local exchange telephone company, and is in the public interest. Except as
613 provided in subsection A of section 15 of this Act, all local exchange certificates granted by the
614 [Commission] after [July 1, 2002], shall be to provide service in any territory in the state unless
615 the applicant specifically requests a different certificated service territory. The [Commission]
616 shall amend the certificated service territory of each local exchange carrier that was previously
617 certificated to provide service in only part of the state to permit such carrier's provision of local
618 exchange service throughout this state beginning on [September 1, 2002], unless that local
619 exchange carrier notifies the [Commission] prior to [September 1, 2002], that it elects to retain its
620 existing certificated service territory. A local exchange carrier shall only be considered an
621 incumbent in any certificated service territory in which it was considered an incumbent prior to
622 [July 1, 2002].

(C) A [Commission] order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a new entrant shall be entered no more than [180] days from the filing of the application, except that the [Commission], upon notice to all parties in interest, may extend that period in additional [30-day] increments not to exceed an additional [90] days in all.

(D) The [Commission] shall:

(i) promote and seek to assure the provision of competitive services to all classes of customers throughout all geographic areas of the state by a variety of service providers;

(ii) require equity in the treatment of the certificated local exchange telephone companies so as to encourage competition based on service, quality, and price differences between alternative providers;

(iii) consider the impact on competition of any government-imposed restrictions limiting the markets to be served or the services offered by any provider;

(iv) determine the form of rate regulation, if any, for the local exchange services to be provided by the applicant and, upon application, the form of rate regulation for the comparable services of the incumbent local exchange telephone company provided in the geographical area to be served by the applicant; and

(v) promulgate standards to assure that there is no cross-subsidization of the applicant's competitive local exchange telephone services by any other of its services over which it has a monopoly, whether or not those services are telephone services. The [Commission] shall also adopt safeguards to ensure that the prices charged and the revenue received by a county, city or town for providing telecommunications services shall not be cross-subsidized from other revenues of the county, city or town or affiliated entities, except in areas where no offers exist from for-profit providers of such telecommunications services, or as authorized pursuant to subdivision 5 of this subsection.

(E) The [Commission] shall discharge the responsibilities of state commissions as set forth in the Federal Telecommunications Act of 1996 (P.L. 104-104), this Act, and applicable law and regulations, including, but not limited to, the arbitration of interconnection agreements between local exchange carriers; however, the [Commission] may exercise its discretion to defer selected issues under the Act. If the [Commission] incurs additional costs in arbitrating such agreements or resolving related legal actions or disputes that cannot be recovered through the maximum levy authorized pursuant to [insert citation], that levy shall be increased above the levy authorized by that section to the extent necessary to recover such additional costs.

(F) Upon the [Commission's] granting of a certificate to a county, city or town under this section, such county, city, or town:

(i) shall be subject to regulation by the [Commission for Intrastate Telecommunications Services],

(ii) shall have the same duties and obligations as other certificated providers of telecommunications services,

(iii) shall separately account for the revenues, expenses, property, and source of investment dollars associated with the provision of such services, and

(iv) to ensure that there is no unreasonable advantage gained from a government agency's taxing authority and control of government-owned land, shall charge an amount for such services that

(a) does not include any subsidies, unless approved by the [Commission], and

(b) takes into account, by imputation or allocation, equivalent charges for all taxes, pole rentals, rights of way, licenses, and similar costs incurred by for-profit providers. Each certificated county, city, or town that provides telecommunications services regulated by the [Commission] shall file an annual report with the [Commission] demonstrating that the

requirements of clauses (iii) and (iv) of this subdivision have been met. The [Commission] may approve a subsidy under this section if deemed to be in the public interest and provided that such subsidy does not result in a price for the service lower than the price for the same service charged by the incumbent provider in the area.

(G) A locality that has obtained a certificate pursuant to this section shall:

(i) comply with all applicable laws and regulations for the provision of telecommunications services;

(ii) make a reasonable estimate of the amount of all federal, state, and local taxes (including income taxes and consumer utility taxes) that would be required to be paid or collected for each fiscal year if the locality were a for-profit provider of telecommunications services,

(iii) prepare reasonable estimates of the amount of any franchise fees and other state and local fees (including permit fees and pole rental fees), and right-of-way charges that would be incurred in each fiscal year if the locality were a for-profit provider of telecommunications services,

(iv) prepare and publish annually financial statements in accordance with generally accepted accounting principles showing the results of operations of its provision of telecommunications services, and

(v) maintain records demonstrating compliance with the provisions of this section that shall be made available for inspection and copying pursuant to the state [Freedom of Information Act (insert citation)].

(vi) Each locality that has obtained a certificate pursuant to this section shall provide nondiscriminatory access to for-profit providers of telecommunications services on a first-come, first-served basis to rights-of-way, poles, conduits or other permanent distribution facilities owned, leased or operated by the locality unless the facilities have insufficient capacity for such access and additional capacity cannot reasonably be added to the facilities.

(vii) The prices charged and the revenue received by a locality for providing telecommunications services shall not be cross-subsidized by other revenues of the locality or affiliated entities, except in areas where no offers exist from for-profit providers of such telecommunications services, or as permitted by the provisions of subdivision B 5. The provisions of this subdivision shall not apply to Internet access, broadband, information, and data transmission services provided by any locality providing telecommunications services on [March 1, 2002].

(viii) The [Commission] shall promulgate rules necessary to implement this section. In no event, however, shall the rules necessary to implement [subdivisions B 5 iii and iv, B 6 ii through v, and B 8] impose any obligations on a locality that has obtained a certificate pursuant to this section, but is not yet providing telecommunications services regulated by the [Commission].

(ix) Public records of a locality that has obtained a certificate pursuant to this section, which records contain confidential proprietary information or trade secrets pertaining to the provision of telecommunications service, shall be exempt from disclosure under the state [Freedom of Information Act (insert citation)]. As used in this subdivision, a public record contains confidential proprietary information or trade secrets if its acquisition by a competing provider of telecommunications services would provide the competing provider with a competitive benefit.

(H) [Insert citation] shall not apply to a county, city or town that has obtained a certificate pursuant to this section.

(I) Any county, city, or town that has obtained a certificate pursuant to this section may construct, own, maintain, and operate a fiber optic or communications infrastructure to provide consumers with Internet services, data transmission services, and any other communications service that its infrastructure is capable of delivering; provided, however, nothing in this

subsection shall authorize the provision of cable television services or other multi-channel video programming service. Furthermore, nothing in this subsection shall alter the authority of the [Commission].

(J) Any county, city, or town that has obtained a certificate pursuant to this section and that had installed a cable television headend prior to [December 31, 2002], is authorized to own and operate a cable television system or other multi-channel video programming service and shall be exempt from the provisions of [insert citation]. Nothing in this subsection shall authorize the [Commission] to regulate cable television service.

Section 17. *[Pole Attachments; Cable Television Systems and Telecommunications Service Providers.]*

(A) As used in this section:

“Cable television system” means any system licensed, franchised or certificated pursuant to section 2 of this Act that transmits television signals, for distribution to subscribers of its services for a fee, by means of wires or cables connecting its distribution facilities with its subscriber's television receiver or other equipment connecting to the subscriber's television receiver, and not by transmission of television signals through the air.

“Pole attachment” means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, right-of-way or similar facility owned or controlled by a public utility.

“Public utility” has the same meaning ascribed thereto in [insert citation].

“Rearrangement” means work performed at the request of a telecommunications service provider or cable television system to, on or in an existing pole, duct, conduit, right-of-way or similar facility owned or controlled by a public utility that is necessary to make such pole, duct, conduit, right-of-way, or similar facility usable for a pole attachment. “Rearrangement” shall include replacement, at the request of a telecommunications service provider or cable television system, of the existing pole, duct, conduit, right-of-way, or similar facility if the existing pole, duct, conduit, right-of-way, or similar facility does not contain adequate surplus space or excess capacity and cannot be rearranged so as to create the adequate surplus space or excess capacity required for a pole attachment.

“Telecommunications service provider” means any public service corporation or public service company that holds a certificate of public convenience and necessity to furnish local exchange telephone service or interexchange telephone service.

(B) Upon request by a telecommunications service provider or cable television system to a public utility, both the public utility and the telecommunications service provider or cable television system shall negotiate in good faith to arrive at a mutually agreeable contract for attachments to the public utility's poles by the telecommunications service provider or cable television system.

(C) After entering into a contract for attachments to its poles by any telecommunications service provider or cable television system, a public utility shall permit, upon reasonable terms and conditions and the payment of reasonable annual charges and the cost of any required rearrangement, the attachment of any wire, cable, facility or apparatus to its poles or pedestals, or the placement of any wire, cable, facility or apparatus in conduit or duct space owned or controlled by it, by such telecommunications service provider or cable television system that is authorized by law, to construct and maintain the attachment, provided that the attachment does not interfere, obstruct or delay the service and operation of the public utility or create a safety hazard.

(D) Notwithstanding the provisions of subsection C, a public utility providing electric utility service may deny access by a telecommunications service provider or cable television system to any pole, duct, conduit, right-of-way, or similar facility owned or controlled, in whole

or in part, by such public utility, provided such denial is made on a nondiscriminatory basis on grounds of insufficient capacity or reasons of safety, reliability, or generally applicable engineering principles.

(E) This section shall not apply to any pole attachments regulated pursuant to 47 U.S.C. § 224.

Section 18. [*Regulation by State Corporation Commission.*]

(A) Every cooperative organized under this Act shall be subject to the jurisdiction of the [State Corporation Commission] with respect to telephone services and facilities in the same manner and to the same extent as are other similar utilities under the laws of this state, except that:

(i) the [Commission] shall have no jurisdiction over the rates, service quality and types of service offerings of the cooperative to its members;

(ii) a cooperative shall not be required to file a local service tariff with the [Commission]; and

(iii) where a cooperative establishes a cable television system, it shall be subject to this Act.

(B) That in any locality in which the governing body of the locality has granted one or more new cable franchises during the [12-month period prior to July 1, 2006], that include an overlapping geographic service area with another cable franchise within that locality, all franchises within that locality shall remain in full force and effect until the earliest expiration date of the overlapping franchises or until one is terminated pursuant to the terms of the franchise and shall not be subject to the provisions of this Act, except as set forth in this clause. A locality that has granted one or more new, overlapping franchises within the [12-month period prior to July 1, 2006], shall have the option not to offer, accept, or implement the ordinance cable franchise process described in section 5 of this Act until the earliest expiration date of the overlapping franchises, but may determine only to grant new cable franchises during such period through the Negotiated Cable Franchise process. Any such locality, when granting any additional cable franchises after July 1, 2006, and until the existing cable franchises expire or are terminated pursuant to their terms, shall make the terms of any such newly granted franchise available, pursuant to section 9 of this Act, to all cable operators with existing franchises. Any locality in which the governing body of the locality has granted one or more new cable franchises during the [12-month period prior to July 1, 2006], that include an overlapping geographic service area with another cable franchise within that locality, shall make the terms of any such newly granted franchise available, in the manner described in section 5 of this Act, to all cable operators with existing franchises on the date the subsequent overlapping franchise was awarded. Upon the expiration of a current cable franchise that is subject to this clause, this clause shall no longer be applicable to any cable franchise in such locality and the locality shall thereafter be subject to all provisions of this Act.

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

Section 20. [*Repealer.*] [Insert repealer clause.]

Section 21. [*Effective Date.*] [Insert effective date.]

Malpractice Liability During Pandemics

This Act protects health care providers from malpractice liability when they respond to a natural disaster, pandemic event, or bioterrorism unless the health care provider is grossly negligent; caused the emergency; or has engaged in criminal conduct. This Act applies the limited liability protections to a health care provider even if the provider has a duty to respond or the provider has an expectation of payment or remuneration.

Submitted as:

Utah

SB 153

Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Malpractice
2 Liability During a Pandemic Event.”

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

5 (1) (a) “Emergency” means an unexpected occurrence involving injury, the threat of
6 injury, or illness to a person or the public due to:

7 (i) a natural disaster;

8 (ii) bioterrorism;

9 (iii) an act of terrorism;

10 (iv) a pandemic; or

11 (v) other event of similar nature.

12 (b) “Emergency care” includes actual assistance or advice offered to avoid,
13 mitigate, or attempt to mitigate the effects of an emergency.

14 (c) “Person” means as defined in [insert citation].

15 (2) (a) A person, who in good faith, assists governmental agencies or political
16 subdivisions with the activities described in [Subsection (2)(b)] is not liable for civil damages or
17 penalties as a result of any act or omission unless the person rendering the assistance:

18 (i) is grossly negligent;

19 (ii) caused the emergency; or

20 (iii) has engaged in criminal conduct.

21 (b) The following activities are protected from liability in accordance with
22 [Subsection (2)(a)]:

23 (i) implementing measures to control the causes of epidemic, pandemic,
24 communicable diseases, or other conditions significantly affecting public health, as necessary to
25 protect the public health in accordance with [insert citation];

26 (ii) investigating, controlling, and treating suspected bioterrorism or
27 disease in accordance with [insert citation]; or

28 (iii) responding to:

29 (A) a national, state, or local emergency;

30 (B) a public health emergency as defined in [insert citation]; or

31 (C) a declaration by the President of the United States or other

32 federal official requesting public health related activities.

33 (c)[Subsection (2)(a)] applies to a person even if that person has:
34 (i) a duty to respond; or
35 (ii) an expectation of payment or remuneration.
36 (3) The immunity in [Subsection (2)] is in addition to any immunity protections that may
37 apply in state or federal law.
38
39 Section 3. [*Severability*.] [Insert severability clause.]
40
41 Section 4. [*Repealer*.] [Insert repealer clause.]
42
43 Section 5. [*Effective Date*.] [Insert effective date.]

Mediation of Emergency or Disaster-Related Insurance Claims

This Act:

- provides for a voluntary mediation program for residential property insurance claims caused by disasters;
- requires sellers of property insurance to disclose major perils that are not covered;
- provides for the tolling of time periods in property insurance policies in disaster situations;
- provides for the tolling of time periods if the operations of the department of insurance are interrupted by force majeure, and
- authorizes motor vehicle self-insurance for certain religious organizations.

Submitted as:

North Carolina

Session Law 2006-145

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This Act shall be cited as “An Act to Address Mediating
2 Residential Property Insurance Claims Caused by Disasters.”

3
4 Section 2. [*Purpose and Scope*.]

5 (a) This Act creates a nonadversarial alternative dispute resolution procedure for a
6 facilitated claim resolution conference prompted by the critical need for effective, fair, and timely
7 handling of insurance claims arising out of damages to residential property as the result of a
8 disaster. This Act applies only if a state of disaster has been proclaimed for the state or for an area
9 within the state by the governor under [insert citation], or if the President of the United States has
10 issued a major disaster declaration for the state or for an area within the state under the Robert T.
11 Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended.

12 (b) The procedure established by this Act is available to all first-party claimants who have
13 insurance claims resulting from damage to residential property occurring in this state. This Act
14 does not apply to commercial insurance, motor vehicle insurance, or to liability coverage
15 contained in property insurance policies.

16 (c) The [state commissioner of insurance] may designate a person, either within the [state
17 insurance department] or outside the [state insurance department], as the administrator or other
18 functionary to carry out any of the [commissioner’s] duties under this Act.

19
20 Section 3. [*Definitions*.] As used in this Act:

21 (1) Administrator. – The state [Commissioner of Insurance] or the [Commissioner’s
22 designee]; and the term is used interchangeably with regard to the [Commissioner’s] duties under
23 this Act.

24 (2) Disaster. – As defined in [insert citation].

25 (3) Disputed claim. – Any matter on which there is a dispute as to the cause of loss or
26 amount of loss, for which the insurer has denied payment, in part or whole, with respect to claims

arising from a disaster. Unless the parties agree to mediate a disputed claim involving a lesser amount, a “disputed claim” involves the insured requesting [one thousand five hundred dollars (\$1,500)] or more to settle the dispute, or the difference between the positions of the parties is [one thousand five hundred dollars (\$1,500)] or more. “Disputed claim” does not include a dispute with respect to which the insurer has reported allegations of fraud, based on a referral to the insurer’s special investigative unit, to the [Commissioner]. A disputed claim does not include one in which there has been a denial of coverage for the loss because of exclusions in the policy, terms in the policy, conditions in the policy, or nonexistence of the policy at the time of the loss.

(4) Mediation. – As defined in [insert citation].

(5) Mediator. – A neutral person who acts to encourage and facilitate a resolution of a claim.

(6) Party or parties. – The insured and his or her insurer, including a surplus lines insurer and underwriting associations as defined in [insert citation], when applicable.

Section 4. *[Notification of Right to Mediate.]*

(a) Insurers shall notify their insureds in this state who have claimed damage to their residential properties as a result of a disaster of their right to mediate disputed claims. This requirement applies to all disputed claims, including instances where checks have been issued by the insurer to the insured.

(b) The insurer shall mail a notice of the right to mediate disputed claims to an insured within [five days] after the time the insured or the [Administrator] notifies the insurer of a dispute regarding the insured’s claim. The following apply:

(1) If the insurer has not been notified of a disputed claim before the time an insurer notifies the insured that a claim has been denied in whole or in part, the insurer shall mail a notice of the right to mediate to the insured in the same mailing as the notice of denial.

(2) The insurer is not required to send a notice of the right to mediate if a claim is denied because the amount of the claim is less than the insured’s deductible.

(3) The mailing that contains the notice of the right to mediate shall include any consumer brochure on mediation developed by the [Commissioner].

(4) Notification shall be in writing and shall be legible, conspicuous, and printed in at least [12-point type].

(5) The first paragraph of the notice shall contain the following statement: “The [insert state] legislature has enacted a law to facilitate fair and timely handling of residential property insurance claims arising out of disasters. The law gives you the right to attend a mediation conference with your insurer in order to settle any dispute you have with your insurer about your claim. An independent mediator, who has no connection with your insurer, will be in charge of the mediation conference.”

(c) The notice shall also:

(1) include detailed instructions on how the insured is to request mediation, including name, address, and phone and fax numbers for requesting mediation through the [Administrator];

(2) include the insurer’s address and phone number for requesting additional information, and

(3) state that the [Administrator] will select the mediator.

Section 5. *[Request for Mediation.]*

(a) If an insured requests mediation before receipt of the notice of the right to mediate or if the date of the notice cannot be established, the insurer shall be notified by the [Administrator] of the existence of the dispute before the [Administrator] processes the insured’s request for mediation. An insured must request mediation within [60 days] after the denial of the claim;

failure to request mediation within this time period shall only bar the right to demand mediation; it shall not prejudice any other legal right or remedy of the insured nor prohibit the insurer from voluntarily accepting the request for mediation.

(b) If an insurer receives a request for mediation, the insurer shall electronically transmit the request to the [Administrator] within [three business days] after receipt of the request. If the [Department] receives any requests, it shall electronically transmit those requests to the [Administrator] within [three business days] after receipt. The [Administrator] shall notify the insurer within [48 hours] after receipt of a request that has been filed with the [Department].

(c) In the insured's request for mediation, the insured shall provide the following information, if known:

(1) name, address, and daytime telephone number of the insured and location of the property if different from the address given;

(2) the claim and policy number for the insured;

(3) a brief description of the nature of the dispute;

(4) the name of the insurer and the name, address, and phone number of the contact person for scheduling mediation; and

(5) information with respect to any other policies of insurance that may provide coverage of the insured property for named perils such as flood, earthquake, or windstorm.

Section 6. *[Mediation Fees.]*

(a) The fees of the mediator and of the [Administrator] as established by the [Commissioner] shall be borne by the insurer. All other mediation costs, fees, or expenses shall be borne by the party incurring such costs, fees, or expenses unless otherwise provided in a settlement agreement.

(b) The [Commissioner] may establish fee schedules, through emergency rules, for fees to be paid to the [Administrator], the mediator, and for timely and untimely mediation cancellations.

Section 7. *[Scheduling of Mediation; Qualification of Mediator.]*

(a) The [Administrator] shall select a mediator and schedule the mediation conference.

(b) In order to be approved, a mediator must be certified by the [Dispute Resolution Commission] under [insert citation]; or, if not, shall be approved at the discretion of the [Administrator] only if the parties agree on the selected mediator and the proposed mediator is a licensed attorney in good standing with the state Bar. A mediator shall not make an award or render a judgment as to the merits of the action.

Section 8. *[Conduct of the Mediation Conference.]*

(a) The [Commissioner] may adopt rules, in addition to the provisions of this section and that are not in conflict with [insert citation], for the conduct of mediation conferences under this Act. The rules adopted by the [Commissioner] shall include a requirement of the mediator to advise the parties of the mediation process and their rights and duties in the process.

(b) All parties shall negotiate in good faith. A decision by an insurer to stand by a coverage determination shall not be considered a failure to negotiate in good faith. A party shall be determined to have not negotiated in good faith if the party or a person participating on the party's behalf, becomes unduly argumentative or adversarial or continuously disrupts or otherwise inhibits the negotiations, as determined by the mediator.

(c) The mediator shall terminate the negotiations if the mediator determines that either party is not negotiating in good faith, either party is unable or unwilling to participate meaningfully in the process, or upon mutual agreement of the parties.

(d) The party responsible for causing termination shall be responsible for paying the mediator's fee and the administrative fee for any rescheduled mediation.

- (e) The representative of the insurer attending the conference shall:
- (1) Bring, in paper or electronic medium, a copy of the policy and the entire claims file to the conference.
 - (2) Know the facts and circumstances of the claim and be knowledgeable of the provisions of the policy.
- (f) An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle within the limits of the policy.
- (g) The mediator shall be in charge of the conference and will establish and describe the procedures to be followed. The mediator shall conduct the conference in accordance with the standards of professional conduct for mediation adopted by the American Arbitration Association, the American Bar Association, the Society of Professionals in Dispute Resolution, and, where not inconsistent, [insert citation].
- (h) All statements made and documents produced at a settlement conference shall be deemed settlement negotiations in anticipation of litigation.
- (i) A party may move to disqualify a mediator for good cause at any time. The request shall be directed to the [Administrator] if the grounds are known before the mediation conference. Good cause consists of conflict of interest between a party and the mediator, inability of the mediator to handle the conference competently, or other reasons that would reasonably be expected to impair the conference.

Section 9. *[Post-Mediation.]*

- (a) Within [five days] after the conclusion of the conference, the mediator shall file with the [Administrator] a mediator's status report, on a form prescribed by the Administrator, indicating whether or not the parties reached a settlement.
- (b) Mediation is nonbinding unless all the parties specifically agree otherwise in writing.
- (c) If the parties reach a settlement, the mediator shall include a copy of the settlement agreement with the status report. Within [three business days] after the conclusion of the conference, the insurer shall disburse the settlement funds in accordance with the terms of the settlement agreement. The insured has [three business days] after receipt of the settlement funds within which to notify the [Commissioner] and the insurer of the insured's decision to rescind the settlement agreement, as long as the insured has not received the settlement funds by electronic means or has not cashed or deposited any check or draft disbursed to the insured in payment of the settlement funds.
- (d) If a settlement agreement is reached and is not rescinded, it shall act as a release of all specific claims that were presented in the conference. Any subsequent claim under the policy shall be presented as a separate claim.

Section 10. *[Nonparticipation in Mediation Program.]* If the insured decides not to participate in this program or if the parties are unsuccessful at resolving the claim, the insured may choose to proceed under the appraisal process set forth in the insurance policy, by litigation, or by any other dispute resolution procedure available under state law.

Section 11. *[Commissioner's Review.]* If the insured rescinds a settlement agreement in accordance with [Section 9 (c)] of this Act, the [Commissioner] may review the settlement agreement to determine if the agreement was fair to the parties to the agreement. If the [Commissioner], upon review and within [10 business days] after receiving notice of the rescission, deems that it was fair to the parties, the insured, upon notice from the [Commissioner], may withdraw the rescission within [five business days] after receipt of notice from the [Commissioner] and reinstate the settlement agreement as if no rescission had taken place. The

[Commissioner's] review and findings shall not be offered or accepted as evidence in any subsequent proceedings.

Section 12. [*Relation to Administrative Procedure Act.*] The applicable provisions of the [state Administrative Procedure Act] shall govern issues relating to mediation that are not addressed in this Act.

Section 13. [*Notice to Property Insurance Policyholder about Flood, Earthquake, Mudslide, Mudflow, and Landslide Insurance Coverage.*]

(a) Every insurer that sells property insurance policies that do not provide coverage for the perils of flood, earthquake, mudslide, mudflow, or landslide shall, upon the issuance and renewal of each policy, identify to the policyholder which of these perils are not covered under the policy. The insurer shall print the following warning, citing which peril is not covered, in Times New Roman 16-point font or other equivalent font and include it in the policy on a separate page immediately before the declarations page:

“Warning: this property insurance policy does not protect you against losses from [floods], [earthquakes], [mudslides], [mudflows], [landslides]. You should contact your insurance company or agent to discuss your options for obtaining coverage for these losses. This is not a complete listing of all of the causes of losses not covered under your policy. You should read your entire policy to understand what is covered and what is not covered.”

(b) As used in this section, “insurer” includes an entity that sells property insurance under [insert citation].

Section 14. [*State of Disaster; Automatic Stay of Proof of Loss Requirements; Premium and Debt Deferrals; Loss Adjustments For Separate Windstorm Policies.*] Whenever a state of disaster is proclaimed for the state or for an area within the state under [insert citation] or whenever the President of the United States has issued a major disaster declaration for the state or for an area within the state under the Stafford Act, 42 U.S.C. § 5121, et seq., as amended:

(1) The application of any provision in an insurance policy insuring real property and its contents that are located within the geographic area designated in the proclamation or declaration, which provision requires an insured to file a proof of loss within a certain period of time after the occurrence of the loss, shall be stayed for the time period not exceeding the expiration of the disaster proclamation or declaration and all renewals of the proclamation or [45 days], whichever is later.

(2) As used in this subdivision, “insurance company” includes a service corporation, HMO, MEWA, surplus lines insurer, and the underwriting associations under [insert citation]. All insurance companies, premium finance companies, collection agencies, and other people subject to this Act shall give their customers who reside within the geographic area designated in the proclamation or declaration the option of deferring premium or debt payments that are due during the time period covered by the proclamation or declaration. This deferral period shall be [30 days] from the last day the premium or debt payment may be made under the terms of the policy or contract. This deferral period shall also apply to any statute, rule, or other policy or contract provision that imposes a time limit on an insurer, insured, claimant, or

customer to perform any act during the time period covered by the proclamation or declaration, including the transmittal of information, with respect to insurance policies or contracts, premium finance agreements, or debt instruments when the insurer, insured, claimant, or customer resides or is located in the geographic area designated in the proclamation or declaration. Likewise, the deferral period shall apply to any time limitations imposed on insurers under the terms of a policy or contract or provisions of law related to people who reside within the geographic area designated in the proclamation or declaration. The [Commissioner] may extend any deferral period in this subdivision, depending on the nature and severity of the proclaimed or declared disaster. No additional rate or contract filing shall be necessary to effect any deferral period.

(3) With respect to health benefit plans, after a deferral period has expired, all premiums in arrears shall be payable to the insurer. If premiums in arrears are not paid, coverage shall lapse as of the date premiums were paid up, and preexisting conditions shall apply as permitted under this Act; and the insured shall be responsible for all medical expenses incurred since the effective date of the lapse in coverage.

(4) In addition to the requirements of [insert citation] for separate windstorm policies that are written by an insurer other than the [Underwriting Association], losses shall be adjusted by the insurer that issued the property insurance and not by the insurer that issued the windstorm policy. The insurer that issued the windstorm policy shall reimburse the insurer that issued the property insurance for reasonable expenses incurred by that insurer in adjusting the windstorm losses.

Section 15. *[Incident Affecting Operations of the Department; Stay of Deadlines and Deemer Provisions.]* Regardless of whether a state of disaster has been proclaimed under [insert citation] or declared under the Stafford Act, whenever an incident beyond the [Department's] reasonable control, including an act of God, insurrection, strike, fire, power outage, or systematic technological failure, substantially affects the daily business operations of the [Department], the [Commissioner] may issue an order, effective immediately, to stay the application of any deadlines and deemer provisions imposed by law or rule upon the [Commissioner] or [Department] or upon people subject to the [Commissioner's] jurisdiction, which deadlines and deemer provisions would otherwise operate during the time period for which the operations of the [Department] have been substantially affected. The order shall remain in effect for a period not exceeding [30 days]. The order may be renewed by the [Commissioner] for successive periods not exceeding [30 days] each for as long as the operations of the [Department] remain substantially affected, up to a period of [one year] from the effective date of the initial order.

Section 16. *[Religious Organizations; Self-Insurance.]*

(a) Notwithstanding any other provision of this Act, any recognized religious organization having established tenets or teachings and that has been in existence at all times since [December 31, 1950], may qualify as a self-insurer by obtaining a certificate of self-insurance from the [Commissioner] as provided in [subsection (c)] of this section if the [Commissioner] determines that all of the following conditions are met:

(1) members of the religious organization operate [five or more] vehicles that are registered in this state and are either owned or leased by them;

(2) members of the religious organization hold a common belief in mutual financial assistance in time of need to the extent that they share in financial obligations of other members who would otherwise be unable to meet their obligations;

(3) the religious organization has met all of its insurance obligations for the [five years] preceding its application;

(4) the religious organization is financially solvent and not subject to any actions in bankruptcy, trusteeship, receivership, or any other court proceeding in which the financial solvency of the religious organization is in question.

(5) neither the religious organization nor any of its participating members has any judgments arising out of the operation, maintenance, or use of a motor vehicle taken against them that have remained unsatisfied for more than [30 days] after becoming final.

(6) there are no other factors that cause the [Commissioner] to believe that the religious organization and its participating members are not of sufficient financial ability to pay judgments against them; and

(7) the religious organization and its participating members meet other requirements that the [Commissioner] by administrative rule prescribes.

(b) The [Commissioner] may, in the [Commissioner's] discretion, upon the application of a religious organization, issue a certificate of self-insurance when the [Commissioner] is satisfied that the religious organization is possessed and will continue to be possessed of an ability to pay any judgments that might be rendered against the religious organization. The certificate shall serve as evidence of insurance for the purposes of [insert citation].

(c) A group issued a certificate of self-insurance under this section shall notify the [Commissioner] in writing if any person ceases to be a member of the group. The group shall notify the [Commissioner] within [10 days] of the person's removal or departure from the group.

(d) The [Commissioner] may, at any time after the issuance of a certificate of self-insurance under this subsection, cancel the certificate by giving [30 days'] written notice of cancellation to the religious organization whenever there is reason to believe that the religious organization to whom the certificate was issued is no longer qualified as a self-insurer under this section.

Section 17. [*Severability*.] [Insert severability clause.]

Section 18. [*Repealer*.] [Insert repealer clause.]

Section 19. [*Effective Date*.] [Insert effective date.]

Medicaid Simplification

This Act authorizes the director of the state department of health and welfare to restructure the state Medicaid program in order to achieve improved health outcomes for Medicaid participants and slow the rate of growth in Medicaid costs. The legislation simplifies current eligibility categories by establishing three new population groups, based on participants' health needs. The bill authorizes the director to develop a State Plan for Medical Assistance for each of the three groups. This legislation further describes the benefits for each of the three groups, in addition to a global benefit list for all Medicaid participants in the state.

Submitted as:

Idaho

HB 776

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act is entitled “The Medicaid Simplification Act.”

2

3 Section 2. [*Legislative Findings.*]

4 (1) The [legislature] finds that the current federal Medicaid law and regulations have not
5 kept pace with modern health care management practices, create obstacles to quality care and
6 impose unnecessary costs on the delivery of effective and efficient health care. The [legislature]
7 believes that this state must strive to balance efforts to contain Medicaid costs, improve program
8 quality and improve access to services. The legislature further believes this state can achieve
9 improved health outcomes for Medicaid participants by simplifying eligibility and developing
10 health benefits for Medicaid participants according to their health needs, including appropriate
11 preventive and wellness services.

12 (2) The [legislature] supports development, at a minimum, of the following health-need
13 categories:

14 (a) Low-Income Children and Working-Age Adults. The broad policy goal for the
15 Medicaid program for low-income children and working-age adults is to achieve and maintain
16 wellness by emphasizing prevention and by proactively managing health. Additional specific
17 goals are:

- 18 (i) To emphasize preventive care and wellness;
19 (ii) To increase participant ability to make good health choices; and
20 (iii) To strengthen the employer-based health insurance system.

21 (b) Persons with Disabilities or Special Health Needs. The broad policy goal for
22 the Medicaid Program for Persons with Disabilities or Special Health Needs is to finance and
23 deliver cost-effective individualized care. Specific program goals are:

- 24 (i) To emphasize preventive care and wellness;
25 (ii) To empower people with disabilities to manage their own lives;
26 (iii) To provide opportunities for employment for people with disabilities;

27 and

28 (iv) To provide and to promote family-centered, community-based,
29 coordinated care for children with special health care needs.

(c) Elders. The broad policy goal for the Medicaid Program For Elders is to finance and deliver cost-effective individualized care which is integrated, to the greatest extent possible, with Medicare coverage. Additional specific goals are:

- (i) To emphasize preventive care and wellness;
- (ii) To improve coordination between Medicaid and Medicare coverage;
- (iii) To increase nonpublic financing options for long-term care; and
- (iv) To ensure participants' dignity and quality of life.

(3) To the extent practicable, the [department] shall achieve savings and efficiencies through use of modern care management practices, in areas such as network management, cost-sharing, benefit design and premium assistance.

(4) The [department's] duty to implement these changes in accordance with the intent of the [legislature] is contingent upon federal approval.

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

(1) "Benefit design" means selection of services, providers and beneficiary cost-sharing to create the scope of coverage for participants.

(2) "Community supports" means services that promote the ability of people with disabilities to be self-sufficient and live independently in their own communities.

(3) "Cost-sharing" means participant payment for a portion of Medicaid service costs such as deductibles, coinsurance or copayment amounts.

(4) "Department" means the [department of health and welfare].

(5) "Director" means the [director of the department of health and welfare].

(6) "Health risk assessment" means a process of assessing the health status and health needs of participants.

(7) "Medicaid" means the state Medical Assistance Program.

(8) "Medical assistance" means payments for part or all of the cost of services funded by Titles XIX or XXI of the Federal Social Security Act as amended, as may be designated by [department] rule.

(9) "Medical home" means a primary care case manager designated by the participant or the [department] to coordinate the participant's care.

(10) "Network management" means establishment and management of contracts between the [department] and limited groups of providers or suppliers of medical and other services to participants.

(11) "Participant" means a person eligible for and enrolled in the state Medical Assistance Program.

(12) "Premium assistance" means use of Medicaid funds to pay part or all of the costs of enrolling eligible individuals into private insurance coverage.

(13) "Primary care case manager" means a primary care physician who contracts with Medicaid to coordinate the care of certain participants.

(14) "Provider" means any individual, partnership, association, corporation or organization, public or private, which provides residential or assisted living services, certified family home services, nursing facility services or services offered pursuant to medical assistance.

(15) "Self-determination" means Medicaid services that allow people with disabilities to exercise choice and control over the services and supports they receive.

(16) "State plan" means the contract between the state and federal government under 42 U.S.C. section 1396a(a).

Section 4. *[Powers and Duties of the Director.]*

(1) The [director] is hereby encouraged and empowered to obtain federal approval in order that this state design and implement changes to its Medicaid Program that advance the quality of

80 services to participants while allowing access to needed services and containing excessive costs.
81 The design of this state's Medicaid Program shall incorporate and promote advance the concepts
82 outlined in section 2 of this Act.

83 (2) The [director] may create health-need categories other than those stated in [insert
84 citation], subject to legislative approval, and may develop a Medicaid state plan for each
85 category.

86 (3) Each state plan shall include explicit policy goals for the covered population identified
87 in the plan, as well as specific benefit packages, delivery system components and performance
88 measures in accordance with [insert citation].

89 (4) The [director] shall establish a mechanism to ensure placement of participants into the
90 appropriate state plan. This mechanism shall include, but not be limited to, a health risk
91 assessment. This assessment shall comply with federal requirements for Early and Periodic
92 Screening, Diagnosis and Treatment (EPSDT) services for children, in accordance with section
93 1905(a)(4)(B) of the Social Security Act.

94 (5) The [director] may require, subject to federal approval, participants to designate a
95 medical home. Applicants for medical assistance shall receive information about primary care
96 case management, and, if required to so designate, shall select a primary care provider as part of
97 the eligibility determination process.

98 (6) The [director] may, subject to federal approval, enter into contracts for medical and
99 other services when such contracts are beneficial to participant health outcomes as well as
100 economically prudent for the Medicaid program.

101 (7) The [director] may obtain agreements from Medicare, school districts and other
102 entities to provide medical care if it is practical and cost-effective.

103 (8) The [director] is given authority to promulgate rules consistent with this Act.
104

105 Section 5. *[Eligibility for Medical Assistance.]* The [department] shall make payments for
106 medical assistance to, or on behalf of, the following people eligible for medical assistance.

107 (1) The state plan for low-income children and working-age adults includes the following
108 people:

109 (a) Children in families whose family income does not exceed [one hundred
110 eighty-five percent (185%)] of the federal poverty guideline and who meet age-related and other
111 eligibility standards in accordance with [department] rule;

112 (b) Pregnant women of any age whose family income does not exceed [one
113 hundred thirty-three percent (133%)] of the federal poverty guideline and who meet other
114 eligibility standards in accordance with [department] rule, or who meet the presumptive eligibility
115 guidelines in accordance with section 1920 of the Social Security Act;

116 (c) Infants born to Medicaid-eligible pregnant women. Medicaid eligibility must
117 be offered throughout the first year of life so long as the infant remains in the mother's household
118 and she remains eligible, or would be eligible if she were still pregnant;

119 (d) Adults in families with dependent children as described in section 1931 of the
120 Social Security Act, who meet the requirements in the state's Assistance to Families With
121 Dependent Children (AFDC) plan in effect on [July 16, 1996];

122 (e) Families who are provided [six (6) to twelve (12) months] of Medicaid
123 coverage following loss of eligibility under section 1931 of The Social Security Act due to
124 earnings, or [four (4) months] of Medicaid coverage following loss of eligibility under section 19
125 02 (a) (31) of the Social Security Act due to an increase in child or spousal support;

126 (f) Employees of small businesses who meet the definition of "eligible adult" as
127 described in [insert citation], whose eligibility is limited to the Medical Assistance Program
128 described in [insert citation]; and

(g) All other mandatory groups as defined in Title XIX of the Social Security Act, if not listed separately in subsection (2) or (3) of this section.

(2) The state Plan for Persons with Disabilities or Special Health Needs includes the following:

(a) People under age [sixty-five (65) years] eligible in accordance with Title XVI of the Social Security Act, as well as people eligible for Aid To The Aged, Blind And Disabled (AABD) under Titles I, X and XIV of the Social Security Act;

(b) People under age [sixty-five (65) years] who are in need of the services of a licensed nursing facility, a licensed intermediate care facility for the developmentally disabled, a state mental hospital, or home based and community-based care, whose income does not exceed [three hundred percent (300%)] of the Social Security Income (SSI) Standard and who meet the asset standards and other eligibility standards in accordance with federal law and regulation, state law and [department] rule;

(c) Certain disabled children described in 42 CFR 435.225 who meet resource limits for Aid to The Aged, Blind And Disabled (AABD) and income limits for Social Security Income (SSI) and other eligibility standards in accordance with [department] rules;

(d) People under age [sixty-five (65) years] who are eligible for services under both Titles XVIII and XIX of the Social Security Act;

(e) Children who are eligible under Title IV-E of the Social Security Act for subsidized board payments, foster care or adoption subsidies, and children for whom the state has assumed temporary or permanent responsibility and who do not qualify for Title IV-E assistance but are in foster care, shelter or emergency shelter care, or subsidized adoption, and who meet eligibility standards in accordance with [department] rule;

(f) Eligible women under [age sixty-five (65) years] with incomes at or below [two hundred percent (200%)] of the federal poverty level, for cancer treatment pursuant to the Federal Breast and Cervical Cancer Prevention and Treatment Act of 2000;

(g) Low-income children and working-age adults under age [sixty-five (65)] years who qualify under subsection (1) of this section and who require the services for persons with disabilities or special health needs; and

(h) People over [sixty-five (65)] years who choose to enroll in this state plan.

(3) The State Plan For Elders includes the following people:

(a) People aged [sixty-five (65) years or older] eligible in accordance with Title XVI of the Social Security Act, as well as people eligible for Aid To The Aged, Blind And Disabled (AABD) under Titles I, X and XIV of the Social Security Act;

(b) People aged sixty-five (65) years or older who are in need of the services of a licensed nursing facility, a licensed intermediate care facility for the developmentally disabled, a state mental hospital, or home-based and community-based care, whose income does not exceed [three hundred percent (300%)] of the Social Security Income (SSI) standard and who meet the assets standards and other eligibility standards in accordance with federal and state law and [department] rule;

(c) People aged [sixty-five (65) years or older] who are eligible for services under both titles XVIII and XIX of the Social Security Act who have enrolled in the Medicare program; and

(d) People under age [sixty-five (65) years] who are eligible for services under both Titles XVIII and XIX of the Social Security Act and who elect to enroll in this state plan.

Section 6. *[Medical Assistance Program -- Services to be Provided.]*

(1) The department may make payments for the following services furnished by providers to participants who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be reimbursed only when medically necessary and

in accordance with federal law and regulation, state law and [department] rule. Notwithstanding any other provision of this Act, medical assistance includes the following benefits specific to the eligibility categories established in [insert citation], as well as a list of benefits to which all Medicaid participants in this state are entitled, defined in subsection (5) of this section.

(2) Specific health benefits and limitations for low-income children and working-age adults include:

(a) All services described in subsection (5) of this section;
(b) Early and periodic screening, diagnosis and treatment services for individuals under age [twenty-one (21) years], and treatment of conditions found; and

(c) Cost-sharing required of participants. Participants in the low-income children and working-age adult group are subject to the following premium payments, as stated in [department] rules:

(i) Participants with family incomes equal to or less than [one hundred thirty-three percent (133%)] of the federal poverty guideline are not required to pay premiums; and

(ii) Participants with family incomes above [one hundred thirty-three percent (133%)] of the federal poverty guideline will be required to pay premiums in accordance with [department] rule.

(3) Specific health benefits for people with disabilities or special health needs include:

(a) All services described in subsection (5) of this section;
(b) Early and periodic screening, diagnosis and treatment services for individuals under age [twenty-one (21)] years, and treatment of conditions found;

(c) Case management services as defined in accordance with subsection 1905(a)(19) or section 1915(g) of the Social Security Act; and

(d) Mental health services, including:

(i) Inpatient psychiatric facility services whether in a hospital, or for people under age [twenty-two (22)] years in a freestanding psychiatric facility, as permitted by federal law, in excess of those limits in [department] rules on inpatient psychiatric facility services provided under subsection (5) of this section;

(ii) Outpatient mental health services in excess of those limits in [department] rules on outpatient mental health services provided under subsection (5) of this section; and

(iii) Psychosocial rehabilitation for reduction of mental disability for children under the age of [eighteen (18) years] with a Serious Emotional Disturbance (SED) and for severely and persistently mentally ill adults, aged [eighteen (18) years or older], with severe and persistent mental illness;

(e) Long-term care services, including:

(i) Nursing facility services, other than services in an institution for mental diseases, subject to participant cost-sharing;

(ii) Home-based and community-based services, subject to federal approval, provided to people who require nursing facility level of care who, without home-based and community-based services, would require institutionalization. These services will include community supports, including an option for self-determination, which will enable people to have greater freedom to manage their own care; and

(iii) Personal care services in a participant's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse;

(f) Services for people with developmental disabilities, including:

(i) Intermediate care facility services, other than such services in an institution for mental diseases, for people determined in accordance with section 1902(a)(31) of

the Social Security Act to be in need of such care, including such services in a public institution, or distinct part thereof, for the mentally retarded or people with related conditions;

(ii) Home-based and community-based services, subject to federal approval, provided to Individuals Who Require an Intermediate Care Facility for the Mentally Retarded (ICF/MR) level of care who, without home-based and community-based services, would require institutionalization. These services will include community supports, including an option for self-determination, which will enable individuals to have greater freedom to manage their own care; and

(iii) Developmental services. The [department] shall pay for rehabilitative services, including medical or remedial services provided by a facility that has entered into a provider agreement with the department and is certified as a developmental disabilities agency by the [department];

(g) Home health services, including:

(i) Intermittent or part-time nursing services provided by a home health agency or by a registered nurse when no home health agency exists in the area;

(ii) Home health aide services provided by a home health agency; and

(iii) Physical therapy, occupational therapy or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility;

(h) Hospice care in accordance with section 1905(o) of the Social Security Act;

(i) Specialized medical equipment and supplies; and

(j) Medicare cost-sharing, including:

(i) Medicare cost-sharing for qualified Medicare beneficiaries described in section 1905(p) of the Social Security Act;

(ii) Medicare part A premiums for qualified disabled and working individuals described in section 1902(a)(10)(E)(ii) of the Social Security Act;

(iii) Medicare part B premiums for specified low-income Medicare beneficiaries described in section 1902(a)(10)(E)(iii) of the Social Security Act; and

(iv) Medicare part B premiums for qualifying individuals described in section 1902(a)(10)(E)(iv) and subject to section 1933 of the Social Security Act.

(4) Specific health benefits for elders include:

(a) All services described in subsection (5) of this section, other than if provided under the federal Medicare program;

(b) All services described in subsection (3) of this section, other than if provided under the federal Medicare program; and

(c) Other services that supplement Medicare coverage.

(5) Benefits for all Medicaid participants, unless specifically limited in subsection (2), (3) or (4) of this section include the following:

(a) Health care coverage including, but not limited to, basic inpatient and outpatient medical services, and including:

(i) Physicians' services, whether furnished in the office, the patient's home, a hospital, a nursing facility or elsewhere;

(ii) Services provided by a physician or other licensed practitioner to prevent disease, disability and other health conditions or their progressions, to prolong life, or to promote physical or mental health; and

(iii) Hospital care, including:

1. Inpatient hospital services other than those services provided in an institution for mental diseases;
2. Outpatient hospital services; and
3. Emergency hospital services;

(iv) Laboratory and x-ray services;

(v) Prescribed drugs;
 (vi) Family planning services and supplies for individuals of child-bearing age;
 (vii) Certified pediatric or family nurse practitioners' services;
 (viii) Emergency medical transportation;
 (ix) Mental health services, including:
 1. Outpatient mental health services that are appropriate, within limits stated in [department] rules; and
 2. Inpatient psychiatric facility services within limits stated in [department] rules;
 (x) Medical supplies, equipment, and appliances suitable for use in the home; and
 (xi) Physical therapy and related services;
 (b) Primary care case management;
 (c) Dental services, and medical and surgical services furnished by a dentist in accordance with section 1905(a)(5)(B) of the Social Security Act;
 (d) Medical care and any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law, including:
 (i) Podiatrists' services;
 (ii) Optometrists' services;
 (iii) Chiropractors' services; and
 (iv) Other practitioners' services, in accordance with [department] rules;
 (e) Services for individuals with speech, hearing and language disorders, provided by or under the supervision of a speech pathologist or audiologist;
 (f) Eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;
 (g) Services provided by essential providers, including:
 (i) Rural health clinic services and other ambulatory services furnished by a rural health clinic in accordance with section 1905(l)(1) of the Social Security Act;
 (ii) Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with section 1905(l)(2) of the Social Security Act;
 (iii) Indian health services; and
 (iv) District health [departments];
 (h) Any other medical care and any other type of remedial care recognized under state law, specified by the secretary of the federal department of health and human services;
 (i) Nonemergency medical transportation; and
 (j) Physician, hospital or other services deemed experimental are excluded from coverage. The [director] may allow coverage of procedures or services deemed investigational if the procedures or services are as cost-effective as traditional, standard treatments.

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

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

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

Medical Home for Children

This Act defines the term “medical home” as a primary care practice that provides continuous, accessible, and comprehensive medical and non-medical services to a child and his or her family. It instructs the state department of health care policy and financing to develop systems and standards to maximize the number of children who are enrolled in the medical assistance program or the children’s basic health plan who have a medical home. It requires the department to report annually their progress toward maximizing the number of children who have a medical home and who are enrolled in the medical assistance program or the children’s basic health plan.

Submitted as:

Colorado

SB 130

Status: Enrolled to governor, March 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address a ‘Medical Home’
2 for a Child.”

3
4 Section 2. [*Medical Home.*]

5 (1) The [general assembly] hereby finds and declares that:

6 (a) the best medical care for infants, children, and adolescents is provided through
7 a medical home, as defined in this Act, where qualified health care practitioners provide primary
8 care and help manage and facilitate all aspects of medical care;

9 (b) infants, children, and adolescents and their families work best with a health
10 care practitioner who knows the family and who develops a partnership of mutual responsibility
11 and trust;

12 (c) medical care provided through emergency departments, walk-in clinics, and
13 other urgent-care facilities is often more costly and less effective than care given by a physician
14 with prior knowledge of the child and his or her family; and

15 (d) the state [health department] should strive to find a medical home for each
16 child receiving services through the state medical assistance program, or the Children’s Basic
17 Health Plan, as defined in [insert citation].

18 (2) The state [health department] shall develop systems and standards to maximize the
19 number of children enrolled in the state medical assistance program or the Children’s Basic
20 Health Plan who have a medical home.

21 (3) the state [health department] shall report annually to the [health and human services
22 committees of the house of representatives and the senate], or any successor committees, on
23 progress made toward maximizing the number of children with a medical home who are enrolled
24 in the state medical assistance program or the Children’s Basic Health Plan.

25 (4) As used in this Act, a “medical home” means a health care practitioner who provides
26 continuous, accessible, and comprehensive medical and nonmedical services to a child and his or
27 her family.

28 (a) A medical home shall offer family-centered, compassionate, culturally
29 effective care and sensitive, respectful communication to a child and his or her family. The

30 services available to a child and his or her family through a medical home include, but are not
31 limited to:

- 32 (I) health maintenance and preventative care;
- 33 (II) anticipatory guidance and health education;
- 34 (II) acute and chronic illness care;
- 35 (IV) coordination of medications, specialists, and therapies;
- 36 (V) provider participation in hospital care; and
- 37 (VI) twenty-four-hour telephone care.

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

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

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

Military Family Relief

This Act establishes a military family relief fund to provide grants for essential family support expenses to the families of Indiana residents who are members of the National Guard or the armed forces reserves and have been called to active duty after September 11, 2001. It allows the state veterans' affairs commission to establish the eligibility criteria and application and selection procedures for the grants. The bill requires the state director of veterans' affairs to report to the budget committee before August 1, 2006, on the grant determination procedures to be used.

This bill creates a veteran license plate and specifies that the plate is not a special group recognition license plate. The legislation provides for the collection of a \$15 annual supplemental fee at the time a vehicle plated with a veteran license plate is registered, which is to be deposited in the military family relief fund. The Act creates a support our troops license plate and specifies that the plate is not a special recognition license plate. It provides for the collection of a \$20 annual supplemental fee at the time a vehicle plated with a support our troops license plate is registered, which is to be deposited in the military family relief fund.

Submitted as:

Indiana

Senate Enrolled Act 75

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act is entitled "An Act to Establish a Military Family Relief
2 Fund.]
3

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

5 "Active duty" means full-time service in:

6 (1) a reserve component of the armed forces; or
7 (2) the national guard; for a period that exceeds [thirty (30)] consecutive days in a
8 calendar year.

9 "Armed forces" includes the reserve components of the following:

10 (1) The United States Army;
11 (2) The United States Navy;
12 (3) The United States Marine Corps;
13 (4) The United States Air Force; and
14 (5) The United States Coast Guard.

15 "Commission" refers to the [veterans' affairs commission] established by [insert citation.]

16 "Department" refers to the state [department of veterans' affairs] established by [insert
17 citation.]

18 "Director" refers to the [director of veterans' affairs].

19 "Fund" refers to the [Military Family Relief Fund] established by [section 3] of this Act.

20 "National guard" means:

21 (1) the (state) Army National Guard; or
22 (2) the (state) Air National Guard.
23

24 Section 3. [*Military Family Relief Fund.*]

(a) A [Military Family Relief Fund] is established beginning [January 1, 2007], to provide assistance with food, housing, utilities, medical services, basic transportation, and other essential family support expenses that have become difficult to afford for families of residents who are:

(1) members of:

(A) a reserve component of the Armed forces; or

(B) the National Guard; and

(2) called to active duty after [September 11, 2001].

(b) The [department] shall expend the money in the [Military Family Relief Fund] exclusively to provide grants for assistance as described in subsection (a).

(c) The [director] shall administer the [Fund].

(d) The [Fund] consists of the following:

(1) Appropriations made by the [general assembly].

(2) Donations to the [Fund].

(3) Interest as provided in subsection (e).

(4) Money transferred to the fund from other funds.

(5) Annual supplemental fees collected under [insert citation].

(6) Money from any other source authorized or appropriated for the [Fund].

(e) The [treasurer] of state shall invest the money in the [Fund] not currently needed to meet the obligations of the [Fund] in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the [Fund].

(f) Money in the [Fund] at the end of a state fiscal year does not revert to the [State General Fund] or to any other [Fund].

(g) There is annually appropriated to the [department] for the purposes of this Act all money in the [Fund] not otherwise appropriated to the [department] for the purposes of this Act.

(h) The [commission] may adopt rules for the provision of grants under this Act. The rules adopted under this section must address the following:

(1) Uniform need determination procedures;

(2) Eligibility criteria;

(3) Application procedures;

(4) Selection procedures;

(5) Coordination with other assistance programs; and

(6) Other areas in which the [department] determines that rules are necessary to ensure the uniform administration of the grant program under this Act.

(i) The [director] or a [member of the commission] may make a request to the [General Assembly] for an appropriation to the [Fund].

(j) The [director] shall establish the capability to receive donations to the [Fund] from the public on the [department's] Internet site.

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

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

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

Mine Safety

This Act:

- Defines “mine manager;”
- Requires facilities to submit emergency action plans when making an application for a license;
- Establishes content requirements for the emergency action plan and where copies of the plan are made available;
- Requires the implementation of emergency evacuation plans and firefighting programs;
- Requires that by September 1, 2006, licensed facilities will be able to activate emergency action plans;
- Requires mapping working sections in a mine and the designating escapeways;
- Requires escapeway drills at all licensed coal mines;
- Provides for telephone or equivalent two-way communication facilities in underground and surface coal mines by September 1, 2006;
- Requires ventilation plans and roof control plans be submitted along with requests for licenses and include entrapments, roof falls, and inundation of the mine with liquid or gas in the events that trigger a mine rescue;
- Requires mine ventilation plans and revisions to existing mine ventilation plans be submitted to and approved by the executive director of the Office of Mine Safety and Licensing;
- Prohibits mine licensees from storing self-contained self-rescuers farther apart than 25 feet;
- Provides that self-contained self-rescuers be deployed at not more than 45 minute walking intervals, be placed in storage units to prevent their destruction, and have luminescent signs, alarms, and strobe lights;
- Prohibits using return airway as an escapeway and requires devices that direct miners to the surface at 100-foot intervals;
- Prohibits riding under a trolley wire;
- Defines “serious physical injury;”
- Requires reporting accidents that involves serious physical injury or loss of life within 15 minutes after actual knowledge of the occurrence; and
- Establishes a \$100,000 dollar penalty for failure to report.

Submitted as:

Kentucky

SB 200E/N

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] This Act is entitled “An Act to Ensure Mine Safety.”
- 2
- 3 Section 2. [*Definitions and Applicability.*]
- 4 (1) Unless the context requires otherwise; this Act applies only to commercial coal mines.
- 5 (2) As used in this Act:

(a) "Approved" means that a device, apparatus, equipment, or machinery, or practice employed in the mining of coal has been approved by the [commissioner of the Department for Natural Resources];

(b) "Assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the people employed therein;

(c) "Board" means the [Mining Board] created in [insert citation];

(d) "Commercial mine" means any coal mine from which coal is mined for sale, commercial use, or exchange. This term shall in no instance be construed to include a mine where coal is produced for own use;

(e) "Commission" means the [Mine Safety Review Commission];

(f) "Commissioner" means [commissioner of the Department for Natural Resources];

(g) "Department" means the [Department for Natural Resources];

(h) "Drift" means an opening through strata or coal seams with opening grades sufficient to permit coal to be hauled therefrom or which is used for the purpose of ventilation, drainage, ingress, egress, and other purposes in connection with the mining of coal;

(i) "Excavations and workings" means the excavated portions of a mine;

(j) "Executive director" means the [executive director of the Office of Mine Safety and Licensing].

(k) "Face equipment" means mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated in the last open crosscut in any entry or room;

(l) "Fire boss" (often referred to as mine examiner) means a person certified as a mine foreman or assistant mine foreman who is designated by management to examine a mine or part of a mine for explosive gas or other dangers before a shift crew enters;

(m) "Gassy mine." All mines shall be classified as gassy or gaseous;

(n) "High voltage" means any voltage of [one thousand (1,000)] volts or more;

(o) "Imminent danger" means the existence of any condition or practice which could reasonably be expected to cause death or serious physical harm before the condition or practice can be abated;

(p) "Inactive workings" shall include all portions of a mine in which operations have been suspended for an indefinite period, but have not been abandoned;

(q) "Intake air" means air that has not passed through the last working place of the split or by the unsealed entrances to abandoned workings and by analysis contains not less than [nineteen and one-half percent (19.5%)] oxygen, no dangerous quantities of flammable gas, and no harmful amounts of poisonous gas or dust;

(r) "Licensee" means any owner, operator, lessee, corporation, partnership, or other person who procures a license from the department to operate a coal mine;

(s) "Low voltage" means up to and including [six hundred sixty (660)] volts;

(t) "Medium voltage" means voltages greater than [six hundred sixty (660)] and up to [nine hundred ninety-nine (999)] volts;

(u) "Mine" means any open pit or any underground workings from which coal is produced for sale, exchange, or commercial use, and all shafts, slopes, drifts, or inclines leading thereto, and includes all buildings and equipment, above or below the surface of the ground, used in connection with the workings. Workings that are adjacent to each other and under the same management, but which are administered as distinct units, shall be considered a separate mine;

(v) "Mine foreman" means a certified person whom the licensee or superintendent places in charge of the workings of the mine and of the people employed therein;

(w) "Mine manager" means a certified or noncertified person whom the licensee places in charge of a mine or mines and whose duties include but are not limited to operations at the mine or mines and supervision of personnel when qualified to do so;

(x) "Office" means the [Office of Mine Safety and Licensing];

(y) "Open-pit mine" shall include open excavations and open-cut workings, including but not limited to auger operations and highwall mining systems for the extraction of coal;

(z) "Operator" means the licensee, owner, lessee, or other person who operates or controls a coal mine.

(aa) "Permissible" refers to any equipment, device, or explosive that has been approved by the United States Bureau of Mines, the Mining Enforcement and Safety Administration, or the Mine Safety and Health Administration and that meets all requirements, restrictions, exceptions, limitations, and conditions attached to the classification by the approving agency;

(bb) "Preshift examination" means the examination of a mine or any portion thereof where miners are scheduled to work or travel, which shall be conducted not more than [three (3)] hours before any oncoming shift;

(cc) "Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned, inaccessible, or pillared workings;

(dd) "Serious physical injury" means an injury which has a reasonable potential to cause death;

(ee) "Shaft" means a vertical opening through the strata that is used in connection with the mining of coal, for the purpose of ventilation or drainage, or for hoisting men, coal, or materials;

(ff) "Slope" means an inclined opening used for the same purpose as a shaft;

(gg) "Superintendent" means the person who, on behalf of the licensee, has immediate supervision of [one (1)] or more mines;

(hh) "Supervisory personnel" means a person certified under the provisions of this Act to assist in the supervision of a portion or the whole of the mine or of the people employed therein;

(ii) "Tipple or dumping point" means the structure where coal is dumped or unloaded from the mine

(jj) "Working face" means any place in a coal mine at which the extraction of coal from its natural employed therein; car into railroad cars, trucks, wagons, or other means of conveyance; deposit in the earth is performed during the mining cycle;

(kk) "Working place" means the area of a coal mine in by the last open crosscut;

(ll) "Working section" means all areas of a coal mine from the loading point to and including the working faces; and

(mm) "Workmanlike manner" means consistent with established practices and methods utilized in the coal industry.

Section 3. *[Authority of Commissioner over Mines.]*

(1) The [commissioner] shall have full authority over the [department] and shall superintend and direct the activities of the mine inspectors and other personnel of the [department]. There is created within the [Department for Natural Resources] an [Office of Mine Safety and Licensing].

(2) The [secretary] shall appoint an [executive director to the Office of Mine Safety and Licensing] in accordance with [insert citation] and prescribe his powers and duties.

(3) The [commissioner] may, whenever necessary, divide the coal fields of the state into as many inspection districts as necessary, so as to equalize as nearly as practicable the work of each inspector, and may assign to the inspectors their respective districts.

(4) The [commissioner] may, whenever he or she deems it necessary in the interest of efficient supervision of the mines, temporarily employ the services of additional mine inspectors or change inspectors from [one (1)] district to another.

(5) The [commissioner] shall superintend and direct the inspection of mines and cause to be investigated the character and quality of air in mines whenever conditions indicate the necessity of doing so.

(6) The [commissioner] shall collect statistics relating to coal mining in the state and make an [annual] report of the statistics.

(7) The [commissioner] shall see that maps, plans, projections, and proposed developments of all underground coal mines are made and filed in his office.

(8) The [commissioner] shall keep a properly indexed, permanent record of all inspections made by himself and the first aid and mine rescue methods, and may conduct demonstrations in safety whenever he deems it advisable.

(9) The [commissioner] shall exercise general supervision over the training of officials and workmen concerning mine ventilation, mining methods, and mine accidents and their prevention, and in safety and personnel.

(10) The [commissioner] shall exercise general supervision over the dissemination of information among officials and employees of the [department] and shall assume full charge in the event of mine fire or explosion or other serious accident at any mine in the state.

(11) The [commissioner] may assist in the resumption of operations of any mine or gather data for the development of any coal seams that would be of any benefit to the state or create new employment.

(12) The [commissioner] may prescribe reasonable safety standards governing the use of explosives, and electrical and mechanical equipment in the operation of open-pit or surface mines.

(13) The [secretary of the Environmental and Public Protection Cabinet] shall have the power and authority to promulgate, amend, or rescind any administrative regulations he or she deems necessary and suitable for the proper administration of this Act. Administrative regulations may be promulgated, amended, or rescinded by the [secretary] only after public hearing or an opportunity to be heard thereon of which proper notice by publication pursuant to [insert citation], has been given. Administrative regulations so promulgated shall carry the full force and effect of law.

(14) The [commissioner] shall ascertain the cause or causes of any coal mining fatality and, within [sixty (60)] days of completion of the investigation, shall report his or her findings and recommendations to the [Governor, the Mine Safety Review Commission, the Mining Board, and the Legislative Research Commission]. The recommendations may include, without being limited to, the need to promulgate or amend administrative regulations to prevent the recurrence of the conditions causing the fatality.

(15) The [commissioner] shall assess civil monetary penalties against licensed facilities for violations of laws in this Act and [insert citation] pertaining to roof control plans and mine ventilation plans that could lead to imminent danger or serious physical injury. The [Environmental and Public Protection Cabinet] shall promulgate administrative regulations within [ninety (90)] days of the effective date of this Act providing for the manner and method of the assessment of the penalties and appeals therefrom. In no event shall the civil penalty assessed pursuant to this subsection for the violation exceed [five thousand dollars (\$5,000)]. Nothing contained in this subsection shall be construed to impair or contravene the authority granted under [subsection (2) of Section 7] of this Act for imposing penalties against licensed facilities.

Section 4. *[Mine Equipment Review Panel.]*

(1) There is hereby established a [Mine Equipment Review Panel] attached to the [Department for Natural Resources in the Environmental and Public Protection Cabinet].

(2) The [Mine Equipment Review Panel] shall be a permanent panel of recognized experts who shall review and make recommendations to the [executive director of the Office of Mine Safety and Licensing] regarding best available mine safety technologies, including but not limited to wireless tracking and communications devices for use by miners in underground mines. Based on the recommendations provided by the [panel], the [executive director] shall comprise a list of commercially available mine safety equipment, including wireless tracking and communications devices that may be approved for use by coal miners.

(3) The [panel] shall meet at the call of the [chair]. The [chair of the panel] shall be the [executive director of Mine Safety and Licensing]. Members of the [panel] shall serve without pay, but shall be entitled to reimbursement of travel-related expenses.

(4) The [Mine Equipment Review Panel] shall be composed of the following members, who shall be appointed by the [commissioner] not less than [thirty (30)] days after the effective date of this Act:

(a) [One (1)] member shall represent the National Institute of Occupational Safety and Health;

(b) [One (1)] member shall represent the federal Mine Safety and Health Administration;

(c) [One (1)] member shall represent the coal industry;

(d) [One (1)] member shall be appointed from the membership of the United Mine Workers of America and shall represent mine labor, preferably a member of a state mine rescue team;

(e) [One (1)] member shall represent the [Department of Mining Engineering at the state university]; and

(f) [One (1)] member shall be the [executive director of the Office of Mine Safety and Licensing].

(5) The [Mine Equipment Review Panel] shall provide initial recommendations to the [executive director of the Office of Mine Safety and Licensing] not more than [one hundred twenty (120)] days after the panel members have been appointed and the panel is duly constituted to conduct business. Periodically, the panel shall review and make recommendations to the [executive director] on changes to or innovations in mine safety equipment that could be deployed in coal mines.

Section 5. *[Mine Inspectors, Mine Safety Analysts, Electrical Inspectors, And Mine Safety Instructors.]*

(1) The [Governor] shall appoint an adequate number of mine inspectors to ensure at least [two (2)] inspections [annually], provided the mine is in operation the entire year or the proportionate thereof, of all mines in the state and sufficient additional inspectors to enable the [commissioner] to provide adequate surveillance of coal mines where conditions or management policy dictate that more inspections are needed to insure the safety of miners. Except, the [commissioner] shall inspect all underground coal mines not less than [three (3) times annually]. [One (1)] or more of the [appointees] may be designated as electrical mine inspectors. The [Governor] shall also appoint an adequate number of mine safety analysts and mine safety instructors. The term of office of each mine inspector, each mine safety analyst, each electrical inspector, and each mine safety instructor shall be during the period of capable, efficient service and good behavior.

(2) All mine inspectors, mine safety analysts, electrical inspectors, and mine safety instructors shall have a thorough knowledge of first aid and mine rescue and be able to instruct in first aid and mine rescue, and shall possess thoroughly the knowledge required of the [commissioner] by [insert citation], and shall have a thorough and practical knowledge of mining gained by at least [five (5)] years experience in coal mines in the state. All surface mine safety analysts shall have at least [five (5)] years experience in surface mines in the state. For the purposes of this subsection, a degree in mining engineering from a recognized institution shall be deemed equivalent to [two (2)] years of practical experience in coal mines or an associate degree in mining technology from a recognized institution shall be deemed equivalent to [one (1)] year practical experience in coal mines. A person desiring to use a mining engineering or technology degree for practical experience credit shall file proof of having received a degree prior to examination.

(3) No person shall be appointed to the office of mine inspector, underground mine safety analyst, electrical inspector, or mine safety instructor unless he holds a current mine foreman's certificate. No person shall be appointed to the office of surface mine safety analyst unless he holds a current surface mine foreman's certificate. A person appointed as mine inspector, mine safety analyst, electrical inspector, and mine safety instructor shall pass an examination administered by the [board]. The [commissioner] may recommend to the [Governor] applicants for the positions of mine inspector, mine safety analyst, electrical inspector, or mine safety instructor who have successfully passed the examination and are proved by worth, training, and experience to be the most competent of the applicants.

(4) Mine inspectors, mine safety analysts, electrical inspectors, and mine safety instructors shall be of good moral character and temperate habits and shall not, while holding office, act in any official capacity in operating any coal mine.

(5) No reimbursement for traveling expenses shall be made except on an itemized accounting for the expenses submitted by inspectors, analysts, and safety instructors who shall verify upon oath that the expenses were incurred in the discharge of their official duties.

(6) Each mine inspector, mine safety analyst, electrical inspector, and mine safety instructor shall take oath, which shall be certified by the officer administering it. The oath, in writing, and the certificate, shall be filed in the office of the [Secretary of State].

(7) Each mine inspector, mine safety analyst, electrical inspector, and mine safety instructor shall give bond with surety approved by the [Governor].

(8) Each mine inspector shall give his entire time and attention to the duties of his office, which shall consist of the following:

(a) Inspecting mines and aiding, under the direction of the [commissioner], in carrying out and enforcing the provisions of the law relating to the inspection of mines;

(b) Training officials and workmen in and about the mines in first aid and mine rescue methods;

(c) Advising officials and workmen in methods pertaining to safety in all its phases and in methods pertaining to the prevention of mine fires and explosions;

(d) Taking charge of mine rescue and recovery work whenever a mine fire, mine explosion or other serious accident occurs within his district, and the [commissioner] is not present, and assisting in such work in other districts when so directed by the [commissioner];

(e) Reopening mines or portions of mines that have been sealed on account of fire or any other cause, when directed by the [commissioner] to do so;

(f) Inspecting each underground coal mine in his district at least [three (3)] times a year and all other mines [once every six (6)] months. The [commissioner] may cause inspections more often if practicable and if funds permit, and whenever any danger to the workmen may exist; making a personal examination of the interior of each mine with respect to ventilation, drainage, roof control, blasting, electricity, escapeways, and general security, and also a personal

examination of the outside facilities of the mine; and in gassy mines below the water table, inspections shall be more frequent, and as often as practical whenever any danger to workmen is indicated by a previous inspection. Such inspections shall involve at least [two (2)] inspectors. The inspectors shall locate themselves in different sections of the mine in order to determine the effectiveness and reliability of the ventilation system. Each section of the mine shall be so inspected;

(g) It shall be permissible for a mine inspector to inspect any coal preparation plant or surface facility of any mining operation of coal including any overland coal belts; and

(h) A mine inspector shall have the express authority to enter upon the premises of and inspect any coal mine, including any overland coal belts, at any reasonable time.

Section 6. *[Mine Operator's License.]*

(1) The operation of a coal mine in this state is a privilege granted by this state to a licensee who satisfies the requirements of this section and demonstrates that the mine is or will be operated in a safe manner and in accordance with the laws of this state.

(2) Within [forty-five (45)] days after [January 1] of each year, the owner, operator, lessee, or licensee of each mine shall procure from the [department] a license to operate the mine, and the license shall not be transferable. Any owner, operator, lessee, or licensee who assumes control of a mine, opens a new mine, or reopens an abandoned mine during any calendar year shall procure a license before mining operations are begun.

(3) The license shall be in printed form as the [commissioner] may prescribe and when issued shall be kept posted at a conspicuous place near the main entrance of the mine.

(4) Requests for a license shall be made to the [department] and shall be accompanied by a United States Postal Money Order or cashier's check drawn in favor of the [State Treasurer] in an amount established by administrative regulations of a minimum of [one hundred (\$100)] and a maximum of [fifteen hundred dollars (\$1,500)]. The license shall be issued when the following are properly submitted to the [commissioner]:

(a) The annual report of the licensee and the annual mine map required in this Act;

(b) A certification from the [executive director of the Office of Workers' Claims] that the licensee has provided positive proof of compliance with the provisions of [insert citation];

(c) A certification from the [commissioner of the Department of Revenue] that the licensee is not a "delinquent taxpayer" as defined in [insert citation];

(d) A ventilation plan required in this Act; and

(e) An approved emergency action plan required by this Act.

(5) The [commissioner or his accredited agents] shall have the authority to extend the time for filing of the map not to exceed an additional [forty-five (45)] days. Upon receipt of withdrawal of the certification of the [executive director of the Office of Workers' Claims], or upon receipt of notice from the [commissioner of revenue] that the licensee is a "delinquent taxpayer," as defined in [insert citation], the [department] shall forthwith revoke any license issued. Revocation of a license shall be an administrative function of the [department]. Appeal of the revocation of a license shall lie in the [county Circuit Court].

(6) The [department] shall immediately revoke any license, if the [department] receives:

(a) Withdrawal of the certification of compliance with [insert citation] issued by the [executive director of the Office of Workers' Claims]; or

(b) Notice from the [commissioner of the Department of Revenue] that the licensee is a "delinquent taxpayer" as defined in [insert citation].

(7) The [commissioner], the [executive director of the Office of Mine Safety and Licensing], or the [mine inspector] shall have the authority to stop production or close any mine whose operator fails to procure a license or fails to furnish a [Certification of Workers'

Compensation Coverage] as required under this section. The [department] shall be authorized to seek injunctive relief for any violation of this section.

(8) Revocation of a license by the [department] shall be an administrative function of the [department]. Appeals from revocation by the [department] shall be brought in [Circuit Court].

(9) A license which has been revoked under the “delinquent taxpayer” provision shall not be reissued until a written tax clearance has been received from the [commissioner of revenue].

(10) No mine underlying a cemetery shall be licensed by the [commissioner] unless [two-thirds (2/3)] of the governing body of that cemetery vote in approval of the operation. The application for a license shall contain an affidavit setting forth the approval of the cemetery's governing body. This subsection applies only to those cemeteries with governing bodies.

Section 7. *[Map of Workings of the Mine.]*

(1) The operator or superintendent of each underground mine shall [annually] make or cause to be made a map of the workings of the mine which is accurate and of professional quality, on a scale of not less than [one hundred (100) and not more than five hundred (500)] feet to the inch, showing the area mined and the forms of the excavations up to [January 1], together with the location and connection of the property and mineral lease lines of all adjoining lands within [one thousand (1,000)] feet of the excavations and, marked on each tract, the name of each owner or lessee of adjoining lands and of mine property for which the map is being filed. Such map shall also show:

- (a) The proposed general plan of mining for the next [twelve (12)] months;
- (b) All pillared, worked-out, and abandoned areas;
- (c) Entries and aircourses with the direction of airflow indicated by arrows;
- (d) Dip of the coal bed;
- (e) Escapeways;
- (f) Major roof falls;
- (g) Any worked-out areas within [one thousand (1,000)] feet of the projections proposed for the next [twelve (12)] months, designating whether active, abandoned, or pillared, and showing precautions to be taken if mines are projected towards old workings which cannot be examined;
- (h) Mines above or below;
- (i) Water pools above;
- (j) Location of all known oil and gas wells, both producing and abandoned, within the area required to be mapped, as well as owners and well numbers when possible;
- (k) Such map shall identify those areas of the mine which are inaccessible or cannot be entered safely and on which no information is available;
- (l) The name and address of the mine, the mine number, seam, and seam thickness;
- (m) The scale and orientation of the map, longitude and latitude, and corresponding USGS 7.5 minute quadrangle map;
- (n) The property or boundary lines of the mine, indicating the [twenty-five (25)] foot barrier required by [insert citation] between projections and property lines;
- (o) All known drill holes that penetrate the coal bed being mined;
- (p) All shaft, slope, drift, and tunnel openings and auger and strip-mined areas of the coal bed being mined;
- (q) The location of all surface mine ventilation fans; the location may be designated on the mine map by symbols;
- (r) The location of railroad tracks and public highways leading to the mine, and mine buildings of a permanent nature with identifying names shown, and water sheds near openings of the mine;

(s) The location and description of at least [two (2)] permanent base line points coordinated with the underground and surface mine traverses, and the location and description of at least [two (2)] permanent elevation benchmarks used in connection with establishing or referencing mine elevation surveys, and any other identifying permanent landmarks;

(t) The location and elevation of any body of water dammed in the mine or held back in any portion of the mine; provided, however, such bodies of water may be shown on overlays or tracings attached to the mine maps used to show contour lines;

(u) The elevations of tops and bottoms of shafts and slopes, and the floor at the entrance to drift and tunnel openings;

(v) The elevation of the floor at intervals of not more than [two hundred (200)] feet in:

1. At least [one (1)] entry of each working section, main entry, and cross entries;

2. The last line of open crosscuts of each working section, and main and cross entries before such sections and main and cross entries are abandoned;

3. Rooms advancing toward or adjacent to property or boundary lines or adjacent mines; and

(w) Contour lines passing through whole number elevations of the coal bed being mined. The spacing of such lines shall not exceed [ten (10)] foot elevation levels, except that a broader spacing of contour lines may be approved by the commissioner or his authorized representative for steeply-pitching coal beds. Contour lines may be placed on overlays or tracings attached to mine maps. The operator, superintendent, or mine manager shall deposit a true copy of the map with his license application to the [commissioner] within [forty-five (45)] days after January 1, and another copy of the map shall be kept at the office of the mine. A copy shall also be furnished the [district office of the department].

(2) After making and filing the map with the [commissioner], the operator, superintendent, or mine manager thereafter is only required to file [annually] with the [commissioner], within the time specified, such additional map and statement as is necessary to show the progress of the workings, the amount and forms of excavations, and the property lines within [one thousand (1,000)] feet of the excavations extended since the date of the preceding map. The [commissioner] shall [annually], [before January 1], give notice that the map is required.

(3) The [commissioner] may require any operator, superintendent, or mine manager to furnish a map other than those required in subsections (1) and (2) of this section or of a surface mine, and the operator or superintendent shall immediately comply with the requirement.

(4) The mine inspector shall have the authority to stop production at the mine of any operator who does not furnish within [thirty (30)] days of notification of specific deficiencies a map which fully complies with the requirements of this section.

(5) If the operator, superintendent, or mine manager of any mine fails to furnish to the [commissioner] any map required by this Act, the [commissioner] may cause a correct survey and map of the mine or extensions thereof to be made at the expense of the owner, lessee or operator of the mine, and the cost of the map shall be recoverable from the owner, lessee or operator in the same manner as debts are recoverable by law.

(6) If at any time the [commissioner] has reason to believe that any map furnished under this Act is materially incorrect, so that it will not serve the purpose for which it was intended, he may have a survey and map made or corrected, and the expense of making the survey, map or correction shall be paid by the owner, lessee or operator of the mine, or recovered in the same manner as debts are recoverable by law; but if the map furnished by the operator or superintendent is found to be correct, the expense of the survey and drafting of the map shall be paid by this state.

Section 8. [*Mine Ventilation Plan.*]

(1) A mine ventilation plan and any revision of an existing mine ventilation plan shall be suitable to the ventilation conditions and mining system of each mine. The mine ventilation plan and any revisions to the mine ventilation plan approved by the United States Mine Safety and Health Administration shall be submitted to the executive director or his or her authorized representative and incorporated into the license. All mine ventilation plans shall be set forth in printed form. The mine ventilation plan shall require the air quality throughout the mine to contain at least [nineteen and one-half percent (19.5%)] oxygen and not more than [one-half of one percent (0.5%)] of carbon dioxide, and the volume and velocity of the air current shall be sufficient to dilute, render harmless, and carry away flammable, explosive, noxious, and harmful gases, dust, smoke, and fumes. A copy of the mine ventilation plan and any revisions to that plan shall be available to the miners and their representatives.

(2) The ventilation of all underground coal mines shall be produced by means of mechanically operated fans located outside the mine in fireproof housing and offset at least [fifteen (15) feet to one (1) side or above the opening], protected by explosion doors or weak walls and arranged so that ventilating current may be reversed if necessary. The fan shall be installed so as to prevent recirculation of mine air. The main fan shall be operated from a power circuit independent from the mine circuit. If inside auxiliary fans are required to ventilate working places the [commissioner] must first approve the installation.

(3) The licensee, superintendent, or foreman of every coal mine worked by shaft, slope, or drift shall provide and maintain for every mine [two (2)] separate and distinct escapeways, [one (1)] of which is vented by the intake air. However, if a mine was originally licensed prior to [January 1, 1990], the [commissioner] may approve an alternate ventilation plan. Each active working section shall be ventilated by a separate split of intake air. In all mines the quantity of air passing through the last open crosscut between the intake and return in any pair or sets of entries shall be not less than [nine thousand (9,000)] cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. All working faces from which coal is being cut, mined, or loaded in a working section between the intake and return airway entries shall be ventilated with a minimum quantity of [three thousand (3,000)] cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. The quantity of air reaching the last crosscut in pillar sections may be less than [nine thousand (9,000)] cubic feet of air per minute if at least [nine thousand (9,000)] cubic feet of air per minute is being delivered to the intake of the pillar line. The air current shall under any conditions have a sufficient volume and velocity to reduce and carry away smoke from blasting and any flammable or harmful gases.

(4) All mines shall maintain at least [nine thousand (9,000)] cubic feet of air per minute at the points mentioned in subsection (3) of this section. The [commissioner] shall have the authority to require additional air in any mine when he deems it necessary for the safety of the employees. When the air from a split has passed through and has ventilated all the working places in an air split of a mine it shall then be designated as return air. Return air courses shall not be designated as primary escapeways.

(5) As working places advance, breakthroughs for air shall be made not more than [ninety (90)] feet apart, except that where longwall or modern systems of mining are used the [commissioner] or his authorized representative may approve a greater distance between breakthroughs or the method of ventilating such longwall or modern systems of mining. If any breakthroughs between intake and return airways are not required for the passage of air or the travel of equipment, they shall be closed with stoppings. All permanent stoppings shall be substantially built with suitable incombustible or fire resistant material subject to the approval of the mine inspector so as to keep the working places well ventilated. All brattice cloth and ventilation tubing shall be flame resistant. Doors on the main haulways shall be avoided where

practicable, and overcasts, built of concrete or other suitable material and of ample strength, shall be adopted. Where doors are used they shall be built in a substantial manner, and shall be hung so as to close automatically when unobstructed.

(6) In a mine where methane can be found to an extent of [one percent (1%)] or more on the return of any [one (1)] split, the inspector, with the approval of the [commissioner] may require the mine to be ventilated by the exhaust system, requiring the haulage roads and all feed wires to be located on the intake air and the electrical system to be so arranged that no wires carrying electrical current shall be on return air. A period of not more than [ninety (90)] days from date of notification shall be allowed to make the changes required.

(7) The ventilation plan shall require all fans utilized in the ventilation plan to be in operation for a sufficient period to ensure air quality and equalization of the mine atmosphere prior to the entry of workers into underground areas.

Section 9. [*Mine Outlets: Ingress, Egress.*]

(1) No licensee, superintendent, mine manager, or mine foreman of any mine opened after [June 16, 1972], shall permit people to work therein unless there are to every seam of coal worked in the mine at least [two (2)] separate outlets, separated by natural strata of not less than [one hundred fifty (150)] feet in breadth if the mine is worked by shaft or slope, and separated by a pillar of natural strata of not less than [two thousand (2,000)] square feet if the mine is worked by drift, by which outlets distinct means of ingress and egress are readily available to people employed in the mine, but it shall not be necessary for the [two (2)] outlets to belong to the same mine. This subsection does not apply to the openings of a new entry that is being worked for the purpose of making connection between the [two (2)] outlets so long as not more than [twenty (20)] people are employed at one time in making the connection or driving the second opening, or to any mine in which the second opening has been rendered unavailable by reason of final robbing or removal of pillars so long as not more than [twenty (20)] people are employed therein at one time, and the workings are no farther than [five hundred (500)] feet from the bottom of the shaft or slope or from the drift opening.

(2) If any mine has but [one (1)] means of ingress or egress for people employed therein, and the owner does not own suitable ground for another opening, the owner may select appropriate adjacent ground for that purpose and have it condemned pursuant to the Eminent Domain Act of this state.

Section 10. [*Properly Certified Person.*]

(1) In all mines the licensee, mine manager, or superintendent shall employ [one (1)] or more properly certified people.

(2) A properly certified person shall examine carefully, within [three (3)] hours before each shift enters the mine:

- (a) Every working place;
- (b) All places adjacent to live workings;
- (c) Every roadway where people are required to work or travel;
- (d) All abandoned panels on the intake;
- (e) Every set of seals on the intake; and
- (f) All roof falls near active workings on the intake and on the working sections.

(3) Before proceeding with the examination he shall see that the air current is traveling its proper course.

(4) A properly certified person shall use approved gas detection devices in the performance of the required examination and shall examine the entrances to all worked-out and abandoned portions adjacent to the intake roadways and working places under his charge where explosive gas is likely to accumulate.

(5) After examination the properly certified person shall leave at or as close as possible to the face of every place examined the date and time of the examination and his initials as evidence that he has performed his duty.

(6) If an explosive mixture of gas is discovered, the properly certified person shall place a danger signal across the entrance to every place where explosive gas is discovered or where immediate danger is found to exist from any other cause. The signal shall be sufficient warning to ensure that people do not enter the area.

(7) When the mine is idle and workmen are required to go into the mine, the section, portion, or part of the mine entered must be inspected by a properly certified person within [three (3)] hours before the workmen enter.

(8) Each week, a properly certified person designated by the mine foreman shall examine each set of seals on the return, all designated intake and return entries, and all escapeways.

Section 11. [*Certified Mine Foreman.*]

(1) All commercial coal mines shall employ a certified mine foreman therein to properly carry out the plans and rules when approved by the [commissioner of the department] and to be responsible for compliance with the provisions of this Act.

(2) When the mine workings become so extensive that the mine foreman is unable personally to carry out the duties required of him by law, the operator, superintendent, or mine manager shall employ a sufficient number of people holding suitable certificates of qualifications to act as assistants to the mine foreman, and under his instructions.

(3) The mine foreman or his assistants shall visit and carefully examine each working place in the mine at least every [four (4)] hours while the mine employees are at work. He shall examine as live workings, on regular inspections, all places in live sections that are temporarily abandoned. If the mine foreman finds any place to be in a dangerous condition, he shall not leave the place until it is made safe, or until the employees working therein are removed until the place is made safe. He shall see that every mine liberating explosive gas is kept free of standing gas in all working places and roadways, and that all accumulations of explosive or noxious gases in the worked-out or abandoned portions of any mine are removed as soon as possible after discovery. He shall ensure that all preshift examinations are conducted by a certified person and that examinations of conveyor belts have been conducted. He shall not allow any person who may be endangered by the presence of explosive or noxious gases to enter that portion of the mine until the gases have been removed. He shall direct and see that all dangerous places and the entrances to worked-out and abandoned places in all mines are properly barricaded across the openings, so that no person will enter, and that danger signs are posted upon the barricade to warn people of existing danger. He shall give prompt attention to the removal of all dangers reported to him by his assistants, the fire boss or any person working in the mine, and if it is impracticable to remove the danger at once he shall notify every person whose safety is menaced thereby to remain away from the portion where the dangerous condition exists. He or his assistants, fire bosses, or other certified people shall, at least once every week, travel and examine all air courses, escapeways, the caches of self-contained self-rescuer devices required by this Act, the cache's contents, seals on the return, roads, and openings that give access to old workings or pillar falls, and make a record of the condition of all places where danger has been found. The record shall be made with ink pencil in the record book provided for that purpose.

(4) The mine foreman shall notify, in writing, the licensee or superintendent of the mine of his inability to comply with any of the requirements of the mining laws, and the licensee or superintendent shall at once attend to the matter complained of by the mine foreman so as to enable him to comply with the mining laws.

(5) The mine foreman shall each day enter and sign plainly with ink, in a book provided for that purpose, a report of the condition of the mine. The report shall clearly state any danger

that comes under his observation during the day or is reported to him by his assistants or by the fire bosses, and shall state what action was taken to correct such danger, whether or not there is a proper supply of material on hand for the safe working of the mine, and whether or not the mining laws are being complied with. The mine foreman shall each day read carefully, and countersign with ink, all reports entered in the record book of the fire bosses.

(6) The mine superintendent, mine manager, mine foreman, and assistant foreman shall be held jointly responsible for the immediate compliance with the provisions of this Act.

Section 12. *[Availability of Materials and Supplies Relating to Mine Safety.]*

(1) Each superintendent or mine manager shall, on behalf and at the expense of the licensee, keep on hand at or within convenient distance of the mine, not to exceed [five hundred (500)] feet, a sufficient quantity of all materials and supplies required to preserve the safety of employees, as ordered by the mine foreman and required by law. If the superintendent or mine manager cannot procure the necessary materials or supplies, he shall at once notify the mine foreman, who shall withdraw the men from the mine until the materials or supplies are received.

(2) The superintendent or mine manager shall, at least once each week, read and examine carefully and countersign all reports entered in the mine record book of the mine foreman.

(3) The licensee, superintendent, or mine manager shall cooperate with the mine foreman and other officials in the fulfillment of their duties under this Act, and shall direct that the mine foreman and all other employees under him comply with the law, especially when his attention is called by the mine inspector or by the [commissioner] to any violations of the laws.

(4) The superintendent or mine manager shall keep on hand at the mine a supply of printed rules, notices, and record books required by this Act. The superintendent or mine manager shall see that rules, notices, and record books are delivered to the proper people at the mine and are properly cared for, and that the rules and notices are posted in conspicuous places at or near the entrance to the mine and kept legible.

Section 13. *[Imminently Dangerous Condition.]*

(1) The operator, superintendent, or mine manager of every mine shall furnish the mine inspector proper facilities for entering the mine and making examinations or obtaining information.

(2) If any inspector discovers that any mine does not conform to the provisions of this Act in respect to the safety of employees, or that by reason of any defect or practice not specifically covered by this Act in or about the mine, the lives or health of people employed therein are endangered, he shall immediately issue an emergency order to the licensee or superintendent. If he deems it necessary for the immediate protection from imminent danger of bodily harm of the people employed in the mine, he shall withdraw the men who may be endangered according to the following procedures:

(a) If the entire mine is affected by the dangerous condition, all men shall be withdrawn and production shall be halted until all defects causing the imminently dangerous condition are corrected;

(b) If an imminent danger affects only a portion of the mine, the people whose safety may be menaced thereby shall be withdrawn from the affected part of the mine and production halted in that area until the dangerous condition is corrected;

(c) Where production is necessary to correct the unsafe condition, it shall be permitted to that extent, using only the necessary personnel; and

(d) Production at the affected area of a mine from which men are withdrawn pursuant to this section may be resumed upon reinspection by a mine inspector and a finding by that inspector that the mine is no longer imminently unsafe.

(3) In all emergency hearings, a departmental attorney, the [Attorney General], [state's attorney] or the county attorney of the judicial circuit or county in which the mine is situated shall appear for the state and defend the action.

Section 14. [*Mine Rescue Divisions.*] The [commissioner of the department] shall partition the coal fields in this state into [mine rescue divisions]. In each [division] there shall be a station, the location of which shall be determined by the [commissioner], and there shall be kept at each station apparatus, appliances, and supplies for use in the work of rescue and relief upon the occurrence of entrapments, roof falls, inundation of liquids or gasses, explosions or mine fires, and for the training of officials and miners in mine rescue work. The [commissioner] shall provide each station and himself with the necessary instruments, appliances, apparatus, chemicals, trucks, and automobiles, and shall designate [one (1)] of the inspectors to have charge of each station.

Section 15. [*Emergency Action Plan for Underground Mines.*]

(1) An emergency action plan shall be submitted with each application for a license to operate an underground mine. The emergency action plan shall be for use during emergencies at the licensed facility. The plan shall consist of the following components:

(a) A certification, submitted by the applicant, that the telephone or equivalent two-way communication system will be in place and functioning at the facility when operation begins;

(b) A listing of the telephone numbers of the facility personnel, state and federal regulatory agencies, and state, federal, and local emergency response agencies to be contacted in the event of a mine emergency;

(c) The positions and telephone numbers of the people designated by the licensee to implement the emergency action plan during mine emergencies;

(d) The name of the ambulance service or first responder with which the licensee has made arrangements to provide twenty-four (24) hour emergency medical assistance for any person injured at the licensed facility;

(e) A copy of the licensed facility's mine emergency evacuation and fire-fighting plan, if one is required; and

(f) A training schedule for all personnel as to their responsibilities under the emergency action plan. On site, each licensed facility shall maintain a log containing training dates, the personnel trained, and their positions and shifts.

(2) The licensee shall provide a revised copy of the plan to the [district office and the Office of Mine Safety and Licensing] within [ten (10)] days of a change in any of the information required in [subsection (1) of this section] becoming effective.

(3) The licensee shall be responsible for ensuring that copies of the licensed facility's emergency action plan are submitted to the appropriate [district office and to the Office of Mine Safety and Licensing]. Copies of the plan also shall be kept on the premises of the licensed facility where it shall be made open to inspection by the licensee's employees and their independent contractors and inspectors.

(4) Each licensed facility shall post in a prominent place at the mine office a copy of all emergency contact numbers. The list of emergency contact numbers shall be made available to the licensee's employees and their independent contractors during training on the emergency action plan.

(5) Each licensed facility shall train all employees of the licensee, including their independent contractors, at the beginning of their employment with the licensed facility and on an annual basis on the emergency action plan and the people responsible for the plan's implementation.

(6) Each licensed facility on which an underground mine is operated shall develop and implement a mine emergency evacuation and fire-fighting program that instructs all miners and other personnel of the licensed facility in the proper evacuation procedures they must follow if a mine emergency occurs. The program, and any revisions thereto, must be submitted to the [executive director] or his designee. All personnel of the licensed facility, including independent contractors, shall be trained in the performance of the plan's revisions prior to any of the revisions being implemented. The program shall include a plan to train all miners on all shifts with procedures for:

- (a) Mine emergency evacuation for mine emergencies that present an imminent danger to miners due to fire, explosion, or gas, or water inundation;
- (b) Evacuation of all miners not required for a mine emergency response;
- (c) Rapid assembly and transportation of necessary miners, fire suppression equipment, and rescue apparatus to the scene of the mine emergency; and
- (d) Operation of fire suppression equipment available in the mine.

Section 16. *[Map of Designated Escapeways and Escapeway Drills.]*

(1) A map shall be posted or readily accessible to all miners in each working section, and in each area where mechanized equipment is being installed or removed. The map shall show the designated escapeways from the working section to the locations where miners must travel to satisfy the escapeway drill specified in [subsection (4) of this section].

(2) A map showing the main escapeways shall be posted at the surface location of the licensed facility where miners congregate.

(3) All maps shall be kept up to date. Any changes in routes of travel, locations of doors, or directions of airflow shall be shown on the maps by the end of the shift. Miners affected by the changes shall be informed of the changes before entering the underground areas of the mine. Miners on a shift underground when any change is made shall be immediately notified of the change.

(4) At least once every [ninety (90)] days each miner, including those miners with working stations located between the working sections and main escapeways, shall participate in a practice escapeway drill.

(5) During the drill, miners that do not have working stations located between the working sections and the main escapeways shall travel the greater distance of the [two (2)] following choices:

- (a) A path from the primary or alternate escapeway from the miner's working section or from the area where mechanized mining equipment is being installed or removed, to the area where the split of air ventilating the working section intersects a main air course; or

- (b) A path which is [two thousand (2,000)] feet outby the section loading point.

(6) Those miners who have working stations located between the working sections and the main escapeways shall participate in the escapeway drill by traveling in the primary or alternate escapeway for a distance of [two thousand (2,000)] feet from their working station toward the nearest escape facility or drift opening.

(7) (a) At least [once every six (6) weeks] and for each shift, at least [two (2)] miners on each coal producing working section who work on that section, accompanied by the section foreman, shall participate in a practice escapeway drill and shall travel the primary or alternate escapeway:

1. From the location specified in paragraph (a) of subsection (5) of this section to the surface;
2. To mechanical escape facilities; or
3. To an underground entrance to a shaft or slope to the surface.

(b) Systematic rotation of section personnel shall be used so that all miners participate in this drill.

(8) (a) At least [once every six (6) weeks], at least [two (2)] miners on each maintenance shift and a foreman or assistant foreman, shall participate in a practice escapeway drill and shall travel the primary or alternate escapeway:

1. From the location specified in paragraph (a) of subsection (5) of this section to the surface;

2. To mechanical escape facilities; or

3. To an underground entrance to a shaft or slope to the surface.

(b) Systematic rotation of maintenance personnel and working sections shall be used so that all miners participate in the drill and so that the escapeways from all sections are traveled.

(9) For all escapeway drills required by this section, an escapeway drill shall not be conducted in the same escapeway as the drill proceeding immediately thereafter.

(10) Before or during practice escapeway drills, miners shall be informed of the locations of fire doors, check curtains, changes in the routes of travel, caches of self-rescuers, and plans for diverting smoke from escapeways.

Section 17. [*Lifeline Cords.*] In all designated escapeways, each operator shall provide lifeline cords, with attached reflective material at not to exceed [twenty-five (25)] foot intervals and devices indicating the direction to the surface at not to exceed [one hundred (100)] foot intervals, from outby the loading point; provided, that in case of a shaft mine, such lifeline cords shall extend from outby the loading point to the bottom of the designated escape shaft. Such lifeline cord shall be of durable construction sufficient to allow miners to see and to use effectively to guide themselves out of the mine in the event of an emergency.

Section 18. [*Ensuring Two-Way Communication between Mines and Surface Communication Facilities.*]

(1) Effective [insert date], each licensed underground facility shall provide telephone service or equivalent two-way communication facilities, approved by the [executive director or his authorized representative], between the surface of each landing of main shafts and slopes, and between the surface and each working section that is more than [one hundred (100)] feet from a portal. Implementation of telephone or equivalent two-way communication facilities shall be subject to the following provisions:

(a) Telephones or equivalent two-way communications facilities provided at each working section shall be located not more than [five hundred (500)] feet outby the last open crosscut and not more than [eight hundred (800)] feet from the farthest point of penetration of the working faces on the section;

(b) Primary telephone or two-way communications systems and lines shall be located in the intake air course or adjacent entry, but shall not be located in the beltway or return air courses unless approved by the [executive director of the Office of Mine Safety and Licensing] in seams with coal heights [twenty-six (26) inches or less]; and

(c) The incoming communication signal on the telephone or other approved two-way communications system shall activate an audible alarm that is distinguishable from the surrounding noise level and a visual alarm that can be seen by a miner regularly employed on the working section.

(2) Effective [insert date], each licensed underground facility shall have a telephone or equivalent two-way communications facility located on the surface within [one thousand (1,000) feet] of all main portals. The telephone or equivalent two-way communication system shall be installed in either a building or in a box-like structure designed to protect the communication

equipment from damage by inclement weather. At least [one (1)] of these communications systems shall be at a location where a responsible person is available and authorized to respond to an emergency situation at all times when miners are working underground. The incoming communication signal on the telephone or other approved two-way communications system shall activate an audible alarm, distinguishable from the surrounding noise level and a visual alarm that can be seen by the responsible person stationed near the communication system.

(3) Effective [insert date], each licensed underground facility shall have a telephone or equivalent two-way communications system located on the surface which can be used to activate the licensed facilities emergency action plan required in Section 2 of this Act and to comply with reporting requirements contained in Section 19 of this Act. The telephone or equivalent two-way communication system shall be installed in either a building or in a box-like structure designed to protect the communication equipment from damage by inclement weather. At least [one (1)] of the communication systems shall be at a location where a responsible person is available and authorized to respond at all times to an emergency situation when miners are working. The incoming communication signal on the telephone or other approved two-way communications system shall activate an audible alarm, distinguishable from the surrounding noise level and a visual alarm that can be seen by the responsible person stationed near the communication facility.

Section 19. [*Self-Contained Self-Rescuer Devices.*]

(1) All underground miners shall be provided with an approved self-contained self-rescuer device and shall have that device within [twenty-five (25)] feet of them at all times. The self-contained self-rescuer shall be provided to the miners by the licensee at no cost to the miners.

(2) In addition to the requirements for self-contained self-rescuers set forth in this section, all licensed premises shall maintain caches of self-contained self-rescuer devices which shall be stored in locations readily accessible to the primary and secondary escapeways or provide proof of an order for self-contained self-rescuers through the submission of a valid purchase order that clearly names the vendor, contact information for the vendor, the number of devices purchased, and the date of the order, which shall not be later than [thirty (30)] days after the effective date of this Act. In all cases, the self-contained self-rescuers shall be in place by [July 1, 2007], or shall be extended by the [commissioner] upon substantiated proof of unavailability.

(a) The caches shall be maintained in sufficient numbers and locations determined in accordance with the most recent rules, standards, and regulations issued by the United States Mine Safety and Health Administration;

(b) The caches shall be maintained in storage units capable of protecting the self-contained self-rescuers from water, dust, and any other condition which will cause deterioration of the self-contained self-rescuer;

(c) The storage unit locations shall have reflective signs that read "SELF-RESCUERS" conspicuously posted as to be visible from the primary and secondary escapeways. Intrinsically safe strobe light devices also shall be attached to the storage unit. The strobe light devices may operate continuously or shall be capable of activation in the event of a mine emergency;

(d) In addition to the requirements set forth in this section for self-contained self-rescuers, the mine operator shall provide for each person who is underground at [least one (1)] additional self-contained self-rescuer device which provides protection for a period of [one (1)] hour or longer, to cover all people in the mine; and

(e) If a mantrip or mobile equipment is used to enter or exit the mine, additional self-contained self-rescuer devices, each of which provides protection for a period of [one (1) hour] or longer, shall be available for all people who use the transportation from portal to portal.

(3) It shall be a [Class D felony] for any person to remove a self-rescuer from the cache for purposes other than use during an emergency, or for repair, maintenance, or replacement or as authorized by the licensee.

Section 20. [*Places of Refuge.*]

(1) After [June 16, 1972], on single-track haulage roads in mines, which the people employed in the mine must use while performing their work or while traveling on foot to and from their work, there shall be places of refuge on [one (1) side] not less than [five (5)] feet in depth from the side of the mine car, and [five (5)] feet wide, and not more than [ninety (90)] feet apart. Refuge holes of the same dimensions shall also be provided at switch throws.

(2) Special places of refuge are not required on haulage roads on which room necks or breakthroughs occur at regular intervals not exceeding [ninety (90)] feet, and thus furnish places of refuge, or on haulage roads in which the track is so laid as to give a minimum clearance on [one (1)] side of not less than [thirty (30)] inches from the side of any haulage engine or any mine car, the clearance to be on the side of the road opposite that upon which electric wires are strung, if electric wires are strung in the road.

(3) No unauthorized person shall travel on foot to or from work upon any haulage road or slope where transportation is by track, when other roads in proper condition for travel are available.

(4) On all main haulage roads where hauling is done by machinery the mine foreman shall provide a proper system of signals, and a conspicuous light or marker approved by the [commissioner] on the front and rear of every trip or train of cars when in motion in the mine.

(5) Man-trips shall be operated at safe speeds consistent with the condition of roads and type of equipment used and shall be so controlled that they can be stopped within the limits of visibility, in no event at a speed in excess of twelve (12) miles per hour.

(6) Each man-trip consisting of more than one (1) mine car of men shall be under the charge of a certified official, and it shall be operated independently of any loaded trip of coal or other material.

(7) Cars on the man-trip shall not be overloaded, and sufficient cars in good mechanical condition shall be provided.

(8) No material or tools except small hand tools shall be transported in the same car with men on any man-trip unless in a separate, enclosed compartment of the car, and all people shall ride inside of man-trip cars, except the motorman and brakeman or trip rider.

(9) Men shall not load or unload before the cars in which they are to ride or are riding come to a full stop, and men shall proceed in an orderly manner to and from man-trips.

(10) A waiting station shall be provided where men are required to wait for man-trips or man-cages. It shall have sufficient room, ample clearance from moving equipment, and adequate seating facilities.

(11) Power wires shall be guarded effectively at man-trip stations where there is a possibility of any person coming in contact with energized electric wiring while loading or unloading from the man-trip.

(12) Cars used for transporting men on slopes shall be equipped with a safety device capable of stopping the trip in event of failure of the rope or couplings. The device shall be approved by the [commissioner].

(13) Where belts are used for transporting men, unless the [commissioner] finds that a safety hazard exists which cannot be corrected, the belt transport will be allowed, and a minimum clearance of [eighteen (18)] inches shall be maintained between the belt and the roof or cross bars, projecting equipment, cap pieces, overhead cables, wiring, and other objects; but where the height of the coal bed permits, the clearance shall not be less than [twenty-four (24)] inches.

(14) Unless a greater speed is allowed by special permission from the [commissioner], in which event the conditions, limitations, and rules imposed in connection with the grant of permission shall be observed, the belt speed shall not exceed [two hundred fifty (250)] feet per minute where the minimum overhead clearance is [eighteen (18)] inches, or [three hundred (300)] feet per minute when the minimum overhead clearance is [twenty-four (24)] inches, while men are loading, unloading, or being transported.

(15) The space between men riding on a belt line shall not be less than [six (6)] feet.

(16) Loading and unloading stations shall be illuminated properly.

(17) A certified official or some other supervisory personnel appointed by the mine foreman shall supervise all man-trips.

(18) At all mines utilizing track haulage or transportation, there shall be developed a safe and uniform system of traveling through all switch points to prevent collisions. This system shall be designed in a manner which ensures that all people can determine who has the right of way in all circumstances. Information concerning this system shall be included in [annual] retraining.

(19) Efficient equipment, either mobile or self-propelled, equipped with sufficient first-aid equipment and supplies, shall be available on all underground sections where men are present to transport injured workers to the surface.

(20) At those mines that do not have a contract or other arrangement for providing ambulance service, a 4-wheel-drive vehicle or other vehicle suitable to the terrain equipped with sufficient first-aid equipment and supplies shall be available to the mines or preparation facilities for the transportation of injured workers. At those mines that have a contract or other arrangement for providing ambulance service, the access road to the mine or preparation facility shall be kept in a condition which is passable by the ambulance vehicle or other emergency rescue equipment.

(21) The [commissioner] shall be empowered to draft additional administrative regulations providing for transporting men when necessary.

Section 21. *[Reporting Mine Accidents.]*

(1) Whenever serious physical injury or loss of life occurs in a mine or in the machinery connected therewith or whenever a fire, explosion, entrapment of an individual for more than [thirty (30)] minutes, inundation of a mine by water or gases, or other serious accident occurs, the superintendent of the mine, or, if he is absent, the mine manager, or if he is absent, the mine foreman in charge of the mine or his designee, shall within [fifteen (15)] minutes of having actual knowledge of the occurrence and access to the communication system as required under subsection (3) of Section 1 of this Act give notice to the department and to the representative of the miner, stating the particulars of the accident. No person shall alter the scene of a mining accident in a manner that will interfere with the department's investigation of the accident, except to the extent necessary to rescue an individual or to eliminate an imminent danger.

(2) Upon receipt of notification of an occurrence set forth in subsection (1) of this section, the mine inspector shall immediately go to the scene of the accident and make an investigation and suggestions and render the assistance as he deems necessary for the future safety of the employees, investigate the cause of the fire, explosion, or accident, make a record thereof, and forward it to the [commissioner].

(3) The record of the investigations shall be preserved with the other records of the [commissioner's] office. To aid in making the investigations, the [commissioner] or the mine inspector may compel the attendance of witnesses and administer oaths.

(4) Failure to comply with the reporting requirements set forth in this section shall create a rebuttable presumption of an intentional order to violate mine safety laws that place miners in imminent danger of serious physical injury or death and shall be subject to revocation, suspension, or probation of the mine license and a civil monetary penalty of not less than [ten thousand dollars (\$10,000)] nor more than [one hundred thousand dollars (\$100,000)].

895
896 Section 22. *[Notice to Department about Abandoning Mines.]*
897 (1) The operator, superintendent, or mine manager of each mine shall give the
898 [commissioner] at least [ten (10)] days' notice of the following:
899 (a) Abandonment of a mine;
900 (b) Resumption of work in a mine after an abandonment or discontinuance for a
901 period of [two (2)] weeks or more; and
902 (c) Change in the operator or name of a mine.
903 (2) Each mine shall be inspected and approved by the [department] before operations are
904 resumed after an abandonment.
905

906 Section 23. *[Prohibiting Disciplining Miners Who Report or Cooperate in Unsafe Mine*
907 *Practice Investigation.]* No licensee, operator, mine superintendent, mine manager, or other
908 supervisory personnel shall terminate or otherwise discipline a miner for reporting or
909 documenting to or cooperating with regulatory agencies in their investigation of unsafe mining
910 practices or conditions or violations of this Act.
911

912 Section 24. *[Sanctions for Violating Mine Safety Laws.]*
913 (1) The [department] shall:
914 (a) Promulgate administrative regulations that establish comprehensive criteria for
915 the imposition and enforcement of sanctions against certified and noncertified personnel and
916 owners and part-owners of licensed premises whose intentional violation of, or order to violate,
917 mine safety laws places miners in imminent danger of serious injury or death. These criteria shall
918 include, but not be limited to, the following:
919 1. In the case of people who are certified miners, the [Mine Safety Review
920 Commission] may revoke or suspend an individual's certification, or probate a person's
921 certification for up to [ten (10) working days] for first offenses, and the [Mine Safety Review
922 Commission] shall establish a maximum penalty for subsequent offenses;
923 2. In the case of people who are owners or part-owners of licensed
924 premises, the [Mine Safety Review Commission] may impose civil monetary penalties against
925 individuals not to exceed [ten thousand dollars (\$10,000)]; and
926 3. In the case of noncertified personnel, the [Mine Safety Review
927 Commission] may impose civil monetary fines equivalent to the value of the wages they receive
928 for up to [ten (10) working days] for first offenses and the [commission] shall establish maximum
929 penalties for subsequent offenses;
930 (b) Notwithstanding subsection (15) of Section 8 of this Act, promulgate
931 administrative regulations that establish comprehensive criteria for the [Mine Safety Review
932 Commission's] imposition of penalties against licensed premises for violations of mine safety
933 laws that place miners in imminent danger of serious injury or death. These penalties shall
934 include, but not be limited to, the revocation or suspension of the mine's license, the probation of
935 a mine's license for a first offense, or the imposition of a penalty against the licensee not to
936 exceed the gross value of the production of the licensed premise for up to [ten (10)] working
937 days;
938 (c) Direct that an employer shall not directly or indirectly reimburse a sanctioned
939 miner or mine supervisor for days of work lost as a result of sanctions imposed by the [Mine
940 Safety Review Commission];
941 (d) Establish procedures by which the [department] shall communicate with the
942 Federal Mine Safety and Health Administration (MSHA) concerning allegations of mine safety
943 violations against coal operators in this state and miners;

944 (e) Jointly with the [Mine Safety Review Commission] establish a process for
945 referring allegations of mine safety violations to the [Mine Safety Review Commission] for
946 adjudication and for the hearing of appeals from penalties imposed by the [Office of Mine Safety
947 and Licensing], and the underlying violation, authorized under subsection (15) of Section 8 of this
948 Act; and

949 (f) Establish procedures to distribute quarterly reports to every licensed entity
950 describing mine fatalities, serious mine accidents, and penalties imposed on certified and
951 noncertified personnel and licensed premises and to require the report to be distributed to every
952 certified working miner employed by the licensed entity, posted at work sites, and reviewed at
953 regular mine safety meetings.

954
955 Section 25. [*Severability*.] [Insert severability clause.]

956
957 Section 26. [*Repealer*.] [Insert repealer clause.]

958
959 Section 27. [*Effective Date*.] [Insert effective date.]

Office of Learning Technology

This Act creates an Office of Learning Technology within the State Council of Higher Education to facilitate and coordinate the voluntary participation of public and private institutions of higher education in the state with technology-enriched initiatives.

The Office is charged with establishing and administering agreements with nonprofit public and private institutions of higher education in the state and other entities for the identification of unmet needs for technology-enriched educational programs and opportunities, and the development and delivery of technology-enriched initiatives, including distance and distributed learning initiatives, for currently served populations and underserved constituencies. In addition, the Office must review technology-enriched learning initiatives and make recommendations to the Council regarding unnecessary duplication of such initiatives; assist in the development of standards for improving access to, training for, and efficiency in such learning initiatives; and enter into contracts for related program development.

Submitted as:

Virginia

Chapter 537 of 2006

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Establish an Office of
2 Learning Technology.”

3
4 Section 2. [*Duties of State Council of Higher Education.*] In addition to such other duties
5 as may be prescribed elsewhere, the [State Council of Higher Education] shall develop a
6 statewide strategic plan that integrates the strategic plan for technology-enriched initiatives
7 prepared pursuant to this Act.

8
9 Section 3. [*Office of Learning Technology.*]

10 A. An [Office of Learning Technology (the Office)] is hereby established within the [State
11 Council of Higher Education].

12 B. The [Office] shall

13 (i) facilitate the development of innovative, cost-effective, technology-enriched
14 teaching and learning initiatives, including distance and distributed learning initiatives, to address
15 currently served populations and underserved constituencies in the state;

16 (ii) seek to improve cooperation among and between the institutions of higher
17 education in the state;

18 (iii) seek to improve efficiency and expand the availability of technology-enriched
19 courses; and

20 (iv) facilitate the sharing of research and experience to improve student learning.

21 C. The [director of the Council of Higher Education] shall appoint a [director for the
22 Office], who may employ the personnel required to assist the [Office] in the exercise and
23 performance of its powers and duties. The [director of the Office] shall supervise and manage
24 such personnel and shall prepare, approve, and submit all requests for appropriations and be
25 responsible for all expenditures pursuant to appropriations.

26 D. The [director of the Council] shall appoint a [Learning Technology Advisory
27 Committee (Advisory Committee)] to assist the [Office] in fulfilling its duties. The [Advisory
28 Committee] shall include, but not be limited to, representatives of business and industry, the
29 [Council], public and private institutions of higher education, and the elementary and secondary
30 education community. The state [Secretaries of Education and Technology] shall serve as ex
31 officio members of the [Advisory Committee]. In making such appointments, the [director] shall
32 establish a process whereby the institutions that are parties to agreements for the development and
33 delivery of technology-enriched programs administered by the [Office] may recommend from
34 among such institutions representatives to the [Advisory Committee]. The members of the
35 [Advisory Committee] shall serve without compensation and shall not be reimbursed for expenses
36 incurred in the performance of their duties as members of the [Advisory Committee]. The
37 [Advisory Committee] shall develop bylaws, not inconsistent with state statutes and regulations
38 of the [Council], for its own government and for the management of its official business.

39 E. The [Office] shall establish and administer agreements with nonprofit public and
40 private institutions of higher education in the state and other entities for the identification of
41 unmet needs for technology-enriched educational programs and opportunities and the
42 development and delivery of technology-enriched initiatives, including distance and distributed
43 learning initiatives, for currently served populations and underserved constituencies.

44 F. In addition, the [Office] shall

45 (i) review technology-enriched learning initiatives and make recommendations to
46 the Council regarding unnecessary duplication in such initiatives;

47 (ii) assist in the development of standards for improving access to, training for,
48 and efficiency in such learning initiatives; and

49 (iii) enter into contracts for related program development.

50 G. The [Office] shall identify funding sources for the development of educational
51 opportunities through technology-enriched learning and for other purposes authorized by this Act.

52 F. The [Office] shall submit to the [Council] a strategic plan addressing technology-
53 enriched learning for integration by the [Council] into the plans for a coordinated system of
54 higher education required by [insert citation] and an annual report of technology-enriched
55 learning opportunities currently available through the [Office], the anticipated availability of
56 those opportunities under development, and information regarding student participation and
57 success.

58 G. The [Office] is authorized to apply for, accept, and expend gifts, grants, or donations
59 from public or private sources to enable it to carry out its objectives.

60 H. All agencies of this state shall cooperate with the [Office], and, upon request, assist in
61 the performance of its duties and responsibilities.

62 I. Nothing in this Act shall be construed to restrict or alter the authority of institutions of
63 higher education to engage in technology-enriched initiatives without an agreement administered
64 or established by the [Office].

65
66 Section 4. [*Severability.*] [Insert severability clause.]

67
68 Section 5. [*Repealer.*] [Insert repealer clause.]

69
70 Section 6. [*Effective Date.*] [Insert effective date.]

Organized Retail Theft

This Act 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, this 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.

Submitted as:

Washington

Chapter 277, Laws of 2006

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This Act can be entitled “An Act Relating to Organized Retail
2 Theft.”

3
4 Section 2. [*Theft With Intent to Resell*.]

5 (1) A person is guilty of theft with the intent to resell if he or she commits theft of
6 property with a value of at least [two hundred fifty dollars] from a mercantile establishment with
7 the intent to resell the property for monetary or other gain.

8 (2) The person is guilty of theft with the intent to resell in the first degree if the property
9 has a value of [one thousand five hundred dollars] or more. Theft with the intent to resell in the
10 first degree is a [class B felony].

11 (3) The person is guilty of theft with the intent to resell in the second degree if the
12 property has a value of at least [two hundred fifty dollars, but less than one thousand five hundred
13 dollars]. Theft with the intent to resell in the second degree is a [class C felony].

14 (4) For purposes of this section, a series of thefts committed by the same person from one
15 or more mercantile establishments over a period of [one hundred eighty days] may be aggregated
16 in one count and the sum of the value of all the property shall be the value considered in
17 determining the degree of the theft with the intent to resell involved. Theft committed by the
18 same person in different counties that have been aggregated in one county may be prosecuted in
19 any county in which one of the thefts occurred.

20
21 Section 3. [*Organized Retail Theft*.]

22 (1) A person is guilty of organized retail theft if he or she:

23 (a) Commits theft of property with a value of at least [two hundred fifty dollars]
24 from a mercantile establishment with an accomplice; or

25 (b) Possesses stolen property, with a value of at least [two hundred fifty dollars]
26 from a mercantile establishment with an accomplice. “Stolen” means obtained by theft, robbery,
27 or extortion.

(2) A person is guilty of organized retail theft in the first degree if the property stolen or possessed has a value of one thousand five hundred dollars or more. Organized retail theft in the first degree is a [class B felony].

(3) A person is guilty of organized retail theft in the second degree if the property stolen or possessed has a value of [at least two hundred fifty dollars, but less than one thousand five hundred dollars].

(4) Organized retail theft in the second degree is a [class C felony].

(5) For purposes of this section, a series of thefts committed by the same person from one or more mercantile establishments over a period of [one hundred eighty days] may be aggregated in one count and the sum of the value of all the property shall be the value considered in determining the degree of the organized retail theft involved. Theft committed by the same person in different counties that have been aggregated in one county may be prosecuted in any county in which one of the thefts occurred.

Section 4. [*Retail Theft with Extenuating Circumstances.*]

(1) A person commits retail theft with extenuating circumstances if he or she commits theft of property from a mercantile establishment with one of the following extenuating circumstances:

(a) To facilitate the theft, the person leaves the mercantile establishment through a designated emergency exit;

(b) The person was, at the time of the theft, in possession of an item, article, implement, or device designed to overcome security systems including, but not limited to, lined bags or tag removers; or

(c) The person committed theft at [three or more] separate and distinct mercantile establishments within a [one hundred eighty-day period].

(2) A person is guilty of retail theft with extenuating circumstances in the first degree if the theft involved constitutes theft in the first degree. Retail theft with extenuating circumstances in the first degree is a [class B felony].

(3) A person is guilty of retail theft with extenuating circumstances in the second degree if the theft involved constitutes theft in the second degree. Retail theft with extenuating circumstances in the second degree is a [class C felony].

(4) A person is guilty of retail theft with extenuating circumstances in the third degree if the theft involved constitutes theft in the third degree. Retail theft with extenuating circumstances in the third degree is a [class C felony].

Section 5. [*Criminal Profiteering.*] As used in this Act,

(1) “Criminal profiteering” means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, and includes theft with the intent to resell, as defined in section 2 of this Act or organized retail theft, as defined in section 3 of this Act.

(2) “Pattern of criminal profiteering activity” means engaging in at least [three] acts of criminal profiteering, one of which occurred after [July 1, 1985], and the last of which occurred within [five years], excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the [three] acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events.

78

79

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

80

81

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

82

83

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

Parental Choice in Education

This Act establishes tuition scholarships to enable certain public school students to transfer to a private school. The Act:

- specifies criteria for qualifying for a scholarship;
- specifies criteria for private schools to enroll scholarship students;
- specifies the amount, timing, and form of scholarship payments;
- requires the State Board of Education to make rules;
- gives the State Board of Education enforcement authority;
- requires the Legislature to annually appropriate money from the General Fund for scholarship payments; and
- allows a school district to retain in enrollment a student that transfers to a private school for a period of five years, with a deduction equal to the average scholarship amount.

Submitted as:

Utah

HB 148 (Enrolled version)

Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] This Act shall be cited as “The Parent Choice in Education Act.”
2
3 Section 2. [*Findings and Purpose.*] The [Legislature] finds that:
4 (1) parents are presumed best informed to make decisions for their children, including the
5 educational setting that will best serve their children’s interests and educational needs;
6 (2) the establishment of this Parent Choice In Education Program is justified on the basis
7 of funding the educational needs of school-age children as determined by their parents;
8 (3) school-age children are the primary beneficiaries of the Parent Choice In Education
9 Program authorized in this Act, and any benefit to private schools, whether sectarian or secular, is
10 indirect and incidental;
11 (4) the Parent Choice In Education Program authorized by this Act is available to the
12 parents of school-age children, solely on the basis of income level for the year immediately
13 preceding the year for which a scholarship is sought, and not on the basis of sex, race, religion,
14 national origin, or any other criteria; and
15 (5) the Parent Choice In Education Program authorized in this Act is:
16 (a) enacted for the valid secular purpose of tailoring a child’s education to that
17 child’s specific needs as determined by the parent;
18 (b) neutral with respect to religion; and
19 (c) limited in its assistance to a parent, who may choose to use the scholarship to
20 offset tuition or fees charged by a private school, either sectarian or secular, in which enrollment
21 of the parent’s child is sought, solely as a result of the parent’s genuine and independent private
22 choices.
23
24 Section 3. [*Definitions.*] As used in this Act:
25 (1) “Board” means the [State Board of Education].

(2) “Eligible private school” means a private school that meets the requirements of [Section 5] of this Act.

(3) “Income eligibility guideline” means the maximum annual income allowed to qualify for reduced price meals for the applicable household size as published by the U.S. Department of Agriculture by notice in the Federal Register.

(4) “Parent” includes a legal guardian.

(5) “Scholarship student” means a student who receives a scholarship under this part.

(6) “Tuition” means amounts charged for attending a private school, excluding fees for extracurricular activities or transportation to the private school.

Section 4. [*Scholarship Program Created -- Qualifications -- Application.*]

(1) The Parent Choice in Education Program is created to award scholarships to students to attend a private school.

(2) To qualify for a scholarship under this Act:

(a) the student’s custodial parent or legal guardian shall reside within [insert state];

(b) the student shall be at least [five years of age before September 2] of the year in which admission to a private school is sought and under [19 years of age] on the last day of the school year as determined by the private school, or, if the individual has not graduated from high school, will be under [22 years of age] on the last day of the school year as determined by the private school;

(c) the student shall meet one or more of the following criteria:

(i) the student was born after [September 1, 2001];

(ii) the student was enrolled as a full-time student in a [insert state] public school on [January 1, 2007];

(iii) the individual was not a [insert state] resident on [January 1, 2007]; or

(iv) the student’s parents had an annual income less than or equal to 100% of the income eligibility guideline in the calendar year immediately preceding the school year for which a scholarship is sought; and

(d) the student may not be a recipient of a scholarship awarded under the [State Special Needs Act].

(3) (a) To receive a scholarship, the parent of a student shall submit an application for the scholarship to the [board] by the [June 1] preceding the school year for which a scholarship is sought. Along with the application, the student’s parent shall submit documentation verifying income as required by [board] rule.

(b) The [board] may waive the application deadline.

(4) The [board] shall award scholarships by the [July 1] preceding the school year for which a scholarship is sought.

(5) (a) The scholarship application form shall contain the following statement:

“I acknowledge that a private school may not provide the same level of services that are provided in a public school; the private school in which I have chosen to enroll my child has disclosed to me the teaching credentials of the school’s teachers and the school’s accreditation status; I will assume full financial responsibility for the education of my scholarship student if I accept this scholarship; and acceptance of this scholarship has the same effect as a parental refusal to consent to services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20 122 U.S.C. Sec. 1400 et seq.”

(b) Upon acceptance of the scholarship, the parent assumes full financial responsibility for the education of the scholarship student for the period in which the student receives the scholarship.

(c) Acceptance of a scholarship has the same effect as a parental refusal to consent to services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

(6) A student's parent, at any time, may remove the student from a private school and place the student in another eligible private school and retain the scholarship.

Section 5. [*Eligible Private Schools.*]

(1) To be eligible to enroll a scholarship student, a private school shall:

(a) have a physical location in this state where the scholarship students attend classes and have direct contact with the school's teachers;

(b) contract with an independent certified public accountant to perform the agreed upon procedures specified in [Subsection (2)] and produce a report of the results which shall be submitted to the board at the times specified in [Subsection (2)];

(c) comply with the antidiscrimination provisions of 42 U.S.C. Sec. 2000d;

(d) meet state and local health and safety laws and codes;

(e) disclose to the parent of each prospective student, before the student is enrolled, the special education services that will be provided to the student, if any, including the cost of those services;

(f) (i) annually assess the achievement of each student by administering:

(A) a norm-referenced test scored by an independent party that provides a comparison of the student's performance to other students on a national basis; or

(B) an alternative assessment of the student's achievement, if the student:

(I) has a disability or limited English proficiency; and

(II) would be exempt from taking a nationally norm-referenced achievement test if enrolled in a public school in this state;

(ii) report the test results to the student's parents; and

(iii) upon request, make test results available to other people, in a manner that does not reveal the identity of any student;

(g) employ or contract with teachers who:

(i) hold baccalaureate or higher degrees; or

(ii) have special skills, knowledge, or expertise that qualifies them to provide instruction in the subjects taught;

(h) provide to parents the teaching credentials of the school's teachers; and

(i) provide, upon request to any person, a statement indicating which, if any, organizations have accredited the private school.

(2) (a) The agreed upon procedures to be performed pursuant to [Subsection (1)(b)] are as follows:

(i) (A) determine that working capital is at least [80%] of average quarterly expenditures by taking total expenditures for a year and dividing it by four and then dividing average quarterly expenditures into working capital; and

(B) for a school in the first year of operations, use the estimated budget to estimate average quarterly expenditures;

(ii) (A) determine that scholarship payments are accounted for separately and reconciled to student records; and

(B) for the first year of operations, determine that procedures are in place for this accounting; and

(iii) (A) determine that expenditure of scholarship funds have been made for education expenses and is consistent with other tuition expenditures; and

(B) for the first year of operations, determine that procedures are in place for this accounting.

(b) (i) The independent certified public accountant's report on the agreed upon procedures specified in [Subsection (2)(a)] shall be submitted to the [board] when the private school applies to accept scholarship students and every [four years] thereafter, except as provided in [Subsection (2)(b)(ii)].

(ii) The [board] may, by rule, delay the date when the independent certified public accountant's report shall be submitted.

(3) The following are not eligible to enroll scholarship students:

(a) a school with an enrollment of fewer than [40] students;

(b) a school that operates in a residence; or

(c) a residential treatment facility licensed by the state.

(4) A private school intending to enroll scholarship students shall submit an application to the board by [April 1] of the school year preceding the school year in which it intends to enroll scholarship students.

(5) The [board] shall:

(a) approve a private school's application to enroll scholarship students if the private school meets the eligibility requirements of this section; and

(b) make available to the public a list of the eligible private schools by the [April 30] preceding the school year.

Section 6. *[Scholarship Payments.]*

(1) (a) Scholarships shall be awarded by the board subject to the availability of money appropriated by the [Legislature] for that purpose.

(b) The [Legislature] shall annually appropriate money to the [board] from the [General Fund] to make scholarship payments for all students projected to apply for scholarships.

(c) (i) If monies are not available to pay for all scholarships requested, the scholarships shall be allocated on a random basis except that preference shall be given to students who received scholarships in the previous year.

(ii) If monies are insufficient in a school year to pay for all the continuing scholarships:

(A) new scholarships may not be awarded during that school year;

(B) the monies available for scholarships shall be prorated among the eligible students who received scholarships in the previous year; and

(C) the [board] shall request a supplemental appropriation from the [Legislature] to make full scholarship payments as provided in [Subsection (4) or (5)].

(2) (a) Scholarships shall be awarded based upon the income of a scholarship student's parents in the calendar year immediately preceding the school year for which a scholarship is sought.

(b) (i) The [board] shall make rules specifying how the income of a prospective scholarship student's parents shall be determined.

(ii) The rules shall provide that the scholarship shall be based upon parental income as follows:

(A) if the parents are married, the income of both parents;

(B) if a parent is widowed, the income of the widowed parent;

(C) if a parent is widowed and has remarried, the income of the parent and stepparent;

(D) if the parents are divorced, the income of the parent with whom the scholarship student resided for the greatest amount of time during the past [12 months];

(E) if the parents are divorced and the scholarship student resided with each parent an equal amount of time, the income of the parent who provided more financial support during the past [12 months];

(F) if the divorced parent with whom the scholarship student resided for the greatest amount of time or who provided the greatest financial support has remarried, the income of the parent and stepparent; and

(G) if the scholarship student resides with a guardian, the income of the guardian, unless the guardian's income is exempt by [board] rule.

(iii) The rules shall provide that:

(A) if a parent filed federal or state income tax forms, income shall be based upon adjusted gross income as listed on the income tax forms;

(B) if a parent was exempt from filing federal and state income tax forms, income shall be based on income earned from work; and

(C) a parent shall submit documentation verifying income.

(3) (a) The [board] shall compare the income of a scholarship student's parents to the maximum annual incomes listed in the income eligibility guideline as defined in [Section 3] of this Act to set the scholarship amount.

(b) In determining scholarship amounts, the [board] shall use:

(i) the income eligibility guideline in effect for the school year immediately preceding the school year for which a scholarship is sought; and

(ii) the scholarship student's household size as the applicable household size for the purpose of determining maximum annual income under the income eligibility guideline.

(4) Full-year scholarships shall be awarded in the amounts shown in the following table, or for the amount of tuition for a full year, whichever is less.

If the annual income of a scholarship student's parents is:	The full-year scholarship amount is:
• Less than or equal to 100% of the income eligibility guideline	\$3,000
• Greater than 100% but less than or equal to 125% of the income eligibility guideline	\$2,750
• Greater than 125% but less than or equal to 150% of the income eligibility guideline	\$2,500
• Greater than 150% but less than or equal to 175% of the income eligibility guideline	\$2,250
• Greater than 175% but less than or equal to 200% of the income eligibility guideline	\$2,000
• Greater than 200% but less than or equal to 225% of the income eligibility guideline	\$1,750
• Greater than 225% but less than or equal to 250% of the income eligibility guideline	\$1,000
• Greater than 250% of the income eligibility guideline	\$500

(5) The full-year scholarship amounts shown in the table in [Subsection (4)] apply to scholarships for all grades except kindergarten. The full-year scholarship amount for kindergarten shall be [.55 times] the amounts shown in the table in [Subsection (4)].

(6) The [board] shall annually increase the full-year scholarship amounts shown in the table in [Subsection (4)] by the same percentage annual increase in the value of the weighted pupil unit established in [insert citation].

(7) (a) Except as provided in [Subsection (7)(b)], upon review and receipt of documentation that verifies a student's admission to, or continuing enrollment and attendance at, a private school, the [board] shall make scholarship payments in four equal amounts no later than [September 1, November 1, February 1, and April 15] of each school year in which a scholarship is in force.

(b) In accordance with [board] rule, the [board] shall make a scholarship payment before the first quarterly payment of the school year, if a private school requires partial payment of tuition before the start of the school year to reserve space for a student admitted to the school.

(8) A parent of a scholarship student and the student's private school shall notify the [board] if the student does not have continuing enrollment and attendance at the private school.

(9) Before scholarship payments are made, the [board] shall cross-check enrollment lists of scholarship students, school districts, and youth in custody to ensure that scholarship payments are not erroneously made.

(10) (a) Scholarship payments shall be made by the [board] by individual warrant made payable to the student's parent and mailed by the [board] to the private school. The parent shall restrictively endorse the warrant to the private school for deposit into the account of the private school.

(b) A person, on behalf of a private school, may not accept a power of attorney from a parent to sign a warrant referred to in [Subsection (10)(a)], and a parent of a scholarship student may not give a power of attorney designating a person, on behalf of a private school, as the parent's attorney in fact.

Section 7. *[Mitigation Monies.]*

(1) As provided in this section, a school district shall receive monies to mitigate potential impacts due to the unplanned reduction in revenues resulting from the transfer of scholarship students from the district to a private school.

(2) A school district shall retain in enrollment for purposes of receiving funds under the minimum school program each scholarship student that:

(a) transfers from the school district to a private school; and

(b) resides within the boundaries of the school district.

(3) Each transferred scholarship student meeting the criteria of [Subsection (2)] shall be retained in enrollment:

(a) for [five years] following the transfer or until the student would have graduated from high school if within [five years] of the date of transfer; or

(b) until the student transfers back to the school district, if the student transfers back to the school district within [five years].

(4) For each year a school district retains in enrollment transferred scholarship students as provided in this section, the [board] shall deduct from minimum school program funds distributed to the school district an amount equal to the number of transferred scholarship students retained in enrollment times the average scholarship amount for scholarship students statewide.

(5) The monies deducted from a school district's minimum school program funds as provided in [Subsection (4)] shall be deposited into the [Uniform School Fund] established by [insert citation].

Section 8. *[Board to Make Rules.]*

(1) In accordance with [insert citation] the [board] shall make rules consistent with this Act:

- 254 (a) establishing the application process for the scholarship program, including
255 procedures to allow a parent to apply for a scholarship online;
256 (b) establishing how the income of a scholarship student's parents shall be
257 determined; and
258 (c) implementing [Section 7] of this Act.
259 (2) By [insert date], the [board] shall adopt rules establishing:
260 (a) the application process for private schools and scholarship students; and
261 (b) how the income of a scholarship student's parents shall be determined.
262

263 Section 9. *[Enforcement and Penalties.]*

- 264 (1) (a) The [board] shall require private schools to submit signed affidavits assuring
265 the private school will comply with the requirements of this Act.
266 (b) If a school fails to submit a signed affidavit after having an opportunity to
267 provide explanations and request delays, the [board] may:
268 (i) deny the private school permission to enroll scholarship students; and
269 (ii) interrupt disbursement of or withhold scholarship payments.
270 (2) The [board] may investigate complaints and convene administrative hearings for an
271 alleged violation of this Act.
272 (3) Upon a finding that this Act was violated, the [board] may:
273 (a) deny a private school permission to enroll scholarship students;
274 (b) interrupt disbursement of or withhold scholarship payments; or
275 (c) issue an order for repayment of scholarship payments fraudulently obtained.
276

277 Section 10. *[Limitation on Regulation of Private Schools.]* Nothing in this Act grants
278 additional authority to any state agency or school district to regulate private schools except as
279 expressly set forth in this Act.
280

281 Section 11. *[Review by [Legislative Auditor General].]* The [legislative auditor general]
282 shall conduct a review and issue a report on the Parent Choice in Education Program after the
283 conclusion of the [2013-14 school year].
284

285 Section 12. *[Appropriation.]* As an ongoing appropriation subject to future budget
286 constraints, [\$100,000] is appropriated from the [General Fund] for [fiscal year 2006-07] to the
287 [State Board of Education] for the administration of the Parent Choice in Education Act created
288 by this legislation.
289

290 Section 13. *[Severability.]* [Insert severability clause.]
291

292 Section 14. *[Repealer.]* [Insert repealer clause.]
293

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

Permitting Commercial Nonagricultural Activities to Occur, and Cell Towers to Be Erected on Preserved Farmland

This Act allows farms preserved under various farmland preservation to get a permit of limited duration (up to 20 years) to allow a commercial nonagricultural activity or a personal wireless service facility (i.e., a cellular telephone tower) to occur or to be placed on the land. The issuance of these permits would be either at the sole discretion of the State Agriculture Development Committee (SADC), or in those cases when the development easement is owned by a county agriculture development board or a nonprofit organization, at the joint discretion of the SADC and the county agriculture development board or nonprofit organization, as appropriate.

By allowing a commercial nonagricultural activity to occur in certain limited instances on preserved farmland, the Act corrects an inequity, detailed further below, encountered by some farmers who have chosen to preserve their farms. The accommodation to allow cell towers on preserved farmland in certain limited instances and where appropriate and necessary serves the public good by potentially improving cellular communications, especially when they are used for emergency purposes, while also providing needed income to often struggling farmers.

Under the Act, the only type of preserved farm that could apply for a commercial nonagricultural activity permit would be a commercial farm that was preserved for farmland preservation purposes prior to the date of enactment of the bill and for which no portion of the farm was excluded in the deed of easement from preservation. This provision rectifies an inequity for those farmers who chose to participate earlier in the history of the state's farm preservation program but who did not realize the possibility or potential benefit of excluding a portion of the farm from preservation so that it could be later used for a commercial nonagricultural activity which could provide supplemental income to, among other things, help offset increasingly costly farming operations. Farmers entering preservation programs later in the process have learned since to omit portions of the property from preservation for just such a reason.

The bill imposes a number of qualifying criteria and conditions on these farms and on the type of commercial nonagricultural activity which may be permitted. These criteria and conditions ensure that only small enterprises, such as bed and breakfasts, tractor repair shops, antique shops, the leasing of space to store equipment, etc., which meet local zoning requirements and which require only a few parking spaces could ever qualify.

It is the intent of the bill sponsors and of the committee that franchises, chain stores, and big box stores and businesses should not and cannot be permitted under this bill for a number of important public policy reasons, including obvious incompatibility with the rural character of the land and the adverse impacts that parking and traffic generated by those types of businesses would have on the land.

The bill also addresses the issue of when and how the installation of cellular telephone towers may be allowed on any preserved farm in the State, regardless of when and how it was preserved. Again, the purpose of this provision is to allow a farmer to receive supplemental income for the de minimis use of a very small portion of the farm for this important and compatible public purpose, but only in accordance with strict qualifying criteria and conditions as set forth in the bill.

In addition, the bill requires the SADC to prepare a report every two years on the implementation of this bill. The report must include a survey and inventory of all commercial nonagricultural activities occurring on, and of all personal wireless service facilities placed on, preserved farmland in accordance with the bill; the extent to which existing structures, such as barns, sheds, and silos, are used for those purposes, and how those structures have been modified

therefor; the extent to which new structures, instead of existing structures, have been erected to host personal wireless service facilities and the number and type of new structures used to disguise those facilities, such as artificial trees and faux barns, sheds, and silos; and such other information as the SADC deems useful.

It is also the intent of the bill sponsors and of the committee that, in implementing this bill, the SADC shall ensure that: (1) existing structures, such as barns, sheds, and silos, are used in all cases for the allowed commercial nonagricultural activities and as much as possible for cell towers; (2) new structures would be allowed to be erected to accommodate cell towers only as a last resort; (3) any allowed modification of existing structures for either purpose is sensitive to the historic and aesthetic values and character of agricultural structures; (4) erection of new structures to accommodate cell towers would be equally sensitive to such values and character; (5) cell towers are disguised as much as possible in the form of agricultural or natural looking structures or features; and (6) viewsheds are preserved to the greatest extent possible.

Submitted as:

New Jersey

Chapter 314, P.L. 2005

Status: Enacted into law in 2005.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act is entitled “An Act to Permit Commercial
2 Nonagricultural Activities on Preserved Farmland and to Permit Cell Towers on Preserved
3 Farmland.”
4

5 Section 2. [*Qualifying Land and Development Easements.*]

6 a. Any person who owns qualifying land on which a development easement was conveyed
7 to, or retained by, a [committee, a board, or a qualifying tax exempt nonprofit organization]
8 pursuant to [insert citation], may apply for a special permit pursuant to this section to allow a
9 commercial nonagricultural activity to occur on the land.

10 b. The [committee], in its sole discretion, may issue a special permit pursuant to this
11 section to the landowner if the development easement is owned by the [committee]. The
12 [committee and the board], in their joint discretion, may authorize the [committee] to issue a
13 special permit pursuant to this section to the landowner if the development easement is owned by
14 a [board]. The [committee] and the [qualifying tax exempt nonprofit organization], in their joint
15 discretion, may authorize the [committee] to issue a special permit pursuant to this section to the
16 landowner if the development easement is owned by a [qualifying tax exempt nonprofit
17 organization].

18 c. A special permit may be issued pursuant to this section provided that:

19 (1) the land is a commercial farm as defined pursuant to [insert citation];

20 (2) there is no commercial nonagricultural activity already in existence on the land
21 at the time of application for the special permit or on any portion of the farm that is not subject to
22 the development easement, except that the committee may waive the requirements of this
23 paragraph, either entirely or subject to any appropriate conditions,

24 (a) if such existing commercial nonagricultural activity is deemed to be of
25 a minor or insignificant nature or to rely principally upon farm products, as defined pursuant to
26 [insert citation], derived from the farm, or

27 (b) for other good cause shown by the applicant;

(3) the permit is for [one] commercial nonagricultural activity only;

(4) no more than [one] permit may be valid at any [one] time for use on the land;

(5) the permit is for a maximum of [20 years] duration;

(6) the permit does not run with the land and may not be assigned;

(7) the commercial nonagricultural activity utilizes, or is supported through the occupation of, a structure or structures existing on the date of enactment of this Act, except that the permit may authorize, subject to the requirements of paragraph (12) of this subsection, an expansion of an existing structure or structures which expansion does not exceed [500 square feet] in footprint area in total for all of the structures, provided that, for any such expansion, the applicant demonstrates to the satisfaction of the [committee] that:

(a) the purpose or use of the expansion is necessary to the operation or functioning of the commercial nonagricultural activity;

(b) the area of the proposed footprint of the expansion is reasonably calculated based solely upon the demands of accommodating the commercial nonagricultural activity and does not incorporate excess space; and

(c) the location, design, height, and aesthetic attributes of the expansion reflect the public interest of preserving the natural and unadulterated appearance of the landscape and structures;

(8) the commercial nonagricultural activity does not interfere with the use of the land for agricultural production;

(9) the commercial nonagricultural activity utilizes the land and structures in their existing condition except as allowed otherwise pursuant to paragraph (7) of this subsection;

(10) the commercial nonagricultural activity does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area, and does not involve the creation of additional parking spaces whether paved or unpaved;

(11) the commercial nonagricultural activity is not a high traffic volume business;

and

(12) any necessary local zoning and land use approvals and any other applicable approvals that may be required by federal, State, or local law, rule, regulation, or ordinance are obtained for the commercial nonagricultural activity.

d. In addition to those factors enumerated under subsection c. of this section, the [committee], in evaluating an application for a special permit, shall also consider such additional factors as traffic generated and the number of employees required by the proposed commercial nonagricultural activity so as to limit to the maximum extent possible the intensity of the activity and its impact on the land and the surrounding area.

e. For the purposes of this section:

“Commercial nonagricultural activity” shall not include a personal wireless service facility as defined and regulated pursuant to section 2 of this Act;

“Qualifying land” means a farm that was preserved for farmland preservation purposes prior to the date of enactment of this act under any of the laws cited in subsection a. of this section and for which no portion of the farm was excluded in the deed of easement from preservation; and

“Qualifying tax exempt nonprofit organization” shall have the same meaning as set forth in [insert citation].

Section 3. [*Special Permit to Allow a Personal Wireless Service Facility on Certain Land; Conditions.*]

a. Any person who owns land on which a development easement was conveyed to, or retained by, the [committee, a board, or a qualifying tax exempt nonprofit organization] pursuant to the provisions of [insert citation], or any other state law enacted for farmland preservation

purposes may apply for a special permit pursuant to this section to allow a personal wireless service facility to be erected on the land.

b. The [committee], in its sole discretion, may issue a special permit pursuant to this section to the landowner if the development easement is owned by the [committee]. The [committee and the board], in their joint discretion, may authorize the [committee] to issue a special permit pursuant to this section to the landowner if the development easement is owned by a [board]. The [committee and the qualifying tax exempt nonprofit organization], in their joint discretion, may authorize the [committee] to issue a special permit pursuant to this section to the landowner if the development easement is owned by a [qualifying tax exempt nonprofit organization].

c. A special permit may be issued pursuant to this section provided that:

(1) the land is a commercial farm as defined pursuant to [insert citation];

(2) there is no commercial nonagricultural activity already in existence on the land at the time of application for the special permit or on any portion of the farm that is not subject to the development easement, except that the [committee] may waive the requirements of this paragraph, either entirely or subject to any appropriate conditions,

(a) if such preexisting commercial nonagricultural activity is deemed to be of a minor or insignificant nature or to rely principally upon farm products, as defined pursuant to [insert citation], derived from the farm, or

(b) for other good cause shown by the applicant;

(3) the permit is for [one] personal wireless service facility only, although this paragraph shall not prohibit the [committee, board, or qualifying tax exempt nonprofit organization], as the case may be, from approving the sharing of the single permitted facility by more than [one] personal wireless service company, or the use of the facility for other compatible wireless communication uses deemed by the [committee, board, or qualifying tax exempt nonprofit organization], as the case may be, to not be violative of the intent or the goals, purposes, or requirements of this section;

(4) no more than [one] permit may be valid at any [one] time for use on the land;

(5) the permit is for a maximum of [20 years] duration;

(6) the permit does not run with the land and may not be assigned;

(7) the personal wireless service facility utilizes, or is supported through the occupation of, existing structures, except that the permit may authorize, subject to the requirements of paragraph (12) of this subsection, an expansion of an existing structure or structures which expansion does not exceed [500 square feet] in footprint area in total for all of the structures, or the construction of a new structure not to exceed [500 square feet] in footprint area which is independent of any existing structure, provided that in either case the applicant demonstrates to the satisfaction of the [committee] that:

(a) the expansion or the new structure is necessary to the operation or functioning of the personal wireless service facility;

(b) for a new structure,

(i) there are no existing structures on the land which could be utilized or occupied to adequately support the personal wireless service facility, and

(ii) the relevant deficiencies associated with each such existing structure, as indicated in a written description provided by the applicant, support that conclusion; and

(c) the area of the proposed footprint of the expansion or the new structure is reasonably calculated based solely upon the demands of accommodating the personal wireless service facility and does not incorporate excess space;

(8) the location, design, height, and aesthetic attributes of the personal wireless service facility reflect, to the greatest degree possible without creating an undue hardship on the

applicant or an unreasonable impediment to the erection of the personal wireless service facility, the public interest of preserving the natural and unadulterated appearance of the landscape and structures;

(9) the personal wireless service facility does not interfere with the use of the land for agricultural production;

(10) the personal wireless service facility utilizes the land and structures in their existing condition except as allowed otherwise pursuant to paragraph (7) of this subsection;

(11) the personal wireless service facility does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area, and does not involve the creation of additional parking spaces whether paved or unpaved; and

(12) any necessary local zoning and land use approvals and any other applicable approvals that may be required by federal, state, or local law, rule, regulation, or ordinance are obtained for the personal wireless service facility.

d. In addition to those factors enumerated under subsection c. of this section, the [committee], in evaluating an application for a special permit for a personal wireless service facility, shall also consider such additional factors as traffic generated and the number of employees required by the proposed personal wireless service facility so as to limit to the maximum extent possible the intensity of the activity and its impact on the land and the surrounding area.

e. Notwithstanding any law, rule, or regulation to the contrary, a personal wireless service company whose proposed facility is the subject of a permit application pursuant to this section shall be required to obtain all applicable local zoning and land use approvals and any other applicable approvals that may be required by state or local law, rule, regulation, or ordinance even if the proposed facility includes a compatible wireless communication use, such as law enforcement or emergency response communication equipment, which may otherwise allow the proposed facility to be exempt from obtaining any such approvals.

f. As a condition of the issuance of a permit pursuant to this section, a personal wireless service facility shall agree to allow, at no charge to the requesting state or local governmental entity, the sharing of the facility for any state or local government owned or sponsored compatible wireless communication use for public purposes, such as law enforcement or emergency response communication equipment, approved by the [committee].

g. For the purposes of this section:

“Qualifying tax exempt nonprofit organization” shall have the same meaning as set forth in [insert citation]; and

“Personal wireless service facility” means a personal wireless service tower and any associated equipment and structures necessary to operate and maintain that tower, as regulated pursuant to federal law.

Section 4. [*Special Permit, Application Fee, Grounds for Suspension, Revocation.*]

a. The application fee for a special permit authorized pursuant to either section 1 or section 2 of this Act shall be [\$1,000], payable to the [committee] regardless of whether or not a permit is issued. All proceeds from the collection of application fees by the [committee] pursuant to this Act shall be utilized by the [committee] for farmland preservation purposes.

b. The [committee] may suspend or revoke a special permit issued pursuant to either section 1 or section 2 of this Act for a violation of any term or condition of the permit or any provision of the respective section.

c. The [committee] shall, within [60 days] after the date of enactment of this Act, develop guidelines for the implementation and administration of this Act, including, but not limited to, procedures and standards for the filing, evaluation, and approval of permit applications, which

178 seek to balance, as equally important concepts, the public interest in protecting farmland from
179 further development as a means of preserving agriculture and agricultural structures and
180 enhancing the beauty and character of the state and the local communities where farmland has
181 been preserved with the public interest in providing support to sustain and strengthen the
182 agricultural industry in the state.

183 d. Every [two years], the [committee] shall prepare a report on the implementation of this
184 Act. The report shall include a survey and inventory of all commercial nonagricultural activities
185 occurring on, and of all personal wireless service facilities placed on, preserved farmland in
186 accordance with this Act; the extent to which existing structures, such as barns, sheds, and silos,
187 are used for those purposes, and how those structures have been modified therefor; the extent to
188 which new structures, instead of existing structures, have been erected to host personal wireless
189 service facilities and the number and type of new structures used to disguise those facilities, such
190 as artificial trees and faux barns, sheds, and silos; and such other information as the [committee]
191 deems useful. The report prepared pursuant to this subsection shall be transmitted to the
192 [Governor, the President of the Senate, the Speaker of the General Assembly, the respective
193 chairpersons of the Senate Economic Growth Committee, the Senate Environment Committee,
194 the Assembly Agriculture and Natural Resources Committee, and the Assembly Environment and
195 Solid Waste Committee or their designated successors]. Copies of the report shall also be made
196 available to the public upon request and free of charge, and shall be posted on the website of the
197 [Agriculture Development Committee].

198 e. The [committee] shall adopt, pursuant to [insert citation], any rules and regulations
199 necessary to carry out the purposes of this Act.

200
201 Section 5. [*Severability*.] [Insert severability clause.]

202
203 Section 6. [*Repealer*.] [Insert repealer clause.]

204
205 Section 7. [*Effective Date*.] [Insert effective date.]

Prescription Drugs, Health Professions, Wholesale Drug Distribution Note

According to an Indiana legislative staff report:

In 1988, the US Congress passed the Prescription Drug Monitoring Act. This law did several things. The Indiana Legislature and the Indiana Board of Pharmacy were most interested in the following provisions:

- It required drug pedigrees to be passed along with the drug for certain wholesale drug distributions. This is due to counterfeit drugs being detected within the system.

- It gave the states the authority to regulate the wholesale drug industry.

The wholesale drug distribution (WDD) industry and pharmaceutical manufacturing industry fought the pedigree requirement by insisting that the requirement was too onerous to enact. Thus the FDA has stayed that part of the law for 18 years and it has yet to be enacted. The states did license wholesale drug distributors but, the requirements were very loose and not consistent across states. Some states required inspections and security systems while other states just required a form and a fee.

In 2003 the Food and Drug Administration (FDA) formed an anti-counterfeiting task force in response to the increasing reports of counterfeit drugs infiltrating the US drug distribution system. This task force released an interim report in September of 2003, which was followed by the issuance of a final report issued by the FDA in February 2004. The final report adopted the task force's recommendations. That report made the following recommendations. It asked National Association of Boards of Pharmacy (NABP) to examine and update its current state model regulations for wholesalers in an effort to tighten up the licensure of wholesalers. It requested that states increase the penalties for parties that are caught counterfeiting drugs. The FDA strongly encouraged the voluntary adoption of RFID technology to attach electronic pedigrees to drugs and suggested implementation by 2007. NABP convened a task force in October 2003 to meet this mandate. NABP worked quickly and thoroughly to produce a new model for regulation of the wholesale drug industry. In February 2004, NABP released the Model Rules for the Licensure of Wholesale Distributors, which was based upon Florida's laws for wholesalers, and the input from industry stakeholders. NABP also addressed the FDA's request by creating an accreditation program for wholesale drug distributors—the Verified-Accredited Wholesale Distributors (VAWD) Program. Applicants for VAWD accreditation undergo a criteria compliance review, licensure verification, an inspection, background checks, and screening through NABP's Disciplinary Clearinghouse. State utilization of the VAWD program can help mitigate the adverse fiscal and operational impact of the increased regulation on state government. The model language also set stiffer penalties for the counterfeiting of medications.

Indiana's amendment of its WDD laws began with State Senator Marvin Riegsecker, an Indiana pharmacist. The Senator contacted the Indiana Board of Pharmacy for guidance and was given a copy of NABP's Model Rules for the Licensure of Wholesale Distributors. The language initially introduced by Senator Riegsecker as a Senate bill worked its way through the legislative process. HEA 1098, the final home for the WDD language, was signed by Governor Mitch Daniels in May of 2005.

In general, Indiana's new law brought about three tiers of change to their previous statute:

- Established criminal penalties for counterfeiting;
- Increased licensing requirements and required NABP's VAWD accreditation for each wholesaler; and
- Requires pedigrees for products that leave the normal distribution chain of custody and authorized the Board to eventually establish an electronic pedigree system for all prescription

drugs. HEA 1098 is being recognized as a national model and has received commendations in state legislatures throughout the country, as well as the United States Congress and the Food and Drug Administration.

In addition, HEA 1098:

- Establishes a program for the licensing and regulation of personal services agencies;
 - Provides that home health agencies and personal services agencies are approved to provide home health or personal services under certain federal waivers;
 - Provides that home health services include services that are required to be ordered or performed by certain health care professionals;
 - Increases the home health agency license fee;
 - Requires a personal services agency to comply with employee criminal history check requirements;
 - Provides that a home health agency that operates a personal services agency is not required to obtain a license to operate the personal services agency;
 - Makes operating or advertising an unlicensed personal services agency a Class A misdemeanor;
 - Requires a placement agency to provide the consumer and worker with certain information when a home care services worker is placed in the consumer's home;
 - Allows the state department of health to impose a civil penalty against a placement agency for failing to provide the notice;
 - Relocates the definition of “attendant care services;”
 - Requires the board of pharmacy to establish procedures to ensure that pharmacies may return expired prescription drugs to drug wholesalers and manufacturers;
 - Specifies information that the board must consider in establishing the procedures;
 - Expands the requirements that must be met by a wholesale drug distributor for eligibility for licensure;
 - Allows certain state licensure exams to apply to the psychology reciprocity requirements;
 - Amends several definitions concerning speech-language pathology and audiology;
 - Requires licensure of speech-language pathology aides, associates, and assistants;
 - Amends licensure requirements of speech-language pathologists and audiologists;
 - Requires an audiologist to possess a doctorate degree after January 1, 2007, for an initial license;
 - Allows the professional standards board to issue credentials to certain speech language professionals;
 - Allows certified speech-language pathologists and audiologists who meet certain requirements to be considered to have a National Board of Professional Teaching Standards certification;
 - Requires a referral to administer a test of vestibular function;
 - Amends reciprocity licensure requirements for speech language pathologists and audiologists;
 - Requires licenses to be displayed;
 - Specifies criminal acts related to wholesale drug distribution and legend drugs; and
 - Allows the board of pharmacy to establish an electronic pedigree pilot program.
- Makes conforming changes.

The passage of this bill was the first of its kind in the nation. The process of negotiation to achieve consensus was enormous. Since the entire drug distribution chain is affected by the

language of the bill, many parties were involved in the discussions and ultimately the agreement on this legislation. Parties involved were manufacturers, primary and secondary wholesalers and their associations, National Association of Chain Drug Stores, third party logistics providers, Indiana Pharmacists Alliance and the Indiana Board of Pharmacy.

In 2006, SEA 202 was enacted to make technical corrections to the WDD law. Again, the stakeholders were involved in building a consensus to improve the WDD licensure process.

SEA 202:

- Allows a mechanical device that dispenses drugs to be used at certain remote locations and health care facilities.
- Removes authority for pharmacist extern programs. Adds persons who are allowed to be pharmacist interns.
- Changes references from the Foreign Pharmacy Graduate Equivalency Examination to the Foreign Pharmacy Graduate Examination Committee Certificate.
- Removes the practical examination requirement for certain pharmacists who are licensed in another jurisdiction.
- Provides that a person who has not renewed a pharmacist license within seven years must apply for a new license.
- Allows certain hospitals to operate Type II pharmacies in approved locations near the licensed area.
- Prohibits licensing a pharmacy in a residence.
- Authorizes the board of pharmacy (board) to temporarily suspend certain statutes or administrative rules that would prevent, hinder, or delay the appropriate delivery of pharmaceutical care during a state of emergency declared by the governor or the President of the United States.
- Provides that companies that only manufacture or distribute medical gases are not wholesale drug distributors or manufacturers.
- Adds and amends definitions concerning wholesale drug distributors.
- Allows the board to appoint a designee to inspect wholesale distribution operations. Requires a person seeking a wholesale drug distributor license to provide the board with a criminal history and financial background checks.
- Requires a record keeping pedigree for certain legend drugs that leave the normal chain of custody. Removes the requirement that drug distributors have: (1) a continuous quality improvement system; and (2) policies concerning certain drugs that may be returned.
- Requires that certain wholesale drug accreditation bodies that have an agreement with the board review accreditation denials; and
- Allows the board to grant reciprocity to out of state home medical equipment service providers.

Submitted as:

Indiana HEA 1098 and SEA 202

Status:

HEA 1098 - Enacted into law in 2005.

SEA 202 – Enacted into law in 2006.

Prescription Drug Retail Price Registry

This Act directs the state division of consumer affairs to establish an online registry of retail price information for the 150 most frequently prescribed prescription drugs in the state.

Submitted as:

New Jersey

Chapter 84 of 2006

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as the “Prescription Drug Retail Price
2 Registry Act.”

3
4 Section 2. [*Prescription Drug Retail Price Registry.*]

5 a. There is established a “Prescription Drug Retail Price Registry” in the [division of
6 consumer affairs in the department of law and public safety] for the purpose of making retail
7 price information for the [150] most frequently prescribed prescription drugs in the state readily
8 available to consumers.

9 b. For the purpose of establishing the registry, the [director of the division of consumer
10 affairs], in consultation with the [commissioners of human services and health and senior
11 services], shall obtain drug retail price information for these prescription drugs, which indicates
12 the actual price to be paid to a pharmacy by a retail purchaser for a listed drug at the listed
13 dosage, from data collected by the [division of medical assistance and health services in the
14 department of human services] that includes the charge for the cost of the medication and the
15 dispensing fee, and does not exceed the usual and customary or posted or advertised charge by the
16 pharmacy. The establishment of the registry shall be subject to any federal approval that may be
17 required to effectuate the purposes of this Act and shall conform with any requirements of state or
18 federal law regarding the confidentiality and use of the information contained therein.

19 c. The registry shall include the information obtained by the [director] for [paragraph (b)]
20 of this section, and shall be updated by the [division] at least [weekly] to reflect the most current
21 information obtained by the [director].

22 d. The registry shall be organized by the [director] in a format that is conducive to review
23 and comparison by consumers of prescription drug retail prices charged by pharmacies in each
24 zip code within the state, and shall include the name and address of each pharmacy.

25 e. The [division] shall make available electronically on its Internet website in English and
26 Spanish the information contained in the registry, and shall provide the information to consumers
27 upon request by means of a toll-free telephone service operated by the [division]. The information
28 made available on the Internet website shall:

29 (1) be organized to meet the requirements of this section and be designed so that
30 the consumer may download and print the displayed information;

31 (2) include Internet web links to other governmental information resources that
32 provide information relating to the regulation of prescription drugs and state and federal health
33 care coverage and pharmaceutical assistance programs;

(3) include an advisory statement by the [division] alerting consumers of the need to tell their health care practitioner and pharmacist about all the medications they may be taking and to ask them how to avoid harmful interactions between those drugs, if any; and

(4) contain clearly understandable language that is designed to assist consumers in understanding the content of, and how to access, the information made available on the website pursuant to this section.

f. The [director] may require each pharmacy practice site in the state to furnish to the [director] such information as the [director] deems necessary to effectuate the provisions of this section.

g. The [division] may contract with a public or private entity for the purpose of developing, administering, and maintaining the registry established pursuant to this section. The contract shall specify the duties and responsibilities of the entity with respect to the development, administration, and maintenance of the registry. The [division] shall monitor the work of the entity to ensure that the registry is developed, administered, and maintained pursuant to the requirements of this Act.

Section 3. *[Annual List of [150] Most Frequently Prescribed Prescription Drugs Distributed to Pharmacies; Drug Retail Price List Maintained by Pharmacy.]*

a. The [director of the division of consumer affairs] shall prepare at least [annually], and shall make available to each pharmacy practice site in the state without charge, a list of the [150] most frequently prescribed prescription drugs that includes the usual dosages prescribed for each drug.

b. Each pharmacy practice site in the state shall maintain a prescription drug retail price list, which contains the names of the drugs on the list provided by the [division] pursuant to [subsection a.] of this section and the retail price for each drug on the list charged at that pharmacy practice site, including the date of the update of the retail price list, and shall make the prescription drug retail price list available to customers upon request.

c. The prescription drug retail price list shall include an advisory statement prepared by the [division] alerting consumers of the need to tell their health care practitioner and pharmacist about all the medications that they may be taking and to ask them how to avoid harmful interactions between those drugs, if any.

d. The pharmacy practice site shall post a sign that notifies customers of the availability of the drug retail price list in a conspicuous location that is at or adjacent to the place where prescriptions are presented for compounding and dispensing, in the waiting area for customers, or in the area where prescribed drugs are delivered.

e. The provisions of this section shall not be construed to prevent a pharmacy practice site from changing or charging the current retail price at any time, provided that the listed price is updated at least [weekly] to reflect the new retail price.

f. The [director of the division of consumer affairs], pursuant to the [state Administrative Procedure Act], shall adopt rules and regulations to effectuate the purposes of this Act.

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

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

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

Pretexting

The Federal Trade Commission defines pretexting as the practice of getting your personal information under false pretenses. Pretexters sell your information to people who may use it to get credit in your name, steal your assets, or to investigate or sue you.

This Act provides that identity theft also occurs when a person knowingly:

- uses any personal identification information or personal identification document of another to portray himself or herself as that person, or otherwise, for the purpose of gaining access to any personal identification information or personal identification document of that person, without the prior express permission of that person, or
- uses any personal identification information or personal identification document of another for the purpose of gaining access to any record of the actions taken, communications made or received, or other activities or transactions of that person, without the prior express permission of that person.

This Act provides that where a person has been convicted of this form of identity theft, in the absence of proof of actual damages, the person whose personal identification information or personal identification documents were used in the violation in question may recover damages of \$2,000.

The legislation provides that it is no defense to a charge of aggravated identity theft or identity theft that the offender received the consent of any person to access any personal identification information or personal identification document, other than the person described by the personal identification information or personal identification document used by the offender.

This Act provides that the new offense of using any personal identification information or personal identification document of another to portray himself or herself as that person, or otherwise, for the purpose of gaining access to any personal identification information or personal identification document of that person, without the prior express permission of that person, must be done for the purpose of fraudulently gaining access to any personal identification information or personal identification document of that person and the new offense of using any personal identification information or personal identification document of another for the purpose of gaining access to any record of the actions taken, communications made or received, or other activities or transactions of that person, without the prior express permission of that person must be with the intent to commit or to aid or abet another in committing any felony theft or other felony violation of State law.

Submitted as:

Illinois

Public Act 094-1008

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Pretexting.”

2

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

4 (a) “Personal identification document” means a birth certificate, a driver’s license, a State
5 identification card, a public, government, or private employment identification card, a social
6 security card, a firearm owner’s identification card, a credit card, a debit card, or a passport issued

7 to or on behalf of a person other than the offender, or any document made or issued, or falsely
8 purported to have been made or issued, by or under the authority of the United States
9 Government, this state, or any other political subdivision of any state, or any other governmental
10 or quasi-governmental organization that is of a type intended for the purpose of identification of
11 an individual, or any such document made or altered in a manner that it falsely purports to have
12 been made on behalf of or issued to another person or by the authority of one who did not give
13 that authority.

14 (b) "Personal identifying information" means any of the following information:

- 15 (1) A person's name;
- 16 (2) A person's address;
- 17 (3) A person's date of birth;
- 18 (4) A person's telephone number;
- 19 (5) A person's driver's license number or state identification card as assigned by
20 the [Secretary of State] of this state or a similar agency of another state;
- 21 (6) A person's Social Security number;
- 22 (7) A person's public, private, or government employer, place of employment, or
23 employment identification number;
- 24 (8) The maiden name of a person's mother;
- 25 (9) The number assigned to a person's depository account, savings account, or
26 brokerage account;
- 27 (10) The number assigned to a person's credit or debit card, commonly known as a
28 "Visa Card," "Master Card," "American Express Card," "Discover Card," or other similar cards
29 whether issued by a financial institution, corporation, or business entity;
- 30 (11) Personal identification numbers;
- 31 (12) Electronic identification numbers;
- 32 (13) Digital signals;
- 33 (14) User names, passwords, and any other word, number, character or
34 combination of the same usable in whole or part to access information relating to a specific
35 individual, or to the actions taken, communications made or received, or other activities or
36 transactions of a specific individual.
- 37 (15) Any other numbers or information which can be used to access a person's
38 financial resources, or to identify a specific individual, or the actions taken, communications
39 made or received, or other activities or transactions of a specific individual.

40 (c) "Document-making implement" means any implement, impression, template,
41 computer file, computer disc, electronic device, computer hardware, computer software,
42 instrument, or device that is used to make a real or fictitious or fraudulent personal identification
43 document.

44 (d) "Financial transaction device" means any of the following:

- 45 (1) An electronic funds transfer card.
- 46 (2) A credit card.
- 47 (3) A debit card.
- 48 (4) A point-of-sale card.
- 49 (5) Any instrument, device, card, plate, code, account number, personal
50 identification number, or a record or copy of a code, account number, or personal identification
51 number or other means of access to a credit account or deposit account, or a driver's license or
52 state identification card used to access a proprietary account, other than access originated solely
53 by a paper instrument, that can be used alone or in conjunction with another access device, for
54 any of the following purposes:
 - 55 (A) Obtaining money, cash refund or credit account, credit, goods,
56 services, or any other thing of value.

(B) Certifying or guaranteeing to a person or business the availability to the device holder of funds on deposit to honor a draft or check payable to the order of that person or business.

(C) Providing the device holder access to a deposit account for the purpose of making deposits, withdrawing funds, transferring funds between deposit accounts, obtaining information pertaining to a deposit account, or making an electronic funds transfer.

Section 3. [*Identity Theft*.]

(a) A person commits the offense of identity theft when he or she knowingly:

(1) uses any personal identifying information or personal identification document of another person to fraudulently obtain credit, money, goods, services, or other property, or

(2) uses any personal identification information or personal identification document of another with intent to commit any felony theft or other felony violation of state law not set forth in [paragraph (1) of this subsection (a)], or

(3) obtains, records, possesses, sells, transfers, purchases, or manufactures any personal identification information or personal identification document of another with intent to commit or to aid or abet another in committing any felony theft or other felony violation of state law, or

(4) uses, obtains, records, possesses, sells, transfers, purchases, or manufactures any personal identification information or personal identification document of another knowing that such personal identification information or personal identification documents were stolen or produced without lawful authority, or

(5) uses, transfers, or possesses document-making implements to produce false identification or false documents with knowledge that they will be used by the person or another to commit any felony theft or other felony violation of state law, or

(6) uses any personal identification information or personal identification document of another to portray himself or herself as that person, or otherwise, for the purpose of gaining access to any personal identification information or personal identification document of that person, without the prior express permission of that person, or

(7) uses any personal identification information or personal identification document of another for the purpose of gaining access to any record of the actions taken, communications made or received, or other activities or transactions of that person, without the prior express permission of that person.

(b) Knowledge shall be determined by an evaluation of all circumstances surrounding the use of the other person's identifying information or document.

(c) When a charge of identity theft of credit, money, goods, services, or other property exceeding a specified value is brought the value of the credit, money, goods, services, or other property is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value.

(d) Sentence.

(1) A person convicted of identity theft in violation of [paragraph (1) of subsection (a)] shall be sentenced as follows:

(A) identity theft of credit, money, goods, services, or other property not exceeding [\$300] in value is a [Class 4 felony]. A person who has been previously convicted of identity theft of less than [\$300] who is convicted of a second or subsequent offense of identity theft of less than [\$300] is guilty of a [Class 3 felony]. A person who has been convicted of identity theft of less than [\$300] who has been previously convicted of any type of theft, robbery, armed robbery, burglary, residential burglary, possession of burglary tools, home invasion, home repair fraud, aggravated home repair fraud, or financial exploitation of an elderly or disabled person is guilty of a [Class 3 felony]. When a person has any such prior conviction, the

information or indictment charging that person shall state the prior conviction so as to give notice of the State's intention to treat the charge as a [Class 3 felony]. The fact of the prior conviction is not an element of the offense and may not be disclosed to the jury during trial unless otherwise permitted by issues properly raised during the trial.

(B) Identity theft of credit, money, goods, services, or other property exceeding [\$300] and not exceeding [\$2,000] in value is a [Class 3 felony].

(C) Identity theft of credit, money, goods, services, or other property exceeding [\$2,000] and not exceeding [\$10,000] in value is a [Class 2 felony].

(D) Identity theft of credit, money, goods, services, or other property exceeding [\$10,000] and not exceeding [\$100,000] in value is a [Class 1 felony].

(E) Identity theft of credit, money, goods, services, or other property exceeding [\$100,000] in value is a [Class X felony].

(2) A person convicted of any offense enumerated in [paragraphs (2) through (7) of subsection (a)] is guilty of a [Class 3 felony].

(3) A person convicted of any offense enumerated in [paragraphs (2) through (5) of subsection (a)] a second or subsequent time is guilty of a [Class 2 felony].

(4) A person who, within a [12-month] period, is found in violation of any offense enumerated in paragraphs (2) through (7) of subsection (a) with respect to the identifiers of, or other information relating to, [3 or more separate people], at the same time or consecutively, is guilty of a [Class 2 felony].

Section 4. [*Civil Remedies.*] A person who is convicted of identity theft or aggravated identity theft is liable in a civil action to the person who suffered damages as a result of the violation. The person suffering damages may recover court costs, attorney's fees, lost wages, and actual damages. Where a person has been convicted of identity theft in violation of [subsection (a)(6) or subsection (a)(7) of Section 3], in the absence of proof of actual damages, the person whose personal identification information or personal identification documents were used in the violation in question may recover damages of [\$2,000].

Section 5. [*Offenders Interest in the Property, Consent.*]

(a) It is no defense to a charge of aggravated identity theft or identity theft that the offender has an interest in the credit, money, goods, services, or other property.

(b) It is no defense to a charge of aggravated identity theft or identity theft that the offender received the consent of any person to access any personal identification information or personal identification document, other than the person described by the personal identification information or personal identification document used by the offender.

Section 6. [*Mandating Law Enforcement Agencies to Accept and Provide Reports; Judicial Factual Determination.*]

(a) A person who has learned or reasonably suspects that his or her personal identifying information has been unlawfully used by another may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over his or her actual residence, which shall take a police report of the matter, provide the complainant with a copy of that report, and begin an investigation of the facts or, if the suspected crime was committed in a different jurisdiction, refer the matter to the law enforcement agency where the suspected crime was committed for an investigation of the facts.

(b) A person who reasonably believes that he or she is the victim of financial identity theft may petition a court, or the court, on its own motion or upon application of the prosecuting attorney, may move for an expedited judicial determination of his or her factual innocence, where the perpetrator of the financial identity theft was arrested for, cited for, or convicted of a crime

under the victim's identity, or where a criminal complaint has been filed against the perpetrator in the victim's name, or where the victim's identity has been mistakenly associated with a criminal conviction. Any judicial determination of factual innocence made pursuant to this [subsection (b)] may be heard and determined upon declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be part of the record by the court. If the court determines that the petition or motion is meritorious and that there is no reasonable cause to believe that the victim committed the offense for which the perpetrator of the identity theft was arrested, cited, convicted, or subject to a criminal complaint in the victim's name, or that the victim's identity has been mistakenly associated with a record of criminal conviction, the court shall find the victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying this determination.

(c) After a court has issued a determination of factual innocence under this section, the court may order the name and associated personal identifying information contained in the court records, files, and indexes accessible by the public sealed, deleted, or labeled to show that the data is impersonated and does not reflect the defendant's identity.

(d) A court that has issued a determination of factual innocence under this section may at any time vacate that determination if the petition, or any information submitted in support of the petition, is found to contain any material misrepresentation or fraud.

(e) Except for criminal and civil actions provided for by this Act, or for disciplinary or licensure-related proceedings involving the violation of this Act, no information acquired by, or as a result of, any violation of [Section 3] of this Act shall be discoverable or admissible in any court or other proceeding, or otherwise subject to disclosure without the express permission of any person or people identified in that information.

Section 7. [*Venue.*] In addition to any other venues provided for by statute or otherwise, venue for any criminal prosecution or civil recovery action under this Act shall be proper in any county where the person described in the personal identification information or personal identification document in question resides or has their principal place of business. Where a criminal prosecution or civil recovery action under this Act involves the personal identification information or personal identification documents of more than one person, venue shall be proper in any county where one or more of the people described in the personal identification information or personal identification documents in question resides or has their principal place of business.

Section 8. [*Exemptions, Relation to Other Laws.*]

(a) This Act does not:

(1) prohibit the capture or transmission of personal identifying information in the ordinary and lawful course of business;

(2) apply to a peace officer of this state, or of the federal government, or the officer's agent, while in the lawful performance of the officer's duties;

(3) prohibit a licensed private detective or licensed private detective agency from representing himself, herself, or itself as any another person, provided that he, she, or it may not portray himself, herself, or itself as the person whose information he, she, or it is seeking except as provided under this Act;

(4) apply to activities authorized under any other statute.

(b) No criminal prosecution or civil action brought under this Act shall prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this Act.

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

207

208

209

210

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

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

Requiring Proof of Lawful Presence to Receive Public Benefits

This Act requires each state agency or political subdivision to verify the lawful presence in the United States of each person 18 years of age or older who applies for public benefits, as defined in federal law, for the applicant. It excludes specified public benefits. The legislation specifies the manner of verification, including requiring a specified form of identification, an affidavit, and verification through a federal program. It specifies criminal penalties for falsifying a required affidavit. It also authorizes variations of the affidavit requirement. It prohibits state agencies or political subdivisions from providing benefits in violation of the Act and establishes reporting requirements.

Submitted as:

Colorado

Chapter 13, Laws of 2006

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act Requiring Proof of Lawful
2 Presence to Receive Public Benefits.”

3
4 Section 2. [*Legislative Declaration.*] It is the public policy of this state that all people
5 eighteen years of age or older shall provide proof that they are lawfully present in the United
6 States prior to receipt of certain public benefits.

7
8 Section 3. [*Definitions.*] As used in this Act, unless the context otherwise requires:

9 (1) “emergency medical condition” shall have the same meaning as provided in 42 U.S.C.
10 Sec. 1396b (V) (3).

11 (2) “federal public benefits” shall have the same meaning as provided in 8 U.S.C. Sec.
12 1611.

13 (3) “state or local public benefits” shall have the same meaning as provided in 8 U.S.C.
14 Sec. 1621.

15
16 Section 4. [*Verification of Lawful Presence - Exceptions - Reporting.*]

17 (1) Except as otherwise provided in [subsection (3)] of this section or where exempted by
18 federal law, on and after [insert date], each agency or political subdivision of the state shall verify
19 the lawful presence in the United States of each natural person [eighteen years of age] or older
20 who applies for state or local public benefits or for federal public benefits for the applicant.

21 (2) This section shall be enforced without regard to race, religion, gender, ethnicity, or
22 national origin.

23 (3) Verification of lawful presence in the United States shall not be required:

24 (a) for any purpose for which lawful presence in the United States is not required
25 by law, ordinance, or rule;

(b) for obtaining health care items and services that are necessary for the treatment of an emergency medical condition of the person involved and are not related to an organ transplant procedure;

(c) for short-term, noncash, in-kind emergency disaster relief;

(d) for public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;

(e) for programs, services, or assistance, such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by federal law or regulation that:

(i) deliver in-kind services at the community level, including services through public or private nonprofit agencies;

(ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(iii) are necessary for the protection of life or safety; or

(f) for prenatal care.

(4) An agency or a political subdivision shall verify the lawful presence in the United States of each applicant [eighteen years of age] or older for federal public benefits or state or local public benefits by requiring the applicant to:

(a) produce:

(i) a valid [insert state] driver's license or a [insert state] identification card, issued pursuant to [insert citation]; or

(ii) a United States Military Card or a Military Dependent's Identification Card; or

(iii) a United States Coast Guard Merchant Mariner Card; or

(iv) a Native American tribal document; and

(b) execute an affidavit stating:

(i) that he or she is a United States citizen or legal permanent resident; or

(ii) that he or she is otherwise lawfully present in the United States pursuant to Federal law.

(5) (a) Notwithstanding the requirements of [paragraph (a) of subsection (4)] of this section, the [executive director of the department of revenue] may issue emergency rules, to be effective until [insert date], providing for additional forms of identification or a waiver process to ensure that an individual seeking benefits pursuant to this section proves lawful presence in the United States. The rules are necessary to ensure that certain people lawfully present in the United States receive authorized benefits, including but not limited to homeless state citizens.

(b) This [subsection (5)] and all emergency rules authorized under this [subsection (5)] are repealed, effective [insert date].

(6) A person who knowingly makes a false, fictitious, or fraudulent statement or representation in an affidavit executed pursuant to [subsection (4)] of this section shall be guilty of a violation of [insert citation]. It shall constitute a separate violation of [insert citation] each time that a person receives a public benefit based upon such a statement or representation.

(7) For an applicant who has executed an affidavit stating that he or she is an alien lawfully present in the United States, verification of lawful presence for federal public benefits or state or local public benefits shall be made through the federal Systematic Alien Verification of Entitlement Program, referred to in this section as the "Save Program," operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security. Until such verification of lawful presence is made, the affidavit may be presumed to be proof of lawful presence for purposes of this section.

(8) Agencies or political subdivisions of this state may adopt variations of the requirements of [paragraph (b) of subsection (4)] of this section to improve efficiency or reduce

76 delay in the verification process or to provide for adjudication of unique individual circumstances
77 in which the verification procedures in this section would impose unusual hardship on a legal
78 resident of the state; except that the variations shall be no less stringent than the requirements of
79 this section.

80 (9) It shall be unlawful for an agency or a political subdivision of this state to provide a
81 federal public benefit or a state or local public benefit in violation of this section. Each state
82 agency or department that administers a program that provides state or local public benefits shall
83 provide an annual report with respect to its compliance with this section to the [veterans, and
84 military affairs committees of the senate and house of representatives], or any successor
85 committees.

86 (10) Errors and significant delays by the Save Program shall be reported to the United
87 States Department of Homeland Security and to the Secretary of State, both of which monitor the
88 Save Program and its verification application errors and significant delays and report yearly on
89 such errors and delays, to ensure that the application of the Save Program is not wrongfully
90 denying benefits to legal residents of the state.

91 (11) If any provision of this section or the application thereof to any person or
92 circumstance is held invalid, such invalidity shall not affect other provisions or applications of the
93 section that can be given effect without the invalid provision or application, and to this end the
94 provisions of this section are declared to be severable.

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

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

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

Schoolchildren Health

This Act directs the state board of education to address public health and environmental issues in the classroom and on school grounds by doing all of the following:

- develop guidelines for sealing or removing existing arsenic-treated wood in playground equipment;
- establish guidelines to reduce students' exposure to diesel emissions that can occur as a result of unnecessary school bus idling, nose-to-tail parking, and inefficient route assignments;
- study methods for mold and mildew prevention and mitigation and incorporate recommendations into the public school facilities guidelines as needed;
- establish guidelines for Integrated Pest Management within school facilities, and
- encourage local school boards to remove and properly dispose of all bulk elemental mercury, chemical mercury, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers.

Submitted as:

North Carolina

Session Law 2006-143

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

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

2

3 Section 2. [*Protecting School-Age Children from Toxicants at School.*] The [State Board
4 of Education] shall address public health and environmental issues in the classroom and on school
5 grounds by doing all of the following:

6 a. Develop guidelines for sealing existing arsenic-treated wood in playground equipment
7 or establish a time line for removing existing arsenic-treated wood on playgrounds and testing the
8 soil on school grounds for contamination caused by the leaching of arsenic-treated wood in other
9 areas where children may be at particularly high risk of exposure.

10 b. Establish guidelines to reduce students' exposure to diesel emissions that can occur as a
11 result of unnecessary school bus idling, nose-to-tail parking, and inefficient route assignments.

12 c. Study methods for mold and mildew prevention and mitigation and incorporate
13 recommendations into the public school facilities guidelines as needed.

14 d. Establish guidelines for Integrated Pest Management consistent with the policy of [state
15 school board association] as published in [insert date]. These guidelines may be updated as
16 needed to reflect changes in technology.

17 e. Establish guidelines for notification of students' parents, guardians, or custodians as
18 well as school staff of pesticide use on school grounds.

19

20 Section 3. [*Using Pesticides in Schools.*] Local boards of education shall adopt policies
21 that address the use of pesticides in schools. These policies shall:

22 a. Require the principal or the principal's designee to annually notify the students' parents,
23 guardians, or custodians as well as school staff of the schedule of pesticide use on school property
24 and their right to request notification. Such notification shall be made, to the extent possible, at

least [72 hours] in advance of nonscheduled pesticide use on school property. The notification requirements under this subdivision do not apply to the application of the following types of pesticide products: antimicrobial cleansers, disinfectants, self-contained baits and crack-and-crevice treatments, and any pesticide products classified by the United States Environmental Protection Agency as belonging to the U.S.E.P.A. Toxicity Class IV, “relatively nontoxic” (no signal word required on the product’s label).

b. Require the use of Integrated Pest Management. As used in this sub-subdivision, “Integrated Pest Management” or “IPM” means the comprehensive approach to pest management that combines biological, physical, chemical, and cultural tactics as well as effective, economic, environmentally sound, and socially acceptable methods to prevent and solve pest problems that emphasizes pest prevention and provides a decision-making process for determining if, when, and where pest suppression is needed and what control tactics and methods are appropriate.

Section 4. [*Arsenic-Treated Wood in the Classroom and on School Grounds.*] Local boards of education shall prohibit the purchase or acceptance of chromated copper arsenate-treated wood for future use on school grounds. Local boards of education shall seal existing arsenic-treated wood in playground equipment or establish a time line for removing existing arsenic-treated wood on playgrounds, according to the guidelines established under [insert citation]. Local boards of education are encouraged to test the soil on school grounds for contamination caused by the leaching of arsenic-treated wood.

Section 5. [*Mercury in the Classroom and on School Grounds.*] Local boards of education are encouraged to remove and properly dispose of all bulk elemental mercury, chemical mercury, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers. Local boards of education shall prohibit the future use of bulk elemental mercury, chemical mercury compounds, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers.

Section 6. [*Exposure to Diesel Exhaust Fumes.*] Local boards of education shall adopt policies and procedures to reduce students’ exposure to diesel emissions.

Section 7. [*Private Cause of Action Against State Board of Education of Local Boards of Education.*] Nothing in this Act shall be construed to create a private cause of action against the [State Board of Education], a local board of education, or their agents or employees.

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

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

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

Security and Immigration Compliance

This Act provides for the comprehensive regulation of people in the state who are not lawfully present in the United States. Specifically, this Act:

- prohibits public employers and contractors and subcontractors from entering into certain labor contracts unless the contractor and subcontractors register and participate in a federal work authorization program to verify information about all new employees;
- provides that it shall be unlawful to traffic a person for labor or sexual servitude;
- directs the state commissioner of labor to negotiate a memorandum of understanding between the state and the United States Department of Justice or Department of Homeland Security about the enforcement of federal immigration and custom laws, detention and removals, and investigations in the state;
- directs jailers to make a reasonable effort verify that prisoners who are foreign nationals are lawfully admitted to the United States and if lawfully admitted, that such lawful status has not expired;
- establishes and enforce standards of ethics in the profession of immigration assistance by private people who are not licensed attorneys, and
- requires every agency or a political subdivision of the state to verify the lawful presence in the United States of any natural person 18 years of age or older who has applied for state or local public benefits.

Submitted as:

Georgia

SB 529AP

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The Security and Immigration
2 Compliance Act.”

3
4 Section 2. [*Definitions.*]

5 (a) As used in this Act:

6 (1) ‘Authorized employee’ means any individual authorized for employment in the
7 United States as defined in paragraph (2) of subsection (a) of 8 U.S.C. Section 1324a.

8 (2) ‘Coercion’ means:

9 (A) causing or threatening to cause bodily harm to any person, physically
10 restraining or confining any person, or threatening to physically restrain or confine any person;

11 (B) exposing or threatening to expose any fact or information that if
12 revealed would tend to subject a person to criminal or immigration proceedings, hatred, contempt,
13 or ridicule;

14 (C) destroying, concealing, removing, confiscating, or possessing any
15 actual or purported passport or other immigration document, or any other actual or purported
16 government identification document, of any person; or

17 (D) providing a controlled substance, as such term is defined by [insert
18 citation], to such person.

19 (3) ‘Commissioner’ means the [Commissioner of the Department of Labor].

(4) ‘Compensation’ means money, property, services, promise of payment, or anything else of value.

(5) ‘Deception’ means:

(A) creating or confirming another’s impression of an existing fact or past event which is false and which the accused knows or believes to be false;

(B) maintaining the status or condition of a person arising from a pledge by that person of his or her personal services as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined, or preventing a person from acquiring information pertinent to the disposition of such debt; or

(C) promising benefits or the performance of services which the accused does not intend to deliver or perform or knows will not be delivered or performed. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this Code section.

(6) ‘Employed by’ means that a person is on the payroll of the employer and the employer deducts from the employee’s paycheck social security and withholding taxes or that a person receives compensation from the employer on a commission basis or as an independent contractor.

(7) ‘Federal work authorization program’ means any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603.

(8) ‘Immigration assistance service’ means any information or action provided or offered to customers or prospective customers related to immigration matters, excluding legal advice, recommending a specific course of legal action or providing any other assistance that requires legal analysis, legal judgment, or interpretation of the law.

(9) ‘Immigration matter’ means any proceeding, filing, or action affecting the nonimmigrant, immigrant, or citizenship status of any person that arises under:

(A) Immigration and naturalization law, executive order, or presidential proclamation of the United States or any foreign country; or

(B) Action of the United States Department of Labor, the United States Department of State, the United States Department of Homeland Security, or the United States Department of Justice.

(10) ‘Labor services’ means the physical performance of services in this state.

(11) ‘Labor servitude’ means work or service of economic or financial value which is performed or provided by another person and is induced or obtained by coercion or deception.

(12) ‘Peace officer’ means peace officer as defined in [insert citation].

(13) ‘Public employer’ means every department, agency, or instrumentality of the state or a political subdivision of the state.

(14) ‘Sexual servitude’ means:

(A) Any sexually explicit conduct as defined in [insert citation] for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of [18 years]; or

(B) Any sexually explicit conduct as defined in [insert citation] which is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of [18 years].

(15) ‘Subcontractor’ includes a subcontractor, contract employee, staffing agency, or any contractor regardless of its tier.

Section 3. *[Public Employer Participation in Federal Work Authorization Program.]*

(a) On or after [July 1, 2007], every public employer shall register and participate in the Federal Work Authorization Program to verify information of all new employees.

(b) (1) No public employer shall enter into a contract for the physical performance of services within this state unless the contractor registers and participates in the Federal Work Authorization Program to verify information of all new employees.

(2) No contractor or subcontractor who enters a contract with a public employer shall enter into such a contract or subcontract in connection with the physical performance of services within this state unless the contractor or subcontractor registers and participates in the Federal Work Authorization Program to verify information of all new employees.

(3) Paragraphs (1) and (2) of this subsection shall apply as follows:

(A) on or after [July 1, 2007], with respect to public employers, contractors, or subcontractors of [500 or more] employees;

(B) on or after [July 1, 2008], with respect to public employers, contractors, or subcontractors of [100 or more] employees; and

(C) on or after [July 1, 2009], with respect to all public employers, contractors, or subcontractors.

(c) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(d) Except as provided in subsection (e) of this Code section, the [commissioner] shall prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this section and publish such rules and regulations on the state [department of labor’s] website.

(e) The [commissioner of the department of transportation] shall prescribe all forms and promulgate rules and regulations deemed necessary for the application of this section to any contract or agreement relating to [public transportation] and shall publish such rules and regulations on the [department of transportation’s] website.

Section 4. *[Trafficking a Person for Labor Servitude or Trafficking a Person for Sexual Servitude.]*

(a) A person commits an offense of trafficking a person for labor servitude when that person knowingly subjects or maintains another in labor servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of labor servitude.

(b) A person commits an offense of trafficking a person for sexual servitude when that person knowingly subjects or maintains another in sexual servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of sexual servitude.

(c) Any person who commits the offense of trafficking a person for labor or sexual servitude shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for [not less than one nor more than 20 years]. Any person who commits the offense of trafficking a person for labor or sexual servitude against a person who is under the age of [18 years] shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for [not less than ten nor more than 20 years].

(d) Prosecuting attorneys and the [Attorney General] shall have concurrent authority to prosecute any criminal cases arising under the provisions of this section and to perform any duty that necessarily appertains thereto.

(e) Each violation of this section shall constitute a separate offense and shall not merge with any other offense.

(f) A corporation may be prosecuted under this section for an act or omission constituting a crime under this section only if an agent of the corporation performs the conduct which is an element of the crime while acting within the scope of his or her office or employment and on behalf of the corporation and the commission of the crime was either authorized, requested, commanded, performed, or within the scope of his or her employment on behalf of the corporation or constituted a pattern of illegal activity that an agent of the company knew or should have known was occurring.

Section 5. *[Memorandum of Understanding about Enforcing Immigration Laws.]*

(a) The [commissioner] is authorized and directed to negotiate the terms of a memorandum of understanding between this state and the United States Department of Justice or Department of Homeland Security concerning the enforcement of federal immigration and custom laws, detention and removals, and investigations in the this state.

(b) The memorandum of understanding negotiated pursuant to subsection (a) of this section shall be signed on behalf of the state by the [commissioner] and the [governor] or as otherwise required by the appropriate federal agency.

(c) The [commissioner] shall designate appropriate peace officers to be trained pursuant to the memorandum of understanding provided for in this section. Such training shall be funded pursuant to the federal Homeland Security Appropriation Act of 2006, Public Law 109-90, or any subsequent source of federal funding. The provisions of this subsection shall become effective upon such funding.

(d) A peace officer certified as trained in accordance with the memorandum of understanding as provided in this section is authorized to enforce federal immigration and customs laws while performing within the scope of his or her authorized duties.

Section 6. *[Determining Nationality of Any Person Charged with Driving Under the Influence.]*

(a) When any person charged with a felony or with driving under the influence pursuant to [insert citation] is confined, for any period, in the jail of the county, any municipality or a jail operated by a regional jail authority, a reasonable effort shall be made to determine the nationality of the person so confined.

(b) If the prisoner is a foreign national, the keeper of the jail or other officer shall make a reasonable effort to verify that the prisoner has been lawfully admitted to the United States and if lawfully admitted, that such lawful status has not expired. If verification of lawful status can not be made from documents in the possession of the prisoner, verification shall be made within [48 hours] through a query to the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If the prisoner is determined not to be lawfully admitted to the United States, the keeper of the jail or other officer shall notify the United States Department of Homeland Security.

(c) Nothing in this section shall be construed to deny a person bond or from being released from confinement when such person is otherwise eligible for release.

(d) The [state sheriffs association] shall prepare and issue guidelines and procedures used to comply with the provisions of this section.

Section 7. *[Immigration Assistance.]*

(a) The purpose and intent of this section is to establish and enforce standards of ethics in the profession of immigration assistance by private people who are not licensed attorneys concerning:

(1) immigration and naturalization law, executive order, or presidential proclamation of the United States or any foreign country; or

(2) action of the United States Department of Labor, the United States Department of State, the United States Department of Homeland Security, or the United States Department of Justice.

(b) Any person who provides or offers to provide immigration assistance service may perform only the following services:

(1) complete a government agency form, requested by the customer and appropriate to the customer's needs only if the completion of that form does not involve a legal judgment for that particular matter;

(2) transcribe responses to a government agency form which is related to an immigration matter but not advising a customer as to his or her answers on those forms;

(3) translate information on forms to a customer and translating the customer's answers to questions posed on those forms;

(4) secure for the customer supporting documents currently in existence, such as birth and marriage certificates, which may be needed to be submitted with government agency forms;

(5) translate documents from a foreign language into English;

(6) notarize signatures on government agency forms, if the person performing the service is a notary public commissioned in this state and is lawfully present in the United States;

(7) make referrals, without fee, to attorneys who could undertake legal representation for a person in an immigration matter;

(8) prepare or arranging for the preparation of photographs and fingerprints;

(9) arrange for the performance of medical testing (including X-rays and AIDS tests) and the obtaining of reports of such test results;

(10) conduct English language and civics courses; and

(11) perform such other services that the [office of the Secretary of State] determines by rule may be appropriately performed by such people in light of the purposes of this Act.

(b) The following people are exempt from this section of this Act:

(1) an attorney licensed to practice law in this state or an attorney licensed to practice law in any other state or territory of the United States or in any foreign country when acting with the approval of a judge having lawful jurisdiction over the matter;

(2) a legal intern, clerk, paralegal, or person in a similar position employed by and under the direct supervision of a licensed attorney meeting the requirements in paragraph (1) of this subsection and rendering immigration assistance service in the course of employment;

(3) a not for profit organization recognized by the [Board of Immigration Appeals] under 8 C.F.R. 292.2(a) and employees, of those organizations accredited under 8 C.F.R. 292.2(d); and

(4) any organization employing or desiring to employ an alien or nonimmigrant alien, where the organization, its employees, or its agents provide advice or assistance in immigration matters to alien or nonimmigrant alien employees or potential employees without compensation from the people to whom such advice or assistance is provided.

(c) Nothing in this section shall regulate any business to the extent that such regulation is prohibited or preempted by federal law.

(d) Any person performing such services shall obtain business licenses from the [office of the Secretary of State] and as may be required by a local governing authority.

(e) Any person who provides or offers immigration assistance service and is not exempted under this Act shall post signs at his or her place of business setting forth information in English and in every other language in which the person provides or offers to provide immigration assistance service. Each language shall be on a separate sign. Signs shall be posted in a location where the signs will be visible to customers. Each sign shall be at least [12 inches by 17 inches] and shall contain the following statement:

‘I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.’

(f) Every person engaged in immigration assistance service who is not an attorney who advertises immigration assistance service in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other written communication, with the exception of a single desk plaque, shall include in the document, advertisement, stationery, letterhead, business card, or other comparable written material the following notice in English and the language in which the written communication appears. This notice shall be of a conspicuous size, if in writing, and shall state:

‘I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.’

If such advertisement is by radio or television, the statement may be modified but must include substantially the same message.

(g) Any person who provides or offers immigration assistance service and is not exempted under this section of this Act shall not, in any document, advertisement, stationery, letterhead, business card, or other comparable written material, literally translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies the person is an attorney.

(h) Violations of this section of this Act may result in a fine of up to [\$1,000] per violation. A fine charged pursuant to this section of this Act shall not preempt or preclude additional appropriate civil or criminal penalties.

(i) No person engaged in providing immigration services who is not exempted under this section of this Act shall do any of the following:

(1) accept payment in exchange for providing legal advice or any other assistance that requires legal analysis, legal judgment, or interpretation of the law;

(2) refuse to return documents supplied by, prepared on behalf of, or paid for by the customer upon the request of the customer. These documents must be returned upon request even if there is a fee dispute between the immigration assistant and the customer;

(3) represent or advertise, in connection with the provision assistance in immigration matters, other titles or credentials, including but not limited to ‘notary public’ or ‘immigration consultant,’ that could cause a customer to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter, provided that a certified notary public may use the term ‘notary public’ if the use is accompanied by the statement that the person is not an attorney; the term ‘notary public’ may not be translated to another language;

(4) provide legal advice, recommend a specific course of legal action, or provide any other assistance that requires legal analysis, legal judgment, or interpretation of the law; or

(5) make any misrepresentation or false statement, directly or indirectly, to influence, persuade, or induce patronage.

(j) Any person who violates any provision of this Act shall be guilty of a [misdemeanor] for a [first offense] and a [high and aggravated misdemeanor] for a [second or subsequent offense] committed within [five years] of a previous conviction for the same offense.

(k) The [Secretary of State] shall issue rules not inconsistent with this Act for the implementation, administration, and enforcement of this Act.

Section 8. [*Deducting Authorized Employee as Business Expense.*]

(a) On or after [January 1, 2008], no wages or remuneration for labor services to an individual of [\$600] or more per annum may be claimed and allowed as a deductible business expense for state income tax purposes by a taxpayer unless such individual is an authorized employee. The provisions of this subsection shall apply whether or not an Internal Revenue Service Form 1099 is issued in conjunction with the wages or remuneration.

(b) This section of this Act shall not apply to any business domiciled in this state which is exempt from compliance with federal employment verification procedures under federal law which makes the employment of unauthorized aliens unlawful.

(c) This section of this Act shall not apply to any individual hired by the taxpayer prior to [January 1, 2008].

(d) This section of this Act shall not apply to any taxpayer where the individual being paid is not directly compensated or employed by said taxpayer.

(e) This section of this Act shall not apply to wages or remuneration paid for labor services to any individual who holds and presents to the taxpayer a valid license or identification card issued by the [state Department of Driver Services].

(f) The [commissioner] is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this section of this Act.

Section 9. [*Withholding and Reporting Income Tax.*]

(a) Form 1099 withholding and reporting.

(1) A withholding agent shall be required to withhold state income tax at the rate of [6 percent] of the amount of compensation paid to an individual which compensation is reported on Form 1099 and with respect to which the individual has:

(A) failed to provide a taxpayer identification number;

(B) failed to provide a correct taxpayer identification number; or

(C) provided an Internal Revenue Service issued taxpayer identification number issued for nonresident aliens.

(2) Any withholding agent who fails to comply with the withholding requirements of this subsection shall be liable for the taxes required to have been withheld unless such withholding agent is exempt from federal withholding with respect to such individual pursuant to a properly filed Internal Revenue Service Form 8233 and has provided a copy of such form to the commissioner.

Section 10. [*Verifying Lawful Presence of People 18 Years or Older Who Apply for Public Benefits.*]

(a) Except as provided in subsection (c) of this section or where exempted by federal law, on or after [July 1, 2007], every agency or a political subdivision of this state shall verify the lawful presence in the United States of any natural person [18 years of age] or older who has applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for federal public benefits, as defined in 8 U.S.C. Section 1611, that is administered by an agency or a political subdivision of this state.

(b) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(c) Verification of lawful presence under this section shall not be required:

- (1) for any purpose for which lawful presence in the United States is not required by law, ordinance, or regulation;
- (2) for assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C. Section 1396b(v)(3), of the alien involved and are not related to an organ transplant procedure;
- (3) for short-term, noncash, in-kind emergency disaster relief;
- (4) for public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease; or
- (5) for programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the United States Attorney General, in the United States Attorney General's sole and unreviewable discretion after consultation with appropriate federal agencies and departments, which:
 - (A) deliver in-kind services at the community level, including through public or private nonprofit agencies;
 - (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and
 - (C) are necessary for the protection of life or safety.
- (6) for prenatal care; or
- (7) for postsecondary education, whereby the [Board of Regents of the University System of this state] or the [State Board of Technical and Adult Education] shall set forth, or cause to be set forth, policies regarding postsecondary benefits that comply with all federal law including but not limited to public benefits as described in 8 U.S.C. Section 1611, 1621, or 1623.

(d) Verification of lawful presence in the United States by the agency or political subdivision required to make such verification shall occur as follows:

- (1) The applicant must execute an affidavit that he or she is a United States citizen or legal permanent resident [18 years of age] or older; or
- (2) The applicant must execute an affidavit that he or she is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act [18 years of age] or older lawfully present in the United States.

(e) For any applicant who has executed an affidavit that he or she is an alien lawfully present in the United States, eligibility for benefits shall be made through the Systematic Alien Verification of Entitlement (SAVE) program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security. Until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence for the purposes of this Code section.

(f) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in an affidavit executed pursuant to subsection (d) of this section shall be guilty of a violation of [insert citation].

(g) Agencies or political subdivisions of this state may adopt variations to the requirements of this section to improve efficiency or reduce delay in the verification process or to provide for adjudication of unique individual circumstances where the verification procedures in this section would impose unusual hardship on a legal resident of this state.

(h) It shall be unlawful for any agency or a political subdivision of this state to provide any state, local, or federal benefit, as defined in 8 U.S.C. Section 1621 or 8 U.S.C. Section 1611, in violation of this section. Each state agency or department which administers any program of state or local public benefits shall provide an annual report with respect to its compliance with this section.

(i) Any and all errors and significant delays by SAVE shall be reported to the United States Department of Security and to the [Secretary of State] which will monitor SAVE and its verification application errors and significant delays and report yearly on such errors and significant delays to ensure that the application of SAVE is not wrongfully denying benefits to legal residents of this state.

(j) Notwithstanding subsection (f) of this section any applicant for federal benefits as defined in 8 U.S.C. Section 1611 or state or local benefits as defined in 8 U.S.C. Section 1621 shall not be guilty of any crime for executing an affidavit attesting to lawful presence in the United States that contains a false statement if said affidavit is not required by this section.

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

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

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

Successor Asbestos-Related Liability (FL)

Successor liability generally provides that when a predecessor merges with another corporation, the successor can be held liable for the torts of the dissolved predecessor. This Act places a principled and reasonable limit upon the wholly vicarious asbestos liability of a successor corporation following a merger. The bill limits the liability of successor corporations that have assumed asbestos-related liabilities as the result of a merger or consolidation that occurred prior to January 1, 1972. The limitation on successor liability only applies to successor corporations that have not continued in the asbestos business of the merged or consolidated corporation. The liability of the eligible successor corporations is limited to the adjusted fair market value of the total gross assets of the merged or consolidated corporation on the date of the merger or consolidation. The law permits the determination of the fair market value of a merged or consolidated corporation's total gross assets through any reasonable method. Once the available funds have been exhausted, the successor corporation has no further liability. The law takes effect upon becoming a law and applies to actions asserting an asbestos claim in which the trial has not commenced as of the effective date.

Submitted as:

Florida

Chapter 269 - 2005

Status: Enacted into law in 2005.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act is entitled “An Act Relating To Asbestos-Related
2 Claims.”

3
4 Section 2. [*Legislative Findings and Intent.*] The [Legislature] finds that the number of
5 asbestos-related claims has increased significantly in recent years and threatens the continued
6 viability of a number of uniquely situated companies that have not ever manufactured, sold, or
7 distributed asbestos or asbestos products and are liable only as successor corporations. This
8 liability has created an overpowering public necessity to provide an immediate, remedial,
9 legislative solution. The [Legislature] intends that the cumulative recovery by all asbestos
10 claimants from innocent successors be limited, and intends to simply change the form of asbestos
11 claimants’ remedies without impairing their substantive rights, and finds that there are no
12 alternative means to meet this public necessity. The [Legislature] finds the public interest as a
13 whole is best served by providing relief to these innocent successors so that they may remain
14 viable and continue to contribute to this state.

15
16 Section 3. [*Definitions.*] As used in this Act:

17 (1) “Asbestos claim” means any claim, wherever or whenever made, for damages, losses,
18 indemnification, contribution, or other relief arising out of, based on, or in any way related to
19 asbestos, including:

20 (a) The health effects of exposure to asbestos, including any claim for:

- 21 1. Personal injury or death;
22 2. Mental or emotional injury;
23 3. Risk of disease or other injury; or

24 4. The costs of medical monitoring or surveillance, to the extent these
25 claims are recognized under state law;

26 (b) Any claim made by or on behalf of a person exposed to asbestos, or a
27 representative, spouse, parent, child, or other relative of the person; and

28 (c) Any claim for damage or loss caused by the installation, presence, or removal
29 of asbestos.

30 (2) "Corporation" means a corporation for profit, including a domestic corporation
31 organized under the laws of this state, or a foreign corporation organized under laws other than
32 the laws of this state.

33 (3) "Successor" means a corporation that assumes or incurs, or has assumed or incurred,
34 successor asbestos-related liabilities.

35 (4) "Successor asbestos-related liabilities" means any liabilities, whether known or
36 unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or
37 unliquidated, or due or to become due, which are related in any way to asbestos claims and were
38 assumed or incurred by a corporation as a result of or in connection with a merger or
39 consolidation, or the plan of merger or consolidation related to the merger or consolidation, with
40 or into another corporation, or which are related in any way to asbestos claims based on the
41 exercise of control or the ownership of stock of the corporation before the merger or
42 consolidation. The term includes liabilities that, after the time of the merger or consolidation for
43 which the fair market value of total gross assets is determined under section 6 of this Act, were or
44 are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on
45 behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor,
46 in connection with settlements, judgments, or other discharges in this state or another jurisdiction.

47 (5) "Transferor" means a corporation from which successor asbestos-related liabilities are
48 or were assumed or incurred.

49
50 Section 4. [*Applicability.*]

51 (1) The limitations in section 5 of this Act apply to a corporation that is a successor and
52 became a successor before [January 1, 1972], or is any of that successor corporation's successors.

53 (2) The limitations do not apply to:

54 (a) Workers' Compensation benefits paid by or on behalf of an employer to an
55 employee under [insert citation], or a comparable Workers' Compensation law of another
56 jurisdiction;

57 (b) Any claim against a corporation that does not constitute a successor asbestos-
58 related liability;

59 (c) An insurance company, as defined in [insert citation];

60 (d) Any obligations under the National Labor Relations Act, as amended, or under
61 any collective bargaining agreement; or

62 (e) A successor that, after a merger or consolidation, continued in the business of
63 mining asbestos, in the business of selling or distributing asbestos fibers, or in the business of
64 manufacturing, distributing, removing, or installing asbestos-containing products that were the
65 same or substantially the same as those products previously manufactured, distributed, removed,
66 or installed by the transferor.

67
68 Section 5. [*Limitations on Successor Asbestos-Related Liabilities.*]

69 (1) Except as further limited in subsection (2), the cumulative successor asbestos-related
70 liabilities of a corporation are limited to the fair market value of the total gross assets of the
71 transferor determined as of the time of the merger or consolidation. The corporation does not
72 have any responsibility for successor asbestos-related liabilities in excess of this limitation.

(2) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, the fair market value of the total assets of the prior transferor, determined as of the time of the earlier merger or consolidation, shall be substituted for the limitation set forth in subsection (1) for purposes of determining the limitation of liability of a corporation.

Section 6. [*Establishing Fair Market Value of Total Gross Assets.*]

(1) A corporation may establish the fair market value of total gross assets for the purpose of the limitations under section 5 of this Act through any method reasonable under the circumstances, including:

(a) By reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arm's-length transaction; or

(b) In the absence of other readily available information from which fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(2) Total gross assets include intangible assets.

(3) Total gross assets include the aggregate coverage under any applicable liability insurance that was issued to the transferor whose assets are being valued for purposes of this section, which insurance has been collected or is collectible to cover successor asbestos-related liabilities except compensation for liabilities arising from workers' exposure to asbestos solely during the course of their employment by the transferor. A settlement of a dispute concerning the insurance coverage entered into by a transferor or successor with the insurers of the transferor before the effective date of this Act shall be determinative of the aggregate coverage of the liability insurance to be included in the calculation of the transferor's total gross assets.

Section 7. [*Adjustment.*]

(1) Except as provided in the limitations in this Act, the fair market value of total gross assets at the time of a merger or consolidation shall increase annually at a rate equal to the sum of:

(a) The prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation, unless the prime rate is not published in that edition of the Wall Street Journal, in which case any reasonable determination of the prime rate on the first day of the year may be used; and

(b) [One percent].

(2) The rate in subsection (1) may not be compounded.

(3) The adjustment of fair market value of total gross assets shall continue as provided under subsection (1) until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation or a predecessor, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

(4) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance otherwise included in the definition of total gross assets by subsection (3) of section 6 of this Act.

Section 8. [*Scope.*] The courts in this state shall apply, to the fullest extent permissible under the United States Constitution, this state's substantive law, including the limitation under this act, to the issue of successor asbestos-related liabilities. This Act shall be construed liberally to accomplish its remedial purposes.

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

123 Section 10. [*Repealer.*] [Insert repealer clause.]
124
125 Section 11. [*Effective Date.*] [Insert effective date.]

Successor Asbestos-Related Liability (SC)

This Act:

- Defines certain terms related to asbestos-related claims;
- Limits successor asbestos-related liabilities of a corporation under certain circumstances;
- Provides exceptions to the limitations on successor liability; and
- Provides a method for establishing the fair market value of total gross assets in determining the limitations on successor liability.

Submitted as:

South Carolina

Act No. 280

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This Act is entitled “An Act Relating To Asbestos-Related
2 Claims.”
3

4 Section 2. [*Legislative Findings*.] The [Legislature] finds that the number of asbestos-
5 related claims has increased significantly in recent years and threatens the continued viability of a
6 number of uniquely situated companies that have not ever manufactured, sold, or distributed
7 asbestos or asbestos products and are liable only as successor corporations. This liability has
8 created an overpowering public necessity to provide an immediate, remedial, legislative solution.
9 The [Legislature] intends that the cumulative recovery by all asbestos claimants from innocent
10 successors be limited, and intends to simply change the form of asbestos claimants’ remedies
11 without impairing their substantive rights, and finds that there are no alternative means to meet
12 this public necessity. The [Legislature] finds the public interest as a whole is best served by
13 providing relief to these innocent successors so that they may remain viable and continue to
14 contribute to this state.
15

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

17 (1) “Asbestos claim” means a claim for damages, losses, indemnification, contribution, or
18 other relief arising out of, based on, or in any way related to asbestos, including:

19 (a) the health effects of exposure to asbestos, including a claim for:

- 20 1. personal injury or death;
- 21 2. mental or emotional injury;
- 22 3. risk of disease or other injury; or
- 23 4. the costs of medical monitoring or surveillance, to the extent these

24 claims are recognized pursuant to state law;

25 (b) a claim made by or on behalf of a person exposed to asbestos, or a
26 representative, spouse, parent, child, or other relative of the person; and

27 (c) a claim for damage or loss caused by the installation, presence, or removal of
28 asbestos.

29 (2) “Corporation” means a corporation for profit, including a domestic corporation
30 organized under the laws of this state, or a foreign corporation organized under laws other than
31 the laws of this state.

32 (3) “Successor” means a corporation that assumes or incurs, or has assumed or incurred,
33 successor asbestos-related liabilities.

34 (4) “Successor asbestos-related liabilities” means liabilities, whether known or unknown,
35 asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated,
36 or due or to become due, which are related in any way to an asbestos claim and were assumed or
37 incurred by a corporation as a result of or in connection with a merger or consolidation, or the
38 plan of merger or consolidation related to the merger or consolidation, with or into another
39 corporation, or which are related in any way to asbestos claims based on the exercise of control or
40 the ownership of stock of the corporation before the merger or consolidation. The term includes
41 liabilities that, after the time of the merger or consolidation for which the fair market value of
42 total gross assets is determined under section 6 of this Act, were or are paid or otherwise
43 discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation,
44 or by a successor of the corporation, or by or on behalf of a transferor, in connection with
45 settlements, judgments, or other discharges in this state or another jurisdiction.

46 (5) “Transferor” means a corporation from which successor asbestos-related liabilities are
47 or were assumed or incurred.

48
49 Section 4. [*Applicability.*]

50 (1) The limitations of section 5 of this Act apply to a corporation that is a successor and
51 became a successor before [January 1, 1972], or is any of that successor corporation’s successors.

52 (2) The limitations in section 5 of this Act do not apply to:

53 (a) Workers’ Compensation benefits paid by or on behalf of an employer to an
54 employee under [insert citation], or a comparable workers’ compensation law of another
55 jurisdiction;

56 (b) a claim against a corporation that does not constitute a successor asbestos-
57 related liability;

58 (c) an insurance company, as defined in [insert citation];

59 (d) Any obligations under the National Labor Relations Act, as amended, or under
60 any collective bargaining agreement; or

61 (e) a successor that, after a merger or consolidation, continued in the business of
62 mining asbestos, in the business of selling or distributing asbestos fibers, or in the business of
63 manufacturing, distributing, removing, or installing asbestos-containing products that were the
64 same or substantially the same as those products previously manufactured, distributed, removed,
65 or installed by the transferor.

66
67 Section 5. [*Limitations on Successor Asbestos-Related Liabilities.*]

68 (1) Except as further limited in subsection (2), the cumulative successor asbestos-related
69 liabilities of a corporation are limited to the fair market value of the total gross assets of the
70 transferor determined as of the time of the merger or consolidation. The corporation does not
71 have any responsibility for successor asbestos-related liabilities in excess of this limitation.

72 (2) If the transferor had assumed or incurred successor asbestos-related liabilities in
73 connection with a prior merger or consolidation with a prior transferor, the fair market value of
74 the total assets of the prior transferor, determined as of the time of the earlier merger or
75 consolidation, shall be substituted for the limitation set forth in subsection (1) for purposes of
76 determining the limitation of liability of a corporation.

77
78 Section 6. [*Establishing Fair Market Value of Total Gross Assets.*]

79 (1) A corporation may establish the fair market value of total gross assets for the purpose
80 of the limitations under section 5 of this Act through any method reasonable under the
81 circumstances, including:

(a) by reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arm's-length transaction; or
(b) in the absence of other readily available information from which fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(2) Total gross assets include intangible assets.

(3) Total gross assets include the aggregate coverage under any applicable liability insurance that was issued to the transferor whose assets are being valued for purposes of this section, which insurance has been collected or is collectible to cover successor asbestos-related liabilities except compensation for liabilities arising from workers' exposure to asbestos solely during the course of their employment by the transferor. A settlement of a dispute concerning the insurance coverage entered into by a transferor or successor with the insurers of the transferor before the effective date of this act shall be determinative of the aggregate coverage of the liability insurance to be included in the calculation of the transferor's total gross assets.

Section 7. [*Adjustment.*]

(1) Except as provided in subsections (2), (3), and (4), the fair market value of total gross assets at the time of a merger or consolidation shall increase annually at a rate equal to the sum of:

(a) the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation, unless the prime rate is not published in that edition of the Wall Street Journal, in which case any reasonable determination of the prime rate on the first day of the year may be used; and

(b) [one percent].

(2) The rate in subsection (1) may not be compounded.

(3) The adjustment of fair market value of total gross assets shall continue as provided under subsection (1) until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation or a predecessor, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

(4) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance otherwise included in the definition of total gross assets by subsection (3) of section 6 of this Act.

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

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

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

Sustainable Oceans: Aquaculture and Finfishing

This Act regulates finfish aquaculture locations based on various impacts to water quality, the marine ecosystem and wild fish. The Act directs the state department of fish and game to develop an environmental impact report about coastal marine finfish aquaculture projects. That report will provide a framework for managing marine finfish aquaculture in a sustainable manner that considers environmental impacts. The Act prohibits engaging in marine finfish aquaculture in state waters without a lease. It establishes terms for such leases.

Submitted as:
California
Chapter 36 of 2006
Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act is entitled “The Sustainable Oceans Act.”

2

3 Section 2. [*Legislative Findings.*]

4 (a) The Legislature finds and declares that salt water or brackish water aquaculture is a
5 coastal-dependent use which should be encouraged to augment food supplies.

6 (b) The [Department of Fish and Game] may identify coastal sites it determines to be
7 appropriate for aquaculture facilities. If the [department] identifies these sites, it shall transmit
8 information identifying the sites to the [state environmental quality commission] and any relevant
9 local government agency. The [commission], and where appropriate, local governments, shall
10 provide for as many coastal sites identified by the [Department of Fish and Game] for any uses
11 that are consistent with this Act.

12 (c) Any agency of the state owning or managing land in the coastal zone for public
13 purposes shall be an active participant in the selection of suitable sites for aquaculture facilities
14 and shall make the land available for use in aquaculture when feasible and consistent with other
15 policies of this Act and other provisions of law.

16

17 Section 3. [*Definitions.*] As used in this Act, “Marine Finfish Aquaculture” means the
18 propagation, cultivation, or maintenance of finfish species in the waters of the [Pacific Ocean]
19 that are regulated by this state.

20

21 Section 4. [*Environmental Impact Reports for Existing and Potential Commercial*
22 *Aquaculture Operations.*]

23 (a) The [department] shall, in consultation with an [aquaculture development committee],
24 prepare programmatic environmental impact reports for existing and potential commercial
25 aquaculture operations in both coastal and inland areas of the state if both of the following
26 conditions are met:

27 (1) Funds are appropriated to the [department] for this purpose.

28 (2) Matching funds are provided by the aquaculture industry. For the purpose of
29 this section, “matching funds” include, but are not limited to, any funds expended by the
30 aquaculture industry before [insert date], for the preparation of a programmatic environmental
31 impact report.

(b) If a final programmatic environmental impact report is prepared pursuant to subdivision (a) for coastal marine finfish aquaculture projects and approved by a [state environmental quality commission] established by [insert citation], the report shall provide a framework for managing marine finfish aquaculture in an environmentally sustainable manner that, at a minimum, adequately considers all of the following factors:

(1) Appropriate areas for siting marine finfish aquaculture operations to avoid adverse impacts, and minimize any unavoidable impacts, on user groups, public trust values, and the marine environment.

(2) The effects on sensitive, ocean and coastal habitats.

(3) The effects on marine ecosystems, commercial and recreational fishing, and other important ocean uses.

(4) The effects on other plant and animal species, especially species protected or recovering under state and federal law.

(5) The effects of the use of chemical and biological products and pollutants and nutrient wastes on human health and the marine environment.

(6) The effects of interactions with marine mammals and birds.

(7) The cumulative effects of a number of similar finfish aquaculture projects on the ability of the marine environment to support ecologically significant flora and fauna.

(8) The effects of feed, fish meal, and fish oil on marine ecosystems.

(9) The effects of escaped fish on wild fish stocks and the marine environment.

(10) The design of facilities and farming practices so as to avoid adverse environmental impacts, and to minimize any unavoidable impacts.

Section 5. [*Authority and Requirements for Leasing State Water Bottoms or Water Column.*]

(a) Except as prohibited by [insert citation], the [commission] may lease state water bottoms or the water column to any person for aquaculture, including, but not limited to, marine finfish aquaculture. Upon appropriation of funds for that purpose, or if funds are otherwise available, the [commission] shall adopt regulations governing the terms of the leases, after consulting with affected stakeholders in a public process. No state leases shall be issued, unless the [commission] determines that the lease is in the public interest in a public hearing conducted in a fair and transparent manner, with notice and comment, in accordance with [commission] procedures. Leases issued, and regulations adopted, pursuant to this section, shall not be construed to be fishery management plans.

(b) A person shall not engage in marine finfish aquaculture in ocean waters within the jurisdiction of the state without a lease from the [commission]. Leases and regulations adopted by the [commission] for marine finfish aquaculture shall meet, but are not limited to, all of the following standards:

(1) The lease site is considered appropriate for marine finfish aquaculture in the programmatic environmental impact report if prepared and approved by the [commission].

(2) A lease shall not unreasonably interfere with fishing or other uses or public trust values, unreasonably disrupt wildlife and marine habitats, or unreasonably harm the ability of the marine environment to support ecologically significant flora and fauna. A lease shall not have significant adverse cumulative impacts.

(3) To reduce adverse effects on global ocean ecosystems, the use of fish meal and fish oil shall be minimized. Where feasible, alternatives to fish meal and fish oil, or fish meal and fish oil made from seafood harvesting byproducts, shall be used, taking into account factors that include, but need not be limited to, the nutritional needs of the fish being raised and the availability of alternative ingredients.

(4) Lessees shall establish best management practices, approved by the [commission], for each lease site. Approved best management practices shall include a regular monitoring, reporting, and site inspection program that requires at least [annual] monitoring of lease sites to ensure that the operations are in compliance with best management practices related to fish disease, escapement, and environmental stewardship, and that operations are meeting the requirements of this section. The [commission] may remove fish stocks, close facilities, or terminate the lease if it finds that the lessee is not in compliance with best management practices, that the lessee's activities have damaged or are damaging the marine environment, or that the lessee is not in compliance with this section. The [commission] shall take immediate remedial action to avoid or eliminate significant damage, or the threat of significant damage, to the marine environment.

(5) Before issuance of the lease, the lessee shall provide baseline benthic habitat and community assessments of the proposed lease site to the applicable [regional water quality control board] or the [state water resources control board], and shall monitor the benthic habitat and community during the operation of the lease in a manner determined by the [regional board] or the [state water resources control board]. The [regional board] and the [state water resources control board] may establish and impose reasonable permit fees to pay for the costs of administering and conducting the assessment and monitoring program.

(6) Finfish numbers and density shall be limited to what can be safely raised while protecting the marine environment, as specified by the terms of the lease, subject to review and amendment by the [commission].

(7) The use of all drugs, chemicals, and antibiotics, and amounts used and applied, shall be minimized. All drugs, therapeutic substances, and antibiotics shall be used and applied only as approved by the United States Food and Drug Administration for marine finfish aquaculture. The lessee shall report that use and application to the [commission] on a regular schedule, as determined by the [commission], but no less than [annually], that shall be included in the terms of the lease. The [commission] shall review those reports on a regular basis and at least [annually].

(8) The [commission] shall require all farmed fish to be marked, tagged, or otherwise identified as belonging to the lessee in a manner determined appropriate by the [commission], unless the [commission] determines that identifying farmed fish is unnecessary for protecting wild fish stocks, the marine environment, or other ocean uses.

(9) All facilities and operations shall be designed to prevent the escape of farmed fish into the marine environment and to withstand severe weather conditions and marine accidents. The lessee shall maintain records on all escapes in a manner determined by the [commission]. In the event of more than de minimis escapement, the number of escaped fish and the circumstances surrounding the incident shall be reported immediately to the [commission], and the lessee shall be responsible for damages to the marine environment caused by those escaped fish, as determined by the [commission].

(10) The lessee shall, at a minimum, meet all applicable requirements imposed by the [state water resources control board] and [regional water quality control boards], and shall prevent discharges to the maximum extent possible. Monitoring and testing of water quality shall be required on a regular basis as deemed appropriate by the [state water resources control board] or [regional water quality control boards]. All inspection and monitoring reports and other records, and all data on the discharge of chemical and biological pollutants shall be kept on file and available for public review.

(c) If a restoration or enhancement plan is submitted to, and approved by, the [commission], and that plan, among other things, provides for monitoring and protecting the benthic habitat, the prevention of pollution, and the prevention of adverse impacts on wild fish

stocks from disease, parasites, and genetic alterations, subdivision (b) shall not apply to any of the following:

(1) Artificial propagation, rearing, and stocking projects for the purpose of recovery, restoration, or enhancement of native fish stocks carried out under either of the following:

(A) A scientific collecting or research permit issued by the [department].

(B) The state [ocean resources enhancement and hatchery program], as set forth in [insert citation], for the enhancement of white sea bass.

(2) Nonprofit hatcheries and nonprofit artificial propagation projects operated by, or on behalf of, licensed commercial or sport fishermen and fisherwomen for the purpose of recovery, restoration, or enhancement of the state's native marine fish populations, pursuant to [insert citation].

(d) Nothing in this section shall be construed to limit or expand the application of any other state law or regulation pertaining to marine finfish aquaculture conducted within the ocean waters under the jurisdiction of this state.

Section 6. *[Maximum Terms for State Water Bottom Leases.]*

(a) Except as specified in subdivision (b), no initial term of a state water bottom lease shall exceed [25] years.

(b) The initial term of a state water bottom lease for marine finfish aquaculture shall not exceed [10] years.

Section 7. *[Renewing State Water Bottom Leases.]*

(a) Each state water bottom lease shall specify a period prior to expiration when renewal of the lease may be requested by the lessee. If during this period the lessee is still actively engaged in aquaculture, as determined by the [commission], the lessee shall have a prior right to renew the lease on terms agreed upon between the [commission] and the lessee. If terms are not agreed upon, the [commission] shall advertise for bids on the lease. If a request for renewal is not made by the lessee, the [commission] shall advertise for bids on the lease. The [commission] shall consider bids only from aquaculturists registered pursuant to [insert citation].

(b) Notwithstanding subdivision (a), with respect to any lease of state water bottoms in effect on [January 1, 1983], the lessee shall have a prior right to renew the lease. If the lessee does not renew the lease, the [commission] shall advertise for bids on the lease. The [commission] shall consider bids only from aquaculturists registered pursuant to [insert citation].

(c) Except as specified in subdivision (d), a lease may be renewed for additional periods not to exceed [25] years each.

(d) A lease for marine finfish aquaculture may be renewed for additional periods not to exceed [five years] each.

Section 8. *[State Water Bottom Lease Fees.]*

(a) Except as specified in subdivision (b), the [commission] shall award water bottom leases to the highest responsible bidder, if the bid meets or exceeds the minimum annual rent established by the [commission], which shall not be less than [two dollars (\$2)] per acre, for all species cultivated, unless the acreage applied for is [10 acres or less], in which case the minimum acceptable rent shall be [ten dollars (\$10)] per acre. The [annual] rent for any lease in effect on [January 1, 1983], for the cultivation of oysters shall be [one dollar (\$1)] per acre until the expiration thereof. The [commission] may reject any or all bids for the lease of state water bottoms if it deems the rejection to be in the public interest.

(b) Fees for marine finfish aquaculture leases shall, at a minimum, be sufficient to pay for the costs of administering the marine finfish leasing program, and for monitoring and enforcing the terms of the leases.

Section 9. [*Restoring Aquaculture Sites After a Site Lease Terminates.*]

(a) Upon termination of a lease, for any reason, all structures shall be removed at the lessee's expense from the leasehold, and the area shall be restored to its original condition. If the lessee fails to remove the structures, the state may remove them and the lessee shall pay the removal costs incurred.

(b) The [commission] shall require financial assurances of each marine finfish aquaculture lessee to ensure that restoration is performed to the satisfaction of the [commission]. Financial assurances may take the form of surety bonds executed by an admitted surety insurer, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the [commission], as it determines are available and adequate to ensure the lease site is restored pursuant to this section.

(c) Marine finfish aquaculture lessees shall be responsible for any damages caused by their operations, as determined by the [commission], including, but not limited to, reimbursement for any costs for natural resource damage assessment.

(d) Nothing in this section limits the state in pursuing additional remedies authorized by law.

(e) The state [fish and game commission] and [insert agency] are the principal state agencies responsible for the establishment and control of wildlife and fishery management programs and the [commission] shall not establish or impose any controls with respect thereto that duplicate or exceed regulatory controls established by these agencies pursuant to specific statutory requirements or authorization.

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

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

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

Vendors and Contractors Subject to State Sales Tax

This Act provides that vendors or contractors and each affiliate selling or leasing tangible personal property to a state agency shall be subject to state taxation on its sales or leases into the state.

Submitted as:

Alabama

Act 2006-557

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This Act is entitled “An Act To Tax Tangible Personal Property
2 Sold or Leased to the State.”
3

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

5 (a) The following terms shall have the respective meanings ascribed by this section:

6 (1) “Affiliate” means a related party as defined in [insert citation] as that provision
7 exists on [January 1, 2004.]

8 (2) “State Department” or “Agency” means every state office, department,
9 division, bureau, board, or commission of this state.

10 (b) A state department or agency may not contract for the purchase or lease of tangible
11 personal property from a vendor, contractor, or an affiliate of a vendor or contractor, unless that
12 vendor, contractor, and all of its affiliates that make sales for delivery into this state or leases for
13 use in this state are properly registered, collecting, and remitting to this state, state, and local
14 sales, use, and lease tax, as provided for by [insert citation] or by any local act or ordinance.

15 (c) Each vendor, contractor, or affiliate of a vendor or contractor that is offered a contract
16 to do business with a state department or state agency shall be required to certify that the vendor
17 or affiliate is appropriately registered to collect and remit sales, use, and lease tax as required by
18 this section and submit to that state department or agency certification required by the state
19 [Department of Revenue].

20 (d) Every bid submitted and contract executed by the state shall contain a certification by
21 the bidder or contractor that the bidder or contractor is not barred from bidding for or entering
22 into a contract under this section and that the bidder or contractor acknowledges that the
23 contracting state agency may declare the contract void if the certification completed is false.

24 (e) Each vendor or contractor that sells or leases tangible personal property to a state
25 department or agency, and each affiliate of that vendor or contractor that makes sales for delivery
26 into this state, shall be required to collect and remit this state’s sales, use, or lease tax on all its
27 sales and leases into this state.
28

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

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

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

VoIP Enhanced 911 and Enhanced Wireless 911 Service

This Act deals with enhanced wireless 911 services and Voice over Internet Protocol (VoIP). The bill defines terms that are specific to enhanced wireless 911 VoIP services. Second, the bill establishes a new VoIP E-911 Grant Fee of \$0.25 per month as a subscriber charge on each wireless VoIP telephone number in a state. The purpose of the charge is to develop and maintain enhanced wireless 911 VoIP telecommunications systems along with technology upgrades. The monies collected through the subscriber fee are remitted each month to the state Secretary of Administration and the fees credited to a Wireless Enhanced 911 Grant Fund. The fee becomes effective July 1, 2006. The bill also establishes a new \$0.25 per month, per account VoIP E-911 local fee. That money will be used by service providers of wireless 911 VoIP to ensure sufficient equipment and maintenance for customers. The bill also includes a hold harmless clause for payment of damages from the performance of installing, maintaining, and providing an enhanced 911 VoIP service to the customer.

Under the Act, each service provider has the option to list certain user fees separately on a customer's bill. If charges are stated separately, E-911-related fees must be labeled as "E-911 fees." In addition, the service provider must report all uncollected fees and balances from subscribers to the state Secretary of Administration. The local collection administrator may not use more than 2.0 percent of monies collected for administrative costs. The bill requires that the Secretary of Administration conduct a yearly audit. This bill allows VoIP service providers to recover costs from its customers, plus the collection and administration costs.

Submitted as:

Kansas

HB 2590

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act is entitled "An Act to Address Enhanced Wireless 911
2 VoIP Telecommunications Systems."

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

5 (a) "Interconnected VoIP Service" means as defined in 47 C.F.R. 9.3 (October 1, 2005).

6 (b) "VoIP" means Voice over Internet Protocol.

7 (c) "VoIP Enhanced 911 Grant Fee" means the fee imposed under section 4 of this Act.

8 (d) "VoIP Enhanced 911 Local Fee" means the fee imposed under section 5 of this Act.

9 (e) "VoIP Enhanced 911 Service" means a communication service by which VoIP
10 providers can provide automatic number identification, pseudo-automatic number identification
11 and VoIP automatic location identification information to a requesting Public Safety Answering
12 Point (PSAP).

13 (f) "VoIP Project" means the development and acquisition of the necessary
14 improvements in order to facilitate the establishment of VoIP Enhanced 911 Service.

15 (g) "VoIP project costs" means all costs or expenses which are necessary or incident to a
16 VoIP project and which are directly attributable thereto.

17 (h) “VoIP provider” means a provider of interconnected VoIP service but does not
18 include any telecommunications carrier or local exchange carrier, as defined in [insert citation]
19 which holds a certificate of public convenience and necessity issued by the [state corporation
20 commission].

21 (i) “VoIP service user” means a subscriber to interconnected VoIP service whose
22 primary service address is in this state.

23
24 Section 3. *[Authority to Administer the VoIP Enhanced 911 Act.]*

25 (a) The [secretary] shall administer the provisions of the VoIP Enhanced 911 Act. The
26 [secretary] is hereby authorized to adopt rules and regulations necessary for effectuation of the
27 provisions of this Act, including, but not limited to, assessing civil penalties.

28 (b) No civil penalty shall be imposed pursuant to this section except upon the written
29 order of the [secretary or the secretary’s duly authorized agent] to a VoIP provider. Such order
30 shall state the violation, the penalty to be imposed and the right of such VoIP provider to appeal
31 to the [secretary]. Any such VoIP provider, within [20] days after notification, may make written
32 request to the [secretary] for a hearing or informal conference hearing in accordance with the
33 provisions of the [state administrative procedure act]. The [secretary] shall affirm, reverse or
34 modify the order and shall specify the reasons therefor.

35 (c) Any VoIP provider aggrieved by an order of the [secretary] made under this section
36 may appeal such order to the [district court] in the manner provided by the Act for judicial review
37 and civil enforcement of agency actions.

38 (d) Any civil penalty recovered pursuant to this section shall be deposited with the [local
39 collection point administrator] and subsequently routed back to the corresponding PSAP and shall
40 be used solely for those expenses allowed by this Act.

41
42 Section 4. *[VoIP Enhanced 911 Grant Fee.]*

43 (a) Subject to the provisions of [section 10] of this Act, effective [July 1, 2006], there is
44 hereby established a VoIP Enhanced 911 Grant Fee in the amount of [\$.25 per month per VoIP
45 service user]. It shall be the duty of each VoIP provider to collect such fee from the VoIP service
46 user and remit such fee to the [secretary] as provided by [section 6 of this Act], and amendments
47 thereto. Notwithstanding any other provision of this Act, no VoIP service user shall be liable for,
48 nor shall any VoIP provider be required to collect, the VoIP Enhanced 911 Grant Fee on any
49 interconnected VoIP service upon which an emergency telephone tax is paid pursuant to [insert
50 citation], and amendments thereto, or upon which a Wireless Enhanced 911 Grant Fee is paid
51 pursuant to [insert citation], and amendments thereto. In addition, no service user shall be liable
52 for, nor shall any service supplier, telecommunications public utility, telecommunications carrier
53 or wireless carrier be required to collect the emergency telephone tax imposed pursuant to [insert
54 citation] or the Wireless Enhanced 911 Grant Fee established pursuant to this Act for any
55 interconnected VoIP service upon which a VoIP Enhanced 911 Fee is paid pursuant to this Act.

56 (b) The [secretary] shall remit to the [state treasurer], in accordance with the provisions of
57 [insert citation], any fees received pursuant to this section. Upon receipt of the remittance, the
58 [state treasurer] shall deposit the entire amount in the [state treasury] and credit it to the [Wireless
59 Enhanced 911 Grant Fund] established under this Act.

60
61 Section 5. *[VoIP Enhanced 911 Local Fee.]*

62 (a) Effective [July 1, 2006], there is hereby imposed a VoIP Enhanced 911 Local Fee.
63 Subject to the provisions of [section 10 of this Act], the amount of such fee shall be [\$.25 per
64 month per VoIP service user]. Notwithstanding any other provision of this Act, no VoIP service
65 user shall be liable for, nor shall any VoIP provider be required to collect, the VoIP Enhanced 911
66 Local Fee on any interconnected VoIP service upon which an emergency telephone tax is paid

pursuant to [insert citation], or upon which a Wireless Enhanced 911 Local Fee is paid pursuant to section 14 of this Act. In addition, no service user shall be liable for, nor shall any service supplier, telecommunications public utility, telecommunications carrier or wireless carrier be required to collect the emergency telephone tax imposed pursuant to [insert citation], and amendments thereto, or the Wireless Enhanced 911 Local Fee established pursuant to section 14 of this Act, for any interconnected VoIP service upon which a VoIP Enhanced 911 Fee is paid pursuant to this Act.

(b) The proceeds of the VoIP Enhanced 911 Local Fee, and any interest earned on revenue derived from such fee, shall be used only for the purposes provided in section 14 of this Act.

(c) Each PSAP shall submit to the [secretary] an annual report accounting for the money received by the PSAP from the VoIP Enhanced 911 Local Fee. Such report shall be submitted on a form provided by the [secretary], which shall be consolidated with the report accounting for money received from the Wireless Enhanced 911 Local Fee required pursuant to section 14 of this Act.

(d) If pursuant to section 14 of this Act, a PSAP is required to pay to the [secretary] all money from the Wireless Enhanced 911 Local Fee which has been or is received by such PSAP, such PSAP shall also pay to the [secretary] all money from the VoIP Enhanced 911 Local Fee which have been or are received by such PSAP and the [secretary] shall notify the local collection point administrator that distribution of money from the VoIP Enhanced 911 Local Fee to the PSAP shall be stopped and that such money shall be instead remitted to the [secretary] until the PSAP is again eligible to receive money from the Wireless Enhanced 911 Local Fee. The PSAP thereafter shall not be eligible to receive money from distributions by the local collection point administrator until the PSAP is again eligible to receive money from the Wireless Enhanced 911 Local Fee. The [secretary] shall remit any money received from the repayment by the PSAP or from distributions by the local collection point administrator to the [state treasurer] in accordance with [insert citation], and amendments thereto. Upon receipt of the remittance, the [state treasurer] shall deposit the entire amount in the state treasury and credit it to [The Wireless Enhanced 911 Grant Fund].

Section 6. [*Liability of VoIP Service User to Pay VoIP Enhanced 911 Grant Fee and VoIP Enhanced 911 Local Fee.*]

(a) Every billed VoIP service user shall be liable for the VoIP Enhanced 911 Grant Fee and the VoIP Enhanced 911 Local Fee until such fees have been paid to the VoIP provider.

(b) The duty to collect any such fees imposed pursuant to this Act shall commence [July 1, 2006]. Such fees shall be added to and may be stated separately in billings. If stated separately, the fees shall be labeled “[state] E-911 Fees.”

(c) The VoIP provider shall have no obligation to take any legal action to enforce the collection of the fees imposed by this Act. The VoIP provider shall provide annually to the [secretary] a list of amounts of uncollected VoIP Enhanced 911 Grant Fees along with the names and addresses of those VoIP service users which carry a balance that can be determined by the VoIP provider to be nonpayment of such fees. The VoIP provider shall provide annually to the local collection point administrator a list of amounts of uncollected VoIP Enhanced 911 Local Fees along with the names and addresses of those VoIP service users which carry a balance that can be determined by the VoIP provider to be nonpayment of such fees.

(d) The fees imposed by this Act shall be collected insofar as practicable at the same time as, and along with, the charges for VoIP service in accordance with regular billing practice of the VoIP provider.

(e) The VoIP Enhanced 911 Grant Fee and the amounts required to be collected therefor are due monthly. The amount of any such fees collected in one month by the VoIP provider shall be remitted to the [secretary] not more than [15 days] after the close of the calendar month. On or

117 before the [15th day] of each calendar month following, a return for the preceding month shall be
118 filed with the [secretary] in such form as the [secretary] and the VoIP provider shall agree. The
119 VoIP provider required to file the return shall deliver the return together with a remittance of the
120 amount of the fees payable to the [secretary] The VoIP provider shall maintain records of the
121 amount of any such fees collected pursuant to action in accord with this Act. Such records shall
122 be maintained for a period of [three years] from the time the fees are collected.

123 (f) The VoIP Enhanced 911 Local Fee and the amounts required to be collected therefor
124 are due monthly. The amount of any such fees collected in one month by the VoIP provider shall
125 be remitted to the local collection point administrator not more than [15 days] after the close of
126 the calendar month. On or before the [15th day] of each calendar month following, a return for
127 the preceding month shall be filed with the local collection point administrator. Such return shall
128 be in such form and shall contain such information as required by the administrator. The VoIP
129 provider required to file the return shall deliver the return together with a remittance of the
130 amount of the fees payable to the local collection point administrator. The VoIP provider shall
131 maintain records of the amount of any such fees collected pursuant to action in accord with this
132 Act. Such records shall be maintained for a period of [three] years from the time the fees are
133 collected.

134 (g) Except as provided by [subsection (d) of section 5 of this Act], and amendments
135 thereto, not later than [30] days after receipt of money from VoIP providers pursuant to this
136 section, the local collection point administrator shall distribute such money collected from the
137 VoIP Enhanced 911 Local Fee to the PSAP based upon primary residence information provided
138 by VoIP providers. The local collection point administrator may retain an administrative fee of
139 not more than [2%] of money collected from such fee.

140 (h) The local collection point administrator shall keep accurate accounts of all receipts and
141 disbursements of money from the VoIP Enhanced 911 Local Fee. The receipts and disbursements
142 shall be audited yearly by a licensed municipal accountant or certified public accountant and the
143 audit report shall be submitted to the [secretary].

144
145 Section 7. *[Audits of VoIP Providers Concerning Collecting and Remitting Fees Pursuant*
146 *to this Act.]* In [2008], the [secretary] shall require, and thereafter may require, an audit of any
147 VoIP provider's books and records concerning the collection and remittance of fees pursuant to
148 this Act. Any such audit shall be conducted at the expense of the [secretary]. Information
149 provided by VoIP providers to the [secretary or the advisory board] pursuant to this Act or the
150 Wireless Enhanced 911 Act will be treated as proprietary records which will be withheld from the
151 public upon request of the party submitting such records.

152
153 Section 8. *[Exemptions from Liability to Pay Damages Resulting from the Performance of*
154 *Installing, Maintaining or Providing VoIP Enhanced 911 Service.]* As permitted by regulations of
155 the Federal Communications Commission, the VoIP Enhanced 911 service described in this Act
156 is within the governmental power and authority of the [secretary], local collection point
157 administrator, governing bodies and public agencies. Except as provided by the [state tort claims
158 Act], in contracting for such service and in providing such service, and except for failure to use
159 ordinary care, or for intentional acts, the [secretary], local collection point administrator, each
160 governing body, each public agency, each VoIP provider, and their employees and agents, shall
161 not be liable for the payment of damages resulting from the performance of installing,
162 maintaining or providing VoIP enhanced 911 service. In addition, a VoIP provider, and its
163 officers, directors, employees, vendors and agents, shall have the same immunity and other
164 protection from liability in this state as that provided to wireless carriers under 47 U.S.C. 615a
165 (October 26, 1999).

Section 9. [*Recovering Costs Associated with Installing and Operating VoIP Enhanced 911 Service.*] Nothing in the VoIP Enhanced 911 Act shall be construed to limit the ability of a VoIP provider from recovering directly from the provider's customers its costs associated with designing, developing, deploying and maintaining VoIP Enhanced 911 service and its costs of collection and administration of the fees imposed by this act, whether such costs are itemized on the customer's bill as a surcharge or by any other lawful method.

Section 10. [*Enhanced 911 Grant Fee Discontinued.*]

(a) On [July 1, 2010]:

(1) the VoIP Enhanced 911 Grant Fee shall be discontinued.

(2) the amount of the tax per access line or its equivalent imposed within a jurisdiction pursuant to [insert citation], and amendments thereto, and the amount of the VoIP Enhanced 911 Local Fee per VoIP subscriber whose primary residence is within such jurisdiction shall be an equal amount per month.

(3) the provisions of sections 3 and 4 of this Act shall expire.

(b) On and after [July 1, 2010], the proceeds of the VoIP Local Fee shall be used only to pay for costs of emergency telephone service described in [insert citation], and expenditures authorized by section 14 of this Act.

Section 11. [*Wireless Enhanced 911 Grant Fund.*]

(a) There is hereby established in the [state treasury] a Wireless Enhanced 911 Grant Fund.

(b) Money from the following sources shall be credited to the [Fund]:

(1) amounts received by the state from the federal government for the purposes of the [Fund];

(2) amounts appropriated or otherwise made available by the legislature for the purposes of the [Fund];

(3) amounts received from fees under this Act or from repayments or fees remitted under [insert citation], sections 5, 13, and 14 of this Act;

(4) interest attributable to investment of money in the [Fund]; and

(5) amounts received from any public or private entity for the purposes of the [Fund].

(c) Subject to the conditions and in accordance with requirements of this Act, money credited to the [Fund] shall be used only:

(1) to pay costs of administering the [Fund], including actual and necessary expenses incurred by members of the [Fund Advisory Board] while performing duties required by the Wireless Enhanced 911 Act and costs of any audit performed under [insert citation], but the aggregate amount of all such costs shall not exceed 5% of the money credited to the [Fund]; and

(2) to provide grants to eligible municipalities only for necessary and reasonable costs incurred or to be incurred by a PSAP for:

(A) implementation of Wireless Enhanced 911 Service and VoIP 911 service, as defined in [section 2 of this Act], and amendments thereto;

(B) purchase of equipment and upgrades and modification to equipment used solely to process the data elements of Wireless Enhanced 911 service and VoIP 911 service, as defined in [section 2 of this Act]; and

(C) maintenance and license fees for such equipment and training of personnel to operate such equipment, including costs of training PSAP personnel to provide effective service to all users of the emergency telephone system who have communications disabilities. Such costs shall not include expenditures to lease, construct, expand, acquire,

remodel, renovate, repair, furnish or make improvements to buildings or similar facilities or for other capital outlay or equipment not expressly authorized by this Act.

(d) On or before the [10th] of each month, the director of accounts and reports shall transfer from the [state general fund] to the [Fund] interest earnings based on:

(1) the average daily balance of money in the wireless Enhanced 911 Grant Fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(e) All payments and disbursements from the [Fund] shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the [secretary] or by a person or persons designated by the [secretary].

Section 12. *[Administering Wireless Enhanced 911 Act.]*

(a) The [secretary] shall administer the provisions of the Wireless Enhanced 911 Act and shall be responsible for administration and management of the [Fund]. The [secretary] is hereby authorized to:

(1) enter into binding commitments for the provision of grants in accordance with the provisions of this Act;

(2) review applications of eligible municipalities for grants and select the projects for which grants will be made available; and

(3) adopt rules and regulations necessary for effectuation of the provisions of this Act, including, but not limited to, assessing civil penalties.

(b) No civil penalty shall be imposed pursuant to this section except upon the written order of the [secretary] or the [secretary's duly authorized agent to a wireless carrier]. Such order shall state the violation, the penalty to be imposed and the right of such wireless carrier to appeal to the [secretary]. Any such wireless carrier, within [20] days after notification, may make written request to the [secretary] for a hearing or informal conference hearing in accordance with the provisions of the state administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(c) Any wireless carrier aggrieved by an order of the [secretary] made under this section may appeal such order to the district court in the manner provided by the Act for judicial review and civil enforcement of agency actions.

(d) Any civil penalty recovered pursuant to this section shall be deposited with the local collection point administrator and subsequently routed back to the corresponding PSAP and shall be used solely for those expenses allowed by this Act.

Section 13. *[Grants under the Wireless Enhanced 911 Act.]*

(a) Eligible municipalities wishing to receive a grant under the Wireless Enhanced 911 Act shall submit an application therefore to the [secretary]. Applications shall be in such form and shall include such information as the [secretary] shall require including, but not limited to, the request for proposals submitted to initiate the deployment process, and shall be submitted in a manner and at a time to be determined by the secretary.

(b) The [secretary] may enter into agreements with any eligible municipality for the provision of a grant thereto for payment of all or a part of project costs and, including VoIP project costs, as defined in section 2 of this Act, and amendments thereto, if recommended by the [Advisory Board]. Any eligible municipality may enter into such an agreement and may accept such grant when so authorized by the municipal governing body. The purposes of the grant to be provided, a time frame for implementation, and the amount thereof, which may vary among municipalities, shall be included in the agreements. All such agreements shall include provisions

for repayment of the grant if implementation is not completed in accordance with the terms of the agreement.

(c) If a municipality to which a grant is made available under the Wireless Enhanced 911 Act fails to enter into an agreement with the secretary for the provision of such grant in accordance with the requirements of this Act, the [secretary] may make the amount of the grant available for one or more other projects on the priority list or VoIP projects, as defined in section 2 of this Act, and amendments thereto, if recommended by the advisory board.

(d) The [secretary] shall provide any eligible municipality, upon request, with technical advice and assistance regarding a project, including VoIP projects, or an application for a grant for the payment of all or part of project costs or VoIP project costs.

(e) (1) Subject to the provisions of subsection (e)(3), each PSAP shall submit to wireless carriers a valid request for Wireless Enhanced 911 service by [July 1, 2007].

(2) Subject to the provisions of subsection (e)(3), if a PSAP has not submitted to wireless carriers a valid request for Wireless Enhanced 911 service by [July 1, 2007], such PSAP shall pay to the [secretary] all money paid from the [Fund] to such PSAP. The [secretary] shall remit such money to the state treasurer in accordance with [insert citation], and amendments thereto. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the [state treasury] and credit it to the Wireless Enhanced 911 Grant Fund. Thereafter, such PSAP shall not be eligible to receive money from the [Fund] until the PSAP has submitted to the [secretary] evidence satisfactory to the secretary that the PSAP has submitted to wireless carriers a valid request for Wireless Enhanced 911 service.

(3) If a PSAP is unable to make a valid request by [July 1, 2007], the [advisory board] may approve not to exceed [two] [one-year] extensions of such date to not later than [July 1, 2008], if the [advisory board] determines that:

(A) equipment necessary to receive and utilize the data elements associated with the Wireless Enhanced 911 service has been ordered by the PSAP but is unavailable; or

(B) there is other just cause to extend the date.

Section 14. *[Wireless Enhanced 911 Local Fee.]*

(a) Effective [July 1, 2004], there is hereby imposed a Wireless Enhanced 911 Local Fee. Subject to the provisions of [insert citation], the amount of such fee shall be \$.25 per month per wireless subscriber with primary place of use in this state. Such fee shall not be imposed on prepaid wireless service.

(b) Subject to the provisions of [insert citation] the proceeds of the Wireless Enhanced 911 Local Fee, and any interest earned on revenue derived from such fee, shall be used only for necessary and reasonable costs incurred or to be incurred by PSAP's for:

(1) implementation of Wireless Enhanced 911 service and VoIP Enhanced 911 service;

(2) purchase of equipment and upgrades and modification to equipment used solely to process the data elements of wireless enhanced 911 service and VoIP enhanced 911 service; and

(3) maintenance and license fees for such equipment and training of personnel to operate such equipment, including costs of training PSAP personnel to provide effective service to all users of the emergency telephone system who have communications disabilities. Such costs shall not include expenditures to lease, construct, expand, acquire, remodel, renovate, repair, furnish or make improvements to buildings or similar facilities or for other capital outlay or equipment not expressly authorized by this Act.

(c) Each PSAP shall submit to the secretary an annual report accounting for the money received by the PSAP from the Wireless Enhanced 911 Local Fee. Such report shall be submitted on a form provided by the [secretary].

(d) (1) Subject to the provisions of subsection (d)(3), each PSAP shall submit to wireless carriers a valid request for Wireless Enhanced 911 service by [July 1, 2007].

(2) Subject to the provisions of subsection (d)(3), if a PSAP has not submitted to wireless carriers a valid request for Wireless Enhanced 911 service by [July 1, 2007]:

(A) Such PSAP shall pay to the [secretary] all money from the Wireless Enhanced 911 Local Fee which have been or are received by such PSAP;

(B) The [secretary] shall notify the local collection point administrator that the PSAP has not made a valid request when required and that distributions of money from the Wireless Enhanced 911 Local Fee to the PSAP shall be stopped and that such money shall be instead remitted to the secretary until the [secretary] notifies the local collection point administrator that the PSAP has made a valid request;

(C) The PSAP thereafter shall not be eligible to receive money from the fund or from distributions by the local collection point administrator until the PSAP has submitted to the [secretary] evidence satisfactory to the [secretary] that the PSAP has submitted to wireless carriers a valid request for Wireless Enhanced 911 service. The [secretary] shall remit any money received from the repayment by the PSAP or from distributions by the local collection point administrator to the [state treasurer] in accordance with [insert citation], and amendments thereto. Upon receipt of the remittance, the [state treasurer] shall deposit the entire amount in the [state treasury] and credit it to the Wireless Enhanced 911 Grant Fund.

(3) If a PSAP is unable to make a valid request by [July 1, 2007], the [advisory board] may approve not to exceed [two] [one-year] extensions of such date to not later than [July 1, 2008], if the [advisory board] determines that:

(A) equipment necessary to receive and utilize the data elements associated with wireless enhanced 911 service has been ordered by the PSAP but is unavailable; or

(B) there is other just cause to extend the date.

Section 15. *[Wireless 911 Enhanced Service System and VoIP Enhanced 911 Service System Audit.]*

(a) During calendar year [2006], the [division of post audit] shall conduct an audit of the Wireless Enhanced 911 Service System to determine:

(1) whether money received by municipalities pursuant to the [Wireless Enhanced 911 Act] are being used appropriately;

(2) the amount of money collected pursuant to this Act is adequate;

(3) the status of Wireless Enhanced 911 implementation; and

(4) the need and level of continued funding of the Wireless Enhanced 911 Service System. The audit shall be in accordance with a scope statement authorized and approved by the [legislative post audit committee] and shall be conducted in accordance with [insert citation].

(b) During the calendar year [2008], the [division of post audit] shall conduct an audit of the state Wireless Enhanced 911 Service System and the VoIP Enhanced 911 Service System, as defined in section 2 of this Act, and the Landline Emergency Telephone Service System to determine:

(1) whether money received by municipalities pursuant to the state Wireless Enhanced 911 Act and The VoIP Enhanced 911 Act are being used appropriately;

(2) the amount of money collected pursuant to this Act and the VoIP Enhanced 911 Act is adequate;

(3) the status of Wireless Enhanced 911 and VoIP Enhanced 911 implementation; and

(4) the need and level of continued funding of the Wireless Enhanced 911 Service System, the VoIP Enhanced 911 Service System and the Landline Emergency Telephone Service System. The audit shall be in accordance with a scope statement authorized and approved by the

[legislative post audit committee] and shall be conducted in accordance with [insert citation]. The audit report shall be submitted to the [legislature] at the commencement of the [regular session of the legislature] in [2009].

Section 16. [*County Governments.*] Counties may not exempt from or effect changes in the Wireless Enhanced 911 Act, the VoIP Enhanced 911 Act, or in the provisions of [insert citation].

Section 17. [*Severability.*] [Insert severability clause.]

Section 18. [*Repealer.*] [Insert repealer clause.]

Section 19. [*Effective Date.*] [Insert effective date.]

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