



SUGGESTED STATE LEGISLATION

2013 Volume 72

Developed by the
Committee on Suggested State Legislation
The Council of State Governments





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LEGISLATION
2013
Volume 72**

Developed by the
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Lexington, Kentucky

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2760 Research Park Drive
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Manufactured in the United States of America

ISBN: 978-0-87292-780-3

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

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

CSG promotes excellence in decision-making and leadership skills and champions state sovereignty.

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Foreword

The Council of State Governments (CSG) is pleased to offer this **2013 *Suggested State Legislation*** volume, a valued series of compilations of draft legislation about topics of importance to the states. The draft legislation found in this book represents many hours of work by The Council's Committee on Suggested State Legislation and CSG staff. The entries in this book were selected from hundreds of submissions. Most are based on existing state statutes. Neither The Council nor the Committee seeks to influence the enactment of state legislation. Throughout the years, however, both have found that the experiences of one state may prove beneficial to others. It is in this spirit that these drafts are presented.

The Council of State Governments
Lexington, Kentucky

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Introduction

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

That statement is a simple one, but it remains as true today as it did when it first appeared in the introduction to the 28th volume of *Suggested State Legislation*. For more than 70 years, The Council of State Governments’ Suggested State Legislation (SSL) program has informed state policy-makers about a broad range of legislative issues, and its national Committee on Suggested State Legislation has been an archetype of interstate dialogue, one successfully imitated in a variety of ways.

The Committee on Suggested State Legislation originated as a group of state and federal officials who first met in August of 1940 to review state laws relating to U.S. security. The result was *A Legislative Program for Defense*. That group reconvened following the nation’s entry into World War II in order to develop a volume of *Suggested State War Legislation*. That publication was succeeded by *Suggested State Legislation*, an annual volume of draft legislation about topics of major governmental interest. Today, SSL Committee members represent all regions of the country. They are generally legislators and legislative staff.

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. The SSL Committee now produces SSL volumes electronically in parts, one part after every committee meeting. Each part is published on-line approximately three to four months after a meeting. The electronic parts are then combined into a book that CSG publishes at the end of the SSL Cycle.

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 and style of the bill or Act clear and unambiguous?

All items selected for publication in SSL are presented in a general format as shown in

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

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

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

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

Legislation and accompanying materials should be submitted to the Suggested State Legislation Program, The Council of State Governments, 2760 Research Park Drive, Lexington, Kentucky 40511, (859) 244-8000, fax (859) 244-8001, or ssl@csg.org.

Readers should keep in mind that neither The Council of State Governments nor the SSL Committee advocates 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 SSL by visiting the SSL pages at CSG’s Internet Web site at www.csg.org.

SSL Process

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

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

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

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

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

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

SSL Criteria

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

Criminal Rehabilitation Research (Sample Act)

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

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

Submitted as:

State:

Act/Bill Number

Status:

Suggested State Legislation

(Title, enacting clause, etc.)

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

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

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

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

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

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

11 (A) A [rehabilitation research commission] is established to review, approve, and 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 (B) 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.]

Automated Sales Suppression Device

This Act defines and prohibits the use, purchase, installation, transfer, or sale of any automated sales suppression device or phantomware. It defines an automated sales suppression device as a software program that falsifies the electronic records of electronic cash registers or any other point-of-sale systems, including transaction data and transaction reports or a general reference to a device that allows for, creates, or supports an automated sales suppression system or any kind of phantomware.

Submitted as:

Utah

[HB 96 \(Enrolled version\)](#)

Status: Enacted into law in 2012.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The Automated Sales Suppression Device
2 Act.”

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

5 (1) “Automated sales suppression device means a software program that falsifies the
6 electronic records of electronic cash registers or any other point-of-sale systems, including
7 transaction data and transaction reports or a general reference to a device that allows for, creates, or
8 supports an automated sales suppression system or any kind of phantomware.

9 (2) “Electronic cash register” means any device, wherever located, that maintains a
10 transaction register or supporting documents by means of an electronic device or computer system
11 designed to record transaction data for the purpose of computing, compiling, or processing retail,
12 wholesale, or any other sales transaction data.

13 (3) “Person” means an individual, business, or entity.

14 (4) “Phantomware” means a programming option that is pre-installed, installed at a later
15 time, or otherwise embedded in the operating system of an electronic cash register or hardwired into
16 the electronic cash register; and can be used to create a virtual alternate register or to eliminate or
17 manipulate transaction records that may or may not be preserved in digital formats in order to
18 represent a manipulated record or records of transactions in the electronic cash register.

19 (5) “Transaction data” includes items purchased by a customer, the price for each item, a
20 taxability determination for each item, a segregated tax amount for each of the taxed items, the
21 amount of cash or credit tendered, the net amount returned to the customer in change or in a refund,
22 the date and time of the purchase, the name, address, and identification number of the vendor, and
23 the receipt or invoice number of the transaction.

24 (6) “Transaction report” means a report that includes the sales, taxes collected, media totals,
25 and discount voids at an electronic cash register and that is generated at the end of a day or shift. The
26 report is printed on cash register tape or is stored electronically.

27
28 Section 3. [*Possession, Sale, or Use of Automated Sales Suppression Device Unlawful.*]

29 (A) It is a [third degree felony] to willfully or knowingly sell, purchase, install, transfer, use,
30 or possess in this state any automated sales suppression device or phantomware with the intent to

31 defraud, except that any second or subsequent violation of this Subsection (1) is a [second degree
32 felony].

33 (B) Notwithstanding [insert citation], any person convicted of violating Subsection (A) may
34 be fined not more than [twice the amount of the applicable taxes that would otherwise be due], but
35 for the use of the automated sales suppression device or phantomware.

36 (C) Any person convicted of a violation of Subsection (A) is liable for all applicable taxes,
37 penalties and interest under [insert citation] that would otherwise be due, but for the use of the
38 automated sales suppression device or phantomware to evade the payment of taxes; and shall
39 disgorge all profits associated with the sale or use of an automated sales suppression device or
40 phantomware.

41 (D) An automated sales suppression device and any device containing an automated sales
42 suppression device is contraband and subject to forfeiture under [insert citation].

43

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

45

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

47

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

Autonomous Vehicles

This Act defines autonomous technology and autonomous vehicle and provides legislative intent regarding vehicles with autonomous technology. It authorizes the operation of autonomous vehicles and provides requirements for autonomous vehicles, including liability for autonomous vehicles.

The legislation also requires the department of highway safety and motor vehicles to submit a report to the President of the Senate and the Speaker of the House of Representatives recommending additional legislative or regulatory action that may be required for the safe testing and operation of motor vehicles equipped with autonomous technology.

Submitted as:

Florida

[CS/HB 1207 \(Enrolled version\)](#)

Status: Enacted into law in 2012.

Suggested State Legislation

(Title, enacting clause, etc.)

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

2

3 Section 2. [*Legislative Intent.*] It is the intent of the [legislature] to encourage the safe
4 development, testing, and operation of motor vehicles with autonomous technology on the public
5 roads of the state. The [legislature] finds that the state does not prohibit or specifically regulate the
6 testing or operation of autonomous technology in motor vehicles on public roads.

7

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

9 (1) “Autonomous technology” means technology installed on a motor vehicle that has the
10 capability to drive the vehicle on which the technology is installed without the active control or
11 monitoring by a human operator. The term excludes a motor vehicle enabled with active safety
12 systems or driver assistance systems, including, without limitation, a system to provide electronic
13 blind spot assistance, crash avoidance, emergency braking, parking assistance, adaptive cruise
14 control, lane keep assistance, lane departure warning, or traffic jam and queuing assistant, unless any
15 such system alone or in combination with other systems enables the vehicle on which the technology
16 is installed to drive without the active control or monitoring by a human operator.

17 (2) “Autonomous vehicle” means any vehicle equipped with autonomous technology.

18

19 Section 4. [*Autonomous Vehicles.*]

20 (A) An autonomous vehicle registered in this state must continue to meet federal standards
21 and regulations for a motor vehicle.

22 (B) The vehicle shall:

23 (1) Have a means to engage and disengage the autonomous technology which is
24 easily accessible to the operator.

25 (2) Have a means, inside the vehicle, to visually indicate when the vehicle is
26 operating in autonomous mode.

27 (3) Have a means to alert the operator of the vehicle if a technology failure affecting
28 the ability of the vehicle to safely operate autonomously is detected while the vehicle is operating
29 autonomously in order to indicate to the operator to take control of the vehicle.

30 (4) Be capable of being operated in compliance with the applicable traffic and motor
31 vehicle laws of this state.

32 (C) Federal regulations promulgated by the National Highway Traffic Safety Administration
33 shall supersede this section when found to be in conflict with this section.

34

35 Section 5. [*Operating Autonomous Vehicles.*]

36 (A) A person who possesses a valid driver license may operate an autonomous vehicle in
37 autonomous mode.

38 (B) A person shall be deemed to be the operator of an autonomous vehicle operating in
39 autonomous mode when the person causes the vehicle's autonomous technology to engage,
40 regardless of whether the person is physically present in the vehicle while the vehicle is operating in
41 autonomous mode.

42 (C) Vehicles equipped with autonomous technology may be operated on roads in this state by
43 employees, contractors, or other people designated by manufacturers of autonomous technology for
44 the purpose of testing the technology. For testing purposes, a human operator shall be present in the
45 autonomous vehicle and they shall have the ability to monitor the vehicle's performance and
46 intervene, if necessary, unless the vehicle is being tested or demonstrated on a closed course. Prior to
47 the start of testing in this state, the entity performing the testing must submit to the [department of
48 highway safety and motor vehicles] an instrument of insurance, surety bond, or proof of self-
49 insurance acceptable to the [department] in the amount of [\$5 million].

50 (D) The original manufacturer of a vehicle converted by a third party into an autonomous
51 vehicle shall not be liable in, and shall have a defense to and be dismissed from, any legal action
52 brought against the original manufacturer by any person injured due to an alleged vehicle defect
53 caused by the conversion of the vehicle, or by equipment installed by the converter, unless the
54 alleged defect was present in the vehicle as originally manufactured.

55 (E) By [insert date] the [department of highway safety and motor vehicles] shall submit a
56 report to the [President of the Senate and the Speaker of the House of Representatives]
57 recommending additional legislative or regulatory action that may be required for the safe testing
58 and operation of motor vehicles equipped with autonomous technology.

59

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

61

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

63

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

Beneficiaries’ Bill of Rights

This Act defines a “Retained Asset Account” as “any mechanism whereby the settlement of proceeds payable under a life insurance policy, including but not limited to the payment of cash surrender value, is accomplished by the insurer or an entity acting on behalf of the insurer depositing the proceeds into an account where those proceeds are retained by the insurer, pursuant to a supplementary contract not involving annuity benefits.” The legislation precludes insurers from using a retained asset account as the mode of settlement of payment to a life insurance beneficiary unless the insurer discloses the use of a retained asset account to the beneficiary or the beneficiary’s legal representative prior to the transfer of life insurance proceeds to a retained asset account.

The Act requires insurers to inform a beneficiary about the right to receive a lump-sum payment of life insurance proceeds in the form of a bank check or similar other immediate full payment of benefits. It requires insurers to disclose all payment options available to beneficiaries, in written or electronic format, upon the distribution of anything other than a lump-sum payment of life insurance proceeds. The bill sets forth specific disclosure requirements upon the use of a retained asset account rather than a lump-sum payment.

It establishes annual insurer reporting requirements to the department of insurance about retained asset accounts. The legislation requires all marketing materials, disclosure statements, and supplemental contract forms used in connection with retained asset accounts to be filed with the department of insurance prior to their use. The Act authorizes the commissioner to disapprove any materials, statements, or forms that are inconsistent with the provisions of the section or are otherwise untrue, unfair, deceptive, false, or misleading.

The legislation requires insurers to return any balance held in a retained asset account to the beneficiary if no funds are withdrawn from the account, or if no affirmative directive has been provided to the insurer by the beneficiary, during any continuous three-year period.

Submitted as:

Kentucky

[HB 309](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The Beneficiaries’ Bill of Rights Act.”

2

3 Section 2. [*Definitions.*]

4 (1) As used in this section, “retained asset account” means any mechanism whereby the
5 settlement of proceeds payable under a life insurance policy, including but not limited to the
6 payment of cash surrender value, is accomplished by the insurer or an entity acting on behalf of the
7 insurer depositing the proceeds into an account where those proceeds are retained by the insurer,
8 pursuant to a supplementary contract not involving annuity benefits.

9 (2) (a) An insurer may not use a retained asset account as the mode of settlement unless
10 the insurer discloses the use of a retained asset account to the beneficiary or the beneficiary’s legal
11 representative prior to the transfer of life insurance proceeds to a retained asset account.

12 (b) A beneficiary shall be informed, prior to the distribution of any life insurance
13 proceeds, of his or her right to receive a lump-sum payment of life insurance proceeds in the form of
14 a bank check or other form of immediate full payment of benefits.

15 (3) (a) A complete listing and clear explanation of all life insurance proceeds payment
16 options available to the beneficiary shall accompany, in written or electronic format, the use of a
17 retained asset account. The complete listing and clear explanation of life insurance proceeds
18 payment options shall accompany the disclosure required by subsection (2)(b) of this section.

19 (b) Pursuant to paragraph (a) of this subsection, the use of a retained asset account
20 shall require the following to be included in the complete listing and clear explanation disclosure:

21 1. The recommendation to consult a tax, investment, or other financial advisor
22 regarding tax liability and investment options;

23 2. The initial interest rate, the circumstances and time frames under which
24 interest rates may change, and any dividends and other gains that may be paid or distributed to the
25 account holder;

26 3. The custodian of the funds or assets of the account;

27 4. The coverage guaranteed by the Federal Deposit Insurance Corporation
28 (FDIC), if any, and the amount of the coverage;

29 5. The limitations, if any, on the number or amount of withdrawals or transfers
30 of funds from the account, including any minimum or maximum withdrawal amounts for payment of
31 life insurance proceeds;

32 6. The delays, if any, that the account holder may encounter in completing
33 authorized transactions and the anticipated duration of such delays;

34 7. The services provided for a fee, including a list of the fees and the method
35 of their calculation;

36 8. The nature and frequency of statements of account;

37 9. The payment of some or all of the life insurance proceeds may be by the
38 delivery of checks, drafts, or other instruments to access the available funds;

39 10. The entire life insurance proceeds are available to the account holder by
40 the use of [one (1)] check, draft, or other instrument;

41 11. The insurer or a related party may derive income, in addition to any fees
42 charged on the account, from the total gains received on the investment of the balance of funds in the
43 account;

44 12. The telephone number, address, and other contact information, including a
45 Web site address, to obtain additional information regarding the account; and

46 13. The following statement, "FOR FURTHER INFORMATION, PLEASE
47 CONTACT YOUR STATE DEPARTMENT OF INSURANCE."

48 (c) The writings produced to satisfy the requirements of this subsection shall be
49 written in plain language and printed in bold in no smaller than a [twelve (12) point] font.

50 (4) (a) Insurers shall, on at least an annual basis, report the following information to the
51 [department of insurance]:

52 1. The number and dollar amount of retained asset accounts:

53 a. In force at the beginning of the year;

54 b. Issued or added during the year;

55 c. Closed or withdrawn during the year;

56 d. In force at the end of the year; and

57 e. That are transferred annually pursuant to [insert citation];

58 2. The dollar amount of investment earnings or interest credited to retained
59 asset accounts during the year;

60 3. The dollar amount of fees and other charges assessed during the year;

- 61 4. A narrative description of how the retained asset accounts are structured.
62 The description shall include:
63 a. All of the interest rates paid to retained asset account holders during
64 the reporting year, as well as the number of times changes were made to interest rates during the
65 reporting year;
66 b. A list of all applicable fees charged by the reporting entity directly
67 or indirectly associated with the retained asset accounts; and
68 c. Whether the retained asset accounts were the default method for
69 satisfying life insurance claims;
70 5. The number and dollar amount of retained asset accounts in force at the end
71 of the current year as compared to the prior year segregated by the following ages of the outstanding
72 retained asset accounts:
73 a. [Zero (0) to twelve (12) months];
74 b. [Thirteen (13) to twenty-four (24) months];
75 c. [Twenty-five (25) to thirty-six (36) months];
76 d. [Thirty-seven (37) to forty-eight (48) months];
77 e. [Forty-nine (49) to sixty (60) months]; and
78 f. [Greater than sixty (60) months];
79 6. The identity of any entity or financial institution that administers retained
80 asset accounts on behalf of the insurer; and
81 7. Any other information relating to retained asset accounts as requested or
82 required by the [commissioner of the department of insurance].
83 (b) All marketing materials, disclosure statements, and supplemental contract forms
84 utilized in connection with retained asset accounts shall be filed with the [department of insurance]
85 prior to their use. The [commissioner] shall disapprove any materials, statements, or forms submitted
86 under this section that are inconsistent with subsection (3) of this section or are otherwise untrue,
87 unfair, deceptive, false, or misleading.
88 (5) An insurer shall immediately return any remaining balance held in a retained asset
89 account to the beneficiary when the account becomes inactive. A retained asset account shall
90 become inactive for purposes of this subsection if no funds are withdrawn from the account, or if no
91 affirmative directive has been provided to the insurer by the beneficiary, during any continuous
92 [three (3) year] period.
93 (6) The [commissioner] may promulgate administrative regulations implementing this
94 section.

95
96 Section 3. [*Severability.*] [Insert severability clause.]

97
98 Section 4. [*Repealer.*] [Insert repealer clause.]

99
100 Section 5. [*Effective Date.*] [Insert effective date.]

Brew Pubs and Craft Brewers

This Act is designed to enable small companies that manufacture beer to access the marketplace and develop a customer base without impairing the integrity of a state’s system to regulate selling and distributing beer. It does this by creating a legal pathway for small brewers to self-distribute some of their beer in a state with a tightly-controlled beer distribution system such as Illinois’.

The bill defines “brew pub” and “craft brewer” and sets criteria to enable brew pubs to sell beer manufactured by craft brewers. It also enables a brew pub licensee to simultaneously hold a craft brewer license.

This draft is excerpted from a 2011 Illinois law.

Submitted as:

Illinois

[Illinois Public Act 097-0005](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

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

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

4 (A) “Brew Pub” means a person who is licensed under [insert citation], manufactures beer
5 only at a designated premises to make sales to importing distributors, distributors, and to non-
6 licensees for use and consumption only, who stores beer at the designated premises, and who is
7 allowed to sell at retail from the licensed premises, provided that a brew pub licensee shall not sell
8 for off-premises consumption more than [50,000] gallons per year.

9 (B) “Craft Brewer” means a licensed brewer under [insert citation] or licensed non-resident
10 dealer who manufactures up to [465,000] gallons of beer per year and who may make sales and
11 deliveries to importing distributors and distributors and to retail licensees in accordance with the
12 conditions set forth in this Act and under [insert citation].

13
14 Section 3. [*Brew Pub and Craft Brewer Licenses; Restrictions and Exemptions.*]

15 (A) A brew pub license shall allow the licensee:

16 (1) To manufacture beer only on the premises specified in the license,

17 (2) To make sales of the beer manufactured on the premises or, with the approval of
18 the [state liquor commission], beer manufactured on another brew pub licensed premises that is
19 substantially owned and operated by the same licensee to importing distributors, distributors, and to
20 non-licensees for use and consumption,

21 (3) To store the beer upon the premises, and

22 (4) To sell and offer for sale at retail from the licensed premises, provided that a brew
23 pub licensee shall not sell for off-premises consumption more than [50,000] gallons per year.

24 (B) A person who holds a brew pub license may simultaneously hold a craft brewer license if
25 they otherwise qualify for the craft brewer license and the craft brewer license is for a location
26 separate from the brew pub’s licensed premises. A brew pub license shall permit a person who has
27 received prior approval from the [state liquor commission] to [annually] transfer no more than a total

28 of [50,000] gallons of beer manufactured on premises to all other licensed brew pubs that are
29 substantially owned and operated by the same person.

30 (C) (1) A craft brewer licensee, who must also be either a licensed brewer or licensed
31 non-resident dealer and annually manufacture less than [465,000] gallons of beer, may apply to the
32 [state liquor commission] for a self-distribution exemption to allow the sale of not more than
33 [232,500] gallons of the craft brewer's beer to retail licensees per year. In the application, which
34 shall be sworn under penalty of perjury, the craft brewer licensee shall state:

35 (a) The date it was established;
36 (b) Its volume of beer manufactured and sold for each year since its
37 establishment;

38 (c) Its efforts to establish distributor relationships;

39 (d) That a self-distribution exemption is necessary to facilitate the marketing
40 of its beer; and

41 (e) That it will comply with the alcoholic beverage and revenue laws of the
42 United States, this state as defined under [insert citation], and any other state where it is licensed.

43 (2) Any application submitted shall be posted on the [state liquor commission's]
44 website at least [45] days prior to action by the [state liquor commission]. The [state liquor
45 commission] shall approve the application for a self-distribution exemption if the craft brewer
46 licensee:

47 (a) Is in compliance with the state, revenue, and alcoholic beverage laws
48 under [insert citation];

49 (b) Is not a member of any affiliated group that manufactures more than
50 [465,000] gallons of beer per annum or produces any other alcoholic beverages;

51 (c) Shall not annually manufacture for sale more than [465,000] gallons of
52 beer; and

53 (d) Shall not annually sell more than [232,500] gallons of its beer to retail
54 licensees.

55 (3) A self-distribution exemption holder shall [annually] certify to the [state liquor
56 commission] its manufacture of beer during the previous [12] months and its anticipated
57 manufacture and sales of beer for the next [12] months. The [state liquor commission] may fine,
58 suspend, or revoke a self-distribution exemption after a hearing if it finds that the exemption holder
59 has made a material misrepresentation in its application, violated a revenue or alcoholic beverage
60 law of this state, exceeded the manufacture of [465,000] gallons of beer in any [calendar year] or
61 became part of an affiliated group manufacturing more than [465,000] gallons of beer or any other
62 alcoholic beverage.

63 (D) The [state liquor commission] shall issue rules and regulations governing self-
64 distribution exemptions consistent with this Act.

65 (E) Nothing in this Act shall prohibit a self-distribution exemption holder from entering into
66 or simultaneously having a distribution agreement with a licensed importing distributor or a
67 distributor. If a self-distribution exemption holder enters into a distribution agreement and has
68 assigned distribution rights to an importing distributor or distributor, then the self-distribution
69 exemption holder's distribution rights in the assigned territories shall cease in a reasonable time not
70 to exceed [60] days.

71
72 Section 4. [*Severability.*] [Insert severability clause.]

73
74 Section 5. [*Repealer.*] [Insert repealer clause.]

75
76 Section 6. [*Effective Date.*] [Insert effective date.]

Child-Placing Agencies: Conscience Clause

This Act prohibits, to the extent allowed by federal law, requiring a private child-placing agency to perform, assist, counsel, recommend, consent to, refer, or participate in any placement of a child for foster care or adoption when the proposed placement would violate the agency's written religious or moral convictions or policies.

Submitted as:

Virginia

[HB 189 \(Enrolled version\)](#)

Status: Enacted into law in 2012.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Enable Private Child-Placing
2 Agencies to Refuse to Place Children in Foster Care or Adoption Under Certain Conditions.”

3
4 Section 2. [*Child-Placing Agencies; Conscience Clause.*]

5 (A) To the extent allowed by federal law, no private child-placing agency shall be required to
6 perform, assist, counsel, recommend, consent to, refer, or participate in any placement of a child for
7 foster care or adoption when the proposed placement would violate the agency's written religious or
8 moral convictions or policies.

9 (B) The [commissioner] shall not deny an application for an initial license or renewal of a
10 license or revoke the license of a private child-placing agency because of the agency's objection to
11 performing, assisting, counseling, recommending, consenting to, referring, or participating in a
12 placement that violates the agency's written religious or moral convictions or policies.

13 (C) A state or local government entity may not deny a private child-placing agency any grant,
14 contract, or participation in a government program because of the agency's objection to performing,
15 assisting, counseling, recommending, consenting to, referring, or participating in a placement that
16 violates the agency's written religious or moral convictions or policies.

17 (D) Refusal of a private child-placing agency to perform, assist, counsel, recommend,
18 consent to, refer, or participate in a placement that violates the agency's written religious or moral
19 convictions or policies shall not form the basis of any claim for damages.

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

22
23 Section 4. [*Repealer.*] [Insert repealer clause.]

24
25 Section 5. [*Effective Date.*] [Insert effective date.]

College Credit for Heroes

This Act requires the state workforce commission to establish a program to develop and support ways by which institutions of higher education can award academic or workforce education credit to members of the military and veterans for education and training they receive in the military.

Submitted as:

Texas

[SB 1736 \(enrolled version\)](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The College Credit for Heroes Act.”

2
3 Section 2. [*College Credit for Heroes Program.*]

4 (a) In this section, “institution of higher education” has the meaning assigned by [insert
5 citation].

6 (b) The [state workforce commission] shall establish and administer a College Credit for
7 Heroes demonstration program to identify, develop, and support methods to maximize academic or
8 workforce education credit awarded by institutions of higher education in this state to veterans and
9 military service members for military experience, education, and training obtained during military
10 service in order to expedite the entry of veterans and military service members into the workforce.

11 (c) The [state workforce commission] shall work cooperatively with other state agencies,
12 including the [higher education coordinating board], public junior colleges, and other institutions of
13 higher education, to accomplish the purposes of this section.

14 (d) The [state workforce commission] may award grants to state, local, or private entities that
15 perform activities related to the purposes of this section.

16 (e) The [state workforce commission] shall administer the program using money previously
17 appropriated to it or received from federal or other sources.

18 (f) The [state workforce commission] may adopt rules as necessary for the administration of
19 this section.

20 (g) Not later than [insert date], the [state workforce commission], after consultation with the
21 [higher education coordinating board], shall report to the [legislature] and the [governor]:

22 (1) the results of any grants awarded under this section;

23 (2) best practices for veterans and military service members to achieve maximum
24 academic or workforce education credit at institutions of higher education for military experience,
25 education, and training obtained during military service;

26 (3) measures needed to facilitate the award of academic or workforce education credit
27 by institutions of higher education for military experience, education, and training obtained during
28 military service; and

29 (4) other related measures needed to facilitate the entry of trained, qualified veterans
30 and military service members into the workforce.

31 (h) This section expires [insert date].

32
33 Section 3. [*Severability.*] [Insert severability clause.]

34

35

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

36

37

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

Deduction for Residences in Inventory

This Act enables builders to reduce property taxes for a limited time on a limited number of new single family residences, townhouses, or condominiums they build but haven't sold or rented.

Submitted as:

Indiana

[House Enrolled Act No. 1046](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Create a Deduction for
2 Residences in Inventory.”

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

5 (a) “Affiliated group” means any combination of the following:

6 (1) An affiliated group within the meaning provided in Section 1504 of the Internal
7 Revenue Code, except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue
8 Code shall be determined using [fifty percent (50%) instead of eighty percent (80%)] or a
9 relationship described in Section 267(b)(11) of the Internal Revenue Code.

10 (2) [Two (2)] or more partnerships as defined in [insert citation], including limited
11 liability companies and limited liability partnerships, that have the same degree of mutual ownership
12 as an affiliated group described in subdivision (1), as determined under the rules adopted by the
13 [department of local government finance].

14 (b) “Residence in Inventory” means real property that is not a model residence as defined in
15 [insert citation] and consists of any of the following that has never been occupied: a single family
16 residence, a single family townhouse, or a single family condominium unit. The term does not
17 include any of the land on which the residence, townhouse, or condominium unit is located or real
18 property that is used by the owner as the owner’s regular office space. However, this subsection does
19 not prohibit the use of a garage or other space in the real property to store or display material used to
20 promote the real property or other similar properties or as a space for meetings with prospective
21 buyers or lessees.

22 (c) “Residential builder” means a person who builds single family residences, single family
23 townhouses, or single family condominium units, for sale in the ordinary course of the person’s trade
24 or business.

25
26 Section 3. [*Applicability.*] This Act applies to a residence in inventory that is first assessed as
27 a partially completed structure or a fully completed structure as of [insert date] or thereafter.

28
29 Section 4. [*Deductions for Residences in Inventory.*]

30 (a) A residential builder who is the owner of a residence in inventory is entitled to a
31 deduction from the assessed value of the residence in inventory in the amount of [fifty percent
32 (50%)] of the assessed value of the residence in inventory for the following:

33 (1) Not more than [one (1)] assessment date for which the residence in inventory is
34 assessed as a partially completed structure.

35 (2) The assessment date for which the residence in inventory is first assessed as a
36 fully completed structure.

37 (3) The [two (2)] assessment dates that immediately succeed the assessment date
38 referred to in subdivision (2).

39 (b) A [residential builder] is entitled to a deduction under this Act for not more than [three
40 (3)] residences in inventory in this state.

41 (c) A [residential builder] may not receive a deduction under this Act with respect to a
42 residence in inventory located in an [allocation area] as defined in [insert citation].

43 (d) A [residential builder] whose residence in inventory qualifies for a deduction under this
44 Act and for a deduction under another state law can not receive a deduction under both statutes for
45 that residence in inventory for the same year.

46 (e) A deduction for a residence in inventory under this Act does not apply for a particular
47 assessment date if the residence in inventory is leased for any purpose for any part of the calendar
48 year in which the assessment date occurs.

49 (f) If ownership of the residence in inventory changes to an owner who is also a residential
50 builder, that new owner may claim the residence in inventory deduction under this Act, but the
51 deduction may not be applied for an assessment date other than the assessment dates to which the
52 deduction could have applied if ownership had not changed.

53 (g) A [residential builder] who owns a residence in inventory and claims a deduction under
54 this Act shall provide to the county auditor a notice that informs the auditor of a transfer of the
55 ownership of the residence in inventory and indicates whether the new owner is eligible to receive a
56 deduction under this Act. The notice required by this subsection must be submitted to the county
57 auditor at the same time that a sales disclosure form is filed under [insert citation].

58 (h) A deduction allowed for a residence in inventory under this Act for a particular
59 assessment date is terminated if title to the residence in inventory is transferred after the assessment
60 date of that year but before [January 1 of the following year] and to a person for whom the real
61 property does not qualify as a residence in inventory. The county auditor shall immediately mail
62 notice of the termination to the former owner, the new owner, and the township assessor (or the
63 county assessor if there is no township assessor for the township). The county auditor shall remove
64 the deduction from the tax duplicate and shall notify the county treasurer of the termination of the
65 deduction.

66
67 Section 5. *[Qualifying Statement.]*

68 (a) A [residential builder] who seeks a deduction under this Act must file a statement
69 containing the information required by subsection (b) with the county auditor to claim the deduction
70 for each assessment date for which the residential builder wishes to receive the deduction. The
71 township assessor, or the county assessor if there is no township assessor for the township, shall
72 verify each statement filed under this section, and the county auditor shall make the deductions and
73 notify the county property tax assessment board of appeals of all deductions approved; under this
74 section.

75 (b) The statement referred to in subsection (a) must be verified under penalties for perjury
76 and must contain the following information:

77 (1) The assessed value of the real property for which the [residential builder] is
78 claiming the deduction.

79 (2) The full name and complete business address of the [residential builder] claiming
80 the deduction.

81 (3) The complete address and a brief description of the real property for which the
82 [residential builder] is claiming the deduction.

83 (4) The name of any other county in which the [residential builder] has applied for a
84 deduction under this Act for that assessment date.

85 (5) The complete address and a brief description of any other real property for which
86 the [residential builder] has applied for a deduction under this Act for that assessment date.

87 (6) An affirmation by the [residential builder] that the [residential builder] is
88 receiving not more than [three (3)] deductions under this Act, including any deduction being applied
89 for by the [residential builder] under this Act, either as a [residential builder] of a residence in
90 inventory or as an owner that is part of an affiliated group.

91 (7) An affirmation that the real property has not been leased and will not be leased for
92 any purpose during the term of the deduction.

93 (c) The auditor of a county (referred to in this section as the “first county”) with whom a
94 statement is filed shall immediately prepare and transmit a copy of the statement to the auditor of
95 any other county (referred to in this section as the “second county”) if the [residential builder] who
96 claims the deduction owns or is buying a residence in inventory located in the second county.

97 (d) The county auditor of the second county shall note on the copy of the statement whether
98 the [residential builder] has claimed a deduction for the current year under this Act for a residence in
99 inventory located in the second county. The county auditor shall then return the copy of the
100 statement to the auditor of the first county.

101
102 Section 6. [*Administrative Rules.*] The [department of local government finance] shall adopt
103 rules to implement this Act.

104
105 Section 7. [*Severability.*] [Insert severability clause.]

106
107 Section 8. [*Repealer.*] [Insert repealer clause.]

108
109 Section 9. [*Effective Date.*] [Insert effective date.]

Deregulating Telecommunications Note

Telecommunications products and services are changing rapidly at the beginning of the 21st Century and states are adapting their regulatory structure to accommodate these changes. Ohio, Michigan, North Carolina, Texas, Virginia, and Wisconsin are six recent examples.

Ohio

Ohio [SB 162 \(Enrolled version\)](#), which became law in 2010, revised state-policy objectives for the provision of telecommunications service and repeals the law governing alternative regulation of telephone companies and rescinds related Public Utilities Commission of Ohio (PUCO) rules. An Ohio legislative analysis outlines the Act's provisions as follows:

PUCO jurisdiction over telecommunications

This Act specifies that the PUCO, except as provided in the Act and federal law, has no authority over an interconnected Voice over Internet Protocol-enabled service or a telecommunications service that is not commercially available on the Act's effective date and that employs technology that became available for commercial use after that date, unless the PUCO determines the exercise of authority is necessary for the protection, welfare, and safety of the public and adopts necessary regulations, and specifies that the Office of the Consumers' Counsel (OCC) has authority to assist and represent residential customers to the extent that the PUCO adopts those regulations.

The bill makes consumer purchases of telecommunications services not commercially available on the Act's effective date and that employ new technology subject to the Consumer Sales Practices Act (CSPA), notwithstanding any provision of the CSPA to the contrary, and only if the PUCO does not exercise jurisdiction over such services.

The bill provides that the PUCO does not have jurisdiction over wireless service, resellers of wireless service, or wireless service providers, except as pertaining to telecommunications relay service, 9-1-1 service, certain penalties, carrier access policy, and the creation and administration of mechanisms for carrier access reform, including high cost support.

Under the Act, the PUCO has authority over wireless service and wireless service providers as follows, but only to the extent authorized under federal law to the extent the PUCO carries out:

- rights and obligations under the federal Telecommunications Act of 1996;
- the authority to mediate and arbitrate disputes and approve agreements under the federal Act;
- administration of telephone numbers and number portability;
- certification of telecommunications carriers eligible for universal-service funding under applicable federal law;
- administration of customer proprietary network information in applicable federal law, and
- as provided under the new telecommunication provisions in the Act pertaining to registration of wireless service providers, compliance with applicable PUCO orders, directions, and requirements, and adjudication of disputes.

This law specifies that requirements regarding assessments supporting the PUCO and the OCC, as well as the filing of annual reports for assessments, apply to wireless service providers. It specifies that a number of statutes, many unchanged by the Act, do not apply to telephone companies, including statutes pertaining to PUCO jurisdiction, service discrimination, accounting

requirements, charging tariffed rates, the issuance of stocks, bonds, and notes, uniform pricing, and other statutes, unless necessary, in some cases, for the PUCO to enforce the provisions of the Act.

The Act specifies that, with certain exceptions, the new telecommunications provisions in the Act do not prevent any public utility or railroad from granting property for public purposes. It redefines “public utility” to exclude internet protocol-enabled services, including Voice over Internet Protocol services, and providers of advanced services, broadband service, information service, and any telecommunications service that is not commercially available on the Act's effective date and that employs technology that became available for commercial use after the Act's effective date.

The bill provides that the PUCO has no authority over the quality of service and the service rates, terms, and conditions of telecommunications service provided to end users by a telephone company, except as provided in the Act. It permits the PUCO to adopt various rules that it finds necessary to carry out the provisions of the Act, including rules that address the removal from tariffs of services that were required to be filed in tariffs prior to the Act's effective date. It directs the PUCO to adopt any rules required under the Act no later than 120 days after the Act's effective date.

The Act vests the PUCO with the authority to perform federal obligations and carry out the acts of a state commission, including rights and obligations under the federal Telecommunications Act of 1996, arbitrating disputes and approving agreements under the federal Act, administering truth-in-billing, and other federal obligations and acts of a state commission.

Certification or registration in order to operate in Ohio

This legislation requires, as a condition of operating in Ohio, that a telephone company obtain a certificate from the PUCO and that a wireless service provider register with the PUCO. It requires a certificate application and registration to include the telephone company's or wireless service provider's name and address, a contact person's name and contact information, a service description, evidence of registration with the Secretary of State, evidence of notice of intent to provide telecommunication service to the Public Utilities Tax Division of the Department of Taxation, and with respect to certification only, evidence of financial, technical, and managerial ability to provide adequate service.

It exempts incumbent local exchange carriers (ILECs) from the certification requirements with respect to their geographic service areas as those areas existed before the Act's effective date.

The law permits the PUCO to suspend or reject a telephone company's certification application if it determines the applicant lacks financial, technical, or managerial ability sufficient to provide adequate service. It requires, if any of the application information changes, a telephone company to update its certification and to provide any necessary notice to customers and requires a wireless service provider to update its registration.

The Act requires the PUCO to adopt rules governing certification and registration update requirements.

Unfair or deceptive acts or practices

This bill prohibits telephone companies, but not wireless service providers, from committing certain unfair or deceptive acts or practices regarding the offer or provision of telecommunications service in Ohio. It states that a consumer purchase of wireless service is subject to the Consumer Sales Practices Act (CSPA) notwithstanding any provision of the CSPA to the contrary.

The Act makes failure to include the following in a telephone company solicitation, offer, contract, or other communication as provided in the Act an unfair or deceptive act or practice: truthful, clear, conspicuous, and accurate disclosure of any material terms and conditions of service

and any material exclusions or limitations and disclosure of the company's name and contact information.

This bill permits the PUCO to prescribe a review process to determine when disclosure of the above information is not practicable and therefore nondisclosure would not be an unfair or deceptive act or practice. It requires a telephone company to inform its customers of their rights and responsibilities regarding inside wire, repair and maintenance of customer-owned equipment, use of a network interface device, and diagnostic visit charges, consistent with rules the PUCO adopts. The Act permits the PUCO to determine by rule or adjudication under the terms of the Act what constitutes an unfair or deceptive act or practice in connection with the offer or provision of telecommunications service in Ohio.

It requires the PUCO to notify telephone companies specifying the acts, practices, or omissions that the PUCO determines by rule or adjudication to be unfair or deceptive and states that such companies are not liable absent notice and adequate implementation time.

Service withdrawal/abandonment

This bill permits a telephone company, except for an ILEC providing basic local exchange service, to withdraw or abandon service upon 30-days notice to the PUCO and customers. It specifies that the Act's withdrawal and abandonment provisions do not apply to interconnection and resale agreements approved under the Telecommunications Act of 1996, pole attachments, and conduit occupancy. It prohibits, without PUCO approval, a telephone company from withdrawing any tariff filed with the PUCO for pole attachments or conduit occupancy under the continuing pole attachment and conduit occupancy law or abandoning service provided under that law.

Basic local exchange service

This Act requires telephone companies providing basic local exchange service to ensure available, adequate, and reliable service. It requires the PUCO to adopt rules prescribing the following standards for the provision of basic local exchange service:

- installation of service within five days of receipt of an application;
- outages fixed within 72 hours (and reasonable efforts made to repair outages within 24 hours) and automatic customer credits for all affected customers, of which the telephone company is aware, in the amount of one month's charges per customer for basic local exchange service if an outage is reported and not fixed in 72 hours, with no requirement to credit a customer who caused an outage;
- disconnection for nonpayment not earlier than 14 days after a bill due date;
- the establishment of a billing due date not earlier than 14 consecutive days after the date the bill is postmarked for basic local exchange service provided to end users;
- permitting a utility to require a deposit not to exceed 230% of a reasonable estimate of one month's service charges for the installation of service, and
- reconnection of customers with past-due charges one business day after receipt of the first payment under a payment plan or the full amount due.

The bill requires the PUCO to provide for a waiver of the standards prescribed in rule for basic local exchange service when the PUCO determines it appropriate. It requires an ILEC to provide basic local exchange service to all people or entities in its service area requesting that service, and to provide that service on a reasonable and nondiscriminatory basis, except for the provision of basic local exchange service or any service to occupants of multitenant real estate in certain circumstances where a real estate owner takes action to benefit another service provider.

It permits an ILEC to apply to the PUCO for a waiver of the requirement to provide basic local exchange service to all people or entities in its service area requesting service and requires the PUCO to grant the waiver within 120 days if it finds it to be just, reasonable, not contrary to the public interest, and that the applicant demonstrates a financial hardship or unusual technical limitation, but after the carrier has notified affected people or entities in its service area and after the people or entities have been afforded a reasonable opportunity to comment, including a public hearing.

The bill permits an ILEC to alter rates for basic local exchange service based on 12-month intervals relating to when the last rate increase occurred and, in certain cases, depending on whether the ILEC's local exchange area qualified for alternative regulation under the PUCO rules. It prohibits banking of upward rate alterations. It permits ILECs owned and operated exclusively by and for their customers to alter basic local exchange service rates at any time by any amount.

Lifeline service

The Act requires an ILEC eligible for universal-service support to implement lifeline service for eligible customers, defined as either being at or below 150% of the federal poverty level or participating in any low-income assistance program that is specified in PUCO rules, and permits an ILEC to offer lifeline customers bundles and packages at prevailing rates less the lifeline discount.

It requires the PUCO to work with appropriate state agencies administering federal or state low-income assistance programs, and with carriers, to obtain information necessary for eligibility and automatic enrollment, requires the PUCO to establish requirements for the implementation of automatic enrollment, and requires ILECs to implement automatic enrollment in accordance with those requirements.

The legislation provides for situations in which an individual is determined ineligible or no longer eligible and provides opportunities to prove eligibility.

It provides that lifeline service must consist of flat-rate, monthly, primary access line service with touchtone service at a monthly discount, a waiver of all nonrecurring service order charges for establishing service, but not more than once per customer at a single address in a 12-month period, and free blocking of toll, 900, and 976 service.

The bill requires that ILECs offer special payment arrangements to lifeline customers with past-due bills with an initial payment not to exceed \$25 before the installation of service and the balance for regulated service charges to be paid over six monthly installments.

This Act provides that lifeline customers with past due toll service bills are to have toll-restricted service until the past due charges have been paid or until service is established with another toll service provider.

It requires every ILEC with 50,000 or more access lines that is required to provide lifeline service to establish an annual marketing budget for promoting, marketing, and performing outreach regarding lifeline service.

The law requires all funds in the lifeline marketing budget to be spent for promotion, marketing, and outreach of lifeline services, and prohibits their use for any administrative costs for lifeline implementation.

This Act creates a Lifeline Advisory Board composed of staff of the PUCO, the OCC, consumer groups representing low-income constituents, two representatives from the Ohio Association of Community Action Agencies, and every ILEC with 50,000 or more access lines that is required to implement lifeline service to coordinate all activities relating to the promotion and marketing of and outreach regarding lifeline service, and permits the PUCO to review and approve, in accordance with PUCO rules, the decisions of the advisory board, including decisions on how lifeline promotion, marketing, and outreach services are implemented.

It prohibits ILECs required to implement lifeline service from recovering lifeline marketing, promotion, and outreach expenses from end users.

It permits ILECs required to implement lifeline service to recover from end users of the carriers' telecommunications service other than lifeline service customers, by a method approved by the PUCO, lifeline service discounts and any other lifeline service expenses (except for marketing, promotion, and outreach expenses) that the PUCO prescribes by rule and that are not recovered through federal or state funding, and requires a carrier seeking recovery of these discounts or expenses to apply to the PUCO, in accordance with PUCO rules, for approval of its method of recovery.

The law requires the PUCO, if an ILEC's method of recovery of lifeline discounts or expenses includes a customer billing surcharge, to prescribe how the surcharge is to be identified on customer bills.

It requires every ILEC required to implement lifeline service to file an annual report with the PUCO identifying how many customers receive the service.

Rates, terms, and conditions for certain services

This Act requires that the rates, terms, and conditions for 9-1-1 service provided by a telephone company or a telecommunications carrier, and for carrier access, N-1-1 services (other than 9-1-1 services), pole attachments and conduit occupancy, pay telephone access lines, toll presubscription, and telecommunications relay service, all provided by a telephone company, be approved and tariffed in the manner prescribed by PUCO rule, and be subject to the applicable laws, including PUCO and FCC rules, regulations, and orders.

It permits the PUCO to order changes in a telephone company's rates for carrier access, but specifies that if the PUCO reduces a telephone company's rates for carrier access that are in effect on the Act's effective date, the reduction must be on a revenue-neutral basis under terms and conditions established by the PUCO.

The bill prohibits the PUCO from establishing any requirements for the unbundling of network elements, for the resale of telecommunications service, or for network interconnection that exceed or are inconsistent with or prohibited by federal law. It prohibits the PUCO from establishing pricing for unbundled elements, resale, or interconnection that is not in compliance with federal law.

The law requires a telephone company, except with regard to rate alterations made under the Act's provisions where 30-days notice is required, and except, if applicable, with regard to the Community-voicemail Service Pilot Program, to provide at least 15-days advance notice to its affected customers of any material change in the rates, terms, and conditions of a service and any change in the company's operations "that are not transparent to customers and may impact service."

This Act requires telephone companies to inform customers of the PUCO's toll-free number and e-mail address on all bills and disconnection notices, and residential customers of the OCC's toll-free number and e-mail address on all residential bills and disconnection notices.

The law authorizes the PUCO to adopt rules requiring telephone companies that provide telephone toll service to offer discounts for operator-assisted and direct-dial services for people with communication disabilities. It authorizes the PUCO to adopt rules regarding the rates, terms, and conditions of intrastate telecommunications service initiated from an inmate telephone instrument.

Investigations and adjudications

This Act permits the PUCO to investigate or examine the books, records, or practices of any telephone company. It permits any person to file with the PUCO, or the PUCO to initiate, a complaint alleging that any rate, practice, or service of a telephone company other than a wireless

service provider is unjust, unreasonable, unjustly discriminatory, or in violation of or noncompliance with any of the Act's provisions or a PUCO rule or order.

The law permits any dispute between telephone companies, between telephone companies and wireless service providers, or between wireless service providers, that is within the PUCO's jurisdiction under the Act's provisions, to be brought by a complaint filed under the Act's complaint procedure.

Other changes

The bill requires every telephone company providing telephone exchange service to maintain access to 9-1-1 service on a residential customer's line for at least 14 days immediately following any disconnection for nonpayment of telephone exchange service.

It requires the PUCO to implement, in at least one urban area and one rural area, a two-year Community-voicemail Service Pilot Program, for those who have no traditional access to telephone service, through a competitive-bidding process for selection of vendors to implement the program, requires the imposition of an assessment on all local exchange carriers for the cost of providing the service, and authorizes forfeitures for carriers who do not comply with the assessment requirements.

The law requires, to the extent they are subject to the PUCO's jurisdiction under the Act's provisions, every telephone company, including every wireless service provider, every telecommunications carrier, and every provider of internet protocol-enabled services, including Voice over Internet Protocol, to comply with every order, direction, and requirement of the PUCO made under authority of the Act's provisions.

It limits the information required in a telephone company's and wireless service provider's annual report to information necessary for the PUCO to calculate the PUCO assessment.

It eliminates authority for the PUCO to require a telephone company to file supplemental reports of each exchange area it owns or operates and eliminates the requirement that the PUCO require such supplemental report if 15% of the subscribers of an exchange request it.

It requires the PUCO to adopt rules that require a telephone company subject to continuing law governing pole attachments and conduit occupancy to include in its annual report information required by the PUCO to calculate pole attachment and conduit occupancy rates and any other information the PUCO determines necessary and requires by rule for the PUCO to fulfill its responsibility under the pole attachment law.

It requires that a telephone company's lines and facilities not unreasonably interfere with the practical uses of the property on which they are located and requires a telephone company to repair defective lines and facilities.

It alters the applicability of telephone law regarding electricity service and automatic package carriers.

It eliminates law that stated that unless otherwise ordered by the PUCO each telephone company must file a copy of any contract, agreement, note, bond, or other arrangement entered into with any telephone management, service or operating company.

The bill eliminates law that required every telephone company to carry a proper and adequate depreciation or deferred maintenance account.

It requires telephone companies to file rate schedules only for the following rates: charges for use of attachment of any wire, cable, facility, or apparatus to its poles, pedestals, or placement of attachments in conduit duct space, basic-local-exchange-service rate changes authorized under the Act, lifeline service, discounts for operator-assisted and direct-dial services for people with communication disabilities, carrier access and other services, inmate telephone instruments, and 911 service.

It establishes requirements regarding the approval of domestic telephone company mergers

by the PUCO and provides for the enforcement of PUCO rule violations by the Attorney General and Ohio courts.

The law creates a Select Committee on Telecommunications Regulatory Reform to review the economic benefits of the Act and its impact on jobs, telephone company rates, telephone company quality of service, lifeline program customers, rural markets, rural broadband deployment, the Community-voicemail Service Pilot Program, and carrier access to private property, and requires the Committee to submit a written report of its findings and recommendations to the General Assembly and the Governor no later than four years after the effective date of the Act, at which time the Committee will cease to exist.

The bill requires the PUCO to cooperate with the Committee and provide reports and any other information the Committee requests, and permits the Committee to request assistance from the Legislative Service Commission.

It requires an offender-monitoring device to be designed for electronic monitoring and not be a converted wireless phone or tracking device not designed for this purpose and requires the device to provide a means of text-based or voice communication.

Michigan

Michigan [Act 58 of 2011](#) limits the scope of the state Public Service Commission's (PSC's) rule-making authority and rescinds existing rules pertaining to privacy standards, billing standards, and service quality. The bill specifies that the PSC does not have authority over Voice over Internet Protocol (VoIP). It allows a telecommunication provider to opt out of a requirement to file a schedule of rates, services, and conditions of service with the PSC. It establishes an expiration date of June 30, 2011, on certain service quality rules.

The Act requires the PSC to investigate complaints alleging violations of requirements related to a provider originating or forwarding an intrastate call that is terminated on the network of another provider and to assess a fine against a violator.

It allows a basic local exchange service provider with fewer than 10,000 Michigan end-users, rather than 15,000, to determine that its total-service, long-run, incremental-cost (TSLRIC) is the same as that of a provider with more than 250,000 end-users.

The bill prescribes emergency power requirements for a basic local exchange service provider. It allows a provider to discontinue service to an exchange only if an alternative basic local exchange provider offers a comparable service, rather than the same service, or if two alternative toll providers offer a comparable service.

The Act requires a telecommunication provider proposing to discontinue a regulated service to an exchange to notify each affected customer by mail or within the customer's bill. It gives a person affected by a discontinuance of service 30 rather than 60 days to apply to the PSC to determine if the discontinuance is authorized, and requires the Commission issue a final order within 180 days.

The bill prohibits basic local exchange service providers, rather than telecommunication providers, from taking certain actions, and deletes some actions from the list of prohibitions.

North Carolina

North Carolina [SESSION LAW 2011-52](#) allows local telephone providers open to competition to elect to participate in a new alternative form of regulation. This new form of regulation differs from the previous alternative form of regulation in the following ways:

- The provider will no longer have carrier of last resort responsibilities.

- The provider will not be eligible to receive funds from a state fund that may be established to support universal service.
- The provider will not be required to provide stand-alone basic service to rural customers at rates comparable to rates charged to urban customers.

Texas

Texas enacted [SB 980](#) into law in 2011. This Act prohibits the Texas Public Utility Commission (PUC) from requiring a telecommunications utility that is not a public utility, including a deregulated or transitioning company, to comply with a requirement or standard that is more burdensome than a requirement or standard the PUC imposes on a public utility. The bill generally prohibits a department, agency, or political subdivision of the state from regulating rates charged for, service or contract terms for, conditions for, or requirements for entry into the market for Voice over Internet Protocol services or other Internet Protocol-enabled services.

The Act establishes tariff requirements relating to a telecommunications provider not subject to rate of return regulation and makes provisions governing a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority applicable to a transitioning company under provisions relating to the deregulation of certain incumbent local exchange company markets. The bill prohibits the PUC, on or after September 1, 2011, from requiring a telecommunications provider to provide mandatory or optional extended area service to additional metropolitan areas or calling areas or ordering an expansion of a toll-free local calling area.

The Act requires the PUC to adopt rules to ensure reasonable transparency and accountability in the administration of a Universal Service Fund and sets requirements for support from the Universal Service Fund that is available to deregulated markets. The bill changes the procedures for determining whether a market should be deregulated. Among other provisions, the bill requires a market that is deregulated as of September 1, 2011, to remain deregulated and prohibits the PUC from reregulating a market or company that has been deregulated. An incumbent local exchange company may petition the PUC to deregulate a market of the company that the PUC previously determined should remain regulated. Only the incumbent local exchange company is authorized to initiate a proceeding to deregulate one of the company's markets. The bill changes the conditions under which the PUC determines whether a market should remain regulated.

The bill revises provisions applicable to deregulated and transitioning companies and sets out provisions exempting a transitioning company from certain rate and price requirements. The bill requires the PUC to review and evaluate, through the initiation of one or more proceedings, whether the universal service fund accomplishes the fund's purposes and requires the PUC to complete each proceeding required under those provisions not later than November 1, 2012. The PUC must provide the legislature with a copy of its findings and any orders issued. The PUC is prohibited from initiating a proceeding to review the state High Cost Universal Service Plan before January 2, 2012. The bill makes provisions relating to the support available to deregulated markets, the inapplicability of certain rate and price requirements to a transitioning incumbent local exchange company, and a complaint relating to compliance filed by an affected person effective January 2, 2012.

Virginia

Virginia [Chapter 738](#) of 2011 eliminates certain requirements applicable to competitive telecommunications services. The requirement that competitive services be offered for sale under a filed tariff is eliminated. The bill directs the state corporation commission to permit, but not

mandate, the detariffing of any or all terms, conditions, or rates for retail telephone service not found prior to January 1, 2011, to be a basic local exchange telephone service. After July 1, 2013, that commission shall permit, but may not mandate, the detariffing of any or all terms, conditions, or rates for any or all retail telephone services.

In addition, the measure:

- eliminates the facility-building requirement of telephone companies in instances where a person has service available from one or more alternative providers of wireline or terrestrial wireless communications service at prevailing market rates;
- permits an incumbent provider to meet its obligation to furnish reasonably adequate service and facilities through the use of any and all wireline or terrestrial wireless technology, subject to a requirement that when a telephone company restores service to an existing wireline customer, the company shall offer the option to furnish service using wireline facilities;
- provides that the Commission may conclude that competition can effectively ensure reasonably adequate retail services in competitive exchanges and may carry out its duty to ensure that a public utility is furnishing reasonably adequate retail service in its competitive exchanges by monitoring individual customer complaints and requiring appropriate responses to such complaints;
- amends the requirement of prior approval for the sale of all of the assets of a telephone company to provide that the Commission in such a proceeding shall consider only the financial, managerial, and technical resources to render local exchange telecommunications services of the person acquiring ownership or control;
- eliminates requirements associated with telegraph service that is no longer offered in the state;
- expands the definition of mail used for providing notice to customers to include electronic mail;
- provides that the prohibition on multiple rate increases within a 12-month period does not apply to competitive services;
- exempts telephone companies from provisions relating to energy and capital resource use conservation, standard units of products or service, and fuel purchases;
- eliminates provisions relating to the authority of the Commission to establish areas where a telephone company may provide mobile telephone service;
- deletes obsolete provisions applicable to the extension of telephone facilities into rural areas and to the rates of telephone companies set by municipal ordinances;
- allows the detariffing of interexchange service; and
- provides that requirements that telephone companies file reports, other than reports relating to the special revenue tax, will expire on December 31 of each year unless the commission extends the requirement after notice and an opportunity for a hearing.

Wisconsin

Wisconsin [Act 22 of 2011](#):

- changes the authority of the Public Service Commission (PSC) over telecommunications utilities;
- imposes requirements on certain intrastate switched access rates;
- eliminates mandatory telecommunications tariffs except for intrastate switched access service;
- specifies the PSC's authority over interconnected Voice over Internet Protocol (interconnected VoIP) service;

- changes the PSC’s authority for ensuring universal access to telecommunications service;
- imposes requirements regarding the availability of basic voice service;
- makes changes to requirements for the use of another person’s transmission equipment and property by public utilities and telecommunications providers; and
- makes other changes to telecommunications regulation.

The Act enables the PSC to impose requirements on Competitive Local Exchange Carriers (CLECs) that relate only to the following:

- submission of stockholder and other business management information;
- PSC examination of accounting and other business records;
- use of and connection to transmission equipment and property by other telecommunications providers;
- confidential treatment of records by the PSC;
- rates and costs of unbundled network elements;
- interconnection agreements and related requirements;
- telephone caller identification, pay-per-call, and toll-free services;
- PSC privacy rules; universal service and contributions to the state’s universal service fund;

- access to telecommunications emergency services;
- restrictions on resale or sharing certain services, products, and facilities;
- violations of rules of the Department of Agriculture, Trade and Consumer Protection (DATCP) regarding advertising and sales and collection practices;

- transfer of local exchange customers to other telecommunications providers;
- PSC questionnaires and other information requests;
- changes to PSC orders and reopening PSC cases;
- PSC-required tests;
- conditional, emergency, and supplemental PSC orders;
- timing of effect of PSC orders;
- court review of PSC orders;
- injunction procedures;
- enforcement duties of the PSC, the attorney general, and district attorneys and related court venues;

- penalties related to information and record requests;
- forfeitures;
- abandonment or discontinuance of lines, services, and rights-of-way;
- assessments for reimbursement of PSC expenses;
- assessments for telephone relay service; and
- assessments for enforcement of certain consumer protection requirements by DATCP.

The Act exempts Incumbent Local Exchange Carriers (ILECs) from requirements relating to all of the following:

- PSC classification of public utility service;
- PSC authority regarding production of records, audits of accounts, service measurement standards, and test results;
- PSC authority to enter premises;
- PSC valuation of utility property;
- accounting requirements, including depreciation rates and new construction accounting;

- reporting of expenses, profit, and other items;
- PSC reports of utility property values and other financial data;
- filing of rates and PSC approval of rates;
- prohibition against unjust discrimination among customers;
- certain prohibitions regarding the provision of service to customers;
- construction, installation, or operation of new facilities;
- affiliated interest requirements;
- certain municipal authority to regulate public utilities;
- dissolution and reorganization;
- liability for treble damages;
- PSC enforcement of certain unfair trade practice orders;
- private causes of actions by persons injured by certain violations of law by ILECs;

and

- alternate dispute resolution requirements of the PSC.

Except for wholesale telecommunications service, the bill also exempts ILECs from certain enforcement authority of the PSC.

The Act imposes requirements on intrastate switched access rates that depend on whether a telecommunications provider is a large or small ILEC, new nonincumbent, or large or small nonincumbent, as defined in the bill. The bill establishes a schedule for the various categories of telecommunications provider to reduce intrastate switched access rates over a five year period.

With certain exceptions, the bill provides that interconnected VoIP service is exempt from PSC regulation.

A provider of interconnected VoIP service must do the following, which apply to other telecommunications providers under current law: impose a monthly police and fire protection fee on its customers; pay assessments for DATCP enforcement of certain consumer protection requirements; and pay assessments for a statewide telecommunications relay service.

In addition, interconnected VoIP service is subject to the PSC's authority over interconnection agreements under current law. The bill also provides that, unless otherwise provided under federal law, an entity that provides interconnected VoIP service must pay intrastate switched access rates. Also, unless otherwise provided under federal law, if the entity provides intrastate switched access service in connection with the interconnected VoIP service, the entity is allowed to charge intrastate switched access rates for the service.

Other Suggested State Legislation

A [Telecommunications Deregulation Note](#) in the 2007 SSL volume summarizes actions in Idaho, Iowa, Missouri, and Texas to deregulate the industry.

Determination of Abandonment for Property Subject to a Mortgage Foreclosure Action

This Act establishes a procedure to allow a creditor in a mortgage or an enforcement authority with jurisdiction in the location of the mortgaged property to petition the court having jurisdiction over an existing mortgage foreclosure action to find that the mortgaged property is abandoned. It establishes criteria that constitute prima facie evidence that a mortgage property is abandoned.

Submitted as:

Indiana

[HOUSE ENROLLED ACT No. 1238](#)

Status: Enacted into law in 2012.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Establish Procedures to
2 Determine if Property Subject to a Mortgage Foreclosure Action is Abandoned.”

3
4 Section 2. [*Determination of Abandonment for Property Subject to a Mortgage Foreclosure*
5 *Action.*]

6 (A) This Act applies to a mortgage foreclosure action filed under [insert citation].

7 (B) As used in this Act, “enforcement authority” refers to the enforcement authority as
8 defined in [insert citation] that has jurisdiction in the location of the property that is the subject of a
9 mortgage foreclosure action.

10 (C) At any time during a mortgage foreclosure action, the creditor may petition the court for
11 a determination that the mortgaged property is abandoned. A petition filed with the court under this
12 subsection must allege that the mortgaged property is abandoned and include evidence that [one (1)]
13 or more of the conditions set forth in subsection (G) of this section apply. A petition under this
14 subsection shall be served on the debtor in the manner prescribed by [insert citation].

15 (D) At any time during a mortgage foreclosure action, the enforcement authority that has
16 jurisdiction in the location of the mortgaged property may petition the court for a determination that
17 the mortgaged property is abandoned by filing a motion to intervene in the foreclosure action in the
18 manner prescribed by [insert citation]. The motion to intervene must include a statement of the
19 enforcement authority’s jurisdiction in the location of the mortgaged property; allege that the
20 mortgaged property is abandoned; and include evidence that [one (1)] or more of the conditions set
21 forth in subsection (G) or (H) of this section apply.

22 (E) Upon receiving a request for a determination of abandonment from a creditor or an
23 enforcement authority through a petition or motion filed with the court and served on the required
24 parties in accordance with subsections (C) or (D) of this section, the court shall issue an order to
25 show cause as to why the property should not be found to be abandoned and directing the petitioner,
26 the debtor, and any other person or party the court considers appropriate to appear before the court
27 on a date and time specified in the order under subdivision (1) of this subsection. The court’s order
28 under this subsection must do the following:

29 (1) Direct the parties subject to the order to appear before the court on a date and time
30 specified by the court. The date specified under this subdivision must not be earlier than [fifteen

31 (15)] days or later than [twenty-five (25)] days after the date of the court's order under this
32 subsection (E).

33 (2) Notify the parties subject to the order that any party ordered to appear may present
34 evidence or objections on the issue of abandonment to the court in writing before the appearance
35 date specified by the court under subdivision (1); or in writing or by oral testimony on the date and
36 at the time specified by the court under subdivision (1); in the manner specified by the court; and has
37 the right to be represented by an attorney when appearing before the court.

38 (3) Notify the parties subject to the order that if the debtor fails to submit written
39 evidence or objections to the court before the appearance date specified by the court under
40 subdivision (1); or appear before the court on the date and at the time specified by the court under
41 subdivision (1); the debtor's failure to submit evidence or objections or to appear before the court
42 will result in a finding of abandonment by the court.

43 (F) A party subject to an order issued by the court under this section has the following rights,
44 as described in the court's order under subsection (E):

45 (1) The right to present evidence or objections on the issue of abandonment to the
46 court in writing before the appearance date specified in the court's order under subsection (E)(1); or
47 in writing or by oral testimony on the date and at the time specified in the court's order under
48 subsection (E)(1); in the manner specified by the court.

49 (2) The right to be represented by an attorney when appearing before the court.

50 (G) Subject to subsection (H) of this section, for purposes of an abandonment determination
51 under this Act, [one (1)] or more of the following constitute prima facie evidence that mortgaged
52 property is abandoned:

53 (1) The enforcement authority that has jurisdiction in the location of the mortgaged
54 property has issued an order under [insert citation] with respect to the property.

55 (2) Windows or entrances to the mortgaged property are boarded up or closed off.

56 (3) Multiple window panes on the mortgaged property are broken and unrepaired.

57 (4) [One (1)] or more doors to the mortgaged property are smashed through, broken
58 off, unhinged, or continuously unlocked.

59 (5) Gas service, electric service, water service, or other utility service to the
60 mortgaged property has been terminated.

61 (6) Rubbish, trash, or debris has accumulated on the mortgaged property.

62 (7) The mortgaged property is deteriorating and is either below or in imminent danger
63 of falling below minimum community standards for public safety and sanitation.

64 (8) The creditor has changed the locks on the mortgaged property and for at least
65 [fifteen (15)] days after the changing of the locks the owner has not requested entrance to the
66 mortgaged property.

67 (9) There exist [one (1)] or more written statements, including documents of
68 conveyance, that have been executed by the debtor, or by the debtor's personal representatives or
69 assigns, and that indicate a clear intent to abandon the mortgaged property.

70 (10) There exists other evidence indicating a clear intent to abandon the mortgaged
71 property.

72 (H) Regardless of whether any of the conditions described in subsection (G) are found to
73 apply, the debtor's failure to either present evidence or objections on the issue of abandonment to the
74 court in writing before the appearance date specified in the court's order under subsection (E)(1) of
75 this section or appear before the court on the date specified in the court's order under subsection
76 (E)(1) of this section constitutes prima facie evidence that the mortgaged property is abandoned.

77 (I) If the court finds that [one (1)] or more of the conditions described in subsection (G)
78 apply or the circumstances described in subsection (H) apply; the court shall issue an order finding
79 that the mortgaged property is abandoned.

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

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

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

Diabetes Reporting

This Act requires the state department for Medicaid services, the state department for public health, the state office of health policy, and the personnel cabinet to collaborate to biennially develop plans to reduce the incidence of diabetes in the state and to improve diabetes care. It requires these agencies to develop benchmarks, blueprints, and budgets to implement the plans. It directs the agencies to offer a range of action items within the plans to combat diabetes and to submit the plans to the legislature.

This Act requires these agencies to report biennially to the legislature about the impact of diabetes on people and public programs in the state. This includes the number of people who have the disease, the financial impact of the disease on them and their families, the financial impact on state and local agencies serving such people, and the financial impact of diabetes compared with other chronic diseases and conditions.

The Act also requires these agencies to assess, document, and report to the legislature about the funding and benefits of existing programs aimed at preventing and controlling diabetes, and the level of cooperation between such programs.

Submitted as:

Kentucky

[SB 63](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

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

2
3 Section 2. [*Departmental Plans and Assessments of Diabetes Impact of Citizens.*]

4 (A) The [Department for Medicaid Services], the [Department for Public Health], the [Office
5 of Health Policy], and the [Personnel Cabinet] shall collaborate to identify goals and benchmarks
6 while also developing individual entity plans to reduce the incidence of diabetes in this state,
7 improve diabetes care, and control complications associated with diabetes.

8 (B) The [Department for Medicaid Services], the [Department for Public Health], the [Office
9 of Health Policy], and the [Personnel Cabinet] shall submit a report to the [Legislative Research
10 Commission] by [January 10] of each [odd-numbered year] on the following:

11 (1) The financial impact and reach diabetes of all types is having on the entity, the
12 state, and localities. Items included in this assessment shall include the number of lives with diabetes
13 impacted or covered by the entity, the number of lives with diabetes and family members impacted
14 by prevention and diabetes control programs implemented by the entity, the financial toll or impact
15 diabetes and its complications places on the program, and the financial toll or impact diabetes and its
16 complications places on the program in comparison to other chronic diseases and conditions;

17 (2) An assessment of the benefits of implemented programs and activities aimed at
18 controlling diabetes and preventing the disease. This assessment shall also document the amount and
19 source for any funding directed to the agency or entity from the [state legislature] for programs and
20 activities aimed at reaching those with diabetes;

21 (3) A description of the level of coordination existing between the entities on
22 activities, programmatic activities and messaging on managing, treating, or preventing all forms of
23 diabetes and its complications;

24 (4) The development or revision of detailed action plans for battling diabetes with a
25 range of actionable items for consideration by the [state legislature]. The plans shall identify
26 proposed action steps to reduce the impact of diabetes, pre-diabetes, and related diabetes
27 complications. The plan shall also identify expected outcomes of the action steps proposed in the
28 following biennium while also establishing benchmarks for controlling and preventing relevant
29 forms of diabetes; and

30 (5) The development of a detailed budget blueprint identifying needs, costs, and
31 resources required to implement the plan identified in subsection (4) of this section. This blueprint
32 shall include a budget range for all options presented in the plan identified in subsection (4) of this
33 section for consideration by the [state legislature].

34 (C) The requirements of this Act shall be limited to the diabetes information, data, initiatives,
35 and programs within each agency prior to the effective date of this Act, unless there is unobligated
36 funding for diabetes in each agency that may be used for new research, data collection, reporting, or
37 other requirements of this Act.

38
39 Section 3. [*Administrative Rules.*] The [department of local government finance] shall adopt
40 rules to implement this Act.

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.]

Disclosing Composition of Hydraulic Fracturing Fluids

This SSL draft is based on Texas law. According to a Texas legislative bill analysis, hydraulic fracturing, commonly called “fracking,” is a natural gas drilling method in which a well is drilled vertically more than a mile deep and then extended horizontally into a targeted rock formation. Fracturing fluids, consisting of water, sand, and chemical additives, are pumped at extremely high pressure down the wellbore. The fracturing fluids flow through perforated sections of the wellbore and into the surrounding formation, fracturing the rock and injecting sand into the cracks to hold them open. This process is repeated multiple times to reach maximum areas of the wellbore. The water pressure then is reduced and fluids are returned up the wellbore for disposal or for treatment and reuse, leaving the sand in place to prop open the cracks and allow the gas to flow and be collected at the surface.

This Act requires operators of wells undergoing hydraulic fracturing treatment to complete and post a form on a Hydraulic Fracturing Chemical Registry website of the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission disclosing the total volume of water used in the hydraulic fracturing treatment and each chemical ingredient used in it. The Act addresses how some of that information can be protected from disclosure as trade secrets, and how people can challenge designating such information as trade secrets.

Submitted as:

Texas

[HB No. 3328 \(Enrolled version\)](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act Relating to the Disclosure of the
2 Composition of Hydraulic Fracturing Fluids Used in Hydraulic Fracturing Treatments.”

3
4 Section 2. [*Disclosure of Composition of Hydraulic Fracturing Fluids.*]

5 (a) The [commission] by rule shall:

6 (1) require an operator of a well on which a hydraulic fracturing treatment is
7 performed to:

8 (A) complete the form posted on the hydraulic fracturing chemical registry
9 Internet website of the Ground Water Protection Council and the Interstate Oil and Gas Compact
10 Commission with regard to the well;

11 (B) include in the form completed under Paragraph (A):

12 (i) the total volume of water used in the hydraulic fracturing treatment;
13 and

14 (ii) each chemical ingredient that is subject to the requirements of 29
15 C.F.R. Section 1910.1200(g)(2), as provided by a service company or chemical supplier or by the
16 operator, if the operator provides its own chemical ingredients;

17 (C) post the completed form described by Paragraph (A) on the website
18 described by that paragraph or, if the website is discontinued or permanently inoperable, post the
19 completed form on another publicly accessible Internet website specified by the [commission];

20 (D) submit the completed form described by Paragraph (A) to the
21 [commission] with the well completion report for the well; and

22 (E) in addition to the completed form specified in Paragraph (D), provide to
23 the [commission] a list, to be made available on a publicly accessible website, of all other chemical
24 ingredients not listed on the completed form that were intentionally included and used for the
25 purpose of creating a hydraulic fracturing treatment for the well. The [commission] rule shall ensure
26 that an operator, service company, or supplier is not responsible for disclosing ingredients that:

27 (i) were not purposely added to the hydraulic fracturing treatment;

28 (ii) occur incidentally or are otherwise unintentionally present in the
29 treatment; or

30 (iii) in the case of the operator, are not disclosed to the operator by a
31 service company or supplier. The [commission] rule shall not require that the ingredients be
32 identified based on the additive in which they are found or that the concentration of such ingredients
33 be provided;

34 (2) require a service company that performs a hydraulic fracturing treatment on a well
35 or a supplier of an additive used in a hydraulic fracturing treatment on a well to provide the operator
36 of the well with the information necessary for the operator to comply with Subdivision (1);

37 (3) prescribe a process by which an entity required to comply with Subdivision (1) or
38 (2) may withhold and declare certain information as a trade secret for purposes of [insert citation],
39 including the identity and amount of the chemical ingredient used in a hydraulic fracturing
40 treatment;

41 (4) require a person who desires to challenge a claim of entitlement to trade secret
42 protection under Subdivision (3) to file the challenge not later than the [second anniversary] of the
43 date the relevant well completion report is filed with the [commission];

44 (5) limit the people who may challenge a claim of entitlement to trade secret
45 protection under Subdivision (3) to:

46 (A) the landowner on whose property the relevant well is located;

47 (B) a landowner who owns property adjacent to property described by
48 Paragraph (A); or

49 (C) a department or agency of this state with jurisdiction over a matter to
50 which the claimed trade secret is relevant;

51 (6) require, in the event of a trade secret challenge, that the [commission] promptly
52 notify the service company performing the hydraulic fracturing treatment on the relevant well, the
53 supplier of the additive or chemical ingredient for which the trade secret claim is made, or any other
54 owner of the trade secret being challenged and provide the owner an opportunity to substantiate its
55 trade secret claim; and

56 (7) prescribe a process, consistent with 29 C.F.R. Section 1910.1200, for an entity
57 described by Subdivision (1) or (2) to provide information, including information that is a trade
58 secret as defined by Appendix D to 29 C.F.R. Section 1910.1200, to a health professional or
59 emergency responder who needs the information in accordance with Subsection (i) of that section.

60 (b) The protection and challenge of trade secrets under this section is governed by [insert
61 citation].

62 (c) This Act applies only to a hydraulic fracturing treatment performed on a well for which
63 an initial drilling permit is issued on or after the date the initial rules adopted by the [commission] to
64 implement this Act take effect. A hydraulic fracturing treatment performed on a well for which an
65 initial drilling permit is issued before the date the initial rules take effect is governed by the law as it
66 existed immediately before the effective date of this Act, and that law is continued in effect for that
67 purpose.

68

69 Section 3. [*Severability.*] [Insert severability clause.]
70
71 Section 4. [*Repealer.*] [Insert repealer clause.]
72
73 Section 5. [*Effective Date.*] [Insert effective date.]

Employee Privacy

This Act limits employers from requesting or requiring employees or applicants disclose any user name, password, or other means for accessing a personal account or service through specified electronic communications devices. It also limits employers from taking, or threatening to take, disciplinary action against employees who refuse to disclose specified password and related information.

Submitted as:

Maryland

[SB 433](#)

Status: Enacted into law in 2012.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Prohibit Employers from
2 Requiring Employees or Applicants to Disclose Certain Personal Information.”

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

5 (1) “Applicant” means an applicant for employment.

6 (2) “Electronic communications device” means any device that uses electronic signals to
7 create, transmit, and receive information.

8 (3) “Electronic communications device” includes computers, telephones, personal digital
9 assistants, and other similar devices.

10 (4) “Employer” means a person engaged in a business, an industry, a profession, a trade, or
11 other enterprise in the state; or a unit of state or local government and includes an agent, a
12 representative, and a designee of the employer.

13
14 Section 3. [*Restricting Employers from Asking for Certain Information from Employees or*
15 *Applicants.*]

16 (A) Subject to subsection (B), an employer may not request or require that an employee or
17 applicant disclose any user name, password, or other means for accessing a personal account or
18 service through an electronic communications device.

19 (B) An employer may require an employee to disclose any user name, password, or other
20 means for accessing non-personal accounts or services that provide access to the employer’s internal
21 computer or information systems.

22 (C) An employer may not discharge, discipline, or otherwise penalize or threaten to
23 discharge, discipline, or otherwise penalize an employee for an employee’s refusal to disclose any
24 information specified in subsection (A) of this section or fail or refuse to hire any applicant as a
25 result of the applicant’s refusal to disclose any information specified in subsection (A) of this
26 section.

27 (D) An employee may not download unauthorized employer proprietary information or
28 financial data to an employee’s personal web site, an Internet web site, a web-based account, or a
29 similar account.

30 (E) This section does not prevent an employer:

31 (1) Based on the receipt of information about the use of a personal web site, Internet
32 web site, web-based account, or similar account by an employee for business purposes, from
33 conducting an investigation for the purpose of ensuring compliance with applicable securities or
34 financial law, or regulatory requirements; or

35 (2) Based on the receipt of information about the unauthorized downloading of an
36 employer's proprietary information or financial data to a personal web site, Internet web site, web-
37 based account, or similar account by an employee, from investigating an employee's actions under
38 subsection (D) of this section.

39

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

41

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

43

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

Extraordinary Circumstances Affecting Credit and Insurance Rates

This Act directs insurers that use credit information to underwrite or rate risks for personal insurance policies to provide reasonable exceptions to those rates for consumers who experience certain events that negatively impact their credit information. These include becoming seriously ill or losing a job.

Submitted as:

Iowa

[Senate File 2075 - Enrolled](#)

Status: Enacted into law in 2010.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act Requiring Reasonable Exceptions
2 to Insurance Rates for Consumers Whose Credit Information is Influenced by Extraordinary Life
3 Circumstances.”

4
5 Section 2. [*Extraordinary Life Circumstances.*]

6 A. An insurer authorized to do business in [insert state] that uses credit information to
7 underwrite or rate risks for a policy of personal insurance shall, on written request from a consumer,
8 provide reasonable exceptions to the insurer's rates, rating classifications, company or tier
9 placement, or underwriting rules or guidelines for a consumer who has experienced and whose credit
10 information has been directly influenced by any of the following events:

- 11 (1) Catastrophic event, as declared by the federal or a state government.
12 (2) Serious illness or injury, or serious illness or injury to an immediate family
13 member.
14 (3) Death of a spouse, child, or parent.
15 (4) Divorce or involuntary interruption of legally owed alimony or support payments.
16 (5) Identity theft.
17 (6) Temporary loss of employment for a period of [three] months or more, if such loss
18 results from involuntary termination of employment.
19 (7) Military deployment overseas.
20 (8) Other events, as determined by the insurer.

21 B. If a consumer submits a request for an exception as set forth in paragraph (A), an insurer
22 may, in its sole discretion, but is not required to, do any of the following:

- 23 (1) Require the consumer to provide reasonable written and independently verifiable
24 documentation of the event.
25 (2) Require the consumer to demonstrate that the event had direct and meaningful
26 impact on the consumer's credit information.
27 (3) Require such request to be made no more than [sixty] days from the date of the
28 application for insurance or the policy renewal.
29 (4) Grant an exception despite the fact that the consumer did not provide the initial
30 request for an exception in writing.

31 (5) Grant an exception where the consumer asks for consideration of repeated events
32 or the insurer has considered this event previously.

33 C. An insurer is not out of compliance with any law or rules relating to underwriting, rating,
34 or rate-filing as a result of granting an exception under this subsection. Nothing in this subsection
35 shall be construed to provide a consumer or other insured with a cause of action that does not exist in
36 the absence of this subsection.

37 D. An insurer shall provide notice to consumers that reasonable exceptions are available
38 pursuant to this subsection and information about how the consumer may inquire further about
39 such exceptions.

40 E. Within [thirty] days of the insurer's receipt of sufficient documentation of an event
41 described in paragraph (A) from a consumer, the insurer shall inform the consumer of the outcome
42 of the consumer's request for a reasonable exception. Such communication shall be in writing or
43 provided to a consumer using the same medium as the request.

44 F. This Act applies to personal insurance contracts or policies delivered, issued for delivery,
45 continued, or renewed in this state on or after [insert date].

46
47 Section 3. [*Severability.*] [Insert severability clause.]

48
49 Section 4. [*Repealer.*] [Insert repealer clause.]

50
51 Section 5. [*Effective Date.*] [Insert effective date.]

Fixed Tuition Rate

This Act authorizes a general academic teaching institution to develop a fixed tuition rate program for qualified students who agree to transfer to the institution within 12 months after successfully earning an associate degree from a lower-division institution of higher education. The legislation establishes parameters for the tuition to be charged to a participating student in such a program during a period of at least 24 months after the student's initial enrollment in the general academic institution and requires an institution that develops such a program to prescribe eligibility requirements for participation and to notify applicants for transfer admission from lower-division institutions of higher education regarding the program.

Submitted as:

Texas

[HB 2999 \(enrolled version\)](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act Relating Fixed Tuition Rate
2 Program for Certain Students.”
3

4 Section 2. [*Fixed Tuition Rate.*]

5 (A) As used in this Section:

6 (1) “Coordinating board” means the [higher education coordinating board].

7 (2) “General academic teaching institution” has the meaning assigned by [insert
8 citation].

9 (3) “Lower-division institution of higher education” means a public junior college,
10 public state college, or public technical institute.

11 (B) A general academic teaching institution may develop a fixed tuition rate program for
12 qualified students who agree to transfer to the institution within [12 months] after successfully
13 earning an associate degree at a lower-division institution of higher education. Under a program
14 developed under this section, a general academic teaching institution must:

15 (1) guarantee to a participating student enrolled in an associate degree program at a
16 lower-division institution of higher education, on successful completion of the associate degree
17 program, transfer admission to the general academic teaching institution within the period prescribed
18 above; and

19 (2) notwithstanding any other provision of this section, charge tuition to a
20 participating student for any semester or other academic term during a period of at least [24 months]
21 following the student’s initial enrollment in the institution at the same rate the general academic
22 teaching institution would have charged to the student during the later of:

23 (a) the fall semester of the student’s freshman year at another institution of
24 higher education had the student entered the general academic teaching institution as a freshman
25 student; or

26 (b) the fall semester of the [second] academic year preceding the academic
27 year of the student’s initial enrollment in the general academic teaching institution.

28 (C) A general academic teaching institution that develops a fixed tuition rate program under
29 this section shall prescribe eligibility requirements for participation in the program and notify
30 applicants for transfer admission from lower-division institutions of higher education regarding the
31 program.

32
33 Section 3. [*Severability.*] [Insert severability clause.]

34
35 Section 4. [*Repealer.*] [Insert repealer clause.]

36
37 Section 5. [*Effective Date.*] [Insert effective date.]

Health Insurance - Interstate Sales

This Act directs the state insurance commissioner to enter into a consortium with at least five other states for the reciprocal interstate sale of health insurance policies. It requires one of the consortium states be designated as the primary state for purposes of regulation under that state's laws and regulations. It provides that a consortium state insurer is exempt from a secondary state's laws and regulations, except for premium taxes and assessments, registration requirements, unfair claims practices and judicial process. The bill also identifies matters to be considered by the commissioner in establishing rules of reciprocity, the types of policies eligible to be sold and the effect of interstate sales on regulation of domestic insurers.

Submitted as:

Wyoming

[HB 128 \(Enrolled Act 61\)](#)

Status: Enacted into law in 2010.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act Authorizing Selling Health
2 Insurance in this State by Out-of-State Insurers.”

3
4 Section 2. [*Legislative Findings.*] The [legislature] recognizes that people seeking medical
5 and surgical health insurance coverage in this state need the opportunity to choose among
6 competitive medical and surgical health insurance plans which are affordable and flexible.
7 Therefore, the [legislature] seeks to increase the competitive availability of medical and surgical
8 health insurance coverage by allowing insurers authorized to engage in the business of insurance in
9 [this state] who are also authorized to engage in the business of insurance in selected other states to
10 issue individual medical and surgical health policies in [this state] based upon their policy approval
11 in the other selected states. In addition, the [legislature] seeks to initiate cooperation of like-minded
12 states to create a multi-state consortium with reciprocity agreements for approval, offer, sale, rating,
13 including medical underwriting, renewal and issuance of individual medical and surgical health
14 insurance policies. By creating a consortium of states with reciprocity agreements, the larger
15 population of several states with a single approval for sale in multiple states will be attractive to
16 insurers to develop and rapidly introduce lower cost effective products to residents of [this state].

17
18 Section 3. [*Definitions.*]

19 (a) As used in this Act:

20 (i) “Comprehensive individual medical and surgical insurance policy” shall have the
21 same meaning as “health benefit plan” as that term is defined in [insert citation], including, at a
22 minimum, comprehensive major medical coverage for medical and surgical benefits;

23 (ii) “Health insurance,” “health benefit plan” and “health benefit policy” mean a
24 health benefit plan as defined by [insert citation];

25 (iii) “High deductible health plan” means accident and sickness insurance plans sold
26 or maintained under the applicable provisions of section 223 of the Internal Revenue Code;

27 (iv) “Primary state” means the state designated by the issuer as the state whose
28 covered laws shall govern the health insurance issuer in the sale of health insurance coverage, and

29 (v) “Secondary state” means any state that is not the primary state.
30

31 Section 4. [*Sale of Medical and Surgical Insurance Policies Approved in Identified Other*
32 *States.*] In accordance with the provisions of this Act, the [commissioner] shall identify at least [five
33 (5)] states with insurance laws sufficiently consistent with [this state’s] laws. The [commissioner]
34 may approve for sale in [this state] selected comprehensive individual medical and surgical
35 insurance policies that have been approved for issuance in those other states where the insurer is
36 authorized to engage in the business of insurance so long as the insurer is also authorized to engage
37 in the business of insurance in [this state] and provided that the policy meets the requirements set
38 forth in this Act. High deductible health plans that meet national standards for comprehensive
39 medical and surgical coverage may be among the policies automatically approved in [this state] if
40 approved in the states identified as acceptable by the [commissioner].
41

42 Section 5. [*Approval of Policies.*] A policy approved and issued pursuant to this Act shall be
43 treated as if it were issued by an insurer domiciled in [this state] regardless of the insurer’s actual
44 domiciliary.
45

46 Section 6. [*Financial Requirements; Continuing Compliance.*]

47 (a) Any insurer selling an insurance policy pursuant to this Act, and any plan approved under
48 this Act, shall satisfy actuarial standards and insurer solvency requirements set forth by the National
49 Association of Insurance Commissioners (NAIC) and adopted by regulation promulgated by the
50 [commissioner] or as otherwise prescribed by regulation promulgated by the [commissioner] so long
51 as the regulation is not inconsistent with NAIC standards.

52 (b) Any policy sold in [this state] under the coverage and administrative laws and regulations
53 of another state that are not covered by a guarantee association or similar association of that state
54 shall be protected under [insert citation].

55 (c) The [commissioner] shall have the authority to determine whether an insurer satisfies the
56 standards required by this section and shall not approve a policy or plan that he finds not in
57 compliance with this section. The [commissioner] shall have the authority to determine whether the
58 policies sold pursuant to this Act continue to satisfy the requirements set forth in this section in the
59 same manner as the [commissioner] does with an individual accident and sickness insurance policy
60 approved pursuant to [insert citation]. The [commissioner] shall have the authority to suspend or
61 revoke new sales of out-of-state policies if the laws and regulations of those states are determined to
62 egregiously harm residents of [this state]. Upon suspension or revocation, the issuers of the out-of-
63 state policies shall be required to notify in writing all affected policyholders in [this state] of the
64 suspension or revocation determination by the [commissioner].
65

66 Section 7. [*Multi-State Consortium; Reciprocity Requirements.*]

67 (a) The [commissioner] shall explore with other state [insurance commissioners] the creation
68 of a consortium of like-minded states that could establish rules of reciprocity for the approval of
69 comprehensive individual medical and surgical health insurance policies among the participating
70 states.

71 (b) The [commissioner] shall solicit the thoughts and report a consensus, where one exists, of
72 the other [commissioners] interested in creating a consortium of like-minded states in establishing
73 rules of reciprocity for the approval of health insurance policies. Issues to be considered include but
74 are not limited to:

75 (i) Whether the consortium should involve only high deductible individual policies,
76 all comprehensive individual medical and surgical health insurance policies, both of these types of
77 individual policies plus small group policies or all health insurance policies;

78 (ii) Whether insurers should be free to price differently among consortium states
79 dependent on local health care costs and market conditions;

80 (iii) Whether a policy approved in a primary state shall be automatically available in
81 all secondary states of the consortium, or available at the option of the insurer;

82 (iv) In areas where an associated preferred provider network is absent, whether sale of
83 policies should be prohibited, disclaimers should be required or the sale of policies should be
84 regulated only by market forces and conditions;

85 (v) The adequacy for a multi-state consortium of existing state laws on insurer
86 financial solvency, guarantee funds and imposition and collection of premium taxes;

87 (vi) The authority of a secondary state to deal with customer complaints concerning a
88 multi-state policy;

89 (vii) Whether and when an insurer selling a policy approved in a primary state must
90 notify the [commissioner] of a secondary state that the insurer is marketing the policy in the
91 secondary state;

92 (viii) Whether secondary state insurers, in order to sell competitive policies, may
93 match any less restrictive primary state rules governing policies sold in the secondary state, and
94 whether disclaimers to warn potential customers shall be required on policies and promotional
95 materials in the secondary state;

96 (ix) Whether any of the issues identified in this subsection require the enactment of
97 uniform laws in the consortium states;

98 (x) Estimated savings to customers from policy approval only in the primary state and
99 from uniform or less restrictive policies across the consortium states, and

100 (xi) Other issues deemed appropriate by the [commissioners] to implement a multi-
101 state consortium.

102 (c) The [commissioner] shall make an initial proposal that [this state] recommends the rules
103 of approval for reciprocity should include terms and conditions to protect customers similar to the
104 following:

105 (i) An issuer, with respect to a particular policy, may only designate [one (1)] state as
106 its primary state with respect to all coverage it offers using that policy. An issuer may not change the
107 designated primary state with respect to individual health insurance coverage once the policy is
108 issued; provided, however, that a change in designation may be made upon renewal of the policy
109 with approval of the policyholder. With respect to the designated primary state, the issuer shall be
110 licensed and approved to be doing business in that state;

111 (ii) In the case of a health insurance issuer that is selling a policy in, or to a resident
112 of, a secondary state, the issuer shall be licensed and approved to be doing business in that secondary
113 state, and

114 (iii) The covered laws of the primary state shall apply to individual health insurance
115 coverage offered by a health insurance issuer in the primary state and policies sold in any secondary
116 state. The coverage and issuer shall comply with these terms and conditions with respect to the
117 offering of coverage in [this state].

118 (d) Except as provided in this section, a health insurance issuer with respect to its offer, sale,
119 rating (including medical underwriting), benefit payment requirements, renewal and issuance of
120 comprehensive individual medical and surgical health insurance coverage in [this state] is exempt
121 from any covered laws of [this state] as the secondary state and any rules, regulations, agreements or
122 orders sought or issued by the [commissioner] under or related to the covered laws to the extent that
123 the laws would:

124 (i) Make unlawful or regulate, directly or indirectly, the operation of the health
125 insurance issuer operating in [this state] as a secondary state, except that the [commissioner] may
126 require an issuer:

127 (A) To pay on a nondiscriminatory basis applicable premium and other taxes,
128 including high risk pool assessments and other assessments which are levied on insurers and surplus
129 lines insurers, brokers or policyholders under the laws of [this state];
130 (B) To register with and designate the [commissioner] as its agent solely for
131 the purpose of receiving service of legal documents or process;
132 (C) To submit to examinations of its financial condition in accordance with
133 the policies and regulations established through the national association of insurance
134 [commissioners] for accreditation of states to perform these examinations;
135 (D) To comply with an injunction issued by a court of competent jurisdiction,
136 upon a petition by the [commissioner] acting pursuant to [insert citation];
137 (E) To participate, on a nondiscriminatory basis, in any insurance insolvency
138 guaranty association or similar association to which a health insurance issuer in [this state] is
139 required to belong;
140 (F) To comply with any state law regarding fraud and abuse, except that if the
141 state seeks an injunction regarding the conduct described in this subparagraph, the injunction shall
142 be obtained from a court of competent jurisdiction;
143 (G) To comply with any state law regarding unfair claims settlement
144 practices; and
145 (H) To comply with the applicable requirements for external review
146 procedures with respect to coverage offered in [this state].
147 (ii) Discriminate against the issuer issuing insurance in both the primary state and in
148 any secondary state.
149 (e) Nothing in this section shall be construed to prohibit a health insurance issuer:
150 (i) From terminating or discontinuing coverage or a class of coverage in accordance
151 with the laws of the primary state;
152 (ii) From reinstating lapsed coverage; or
153 (iii) From retroactively adjusting the rates charged an insured individual if the initial
154 rates were set based on material misrepresentation by the individual at the time of issue.
155 (f) A health insurance issuer may not offer for sale individual health insurance coverage in
156 [this state] unless that coverage is currently offered for sale in the primary state.
157 (g) A person acting, or offering to act, as an agent or broker for a health insurance issuer with
158 respect to the offering of individual health insurance coverage shall obtain a license from [this state],
159 with commissions or other compensation subject to the provisions of the laws of [this state], except
160 that [this state] may not impose any qualification or requirement which discriminates against a
161 nonresident agent or broker.
162 (h) Each health insurance issuer issuing individual health insurance coverage in both primary
163 and secondary states shall submit to the [insurance commissioner] of each state in which it intends to
164 offer the coverage before it may offer individual health insurance coverage in [this state]:
165 (i) A copy of the plan of operation or feasibility study or any similar statement of the
166 policy being offered and its coverage which shall include the name of its primary state and its
167 principal place of business;
168 (ii) Written notice of any change in its designation of its primary state; and
169 (iii) Written notice from the issuer of the issuer's compliance with all the laws of the
170 primary state.
171 (i) Nothing in this section shall be construed to affect the authority of any federal or state
172 court to enjoin the solicitation or sale of individual health insurance coverage by a health insurance
173 issuer to any person or group who is not eligible for that insurance.
174 (j) Out-of-state companies offering health benefit plans under this Act shall be subject to
175 regulation by the [commissioner] with regard to enforcement of the contractual benefits under the

176 health benefit plan, including the requirements regarding prompt payment of claims for benefits
177 pursuant to [insert citation].

178

179 Section 8. [*Rules and Regulations.*]

180 (a) The [commissioner] shall draft rules and regulations necessary to implement this Act but
181 shall be under no obligation to draft rules and regulations until after [insert date]. The
182 [commissioner] may adopt the rules provided they are consistent with the requirements of [insert
183 citation].

184 (b) Any dispute resolution mechanism or provision for notice and hearing in this Act shall
185 apply to insurers issuing and delivering plans pursuant to this Act.

186

187 Section 9. [*Conflict with Other Code Provisions.*] If the provisions of this Act conflict with
188 any other provision of this code, the provisions of this Act shall control.

189

190 Section 10. [*Authorization Date.*] No policy shall be issued or delivered for issuance in [this
191 state] pursuant to the provisions of this Act before [date].

192

193 Section 11. [*Severability.*] [Insert severability clause.]

194

195 Section 12. [*Repealer.*] [Insert repealer clause.]

196

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

Jurors: Electronic Communications

This Act generally requires a court, when admonishing a jury against conversation, research, or dissemination of information pursuant to the trial, to clearly explain, as part of the admonishment, that the prohibition applies to all forms of electronic and wireless communication. It requires the officer in charge of a jury to prevent any form of electronic or wireless communication. The Act makes violating such admonishment punishable as civil or criminal contempt of court.

Submitted as:

California

[Chapter 181](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Jurors’ Using
2 Electronic Communications to Research or Disseminate Information about Trials.”

3
4 Section 2. [*Jurors’ Use of Electronic and Wireless Communications.*]

5 (A) In a civil proceeding, if a jury is permitted to separate, either during the trial or after the
6 case is submitted to them, they shall be admonished by the court that it is their duty not to conduct
7 research, disseminate information, or converse with, or permit themselves to be addressed by, any
8 other person on any subject of the trial, and that it is their duty not to form or express an opinion
9 thereon until the case is finally submitted to them. The court shall clearly explain, as part of the
10 admonishment, that the prohibition on research, dissemination of information, and conversation
11 applies to all forms of electronic and wireless communication.

12 (B) In a civil proceeding, when a case is finally submitted to a jury, they may decide in court
13 or retire for deliberation. If they retire, they must be kept together in some convenient place, under
14 charge of an officer, until [at least three-fourths] of them agree upon a verdict or are discharged by
15 the court. Unless by order of the court, the officer having them under charge shall not permit any
16 communication to be made to them, including any form of electronic or wireless communication, or
17 make any himself or herself, except to ask them if they or [at least three-fourths] of them are agreed
18 upon a verdict.

19 (C) In a civil proceeding, willful disobedience by a juror of a court admonishment related to
20 the prohibition on any form of communication or research about their case, including all forms of
21 electronic or wireless communication or research, is in respect to a court of justice, or proceedings
22 therein, included in [insert citation] as contempt of the authority of the court.

23 (D) In a civil proceeding, willful disobedience by a juror of a court admonishment related to
24 the prohibition on any form of communication or research about the case, including all forms of
25 electronic or wireless communication or research, is a [misdemeanor] for contempt of court.

26 (E) In a criminal proceeding, after a jury has been sworn and before the people’s opening
27 address, the court shall instruct the jury generally concerning its basic functions, duties, and conduct.
28 The instructions shall include, among other matters, the admonition that jurors shall not converse
29 among themselves, or with anyone else, conduct research, or disseminate information on any subject
30 connected with the trial. The court shall clearly explain, as part of the admonishment, that the

31 prohibition on conversation, research, and dissemination of information applies to all forms of
32 electronic and wireless communication.

33 (F) In a criminal proceeding, the jury shall also, at each adjournment of the court before the
34 submission of the cause to the jury, whether permitted to separate or kept in charge of officers, be
35 admonished by the court that it is their duty not to conduct research, disseminate information, or
36 converse among themselves, or with anyone else, on any subject connected with the trial, or to form
37 or express any opinion about the case until the cause is finally submitted to them. The court shall
38 clearly explain, as part of the admonishment, that the prohibition on research, dissemination of
39 information, and conversation applies to all forms of electronic and wireless communication.

40 (G) In a criminal proceeding, after hearing the charge, the jury may either decide in court or
41 retire for deliberation. If they do not agree without retiring for deliberation, an officer shall be sworn
42 to keep them together for deliberation in some private and convenient place, and, during the
43 deliberation, not to permit any person to speak to or communicate with them, including any form of
44 electronic or wireless communication, nor to do so himself or herself, unless by order of the court, or
45 to ask them whether they have agreed upon a verdict, and to return them into court when they have
46 so agreed, or when ordered by the court.

47 (H) In a criminal proceeding, willful disobedience by a juror of a court admonishment related
48 to the prohibition on any form of communication or research about the case, including all forms of
49 electronic or wireless communication or research, is a [misdemeanor] for contempt of court.

50
51 Section 3. [*Severability.*] [Insert severability clause.]

52
53 Section 4. [*Repealer.*] [Insert repealer clause.]

54
55 Section 5. [*Effective Date.*] [Insert effective date.]

Justice Reinvestment Statement

The Research Division of the North Carolina General Assembly reports North Carolina [Session Law 2011-192](#), as amended by S.L. 2011-412 (HB 335), revises state criminal laws, criminal procedure laws, and probation statutes. The Act is based upon recommendations of The Council of State Governments Justice Center, working in conjunction with state agencies and officials. Known as the Justice Reinvestment Project, the working group received input from criminal justice practitioners and stakeholders from around the state, including superior and district court judges, district attorneys, defense attorneys, behavioral health treatment providers, family members, consumers, law enforcement officials, victim advocates, and probation officers. The goal of their work was to develop a statewide policy framework to reduce spending on corrections and reinvest in strategies to increase public safety.

Part I - Strengthen Probation Supervision:

- Redefines community punishment and intermediate punishment under the Structured Sentencing Act, and authorizes a sentencing court to impose one or more of the statutorily listed conditions. The change broadens the court's discretion by increasing the scope of probation conditions which may be ordered by the court.
- Enacts a new subsection listing probation conditions applicable to community or intermediate punishments. In addition to any special conditions of probation that may be ordered, the court may impose one or more of the following:
 - House arrest with electronic monitoring.
 - Special probation.
 - Community service.
 - Periods of confinement in a local confinement facility (up to six days per month, limited to consecutive two- or three-day periods, in any three months of the period of probation). When a defendant is on probation for multiple judgments, confinement periods imposed must run concurrently and may total no more than six days per month.
 - Substance abuse assessment, monitoring, or treatment.
 - Participation in an educational or vocational skills development program, including an evidence-based program.
 - Satellite monitoring based on sex offender statutes, if authorized by statute.
- Amends the statute delegating authority to the Department of Correction (Department) to require that offenders sentenced to community punishment and intermediate punishment comply with certain conditions. The Department must establish guidelines and procedures for imposition of the conditions, including a waiver of rights form if the Department wants to impose a period of confinement. The form must include waiver of a hearing before the court, assistance of counsel, and other procedural rights. The use of any of the conditions does not prevent the Department from utilizing the statutes which provide for revocation of probation.
- Requires the Department to use a validated risk assessment instrument in assessing each probationer for the purpose of determining:
 - The offender's risk of reoffending.
 - An appropriate supervision level based upon the determined risk of reoffending and the offender's criminogenic needs. Criminogenic needs generally include such things as who an offender hangs around with, the offenders' attitudes and values, lack of problem solving skills, substance use, employment status, and other attributes directly linked to criminal behavior.
- Amends the statute setting forth the Department's caseload goals. The Act uses the characterization of "high or moderate risk of re-arrest" offenders in lieu of offenders sentenced to

community or intermediate punishments. The goal states that a probation officer should have an average of no more than 60 “high or moderate risk of re-arrest” offenders.

Part I became effective December 1, 2011, and applies to people placed on probation based on offenses which occur on or after December 1, 2011. However, this section and the provisions of this Act requiring the Department to adopt a risk assessment instrument became effective June 23, 2011.

Part II – Post Release Supervision:

- Amends the statutes to include all felons in the post-release supervision program, except Class A and Class B1 prisoners sentenced to life imprisonment without parole. Previously, only Class B1 (non-life without parole) through Class E felons were included.

- Amends the post-release supervision release date, setting it at 12 months (was 9 months) before the maximum imposed prison term for Class B1 through Class E felons. For Class F through Class I felons, the post-supervision release date is set at 9 months before the maximum imposed prison term.

- Amends conditions of probation that can result in a revocation of post-release supervision to include a “non-absconding” condition. A probationer who willfully avoids supervision, or who willfully makes his or her whereabouts unknown to probation authorities, is considered to have absconded.

- Amends the statute authorizing imprisonment for violation of post-release supervision conditions. A person required to register on the sex offender registry, or a person who commits a new offense or absconds, is returned to prison to complete the maximum imposed term. Other felons are returned for three months, and may be returned for three months on two subsequent occasions. If the supervisee is a Class B1 through Class E felon, and has completed three periods of confinement of three months each, then a fourth violation can result in required completion of the maximum imposed prison term.

Part II became effective December 1, 2011, and applies to offenses committed on or after that date.

Part III – Breaking and Entering, Status Offense/Habitual Felon Statute, Penalty Change:

- Creates a new status offense for habitual breaking and entering and authorizes the district attorney to charge the offense in his or her discretion. The offense is punishable as a Class E felony. A defendant who has one or more prior convictions for any of the listed breaking and entering offenses is subject to separate indictments for the offense upon which he or she was arrested and for the habitual breaking and entering felony charge. For purposes of determining the number of prior convictions, a person with more than one felony conviction prior to the age of 18 will be considered to have only one prior felony conviction.

- Changes the penalty for a conviction under the state’s Habitual Felon Statute and authorizes the district attorney to charge the offense in his or her discretion. The felon must be sentenced at a level that is four levels higher than the underlying felony for which the person was convicted, with a maximum sentence at the Class C felony level. Prior law set the penalty as a Class C felony.

Part III became effective December 1, 2011, and applies to any offense that occurs on or after that date, and that is the principal offense for a charge of the status offense of either habitual breaking and entering or habitual felon.

Part IV – Limit Time/Certain Violations of Probation:

- Adds a duty not to abscond to the regular conditions of probation, which are applicable to all offenders placed on probation. This provision became effective December 1, 2011, and applies to offenses committed on or after that date.

- Provides that the court may not revoke probation for violations of conditions of probation other than for a new criminal offense or for absconding (except as provided below), but the court may impose imprisonment for the other types of violations.

- Provides that if a probationer commits a violation of a condition of probation (other than a new crime or absconding, which can result in probation revocation), the court may impose a 90-day period of confinement if the person is on probation for a felony, or up to 90 days of confinement if the person is on probation for a misdemeanor. The defendant may receive only two periods of confinement under this subsection. The Act specifies how credits for confinement while awaiting a hearing are allocated.

Except as noted above, Part IV of this Act became effective December 1, 2011, and applies to probation violations occurring on or after that date.

Part V – Diversion Program/Felony Drug Possession/Advanced Supervised Release Program:

- Amends the controlled substance diversion program to include all first-time felony drug possession charges. The program provides for dismissal of charges upon successful completion of probation. Previously, the program was discretionary (court determined whether the defendant could be enrolled), and allowed only drug offense misdemeanants and people convicted of felony possession of less than one gram of cocaine. The Act also amends statutes providing for expunction of first-time drug possession offenses committed by people under the age of 21.

- Creates a procedure for a defendant, through completion of designated “risk reduction incentives,” to be released on post-release supervision in advance of the term imposed under Structured Sentencing. The section:

- Designates who is an eligible defendant. Eligibility is based upon the defendant's offense and prior record level.

- Authorizes the Department to create incentives consisting of treatment, education, and rehabilitative programs designed to reduce the likelihood that the defendant will reoffend.

- Provides that the court, without objection by the prosecutor, may order that the Department admit the defendant to the Advanced Supervised Release (ASR) program, and that the Department may admit only those offenders ordered into the program by the court. The court will first adjudge and impose an authorized sentence for the offense class, pursuant to the Structured Sentencing Act, which will include a minimum and maximum imposed term.

- Provides for an ASR date, which is the minimum mitigated sentence for the offense at the offender's assigned prior record level. If the court utilizes the mitigated range in determining the sentence under structured sentencing, then the ASR date is 80% of the minimum term imposed by the court.

- Provides that a prisoner released on the ASR date will be placed on post-release supervision. If the prisoner is returned to prison three times (a total of nine months), a subsequent violation will result in revocation of post-release status, and the prisoner must serve the remainder of the maximum imposed sentence.

Part V becomes effective January 1, 2012, and applies to people entering a plea or found guilty of an offense on or after that date.

Part VI – Refocus Criminal Justice Partnership Program:

- Repeals the Criminal Justice Partnership Program (CJPP), eliminates local CJPP boards, and creates a new Article provides for a program called "Treatment for Effective Community Supervision" and does the following:

- Establishes eligibility criteria for offenders, and identifies the priority population for funded programs as people convicted of felony drug offenses, who also have a high likelihood of reoffending and have a high to moderate need for substance abuse treatment.

- Provides for duties of the Department, including formulation of a recidivism reduction plan.
- Requires the Department to report annually on funds expended by contract and to provide an analysis of the participants and services.
- Establishes a state Community Corrections Advisory Board with the following duties and responsibilities:
 - Review the criteria for monitoring and evaluating community-based corrections programs.
 - Recommend community-based corrections program priorities.
 - Review minimum program standards, policies, and rules for community-based corrections programs.
 - Review the evaluation of programs.
 - Requires the North Carolina Sentencing Policy and Advisory Commission to report on recidivism rates for offenders on probation, parole, and post-release supervision who are program participants. The report is to be submitted by April 30 of each even-numbered year to the General Assembly and the Governor.
 - Establishes types of programs eligible for funding, to include substance abuse treatment services and cognitive behavioral programming.

Part VI became effective July 1, 2011. The Act authorizes the Department of Correction to enter into contracts with current program providers in the Criminal Justice Partnership Program on a sole-source basis during the 2011-2012 fiscal year.

Part VII – Misdemeanants to Serve Sentences in Jail:

- Authorizes the Department of Correction (Department) to enter into voluntary agreements with counties, to provide housing for misdemeanants serving periods of confinement of more than 90 days and up to 180 days. Costs of housing these prisoners, including care, supervision, transportation, medical, and any other related costs, are to be covered by state funds and not imposed as local costs. The agreements are not applicable to misdemeanants sentenced for violations of impaired driving laws. The Act also states the intent of the General Assembly that the Department contract with the North Carolina Sheriffs’ Association to provide a service identifying space in local confinement facilities available for housing eligible misdemeanants.
 - Provides that sentences requiring confinement for more than 180 days must be served in the custody of the Department; removes a provision that allowed sheriffs or the county board of commissioners to request the presiding judge to sentence felons to local confinement.
 - Requires the North Carolina Sheriffs’ Association, Inc., in consultation with the Department, to develop a plan for the Statewide Misdemeanant Confinement Program by September 1, 2011.
 - Creates the Statewide Misdemeanant Confinement Fund, a non-reverting fund established within the Department. Moneys in the Fund may be used for the following:
 - Reimbursements by the Sheriffs’ Association to counties for the costs of housing misdemeanants under the Program, including the care, supervision, and transportation of those misdemeanants.
 - Reimbursements to the Department for the cost of housing misdemeanants transferred to the Department, including the care, supervision, and transportation of those misdemeanants.
 - Payment to the Sheriffs’ Association for administrative and operating expenses.
 - Payment to the Department for administrative and operating expenses.
 - Provides that 10% of monthly receipts collected and credited to the Statewide Misdemeanant Confinement Fund is to be transferred on a monthly basis to the Sheriffs’ Association

for support of the Program and for administrative and operating expenses of the Association and its staff.

- Provides that 1% of the monthly receipts collected and credited to the Statewide Misdemeanant Confinement Fund are to be transferred on a monthly basis to the General Fund to be allocated to the Department for administrative and operating expenses for the Program.

- Requires the Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, and the Department of Correction to jointly conduct ongoing evaluations regarding implementation of this Act.

- Requires the North Carolina Sheriffs' Association to report on implementation of the program by October 1, 2011, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, and to report thereafter as requested by the Committee. The report must include relevant information collected monthly by the Sheriffs' Association regarding jail capacity and population in each county.

- Provides effective dates for court fees to conform to provisions in the Appropriations Act, and excludes costs and fees designated for remission to the Statewide Misdemeanant Confinement Fund from the collection assistance fee which supports the General Court of Justice.

- Amends the Appropriations Act to exempt the Statewide Misdemeanant Confinement Fund from a collection assistance fee normally allocated from court fees and designated for support of the General Court of Justice.

Provisions in Part VII of this Act relating to the fund and planning and contracting for the Statewide Misdemeanant Confinement Program became effective July 1, 2011; the remaining provisions become effective January 1, 2012.

Part VIII – Annual Report/Sentencing Commission Exemption:

- Requires the North Carolina Sentencing and Policy Advisory Commission and the Department to report on implementation and results of this Act to the Joint Legislative Correction, Crime Control, and Juvenile Justice Oversight Committee and to the chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, by April 15, 2012. Subsequent reports must be made annually by April 15 of each year.

- Provides the Sentencing Commission is not required to pay fees to the Department of Justice for information necessary to fulfilling its statutory obligations.

Submitted as:

North Carolina

[Session Law 2011-192](#)

Status: Enacted into law in 2011.

Marriage and Civil Union by Proxy for Members of the Military

This Act authorizes marriage and civil union by proxy for people whose military service in a war or conflict prevents them from appearing in person to obtain the marriage or civil union license and participate in the ceremony.

Submitted as:

New Jersey

[Chapter 179](#)

Status: Enacted into law in 2012.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act Authorizing Marriage and Civil
2 Unions by Proxy Under Certain Conditions.”

3
4 Section 2. [*Entry into Marriage or Civil Union by Proxy under Certain Conditions.*] A
5 member of the Armed Forces of the United States or the National Guard who is stationed overseas
6 and serving in a conflict or a war and is unable to appear for the licensure and solemnization of their
7 marriage or civil union as required by [insert citation] may enter into that marriage or civil union by
8 the appearance of an attorney-in-fact, commissioned and empowered in writing for that purpose
9 through a power of attorney. The attorney-in-fact must personally appear before the licensing officer
10 with the person who is not serving overseas, and present the original power of attorney duly signed
11 by the party stationed overseas and acknowledged by a notary or witnessed by two officers of the
12 United States Armed Forces or the National Guard. The power of attorney shall state the legal names
13 of the parties to be married or enter into a civil union, and shall state that the power of attorney is
14 solely for the purpose of authorizing the attorney-in-fact to obtain a marriage or civil union license
15 on the person's behalf and to participate in the solemnization of the marriage or civil union. The
16 original power of attorney shall be a part of the marriage or civil union certificate upon registration.

17
18 Section 3. [*Severability.*] [Insert severability clause.]

19
20 Section 4. [*Repealer.*] [Insert repealer clause.]

21
22 Section 5. [*Effective Date.*] [Insert effective date.]

Mortgage Foreclosure Statement

Hawaii [Act 48 of 2011 \(SB651, SD2 HD2, CD1\)](#) amended the foreclosure processes under state law to provide greater protection for homeowners. The Act requires certain large mortgage servicers to maintain an office in the state that is staffed by at least one agent to address consumer inquiries or complaints and to accept service of process. The Act voids future foreclosure actions taken by unlicensed, nonexempt mortgage servicers.

Hawaii law allows banks to foreclose on homes either non-judicially through a power-of-sale provision that is included in most mortgage agreements, or through the courts. This Act sets a moratorium on certain new nonjudicial foreclosures until July 1, 2012. It establishes a 3-year Mortgage Foreclosure Dispute Resolution Program for nonjudicial foreclosures of residential real property occupied by mortgagors who have been owner-occupants for at least 200 days immediately before the initiation of a foreclosure proceeding. The bill defines “dispute resolution” to mean a facilitated negotiation between a mortgagor and mortgagee for the purpose of reaching an agreement for mortgage loan modification or other agreement in an attempt to avoid foreclosure or to mitigate damages if foreclosure is unavoidable.

The bill directs the state judiciary, through its Center for Alternative Dispute Resolution, to work with the state department of commerce and consumer affairs to set up the program. It authorizes these entities to contract with a third party to run the program. The Act requires foreclosing mortgagees to provide to mortgagors specific information and notification about the program.

The Act directs that before a public sale may be conducted for a residential property that is occupied by an owner-occupant as a primary residence, the foreclosing mortgagee shall, at the election of the owner-occupant, participate in the mortgage foreclosure dispute resolution program. The Act imposes a stay of foreclosure proceedings on the affected property once the qualified owner-occupant elects to participate in the dispute resolution program.

Dispute resolution sessions are facilitated by a “neutral” person who is a dispute resolution specialist assigned to facilitate the dispute resolution process. The bill specifies that a dispute resolution session shall consist of at least one meeting lasting no more than three hours, which may be extended by the equivalent of one additional three-hour session on the same or a different day at the discretion of the facilitator. The bill generally requires both parties to a dispute to be physically present at the dispute resolution session. A dispute resolution process conducted pursuant to the Act should use the calculations, assumptions, and forms established by the Federal Deposit Insurance Corporation Loan Modification Program Guide as set out on the Federal Deposit Insurance Corporation’s publicly accessible website unless a different program or process is agreed to by both parties and the neutral facilitator.

The law requires neutral facilitators of dispute resolutions held under the program to file reports indicating whether the parties reached an agreement and whether either did not fully comply with the program’s provisions. The bill enables the neutral facilitator to impose fines and other sanctions on either party for not complying with dispute resolution process.

The bill requires parties in a dispute resolution session who reach an agreement to file a settlement agreement with the neutral facilitator and to file or record documents as necessary to enforce the agreement. It directs the neutral facilitator to file the settlement document with a closing report. The settlement document becomes a contract between the parties and is enforceable in a private contract action in a court of appropriate jurisdiction in the event of breach by either party. If the settlement document allows for foreclosure or other transfer of the subject property, any stay of foreclosure imposed by the Act on the disputed property shall be released upon filing or recording the settlement document with the appropriate court and state agency. The Act also permits lifting a

stay of foreclosure proceedings on property when the parties to a dispute resolution session do not reach an agreement.

The Act directs that the public sale of foreclosed properties must take place during business hours on a business day at certain state facilities that are not administered by the judiciary.

This legislation requires anyone who forecloses on a property within a planned community, a condominium apartment or unit, or an apartment in a cooperative housing project to notify, by way of registered, or certified mail, the board of directors of the planned community association, the association of owners of the condominium project, or the cooperative housing project in which the property to be foreclosed is located, of the foreclosure at the time foreclosure proceedings are begun. The notice, at a minimum, shall identify the property, condominium apartment or unit, or cooperative apartment that is the subject of the foreclosure and identify the name or names of the person or people bringing foreclosure unless the planned community association, condominium association of owners, or cooperative housing corporation is a party in a foreclosure action.

The law generally prohibits such associations from foreclosing on units in their properties for at least sixty days after a unit owner notifies the association of their intention to cure a default. It prohibits such associations from rejecting a “reasonable payment plan” to cure the default, provided that the plan requires the owner to pay at a minimum the current maintenance fee and some amount owed on a past due balance.

This Act establishes procedures to enable an owner-occupant of a residential property that is subject to nonjudicial foreclosure to convert the action to a judicial foreclosure. This starts when the owner-occupant petitions a court. The bill describes the look and contents of notices to convert a nonjudicial foreclosure to a judicial disclosure.

The Act prohibits foreclosing mortgagees from engaging in any of the following practices:

- Holding a public sale on a date, at a time, or at a place other than that described in the public notice of the public sale or a properly noticed postponement;
- Specifying a fictitious place in the public notice of the public sale;
- Conducting a postponed public sale on a date other than the date described in the new public notice of the public sale;
- Delaying the delivery of the recorded, conformed copy of the conveyance document to a bona fide purchaser who purchases in good faith for more than forty-five days after the completion of the public sale;
- Completing nonjudicial foreclosure proceedings during short sale escrows with a bona fide purchaser if the short sale offer is at least five percent greater than the public sale price; provided that escrow is opened within ten days and closed within forty-five days of the public sale; and provided further that a bona fide short sale purchaser shall have priority over any other purchaser;
- Completing nonjudicial foreclosure proceedings during bona fide loan modification negotiations with the mortgagor; or
- Completing nonjudicial foreclosure proceedings against a mortgagor who has been accepted or is being evaluated for consideration for entry into a federal loan modification program before obtaining a certificate or other documentation confirming that the mortgagor is no longer eligible or an active participant of that federal program.

This Act limits foreclosure actions by junior lienholders. It directs that any foreclosing mortgagee who violates the Act or related state law commits an unfair or deceptive act or practice under state law. It prescribes how a mortgage servicer can voluntarily cease to do business in the state and give up its license.

Submitted as:

Hawaii

[Act 48 \(SB651, SD2 HD2, CD1\)](#)

Status: Enacted into law in 2011.

Municipal Broadband Systems

This Act implements new regulatory, public information, and financial requirements for cities and joint agencies which provide communication services to the public for a fee. The new regulations require that municipal broadband systems:

- Comply with all state, local and federal laws and regulations adhered to by private communication companies.
- Establish separate enterprise funds for the communications service, and conduct annual audits.
- Limit the communication services to the jurisdictional boundaries of the city.
- Eliminate the practice of requiring individuals or developments subscribe to municipal broadband services.
- Provide other service providers with access to the city's rights-of-way, conduits, and other distribution facilities.
- Prohibit advertisements for municipal broadband on the public, education, and government channels of competing providers.
- Limit the revenue used to finance communication services to the income generated from the service.
- Price municipal communication services at a rate equal to the cost of providing the service. The price should include adjustments for capital costs and taxes incurred in the private sector.

The new public information standards require that municipal broadband companies:

- Hold two public hearings prior to offering services.
- Provide notice for the public hearings in local newspapers and with the Utilities Commission.
- Provide the public with all feasibility studies, business plans, and surveys prior to the hearings.
- Allow private communications providers to participate in the hearing.

New financial standards require municipal broadband companies:

- Eliminate the practice of using certificates of participation to finance the construction of a system.
- Make payments in lieu of property taxes to the county/counties in which the services are contained.
- Remit to the state payments in lieu of taxes an amount set by the state department of revenue equivalent to the income, franchise, vehicle, motor fuel, and other taxes due if operating as a private enterprise.

The Act exempts municipal broadband enterprises operating as of a certain date.

Submitted as:

North Carolina

[Session Law 2011-84](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Protect Jobs and Investment by
2 Regulating Local Government Competition with Private Business.”
3

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

5 (1) “City-owned communications service provider” means a city that provides
6 communications service using a communications network, whether directly, indirectly, or through an
7 interlocal agreement or a joint agency.

8 (2) “Communications network” means a wired or wireless network for the provision of
9 communications service.

10 (3) “Communications service” means the provision of cable, video programming,
11 telecommunications, broadband, or high-speed Internet access service to the public, or any sector of
12 the public, for a fee, regardless of the technology used to deliver the service. The terms “cable
13 service,” “telecommunications service,” and “video programming service” have the same meanings
14 as in [insert citations]. The following is not considered the provision of communications service:

15 a. The sharing of data or voice between governmental entities for internal
16 governmental purposes.

17 b. The remote reading or polling of data from utility or parking meters, or the
18 provisioning of energy demand reduction or smart grid services for an electric, water, or sewer
19 system.

20 c. The provision of free services to the public or a subset thereof.

21 (4) “High-speed Internet access service” means Internet access service with transmission
22 speeds that are equal to or greater than the requirements for basic broadband tier 1 service as defined
23 by the Federal Communications Commission for broadband data gathering and reporting.

24 (5) “Interlocal agreement” means an agreement between units of local government as
25 authorized by [insert citation].

26 (6) “Joint agency” means an agency created under [insert citation].
27

28 Section 3. [*Notice; Public Hearing.*] A city or joint agency that proposes to provide
29 communications service shall hold not fewer than [two] public hearings, which shall be held not less
30 than [30] days apart, for the purpose of gathering information and comment. Notice of the hearings
31 shall be published at least once a week for [four] consecutive weeks in the predominant newspaper
32 of general circulation in the area in which the city is located. The notice shall also be provided to the
33 [utilities commission], which shall post the notice on its Web site, and to all companies that have
34 requested service of the notices from the city clerk. The city shall deposit the notice in the U.S. mail
35 to companies that have requested notice at least [45] days prior to the hearing subject to the notice.
36 Private communications service providers shall be permitted to participate fully in the public
37 hearings by presenting testimony and documentation relevant to their service offerings and the city's
38 plans. Any feasibility study, business plan, or public survey conducted or prepared by the city in
39 connection with the proposed communications service project is a public record as defined by [insert
40 citation] and shall be made available to the public prior to the public hearings required by this
41 section. This section does not apply to the repair, rebuilding, replacement, or improvement of an
42 existing communications network, or equipment relating thereto.
43

44 Section 4. [*Public-Private Partnerships for Communications Service.*]

45 (A) Prior to undertaking to construct a communications network for the provision of
46 communications service, a city shall first solicit proposals from private business in accordance with
47 the procedures of this section.

48 (B) The city shall issue requests for proposals that specify the nature and scope of the
49 requested communications service, the area in which it is to be provided, any specifications and

50 performance standards, and information as to the city's proposed participation in providing
51 equipment, infrastructure, or other aspects of the service. The city may prescribe the form and
52 content of proposals and may require that proposals contain sufficiently detailed information to
53 allow for an objective evaluation of proposals using the factors stated in subsection (D) of this
54 section. Each proposal shall at minimum contain all of the following:

55 (1) Information regarding the proposer's experience and qualifications to perform the
56 requirements of the proposal.

57 (2) Information demonstrating the proposer's ability to secure financing needed to
58 perform the requirements of the proposal.

59 (3) Information demonstrating the proposer's ability to provide staffing, implement
60 work tasks, and carry out all other responsibilities necessary to perform the requirements of the
61 proposal.

62 (4) Information clearly identifying and specifying all elements of cost of the proposal
63 for the term of the proposed contract, including the cost of the purchase or lease of equipment and
64 supplies, design, installation, operation, management, and maintenance of any system, and any
65 proposed services.

66 (5) Any other information the city determines has a material bearing on its ability to
67 evaluate the proposal.

68 (C) The city shall provide notice that it is requesting proposals in accordance with this
69 subsection. The notice shall state the time and place where plans and specifications for the proposed
70 service may be obtained and the time and place for opening proposals. Any notice given under this
71 subsection shall reserve to the city the right to reject any or all proposals. Notice of request for
72 proposals shall be given by all of the following methods:

73 (1) By mailing a notice of request for proposals to each firm that has obtained a
74 license or permit to use the public rights-of-way in the city to provide a communications service
75 within the city by depositing such notices in the U.S. mail at least [30] days prior to the date
76 specified for the opening of proposals. In identifying firms, the city may rely upon lists provided by
77 the [office of the secretary of state] and the [Utilities Commission].

78 (2) By posting a notice of request for proposals on the city's Web site at least [30]
79 days before the time specified for the opening of proposals.

80 (3) By publishing a notice of request for proposals in a newspaper of general
81 circulation in the county in which the city is predominantly located at least [30] days before the time
82 specified for the opening of proposals.

83 (D) In evaluating proposals, the city may consider any relevant factors, including system
84 design, system reliability, operational experience, operational costs, compatibility with existing
85 systems and equipment, and emerging technology. The city may negotiate aspects of any proposal
86 with any responsible proposer with regard to these factors to determine which proposal is the most
87 responsive. A determination of the most responsive proposer by the city shall be final.

88 (E) The city may negotiate a contract with the most responsive proposer for the performance
89 of communications service specified in the request for proposals. All contracts entered into pursuant
90 to this section shall be approved and awarded by the governing body of the city.

91 (F) If the city is unable to successfully negotiate the terms of a contract with the most
92 responsive proposer within [60] days of the opening of the proposals, the city may proceed to
93 negotiate with the firm determined to be the next most responsive proposer if such a proposer exists.
94 If the city is unable to successfully negotiate the terms of a contract with the next most responsive
95 proposer within [60] days, it may proceed under this section to provide communications service.

96 (G) All proposals shall be sealed and shall be opened in public, provided that trade secrets
97 shall remain confidential as provided under [insert citation].

98

99 Section 5. [*Financing.*]

100 (A) A city or joint agency subject to the provisions of this Act shall not enter into a contract
101 under [insert citation] to purchase or to finance the purchase of property for use in a communications
102 network or to finance the construction of fixtures or improvements for use in a communications
103 network unless it complies with subsection (B) of this section. The provisions of this section shall
104 not apply to the repair, rebuilding, replacement, or improvement of an existing communications
105 network, or equipment relating thereto.

106 (B) A city shall not incur debt for the purpose of constructing a communications system
107 without first holding a special election under [insert citation] on the question of whether the city may
108 provide communications service. If a majority of the votes cast in the special election are for the city
109 providing communications service, the city may incur the debt for the service. If a majority of the
110 votes cast in the special election are against the city providing communications service, the city shall
111 not incur the debt. However, nothing in this section shall prohibit a city from revising its plan to
112 offer communications service and calling another special election on the question prior to providing
113 or offering to provide the service. A special election required under [insert citation] as a condition to
114 the issuance of bonds shall satisfy the requirements of this section.

115 (C) The [commission] shall apply additional requirements to an application for financing by
116 a city or a joint agency under this Act for the construction, operation, expansion, or repair of a
117 communications system or other infrastructure for the purpose of offering communications service
118 that is or will be competitive with communications service offered by a private communications
119 service provider. This section does not apply to the repair, rebuilding, replacement, or improvement
120 of an existing communications network, or equipment relating thereto, but does apply to the
121 expansion of such existing network. The additional requirements are the following:

122 (1) Prior to submitting an application to the [commission], a city or joint agency shall
123 require at least [two] public hearings on the proposed communications service project and notice of
124 the hearings to private communications service providers who have requested notice.

125 (2) At the same time the application is submitted to the [commission], the city or joint
126 agency shall serve a copy of the application on each person that provides competitive
127 communications service within the city's jurisdictional boundaries or in areas adjacent to the city. No
128 hearing on the application shall be heard by the [commission] until at least [60] days after the
129 application is submitted to the [commission].

130 (3) Upon the request of a communications service provider, the [commission] shall
131 accept written and oral comments from competitive private communications service providers in
132 connection with any hearing or other review of the application.

133 (4) In considering the probable net revenues of the proposed communications service
134 project, the [commission] shall consider and make written findings on the reasonableness of the city
135 or joint agency's revenue projections in light of the current and projected competitive environment
136 for the services to be provided, taking into consideration the potential impact of technological
137 innovation and change on the proposed service offerings and the level of demonstrated community
138 support for the project.

139 (5) The city or joint agency making the application to the [commission] shall bear the
140 burden of persuasion with respect to subdivisions (1) through (4) of this section.

141
142 Section 6. [*City-Owned Communications Service Provider Requirements.*]

143 (A) A city-owned communications service provider shall meet all of the following
144 requirements:

145 (1) Comply in its provision of communications service with all local, state, and
146 federal laws, regulations, or other requirements applicable to the provision of the communications
147 service if provided by a private communications service provider.

148 (2) In accordance with [insert citation], establish [one or more] separate enterprise
149 funds for the provision of communications service, use the enterprise funds to separately account for
150 revenues, expenses, property, and source of investment dollars associated with the provision of
151 communications service, and prepare and publish an independent [annual] report and audit in
152 accordance with generally accepted accounting principles that reflect the fully allocated cost of
153 providing the communications service, including all direct and indirect costs. An [annual]
154 independent audit conducted under [insert citation] and submitted to the [local government
155 commission] satisfies the audit requirement of this subdivision.

156 (3) Limit the provision of communications service to within the corporate limits of
157 the city providing the communications service.

158 (4) Shall not, directly or indirectly, under the powers of a city, exercise power or
159 authority in any area, including zoning or land-use regulation, or exercise power to withhold or delay
160 the provision of monopoly utility service, to require any person, including residents of a particular
161 development, to use or subscribe to any communications service provided by the city-owned
162 communications service provider.

163 (5) Shall provide nondiscriminatory access to private communications service
164 providers on a first-come, first-served basis to rights-of-way, poles, or conduits owned, leased, or
165 operated by the city unless the facilities have insufficient capacity for the access and additional
166 capacity cannot reasonably be added to the facilities. For purposes of this subdivision, the term
167 “nondiscriminatory access” means that, at a minimum, access shall be granted on the same terms and
168 conditions as that given to a city-owned communications service provider.

169 (6) Shall not air advertisements or other promotions for the city-owned
170 communications service on a public, educational, or governmental access channel if the city requires
171 another communications service provider to carry the channel. The city shall not use city resources
172 that are not allocated for cost accounting purposes to the city-owned communications service to
173 promote city-owned communications service in comparison to private services or, directly or
174 indirectly, require city employees, officers, or contractors to purchase city services.

175 (7) Shall not subsidize the provision of communications service with funds from any
176 other noncommunications service, operation, or other revenue source, including any funds or
177 revenue generated from electric, gas, water, sewer, or garbage services.

178 (8) Shall not price any communications service below the cost of providing the
179 service, including any direct or indirect subsidies received by the city-owned communications
180 service provider and allocation of costs associated with any shared use of buildings, equipment,
181 vehicles, and personnel with other city departments. The city shall, in calculating the costs of
182 providing the communications service, impute the cost of the capital component that is equivalent to
183 the cost of capital available to private communications service providers in the same locality and an
184 amount equal to all taxes, including property taxes, licenses, fees, and other assessments that would
185 apply to a private communications service provider, including federal, state, and local taxes; rights-
186 of-way, franchise, consent, or administrative fees; and pole attachment fees. In calculating the costs
187 of the service the city may amortize the capital assets of the communications system over the useful
188 life of the assets in accordance with generally accepted principles of governmental accounting.

189 (9) The city shall annually remit to the general fund of the city an amount equivalent
190 to all taxes or fees a private communications service provider would be required to pay the city or
191 county in which the city is located, including any applicable tax refunds received by the city-owned
192 communications service provider because of its government status and a sum equal to the amount of
193 property tax that would have been due if the city-owned communications service provider were a
194 private communications service provider.

195 (B) A city-owned communications service provider shall not be required to obtain voter
196 approval under [insert citation] prior to the sale or discontinuance of the city’s communications
197 network.
198

199 Section 7. *[Payments in Lieu of Taxes.]*

200 (A) A communications network owned or operated by a city or joint agency shall be exempt
201 from property taxes. However, each city possessing an ownership share of a communications
202 network and a joint agency owning a communications network shall, in lieu of property taxes, pay to
203 any county authorized to levy property taxes the amount which would be assessed as taxes on real
204 and personal property if the communications network were otherwise subject to valuation and
205 assessment. Any payments in lieu of taxes shall be due and shall bear interest, if unpaid, as in the
206 case of taxes on other property.

207 (B) A city-owned communications service provider shall pay to the State, on an annual basis,
208 an amount in lieu of taxes that would otherwise be due the State if the communications service was
209 provided by a private communications service provider, including State income, franchise, vehicle,
210 motor fuel, and other similar taxes. The amount of the payment in lieu of taxes shall be set annually
211 by the [department of revenue] and shall approximate the taxes that would be due if the
212 communications service was undertaken by a private communications service provider. A city-
213 owned communications service provider must provide information requested by the [secretary of
214 revenue] necessary for calculation of the assessment. The [department] must inform each city-owned
215 communications service provider of the amount of the assessment by [January 1] of each year. The
216 assessment is due by [March 15] of each year. If the assessment is unpaid, the State may withhold
217 the amount due, including interest on late payments, from distributions otherwise due the city under
218 [insert citation].

219 (C) A city-owned communications service provider or a joint agency that provides
220 communications service shall not be eligible for a refund under [insert citation] for sales and use
221 taxes paid on purchases of tangible personal property and services related to the provision of
222 communications service, except to the extent a private communications service provider would be
223 exempt from taxation.

224 (D) A city subject to the provisions of this section is not allowed a refund of sales and use
225 taxes paid by it under [insert citation] for purchases related to the provision of communications
226 service as defined in this Act.
227

228 Section 8. *[Exemptions.]*

229 (A) This Act does not apply to the purchase, lease, construction, or operation of facilities by a
230 city to provide communications service within the city’s corporate limits for the city’s internal
231 governmental purposes, including the sharing of data or voice between governmental entities for
232 internal governmental purposes, or within the corporate limits of another unit of local government
233 that is a party with the city to an interlocal agreement under [insert citation] for the provision of
234 internal government services.

235 (B) This Act does not apply to the provision of communications service in an unserved area.
236 A city seeking to provide communications service in an unserved area shall petition the state
237 [utilities commission] for a determination that an area is unserved. The petition shall identify with
238 specificity the geographic area for which the designation is sought. Any private communications
239 service provider, or any other interested party, may, within a time established by order of the
240 [commission], which time shall be no fewer than [30] days, file with the [commission] an objection
241 to the designation on the grounds that one or more areas designated in the petition is not an unserved
242 area or that the city is not otherwise eligible to provide the service. For purposes of this subsection,
243 the term “unserved area” means a census block, as designated by the most recent census of the U.S.

244 Census Bureau, in which at least [fifty percent (50%)] of households either have no access to high-
245 speed Internet service or have access to high-speed Internet service only from a satellite provider. A
246 city may petition the [commission] to serve multiple contiguous unserved areas in the same
247 proceeding.

248 (C) This Act does not apply to a city or joint agency providing communications service as of
249 [insert date], provided the city or joint agency limits the provision of communications service to any
250 one or more of the following:

251 (1) People within the corporate limits of the city providing the communications
252 service. For the purposes of this subsection, corporate limits shall mean the corporate limits of the
253 city as of [insert date], or as expanded through annexation.

254 (2) Existing customers of the communications service as of [insert date]. Service to a
255 customer outside the service area of the city or joint agency who is also a public entity must comply
256 with the open bidding procedures of [insert citation] upon the expiration or termination of the
257 existing service contract.

258 (3) The following service areas: [insert service areas].

259 (D) In the event a city subject to the exemption set forth in subsection (C) of this section
260 provides communications service to a customer outside the limits set forth in that subsection, the city
261 shall have [30] days from the date of notice or discovery to cease providing service to the customer
262 without loss of the exemption.

263

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

265

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

267

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

Next-of-Kin Registry

This Act directs the chief administrator of the state motor vehicle commission to develop an Internet Emergency Contact Information Registry Program. Under the program, the chief administrator shall establish and maintain an automated statewide Internet registry to be known as the “Next-of-Kin Registry,” to store emergency contact information that can be accessed by law enforcement officials to notify the next-of-kin when a motor vehicle accident results in serious bodily injury, death, or incapacitation of a driver or passenger.

The Act directs the the chief administrator to set up a process whereby the holder of any valid permit, probationary or basic driver’s license, or non-driver identification card, may electronically sign onto the state motor vehicle commission website using a number assigned to such documents. The permit holder, licensee, or card holder may then submit the name and telephone number of up to two emergency contacts to be stored in the Next-of-Kin Registry.

The Act defines “emergency contact person” as a person, eighteen years of age or older, whom the holder of any valid state permit, probationary or basic driver’s license, or non-driver identification card has designated to be contacted by law enforcement personnel when the holder is rendered unable to communicate due to involvement in a motor vehicle accident resulting in serious bodily injury, death, or incapacitation. The emergency contact person of a permit holder, licensee, or card holder who is under the age of eighteen and is not emancipated is required to be the holder’s parent or guardian.

A permit holder, licensee, or non-driver identification card holder who submits the name and telephone number of an emergency contact shall have the opportunity to revise or update the emergency contact information at any time.

The bill provides that information in the Next-of-Kin Registry shall be available for the exclusive use of law enforcement officials, and employees of the commission who are designated by the chief administrator, for the purposes of discharging their duties pursuant to the Act. Any emergency contact information submitted to the commission shall not be subject to public disclosure under the state Open Public Records Act or the common law concerning access to public records and shall not be discoverable as a public record by any person, entity, or governmental agency, except upon a subpoena issued by a grand jury or a court order in a criminal matter.

Submitted as:

New Jersey

[Chapter 47 of 2011](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Establish a Next-of-Kin
2 Registry.”

3
4 Section 2. [*Identification Cards and Next-of-Kin Registry.*]

5 (A) The [motor vehicle commission] shall issue an identification card to any resident of the
6 state who is [fourteen] years of age or older and who is not the holder of a valid permit or basic
7 driver's license. The identification card shall attest to the true name, correct age, and other
8 identifying data as certified by the applicant for such identification card. Every application for an

9 identification card shall be signed and verified by the applicant and shall be accompanied by the
10 written consent of at least one parent or the person's legal guardian if the person is under [seventeen]
11 years of age and shall be supported by such documentary evidence of the age and identity, or
12 blindness, disability, or handicap, of such person as the chief administrator may require. In addition
13 to requiring an applicant for an identification card to submit satisfactory proof of identity and age,
14 the [chief administrator] also shall require the applicant to provide, as a condition for obtaining the
15 card, satisfactory proof that the applicant's presence in the United States is authorized under federal
16 law. If the [chief administrator] has reasonable cause to suspect that any document presented by an
17 applicant as proof of identity, age, or legal residency is altered, false or otherwise invalid, the chief
18 administrator shall refuse to grant the identification card until such time as the document may be
19 verified by the issuing agency to the chief administrator's satisfaction.

20 (B) The [chief administrator of the motor vehicle commission] shall develop an Internet
21 emergency contact information registry program. Under the program, the [chief administrator] shall
22 establish and maintain an automated statewide Internet registry to be known as the "Next-of-Kin
23 Registry," which shall be capable of storing emergency contact information to be accessible by law
24 enforcement officials for the purposes established in this section.

25 (C) Under the program, the holder of any [state] validated permit, probationary or basic
26 driver's license, or non-driver identification card may voluntarily submit, via the Internet, the name
27 and telephone number of [two] emergency contacts to the "Next-of-Kin Registry," accessible
28 through the [motor vehicle commission's] website.

29 (D) For the purposes of this section, "emergency contact person" or "emergency contact"
30 means a person, [eighteen] years of age or older, whom the holder of any [state] validated permit,
31 probationary or basic driver's license, or non-driver identification card has designated to be
32 contacted by law enforcement personnel when the permit holder, licensee, or non-driver
33 identification card holder is rendered unable to communicate due to a motor vehicle accident
34 resulting in the serious bodily injury, death, or incapacitation of the permit holder, licensee, or non-
35 driver identification card holder. An "emergency contact person" or "emergency contact" may or
36 may not be the next-of-kin of the permit holder, licensee, or non-driver identification card holder;
37 except that if the permit holder, licensee, or card holder is under the age of [eighteen] and is not
38 emancipated, the emergency contact person shall be the parent or guardian of that permit holder,
39 licensee, or card holder.

40 (E) In implementing this program, the [chief administrator] shall establish a process whereby
41 the holder of any validated permit, probationary or basic driver's license, or nondriver identification
42 card may electronically sign onto the [motor vehicle commission] web site using the holder's
43 validated permit, probationary or basic driver's license number or non-driver identification card
44 number. The permit holder, licensee, or card holder may then submit the name and telephone
45 number of up to two emergency contacts to be stored in the "Next-of-Kin Registry." A permit
46 holder, licensee, or non-driver identification card holder who submits the name and telephone
47 number of an emergency contact shall have the opportunity to revise or update the emergency
48 contact information at any time.

49 (F) Information in the "Next-of-Kin Registry" shall be available for the exclusive use of law
50 enforcement officials, and employees of the [commission] who are designated by the [chief
51 administrator], for the purposes of discharging their duties pursuant to [insert citation]. Any
52 emergency contact information submitted to the [commission] shall not be considered a public
53 record pursuant to [insert citation] and shall not be discoverable as a public record by any person,
54 entity, or governmental agency, except upon a subpoena issued by a grand jury or a court order in a
55 criminal matter.

56 (G) When a motor vehicle accident results in the serious bodily injury, death, or
57 incapacitation of a driver or any passenger, the law enforcement officer investigating the motor

58 vehicle accident shall attempt to locate an emergency contact person by accessing the “Next-of-Kin
59 Registry,” established pursuant to this section. The law enforcement officer shall, when practicable,
60 expeditiously notify the emergency contact of each person involved in the motor vehicle accident
61 and inform the emergency contact of the hospital or other location at which the driver or passenger
62 may be receiving medical treatment.

63 (H) The [chief administrator] and employees of the [commission] who are designated by the
64 [chief administrator], for the purposes of discharging their duties pursuant to this section, shall not
65 be liable to any person for civil damages, or subject to criminal prosecution resulting from or caused
66 by:

67 (1) any disruption or failure in Internet service caused by any accident, malfunction,
68 act of sabotage or God, or any other condition or circumstance that the [commission] has not,
69 directly or indirectly, caused and which results in, or prevents, the holder of any [state] validated
70 permit, probationary or basic driver’s license, or non-driver identification card from accessing, or
71 inputting information into, the “Next-of-Kin Registry” or which results in, or prevents, the [chief
72 administrator] and designated [commission] employees and law enforcement officers from
73 accessing, establishing, or maintaining the “Next-of-Kin Registry”;

74 (2) any misuse of, or the failure or omission to input accurate information, or the
75 inputting of inaccurate or outdated information into the “Next-of-Kin Registry” by any holder of any
76 [state] validated permit, probationary or basic driver’s license, or non-driver identification card; or

77 (3) the inability of any law enforcement officer to make contact, in good faith, with
78 any designated emergency contact person. This limitation of liability is inapplicable if such failure
79 resulted from a malicious purpose or a wanton and willful disregard for the safety of persons or
80 property.

81 (I) No law enforcement officer or law enforcement employee shall be liable to any person for
82 civil damages, or subject to criminal prosecution resulting from or caused by:

83 (1) any disruption or failure in Internet service caused by any accident, malfunction,
84 act of sabotage or God, or any other condition or circumstance that the commission has not, directly
85 or indirectly, caused and which results in, or prevents, the holder of any [State] validated permit,
86 probationary or basic driver’s license, or non-driver identification card from accessing, or inputting
87 information into, the “Next-of-Kin Registry” or which results in, or prevents, the chief administrator
88 and designated commission employees and law enforcement officers from accessing, establishing, or
89 maintaining the “Next-of-Kin Registry”;

90 (2) any misuse of, or the failure or omission to input accurate information, or the
91 inputting of inaccurate or out-dated information into the “Next-of-Kin Registry” by any holder of
92 any [state] validated permit, probationary or basic driver’s license, or non-driver identification card;
93 or

94 (3) the inability of any law enforcement officer to make contact, in good faith, with
95 any designated emergency contact person. This limitation of liability is inapplicable if such failure
96 resulted from a malicious purpose or a wanton and willful disregard for the safety of persons or
97 property.

98 (J) The [chief administrator] may adopt, pursuant to [insert citation], any rules or regulations
99 necessary to implement this Act.

100
101
102
103
104
105

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

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

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

Personal Vehicle Sharing (CA)

This Act prohibits a private passenger motor vehicle from being classified for insurance purposes as a commercial, for-hire, or permissive use vehicle, or livery solely on the basis that it is being used for personal vehicle sharing if the annual revenue received by the vehicle's owner that is generated by personal vehicle sharing does not exceed the annual expenses of owning and operating the vehicle. That includes, but is not limited to, depreciation, interest, lease payments, automobile loan payments, insurance, maintenance, parking, and fuel, and the fact that the personal vehicle sharing is conducted pursuant to a personal vehicle sharing program.

The bill defines a personal vehicle sharing program as a legal entity qualified to do business in the state that facilitates personal vehicle sharing. The bill requires a personal vehicle sharing program, among other things, during all times that the vehicle is engaged in personal vehicle sharing, to provide insurance coverage, and collect, maintain, and make available to the vehicle owner and the vehicle owner's primary automobile liability insurer verifiable electronic records identifying the date, time, initial and final locations of the vehicle, and miles driven when it is being used as part of the personal vehicle sharing program.

The Act limits the circumstances under which the vehicle owner's automobile liability insurance can be subject to liability, and requires that automobile insurance policies not be canceled, voided, terminated, rescinded, or not renewed solely on the basis that the private passenger motor vehicle has been made available for personal vehicle sharing. It authorizes the insurer of the vehicle to exclude any and all coverage afforded under the vehicle owner's automobile insurance policy while the vehicle is used by a person other than the owner as part of a personal vehicle sharing program, and provides the primary and excess insurers of owners, operators, and maintainers of the vehicle with the right to inform the insured that it has no duty to defend or indemnify any person or organization for liability for any loss that occurs during use of the vehicle in a personal vehicle sharing program.

Submitted as:

California

[Chapter 454](#)

Status: Enacted into law in 2010.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This Act shall be cited as "An Act to Address Personal Vehicle
2 Sharing."

3
4 Section 2. [*Personal Vehicle Sharing*.]

5 (a) For purposes of this section the following definitions apply:

6 (1) "Personal vehicle sharing" means the use of private passenger motor vehicles by
7 people other than the vehicle's owner, in connection with a personal vehicle sharing program.

8 (2) "Personal vehicle sharing program" means a legal entity qualified to do business
9 in [this state] engaged in the business of facilitating the sharing of private passenger vehicles for
10 noncommercial use by people within the state.

11 (3) "Private passenger motor vehicle" means a vehicle that is insured, or is subject to
12 being insured, under a personal automobile liability insurance policy insuring a single individual or
13 people residing in the same household, as the named insured, or meets the requirements of [insert
14 citation], but does not include a vehicle with fewer than [four] wheels.

15 (b) No private passenger motor vehicle insured by its owner pursuant to a policy of insurance
16 subject to [insert citation] shall be classified as a commercial vehicle, for-hire vehicle, permissive
17 use vehicle, or livery solely because its owner allows it to be used for personal vehicle sharing as
18 long as all of the following circumstances apply:

19 (1) The personal vehicle sharing is conducted pursuant to a personal vehicle sharing
20 program.

21 (2) The annual revenue received by the vehicle's owner which was generated by the
22 personal vehicle sharing of the vehicle does not exceed the annual expenses of owning and operating
23 the vehicle, including depreciation, interest, lease payments, auto loan payments, insurance,
24 maintenance, parking, fuel, cleaning, automobile repair, and costs associated with personal vehicle
25 sharing, including, but not limited to, the installation, operation, and maintenance of computer
26 hardware and software, signage identifying the vehicle as a personal sharing vehicle, and any fees
27 charged by a personal vehicle sharing program.

28 (3) The owner of the private passenger motor vehicle does not knowingly place the
29 vehicle into commercial use, as defined by [insert citation], by a personal vehicle sharing user while
30 engaged in personal vehicle sharing.

31 (c) A personal vehicle sharing program shall, for each vehicle that it facilitates the use of, do
32 all of the following:

33 (1) During all times that the vehicle is engaged in personal vehicle sharing, provide
34 insurance coverage for the vehicle and operator of the vehicle that are equal to or greater than the
35 insurance coverage maintained by the vehicle owner and reported to the personal vehicle sharing
36 program. However, the personal vehicle sharing program shall not provide liability coverage less
37 than [three times] the minimum insurance requirements for private passenger vehicles. Compliance
38 with the terms and conditions of this paragraph shall be deemed to avoid the application of the
39 limitation on damage recoveries set forth in [insert citation].

40 (2) Provide the registered owner of the vehicle with a [department of motor vehicles]
41 suitable proof of compliance with the insurance requirements of this section and the requirements of
42 [insert citation], a copy of which shall be maintained in the vehicle by the vehicle's registered owner
43 during any time when the vehicle is operated by any person other than the vehicle's owner pursuant
44 to a personal vehicle sharing program.

45 (3) Collect, maintain, and make available to the vehicle's owner, the vehicle owner's
46 primary automobile liability insurer on file with the [department of motor vehicles], and to any other
47 government agency as required by law, at the cost of the personal vehicle sharing program,
48 verifiable electronic records that identify the date, time, initial and final locations of the vehicle, and
49 miles driven when the vehicle is under the control of a person other than the vehicle's owner
50 pursuant to a personal vehicle sharing program.

51 (4) Provide the vehicle's owner and any person that operates the vehicle pursuant to a
52 personal vehicle sharing program with a disclosure that contains information explaining the terms
53 and conditions contained in this section.

54 (5) Not knowingly permit the vehicle to be operated for commercial use by a personal
55 vehicle sharing user while engaged in personal vehicle sharing.

56 (6) Use only private passenger vehicles.

57 (7) Facilitate the installation, operation, and maintenance of computer hardware and
58 software and signage, necessary for a vehicle to be used in a personal vehicle sharing program,
59 including payment of the cost of damage or theft of that equipment and any damage caused to the
60 vehicle by the installation, operation, and maintenance of that equipment.

61 (d) Notwithstanding any other provision of law or any provision in a private passenger motor
62 vehicle owner's automobile insurance policy, in the event of a loss or injury that occurs during any
63 time period when the vehicle is under the operation and control of a person, other than the vehicle

64 owner, pursuant to a personal vehicle sharing program, or otherwise under the control of a personal
65 vehicle sharing program, the personal vehicle sharing program shall assume all liability of the owner
66 and shall be considered the owner of the vehicle for all purposes. Nothing in this section limits the
67 liability of the personal vehicle sharing program for its acts or omissions that result in injury to any
68 persons as a result of the use or operation of a personal vehicle sharing program.

69 (e) A personal vehicle sharing program shall continue to be liable pursuant to subdivision (d)
70 until both of the following occur:

71 (1) The private passenger motor vehicle is returned to a location designated by the
72 personal vehicle sharing program.

73 (2) The earliest of one of the following occurs:

74 (A) The expiration of the time period established for the particular use of the
75 vehicle.

76 (B) The intent to terminate the personal vehicle sharing use is verifiably
77 communicated to the personal vehicle sharing program.

78 (C) The vehicle's owner takes possession and control of the vehicle.

79 (f) The personal vehicle sharing program shall assume liability for a claim in which a dispute
80 exists as to who was in control of the vehicle when the loss occurred giving rise to the claim, and the
81 vehicle's private passenger motor vehicle insurer shall indemnify the personal vehicle sharing
82 program to the extent of its obligation under the applicable insurance policy, if it is determined that
83 the vehicle's owner was in control of the vehicle at the time of the loss.

84 (g) In the event that the owner of the vehicle is named as a defendant in a civil action, for a
85 loss or injury that occurs during any time period when the vehicle is under the operation and control
86 of a person, other than the vehicle's owner, pursuant to a personal vehicle sharing program, or
87 otherwise under the control of a personal vehicle sharing program, the personal vehicle sharing
88 program shall have the duty to defend and indemnify the vehicle's owner, subject to the provisions
89 of subdivisions (d) and (f).

90 (h) Notwithstanding any other provision of law or any provision in a vehicle owner's
91 automobile liability insurance policy, while a private passenger motor vehicle is used by a person
92 other than its owner pursuant to personal vehicle sharing facilitated through a personal vehicle
93 sharing program, all of the following shall apply:

94 (1) The insurer of that vehicle on file with the [department of motor vehicles] may
95 exclude any and all coverage afforded pursuant to its policy.

96 (2) The primary and excess insurer or insurers of the owners, operators, and
97 maintainers of the private passenger motor vehicle used in a personal vehicle sharing program shall
98 have the right to notify an insured that it has no duty to defend or indemnify any person or
99 organization for liability for any loss that occurs during use of the vehicle in a personal vehicle
100 sharing program.

101 (i) No policy of insurance that is subject to [insert citation] shall be canceled, voided,
102 terminated, rescinded, or nonrenewed solely on the basis that the private passenger motor vehicle has
103 been made available for personal vehicle sharing pursuant to a personal vehicle sharing program that
104 is in compliance with the provisions of this section.

105
106 Section 3. [*Severability.*] [Insert severability clause.]

107
108 Section 4. [*Repealer.*] [Insert repealer clause.]

109
110 Section 5. [*Effective Date.*] [Insert effective date.]

Personal Vehicle Sharing (OR)

This Act defines personal vehicle sharing as the use of a private passenger motor vehicle by people other than the vehicle's registered owner in connection with a personal vehicle sharing program. It defines a personal vehicle sharing program as a legal entity qualified to do business in the state that is engaged in the business of facilitating the sharing of private passenger motor vehicles for noncommercial use by people within the state.

The Act directs that private passenger motor vehicle insured by the vehicle's registered owner under an owner's insurance policy may not be classified as a commercial motor vehicle, for-hire motor vehicle, permissive use motor vehicle or livery solely because the vehicle's registered owner allows the vehicle to be used for personal vehicle sharing if the personal vehicle sharing is conducted under a personal vehicle sharing program and the annual revenue received by the vehicle's registered owner that was generated by the personal vehicle sharing does not exceed the annual expenses of owning and operating the vehicle, including depreciation, interest, lease payments, motor vehicle loan payments, insurance, maintenance, parking, fuel, cleaning, automobile repair and costs associated with personal vehicle sharing, including but not limited to the installation, operation and maintenance of computer hardware and software, signage identifying the vehicle as a personal vehicle sharing vehicle and any fees charged by a personal vehicle sharing program.

Submitted as:

Oregon

[HB 3149 \(Enrolled version\)](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Personal Vehicle
2 Sharing.”

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

5 (1) “Owner’s insurance policy” means a private passenger motor vehicle liability insurance
6 policy that includes:

7 (a) All coverage necessary to comply with the financial or future responsibility
8 requirements of [insert citation];

9 (b) The personal injury protection coverage required under [insert citation];

10 (c) The uninsured motorist coverage required under [insert citation]; and

11 (d) Any optional coverage selected by the owner.

12 (2) “Personal vehicle sharing” means the use of a private passenger motor vehicle by people
13 other than the vehicle’s registered owner in connection with a personal vehicle sharing program.

14 (3) “Personal vehicle sharing program” means a legal entity qualified to do business in this
15 state engaged in the business of facilitating the sharing of private passenger motor vehicles for
16 noncommercial use by people within this state.

17 (4) “Private passenger motor vehicle” means a [four-wheel passenger or station wagon type
18 motor vehicle] insured under a motor vehicle liability insurance policy covering a single individual
19 or people residing in the same household as the named insured.

20 (5) “Program insurance policy” means a motor vehicle liability insurance policy that is

21 obtained by the personal vehicle sharing program and that:
22 (a) Includes all coverage needed to comply with the financial or future responsibility
23 requirements of [insert citation];
24 (b) Includes the personal injury protection coverage required under [insert citation];
25 (c) Includes the uninsured motorist coverage required under [insert citation];
26 (d) Includes comprehensive property damage coverage for the vehicle;
27 (e) Includes collision property damage coverage for the vehicle; and
28 (f) Does not include any other optional coverage selected by the owner of the vehicle
29 and included in the owner's insurance policy.
30

31 Section 3. [*Personal Vehicle Sharing Programs.*]

32 (A) For each vehicle that the program facilitates the use of, a personal vehicle sharing
33 program shall:

34 (1) Provide a program insurance policy with coverage for the vehicle, the designated
35 operator of the vehicle and all persons who, with the consent of the named insured, use the motor
36 vehicle insured under the policy. The limits for any coverage included in the program insurance
37 policy that is also included in the owner's insurance policy must be equal to or greater than the
38 coverage limits provided in the owner's insurance policy, as reported to the program by the owner.
39 However, the program may not provide liability coverage that is less than [three times] the limits
40 specified in [insert citation].

41 (2) Provide the vehicle's registered owner with a proof of compliance with the
42 insurance requirements of this section and the financial or future responsibility requirements of
43 [insert citation], a copy of which must be maintained in the vehicle by the vehicle's registered owner
44 at all times when the vehicle is operated by any person other than the vehicle's registered owner
45 pursuant to the program.

46 (3) Collect, maintain and make available to the vehicle's registered owner, the
47 vehicle's registered owner's primary motor vehicle liability insurer and any government agency as
48 required by law, at the cost of the program:

49 (a) Verifiable electronic records that identify the date and time, initial and
50 final locations of the vehicle and miles driven when the vehicle is under the control of a person other
51 than the vehicle's registered owner pursuant to the program; and

52 (b) Any information concerning damages or injuries arising out of personal
53 vehicle sharing pursuant to the program.

54 (4) Not knowingly permit the vehicle to be operated as a commercial vehicle by a
55 personal vehicle sharing user while engaged in personal vehicle sharing. For the purposes of this
56 subsection, "commercial vehicle" has the meaning given that term in [insert citation].

57 (5) Ensure that the vehicle is a private passenger motor vehicle.

58 (6) Facilitate the installation, operation, and maintenance of signage and computer
59 hardware and software necessary for the vehicle to be used in the program.

60 (7) Indemnify the vehicle's registered owner for the cost of damage or theft of
61 equipment installed under subsection (6) of this section and any damage caused to the vehicle by the
62 installation, operation, or maintenance of the equipment.

63 (8) Provide the vehicle's registered owner and any person operating the vehicle
64 pursuant to the program with a disclosure that contains information explaining the requirements of
65 this section.

66 (B) An owner's insurance policy for a private passenger motor vehicle may not be canceled,
67 voided, terminated, rescinded or not renewed solely on the basis that the vehicle has been made
68 available for personal vehicle sharing pursuant to a personal vehicle sharing program that is in
69 compliance with the provisions of this Act.

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Section 4. [*Personal Vehicle Sharing Program Liability.*]

(A) Notwithstanding any provision in the owner's insurance policy and [insert citation], in the event of any loss or injury that occurs at any time when the vehicle is under the operation and control of a person, other than the vehicle's registered owner, pursuant to a personal vehicle sharing program, or is otherwise under the control of a personal vehicle sharing program, the program shall assume all liability of the vehicle owner and shall be considered the vehicle owner for all purposes.

(B) Nothing in subsection (A) of this section:

(1) Limits the liability of a personal vehicle sharing program for any acts or omissions by the program that result in injury to any persons as a result of the use or operation of the program; or

(2) Limits the ability of the personal vehicle sharing program to, by contract, seek indemnification from the vehicle's registered owner for any claims paid by the personal vehicle sharing program for any loss or injury resulting from fraud or material misrepresentation in the maintenance of the vehicle by the vehicle's registered owner.

(C) A personal vehicle sharing program continues to be liable under subsection (A) of this section until:

(1) The vehicle is returned to a location designated by the program; and

(2) (a) The expiration of the time period established for the vehicle occurs;

(b) The intent to terminate the vehicle's personal vehicle sharing use is verifiably communicated to the program; or

(c) The vehicle's registered owner takes possession and control of the vehicle.

(D) (1) A personal vehicle sharing program shall assume liability for a claim in which a dispute exists as to who was in control of a private passenger motor vehicle when the loss giving rise to the claim occurred.

(2) The insurer of the vehicle shall indemnify the program to the extent of the insurer's obligation under the owner's insurance policy, if it is determined that the vehicle's registered owner was in control of the vehicle at the time of the loss.

(E) If a private passenger motor vehicle's registered owner is named as a defendant in a civil action for any loss or injury that occurs at any time when the vehicle is under the operation and control of a person, other than the vehicle's registered owner, pursuant to a personal vehicle sharing program, or is otherwise under the control of a personal vehicle sharing program, the program shall have the duty to defend and indemnify the vehicle's registered owner.

(F) Notwithstanding any provision in the owner's insurance policy, while the vehicle is under the operation and control of a person, other than the vehicle's registered owner, pursuant to a personal vehicle sharing program, or is otherwise under the control of a personal vehicle sharing program:

(1) The insurer of the vehicle on file with the [department of transportation] may exclude any and all coverage afforded under the insurer's policy; and

(2) A primary or excess insurer of the owners, operators, or maintainers of the vehicle may notify an insured that the insurer has no duty to defend or indemnify any person or organization for liability for any loss that occurs during use of the vehicle pursuant to a personal vehicle sharing program.

Section 5. [*Prohibitions Against Classifying Private Passenger Motor Vehicles as Commercial Motor Vehicles.*]

(A) A private passenger motor vehicle insured by the vehicle's registered owner under an owner's insurance policy may not be classified as a commercial motor vehicle, for-hire motor vehicle, permissive use motor vehicle, or livery solely because the vehicle's registered owner allows

119 the vehicle to be used for personal vehicle sharing if:

120 (1) The personal vehicle sharing is conducted under a personal vehicle sharing
121 program.

122 (2) The annual revenue received by the vehicle's registered owner that was generated
123 by the personal vehicle sharing does not exceed the annual expenses of owning and operating the
124 vehicle, including depreciation, interest, lease payments, motor vehicle loan payments, insurance,
125 maintenance, parking, fuel, cleaning, automobile repair and costs associated with personal vehicle
126 sharing, including but not limited to the installation, operation and maintenance of computer
127 hardware and software, signage identifying the vehicle as a personal vehicle sharing vehicle and any
128 fees charged by a personal vehicle sharing program.

129

130 Section 6. [*Applicability.*] Sections 2 to 5 of this Act apply to insurance policies issued or
131 renewed on or after the effective date of this Act.

132

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

134

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

136

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

Prohibiting Workplace Discrimination by Employers

This Act generally makes it unlawful for employers to refuse to hire or fire people, or otherwise discriminate against employees, because of race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, or domestic or sexual violence victim status. It requires employers to make reasonable accommodations for employees who are victims of domestic or sexual violence if those do not cause undue hardship to the operations of the employer. It allows employers to request verification of employees' continued status within specified time frames. The Act creates a civil remedy for employee-victims denied reasonable accommodations.

Submitted as:

Hawaii

[Act 206 of 2011](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Prohibit Workplace
2 Discrimination by Employers.”
3

4 Section 2. [*Unlawful Discriminatory Practices by Employers.*]

5 (a) As used in this section, “domestic or sexual violence victim” or “victim” means an
6 individual who is the victim of domestic or sexual violence as defined in [insert citation].

7 (b) It shall be an unlawful discriminatory practice:

8 (1) Because of race, sex, sexual orientation, age, religion, color, ancestry, disability,
9 marital status, arrest and court record, or domestic or sexual violence victim status if the domestic or
10 sexual violence victim provides notice to the victim’s employer of such status or the employer has
11 actual knowledge of such status:

12 (A) For any employer to refuse to hire or employ or to bar or discharge from
13 employment, or otherwise to discriminate against any individual in compensation or in the terms,
14 conditions, or privileges of employment;

15 (B) For any employment agency to fail or refuse to refer for employment, or
16 to classify or otherwise to discriminate against, any individual;

17 (C) For any employer or employment agency to print, circulate, or cause to be
18 printed or circulated any statement, advertisement, or publication or to use any form of application
19 for employment or to make any inquiry in connection with prospective employment, which
20 expresses, directly or indirectly, any limitation, specification, or discrimination;

21 (D) For any labor organization to exclude or expel from its membership any
22 individual or to discriminate in any way against any of its members, employer, or employees; or

23 (E) For any employer or labor organization to refuse to enter into an
24 apprenticeship agreement as defined in [insert citation]; provided that no apprentice shall be younger
25 than [sixteen] years of age;

26 (2) For any employer, labor organization, or employment agency to discharge, expel,
27 or otherwise discriminate against any individual because the individual has opposed any practice

28 forbidden by this section or has filed a complaint, testified, or assisted in any proceeding respecting
29 the discriminatory practices prohibited under this section;

30 (3) For any person, whether an employer, employee, or not, to aid, abet, incite,
31 compel, or coerce the doing of any of the discriminatory practices forbidden by this section, or to
32 attempt to do so;

33 (4) For any employer to violate the provisions of [insert citation] relating to
34 nonforfeiture for absence by members of the National Guard;

35 (5) For any employer to refuse to hire or employ or to bar or discharge from
36 employment, any individual because of assignment of income for the purpose of satisfying the
37 individual's child support obligations as provided for under [insert citation];

38 (6) For any employer, labor organization, or employment agency to exclude or
39 otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an
40 individual with whom the qualified individual is known to have a relationship or association;

41 (7) For any employer or labor organization to refuse to hire or employ or to bar or
42 discharge from employment, or withhold pay, demote, or penalize a lactating employee because the
43 employee breastfeeds or expresses milk at the workplace. For purposes of this paragraph, the term
44 breastfeed means the feeding of a child directly from the breast; or

45 (8) For any employer to refuse to hire or employ or bar or discharge from
46 employment, or otherwise to discriminate against any individual in compensation or in the terms,
47 conditions, or privileges of employment of any individual because of the individual's credit history
48 or credit report, unless the information in the individual's credit history or credit report directly
49 relates to a bona fide occupational qualification under section [insert citation].

50 (c) An employer may verify that an employee is a victim of domestic or sexual violence by
51 requesting that the employee provide:

52 (1) A signed written statement from a person listed below from whom the employee
53 or the employee's minor child has sought assistance in relation to the domestic or sexual violence:

54 (A) An employee, agent, or volunteer of a victim services organization;

55 (B) The employee's attorney or advocate;

56 (C) The attorney or advocate of the employee's minor child;

57 (D) A medical or other health care professional;

58 (E) A member of the clergy; or

59 (F) A police or court record supporting the occurrence of the domestic or
60 sexual violence;

61 (2) An employer may verify an employee's status as a domestic or sexual violence
62 victim not more than [once every six months] following the date the employer:

63 (A) Was provided notice by the employee of the employee's status as a
64 domestic or sexual violence victim;

65 (B) Has actual knowledge of the employee's status as a domestic or sexual
66 violence victim; or

67 (C) Received verification that the employee is a domestic or sexual violence
68 victim; provided that where the employee provides verification in the form of a protective order
69 related to the domestic or sexual violence with an expiration date, the employer may not request any
70 further form of verification of the employee's status as a domestic or sexual violence victim until the
71 date of the expiration or any extensions of the protective order, whichever is later.

72 (d) An employer shall make reasonable accommodations in the workplace for an employee
73 who is a victim of domestic or sexual violence, including:

74 (1) Changing the contact information, such as telephone numbers, fax numbers, or
75 electronic-mail addresses, of the employee;

76 (2) Screening the telephone calls of the employee;

77 (3) Restructuring the job functions of the employee;
78 (4) Changing the work location of the employee;
79 (5) Installing locks and other security devices; and
80 (6) Allowing the employee to work flexible hours; provided that an employer shall
81 not be required to make the reasonable accommodations if those cause undue hardship on the work
82 operations of the employer.

83 (e) Prior to making the reasonable accommodations under this section, an employer may
84 verify that an employee is a victim of domestic or sexual violence as provided in this section.

85 (f) As used in this section, “undue hardship” means an action requiring significant difficulty
86 or expense on the operation of an employer, when considered in light of the following factors:

87 (1) The nature and cost of the reasonable accommodation needed under this section;

88 (2) The overall financial resources of the employer; the number of employees of the
89 employer; and the number, type, and placement of the work locations of an employer; and

90 (3) The type of operation of the employer, including the composition, structure, and
91 functions of the workforce of the employer, the geographic separateness of the victim’s work
92 location from the employer, and the administrative or fiscal relationship of the work location to the
93 employer.

94 (g) Any employee denied reasonable accommodations by an employer in violation of this
95 section may file a civil action against the employer to enforce this section and recover costs,
96 including reasonable attorney’s fees, incurred in the civil action.

97

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

99

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

101

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

Recovering Crime Victims' Property

This Act establishes a process to enable crime victims or their advocates to recover property held by law enforcement agencies.

Submitted as:

Alaska

[SB 30 \(Enrolled version\)](#)

Status: Enacted into law in 2012.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This Act shall be cited as “An Act to Help Crime Victims Recover
2 Property Lost to Crime.”

3
4 Section 2. [*Return of Property by Hearing*.]

5 (A) As used in this section, “crime victim” means the same as defined in [insert citation].

6 (B) A crime victim who is the owner of property not belonging to a law enforcement agency
7 that is in the custody of the agency under this Act may ask the [office of victims’ rights] established
8 under [insert citation] to request that the agency return the property to the crime victim. The request
9 under this subsection shall be filed by the [office of victims’ rights] on behalf of the crime victim
10 after the [office] has conducted an investigation and has concluded that the crime victim is entitled to
11 the return of the property under the factors listed in subsection (D) of this section.

12 (C) Within [10] days after receipt of a request under subsection (A) of this section and
13 following reasonable notice to the prosecution, defense, and other interested parties, the agency shall
14 request a hearing before the court to determine if the property shall be released to the crime victim.
15 If the property is being held in connection with a criminal case, the hearing shall be before the court
16 with jurisdiction of the criminal case. If no criminal case is pending regarding the property, the
17 hearing shall be before a district or superior court where the property is located.

18 (D) At the hearing, a party that objects to the return of the property shall state the reason on
19 the record. After a hearing, the court may order the return of the property in the custody of a law
20 enforcement agency to the crime victim if the crime victim by a preponderance of the evidence
21 provides satisfactory proof of ownership and the party that objects to the return of the property fails
22 to prove by a preponderance of the evidence that the property must be retained by the agency for
23 evidentiary purposes under the provisions of this Act or another law.

24 (E) If the court orders the return of the property to the crime victim, the court may impose
25 reasonable conditions on the return. Those conditions may include an order that the crime victim
26 retain and store the property so that the property is available for future court hearings, requiring
27 photographs of the property to be taken, or any other condition the court considers necessary to
28 maintain the evidentiary integrity of the property.

29 (F) Notwithstanding another provision of [insert citation], a crime victim’s advocate may file
30 a request under this Act with a law enforcement agency for the return of property to a crime victim
31 after having conducted an investigation and determining that the crime victim is entitled to the return
32 of the property under the factors listed in subsection (D) of this section. In fulfilling the requirements
33 of this subsection, a victim’s advocate may use any of the powers granted to the advocate under
34 [insert citation].

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

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

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

Remote Automated Medication System

This Act generally authorizes licensed skilled nursing facilities and hospice facilities to use remote automated medication systems when such facilities do not have pharmacies on-site.

Submitted as:

Georgia

[HB 457 \(As Passed House and Senate\)](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Authorize Certain Facilities to
2 Use Remote Automated Medication Systems.”

3
4 Section 2. [*Remote Automated Medication Systems.*]

5 (A) As used in this Act “remote automated medication system” means an automated
6 mechanical system defined under [insert citation] and that is located in an institution that does not
7 have an on-site pharmacy and in which medication may be dispensed in a manner that may be
8 specific to a patient.

9 (B) A remote automated medication system shall not be considered a vending machine for
10 purposes of this Act.

11 (C) The possession, filling, and use of canisters for remote automated medication systems
12 pursuant to this Act shall not be considered a violation of [insert citation].

13 (D) As used in this Act, the term “institution” means a skilled nursing facility under [insert
14 citation] or a hospice licensed under [insert citation].

15 (E) Pharmacists may dispense prescriptions from a remote location for the benefit of an
16 institution that uses a remote automated medication system in accordance with the requirements set
17 forth in this Act and the rules and regulations adopted by the [state board of pharmacy] pursuant to
18 [insert citation].

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

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

22
23 Section 5. [*Effective Date.*] [Insert effective date.]
24

Sales and Use Tax Note

Whether and how to collect taxes on items sold over the Internet remains controversial as states look for new revenue, small brick and mortar businesses battle to compete against e-sellers, and businesses of all sizes and types sell more on the Internet. Issues include determining who is responsible for collecting such a tax and the nexus of businesses that sell on the Internet.

Arkansas [Act 1001 of 2011](#) transfers responsibility for collecting sales and use taxes to sellers engaging in the business of selling tangible personal property and services in certain circumstances. For example, the Act directs that “if there is not an affiliated person with respect to a seller in the state, the seller is presumed to be engaged in the business of selling tangible personal property or taxable services for use in the state if the seller enters into an agreement with one or more residents of the state under which the residents, for a commission or other consideration, directly or indirectly refer potential purchasers, whether by a link on an Internet website or otherwise, to the seller,” and if the the cumulative gross receipts from sales by the seller to purchasers in the state who are referred to the seller by all residents exceed \$10,000 during the preceding twelve months.

California [AB 155](#), which became law in 2011, changed provisions of state law which imposed a sales tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in the state, and a use tax on the storage, use, or other consumption in the state of tangible personal property purchased from a retailer for storage, use, or other consumption in the state, measured by sales price. Before AB 155, state law required every retailer engaged in business in the state, as defined, and making sales of tangible personal property for storage, use, or other consumption in the state to collect the tax from the purchaser.

Before AB 155, state law defined a “retailer engaged in business” in the state:

- to mean a retailer that had substantial nexus with the state and a retailer upon whom federal law permits the state to impose a use tax collection duty;
- including, among others, a retailer entering into an agreement or agreements under which a person or people in the state, for a commission or other consideration, directly or indirectly refer potential purchasers of tangible personal property to the retailer, whether by an Internet-based link or an Internet Web site, or otherwise, provided that two specified conditions are met, including the condition that
 - the retailer, within the preceding 12 months, has total cumulative sales of tangible personal property to purchasers in the state in excess of \$500,000; and
 - a retailer that is a member of a commonly controlled group, as defined under the state Corporation Tax Law, and a member of a combined reporting group, as defined, that includes another member of the retailer’s commonly controlled group that, pursuant to an agreement with or in cooperation with the retailer, performs services in this state in connection with tangible personal property to be sold by the retailer.

California AB 155 revised the definition of a “retailer engaged in business” in the state to temporarily eliminate the above-mentioned inclusions in that definition, but also specified that the operation of these inclusions would resume upon a specified date if either a certain federal law authorizing states to require sellers to collect tax is enacted and the state declines to implement that law, or the federal government fails to enact a law providing that authority. California AB 155, for purposes of the condition with respect to total cumulative sales, also increases the threshold amount of total cumulative sales of tangible personal property to purchasers in the state to \$1,000,000 or more.

School Reform Statement (Teacher Tenure, Teacher Performance)

Illinois [SB 7 \(Public Act 097-0008\)](#) establishes new standards for teacher tenure, empowers school districts to remove poor performing teachers from the classroom, and updates regulations about teacher strikes. For example, the law states tenure can only be obtained after four years of service and a series of proficiency reviews. However, it allows for the top-rated educators to be put into a fast-track for tenure after three years without having to wait for the fourth year. The Act directs the state board of education to administer a survey of learning conditions to schools statewide and to publically report about selected indicators of learning conditions resulting from the survey.

SB 7 sets new guidelines that make teacher strikes more difficult. Suburban school districts and other state teacher unions outside Chicago along with their school boards are required to meet with a mediator to disclose their best offer prior to any strike. Strikes in Chicago schools will require a 120-day waiting period from the date the impasse moves to an advisory panel. The Chicago Teachers Union must also have support from at least 75 percent of its bargaining members and provide a minimum of a 10-day strike notice. Chicago Public Schools also now have powers to impose longer school days as well as lengthen the school calendar.

This bill is one of several enacted in 2011 that restrict teacher tenure and/or collective bargaining powers. Ohio's SB 5, Idaho's SB 1108, and Wisconsin's Act 10 are other examples of legislation reducing teachers' collective bargaining authority. Bills passed in Ohio and Idaho also reduce the role of seniority in layoffs, tie teacher evaluation to student achievement, and place additional restrictions or conditions on teacher tenure.

Although Illinois' SB 7 includes similar provisions to legislation enacted in those states, some significant differences in the process exist. For one thing, the legislation in Illinois was enacted by a Democrat-controlled legislature and signed by a Democratic governor, unlike in Ohio, Idaho and Wisconsin. Perhaps a more important difference is that the Illinois bill passed with support from the state's three largest teacher unions, which helped to counteract opposition from the rank-and-file or other unions. Possibly the most telling description, as reported in *The Huffington Post*, was that unions "accepted a spanking in order to avoid a real beat-down." Having observed more stringent bills in Ohio and neighboring Wisconsin, teacher unions in Illinois and legislators successfully negotiated to enact legislation that significantly reforms teacher tenure laws without outlawing teacher unions or abolishing tenure entirely.

The Illinois law, however, has been recognized as a national model by U.S. Education Secretary Arne Duncan who stated, "Illinois has done something truly remarkable and every state committed to education reform should take notice."

One significant difference in Illinois' SB 7 was a substantial degree of input in Illinois from teacher unions, business interests, and education advocacy groups. Groups that participated in drafting and passing the reforms included the Illinois Education Association, the Illinois Federation of Teachers, the Chicago Teachers Union, Stand for Children, Advance Illinois, the Illinois School Management Alliance, Illinois Association of School Administrators, Illinois Association of School Boards, Large Urban District Association, ED-RED, Legislative Education Network of DuPage, Chicago and Illinois Principals Association, and the Illinois Business Roundtable. Two unions temporarily withdrew their support of SB 7 because of provisions that would have affected an ongoing lawsuit and made it harder for members to call a strike. But, both unions signed on again after a trailer bill amended those issues.

Submitted as:
Illinois

Public Act 097-0008 (SB 7)

Status: Enacted into law in 2011.

Sexting and Cyberbullying

This Act prohibits minors from using an electronic communication device, such as a cell phone, to possess, transmit or distribute a sexual image of themselves or of another minor. It includes in the definition of “cyberbullying” the use of electronic communication to transmit or distribute a sexual image of a minor.

Submitted as:

Nevada

[SB277 \(Enrolled version\)](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

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

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

5 (A) “Cyberbullying” means bullying through the use of electronic communication. The term
6 includes the use of electronic communication to transmit or distribute a sexual image of a minor.

7 (B) “Electronic communication device” means any electronic device that is capable of
8 transmitting or distributing a sexual image, including, without limitation, a cellular phone, personal
9 digital assistant, computer, computer network and computer system.

10 (C) “Minor” means a person who is under [18] years of age.

11 (D) “School official” means a principal, vice principal, school counselor or school police
12 officer.

13 (E) “Sexual conduct” has the meaning ascribed to it in [insert citation.]

14 (F) “Sexual image” means any visual depiction, including, without limitation, any
15 photograph or video, of a minor simulating or engaging in sexual conduct or of a minor as the
16 subject of a sexual portrayal.

17 (G) “Sexual portrayal” has the meaning ascribed to it in [insert citation].

18
19 Section 3. [*Prohibiting Using an Electronic Communication Device to Transmit or Distribute*
20 *a Sexual Image of a Minor.*]

21 (A) A minor shall not knowingly and willfully use an electronic communication device to
22 transmit or distribute a sexual image of himself or herself to another person.

23 (B) A minor shall not knowingly and willfully use an electronic communication device to
24 transmit or distribute a sexual image of another minor who is older than, the same age as or not more
25 than [4] years younger than the minor transmitting the sexual image.

26 (C) A minor shall not knowingly and willfully possess a sexual image that was transmitted or
27 distributed as described in subsections (A) and (B) if the minor who is the subject of the sexual
28 image is older than, the same age as or not more than [4] years younger than the minor who
29 possesses the sexual image. It is an affirmative defense to a violation charged pursuant to this
30 subsection if the minor who possesses a sexual image:

31 (1) Did not knowingly purchase, procure, solicit or request the sexual image or take
32 any other action to cause the sexual image to come into his or her possession; and

33 (2) Promptly and in good faith, and without retaining or allowing any person, other
34 than a law enforcement agency or a school official, to access any sexual image:

35 (a) Took reasonable steps to destroy each image; or

36 (b) Reported the matter to a law enforcement agency or a school official and
37 gave the law enforcement agency or school official access to each image.

38 (D) A minor who violates subsection (A):

39 (1) For the first violation:

40 (a) Is a child in need of supervision, as that term is used in [insert citation],
41 and is not a delinquent child; and

42 (b) Is not considered a sex offender or juvenile sex offender and is not subject
43 to registration or community notification as a juvenile sex offender pursuant to [insert citation], or as
44 a sex offender pursuant to [insert citation].

45 (2) For the second or a subsequent violation:

46 (a) Commits a delinquent act, and the court may order the detention of the
47 minor in the same manner as if the minor had committed an act that would have been a misdemeanor
48 if committed by an adult; and

49 (b) Is not considered a sex offender or juvenile sex offender and is not subject
50 to registration or community notification as a juvenile sex offender pursuant to [insert citation], or as
51 a sex offender pursuant to [insert citation].

52 (E) A minor who violates subsection (B):

53 (1) Commits a delinquent act, and the court may order the detention of the minor in
54 the same manner as if the minor had committed an act that would have been a [misdemeanor] if
55 committed by an adult; and

56 (2) Is not considered a sex offender or juvenile sex offender and is not subject to
57 registration or community notification as a juvenile sex offender pursuant to [insert citation], or as a
58 sex offender pursuant to [insert citation.]

59 (F) A minor who violates subsection (C):

60 (1) Is a child in need of supervision, as that term is used in [insert citation], and is not
61 a delinquent child; and

62 (2) Is not considered a sex offender or juvenile sex offender and is not subject to
63 registration or community notification as a juvenile sex offender pursuant to [insert citation] or as a
64 sex offender pursuant to [insert citation].

65 (G) To determine whether a person was a minor, the court or jury may:

66 (1) Inspect the person in question;

67 (2) View the performance;

68 (3) Consider the opinion of a witness to the performance regarding the person's age;

69 (4) Consider the opinion of a medical expert who viewed the performance; or

70 (5) Use any other method authorized by the rules of evidence at common law.

71 (H) Except as otherwise provided in [insert citation], the juvenile court has exclusive original
72 jurisdiction in proceedings concerning any child living or found within the county who is alleged or
73 adjudicated to be in need of supervision because the child uses an electronic communication device
74 to transmit or distribute a sexual image of himself or herself to another person or to possess a sexual
75 image in violation of this Act.

76 (I) A child who is subject to the jurisdiction of the juvenile court pursuant to this section
77 must not be considered a delinquent child.

78
79 Section 4. [*Severability.*] [Insert severability clause.]

80
81 Section 5. [*Repealer.*] [Insert repealer clause.]

82
83

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

State Employee Idea Application

This Act requires the state personnel director to create and make available to all state employees a process and an application to allow state workers to suggest ideas to improve state agency operations. The application must be posted on the department of personnel's website and the process must be advertised on state employee payroll statements. The Act directs the state personnel director to develop a method to evaluate employee suggestions.

State employees submit their suggestions to their agency directors. The Act requires the agency directors to respond to employee suggestions in a timely manner and to calculate the projected savings from employee suggestions before they decide to accept or reject an employee's suggestion.

The legislation requires agency directors to calculate any savings their agencies realize from employee suggestions within 13 months after such suggestions are fully implemented. The directors must forward those calculations to the state auditor for review and verification. Within 120 days after receipt of the calculation, the state auditor must report their review and verification to the legislative audit committee. Agency directors must also identify any state laws or regulations that need to be changed to implement an approved employee suggestion and provide that information to the appropriate legislative committee.

The Act rewards employees up to \$5,000 of any savings realized from their suggestions to improve agency operations.

Submitted as:

Colorado

[Chapter 284 of 2010](#)

Status: Enacted into law in 2010.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Encourage State Employees to
2 Suggest Ideas to Improve State Government Operations.”

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

5 (A) (1) “Employee” means, except as provided in paragraph (2) of this subsection (A), all
6 state employees, including those employees within the state personnel system and those exempt from
7 the state personnel system as specified in [insert citation].

8 (2) “Employee” does not include:

9 (a) An [employee of the office of state planning and budgeting, the office of
10 the state auditor, the joint budget committee, or the department of personnel];

11 (b) An elected official or member of the [legislature]; or

12 (c) The [executive director, program manager, division director, or budget
13 officer of a principal department, the president of a college or university, or a deputy of such
14 director, officer, or president].

15 (B) “Executive director” means a state agency's executive director or similar senior level
16 manager or managing director.

17 (C) “Idea application” means the application described in section 3 of this Act.

18 (D) “Projected savings” means an amount calculated by a state agency that may be realized
19 by the agency directly as a result of an employee's idea application.

20 (E) “Savings realized” means an amount calculated by a state agency that was actually
21 realized by the agency directly as a result of an employee's idea application.

22 (F) “State agency” means any department, board, bureau, commission, division, institution,
23 office, or other agency of the executive, legislative, and judicial branch of the state government,
24 including institutions of higher education.

25
26 Section 3. [*State Employee Idea Application.*]

27 (A) (1) No later than [insert date], the [state personnel director], or their designee, shall
28 create and make publicly available to all employees on the [department of personnel's] web site an
29 idea application, substantially similar to the [Air Force form AF 1000], to allow employees to
30 suggest state agency improvements that may result in cost savings at the state agency where the
31 employee works. Each state agency [executive director] shall create agency-specific supplemental
32 submission materials to the idea application if such materials are deemed necessary by the executive
33 director to manage the submission process. Each state agency shall post such materials on their
34 respective web sites.

35 (2) The idea application shall not be used for ideas that:

36 (a) Would result from obvious and progressive normal business practices,
37 such as a foreseeable expectation that the idea would be implemented in a reasonable time frame as a
38 result of evolving business or industry practice;

39 (b) Are obvious solutions to mandated budget cuts, such as abolishing vacant
40 funded positions or reducing staff through layoffs;

41 (c) Result in cost avoidance as the method of documenting cost savings, such
42 as no or lowered increases in costs for staff, supplies, or equipment;

43 (d) Result in revenue enhancement as the method of documenting cost
44 savings, such as new or increased fees for services; or

45 (e) Simply shift the cost from one state agency to another.

46 (B) No later than [insert date], the [state personnel director], or their designee, shall establish
47 standard evaluation criteria substantially similar to the evaluation criteria used to evaluate the [Air
48 Force form AF 1000], by which all idea applications shall be evaluated. The [state personnel
49 director], or their designee, shall make such criteria available to all [executive directors]. Each state
50 agency [executive director] may establish additional evaluation criteria specific to their agency if
51 such criteria are deemed necessary by the [executive director] to manage the submission process.

52 (C) (1) Any employee may complete an idea application. For processing, the employee
53 shall submit the idea application to the [executive director] of the employee's state agency. An
54 employee shall not be retaliated against for submitting an idea application.

55 (2) The identity of an employee who submits an idea application shall remain
56 confidential and shall be redacted from the application until the employee has been determined to be
57 eligible for an honorary award as specified in subsection (I) of this section, except that the identity of
58 the employee may be made known to the [executive director], or their designee, for purposes of
59 obtaining reasonably necessary additional information related to the idea application.

60 (3) (a) The [executive director], or their designee, shall provide notification of
61 receipt of the idea application to the employee within [fifteen] days after submission of such
62 application. The [executive director], or their designee, may automatically deny an idea application
63 if they deem such application to be duplicative of another application that was submitted within the
64 prior [twelve-month] period or duplicative of a recommendation contained in an audit report from
65 the [office of the state auditor] or any privately contracted auditor, a [joint budget committee staff]
66 document, or any other published evaluation of [this state government]. The [executive director], or
67 their designee, shall provide notice of an automatic denial within [fifteen] days pursuant to this sub-
68 subparagraph.

69 (b) The [executive director], or their designee, shall cause, within [forty-five]
70 business days from the date of submission of an idea application that was not automatically denied
71 for reasons listed in this section or agency-specific evaluation criteria as developed by an [executive
72 director], a projected savings calculation to be made.

73 (c) The [executive director] shall respond with a decision either approving or
74 denying the employee's idea application within [sixty] business days after the date of submission of
75 the idea application. For any idea application that is approved, the [executive director], or their
76 designee, shall identify, to the extent possible, any state laws or rules that would need to be changed
77 as part of the review and approval process. The [executive director], or their designee, shall submit a
78 request for legislation to the committee of reference assigned to such [executive director's] state
79 agency regarding any approved idea application that requires legislation for implementation. Idea
80 applications that do not require legislation for implementation shall be implemented by the state
81 agency as soon as reasonably possible, and no later than [July 1 of the fiscal year following
82 acceptance of the idea application].

83 (4) A copy of any employee's idea application that is not approved, along with a copy
84 of the [executive director's] response, and any document indicating the projected savings shall be
85 submitted by the [director] to the [office of state planning and budgeting] within [sixty] business
86 days after submission of the idea application.

87 (5) The [executive director], or their designee, shall maintain copies of all idea
88 applications that are submitted, along with the following information for approved idea applications:

- 89 (a) A description of the innovative idea implemented;
- 90 (b) The total savings achieved in the [first fiscal year or first full twelve-
91 month period] after full implementation;
- 92 (c) The total dollars awarded as an incentive to the employee who submitted
93 the idea application;
- 94 (d) Any affected general appropriations act line item, if applicable; and
- 95 (e) An evaluation of the effectiveness in achieving the goals set forth in
96 subsection (A) of this section and any honorary award to the employee who submitted the idea.

97 (D) Commencing on or after [insert citation], all state agencies shall advertise that the idea
98 application is available on the [department of personnel's] web site on any type of electronic payroll
99 statements issued to employees and in any electronic broadcast communication made to employees,
100 so long as the advertisement for the idea application occurs at least [monthly].

101 (E) The idea application and the advertisement described in this section shall include
102 information related to the honorary award specified in this section that the employee may earn.

103 (F) Once an idea application is submitted, reviewed, and accepted by the [executive director],
104 or [their designee], the employee shall be informed of the honorary award they may earn.

105 (G) [Thirteen] months after the innovative idea described in the idea application is fully
106 implemented, the [executive director] shall calculate the savings realized for the [first twelve months
107 of full implementation]. All documentation of the savings realized calculation shall be forwarded to
108 the [state auditor] for review and verification no later than [two months after the twelve months of
109 full implementation of the innovative idea described in the idea application]. The [state auditor] shall
110 have [one hundred twenty] days from receipt of the savings realized calculation to:

- 111 (1) Conduct the review and verification of the savings realized calculation; and
- 112 (2) Submit a report with their findings, recommendations, and conclusions to the
113 [legislative audit committee], which shall hold a public hearing for the purposes of a review of the
114 report.

115 (H) The [state auditor's] report described in this section shall be submitted to the [executive
116 director] who approved the idea application and to any members of the [legislature] who carried any
117 legislation to implement the idea.

118 (I) (1) Except as provided in [insert citation], the savings realized as verified by the [state
119 auditor] as specified in this Act, shall be distributed, no later than the [last day of the eighteenth
120 month following the implementation of the innovative idea], and as follows:

121 (a) [five percent, up to five thousand dollars], of the savings realized as a one-
122 time honorary award to the employee who submitted the idea application;

123 (b) [twenty-five percent, up to twenty-five thousand dollars], of the savings
124 realized to the state agency that the employee's idea application directly affects; and

125 (c) the remainder to the state [General Fund].

126 (2) To a state agency that constitutes an [enterprise] for purposes of [insert citation],
127 the savings realized as verified by the [state auditor] shall be distributed, no later than the [last day of
128 the eighteenth month following the implementation of the innovative idea], as follows:

129 (a) [five percent, up to five thousand dollars], of the savings realized as a one-
130 time honorary award to the employee who submitted the idea application;

131 (b) the remainder to the state agency and to the [General Fund]. The amount
132 distributed to the state [General Fund] shall be the same percentage of the savings realized that the
133 state agency receives in total annual revenues from the state [General Fund].

134 (3) If the savings realized result in savings of federal moneys, the federal moneys
135 saved shall not be distributed as specified in subsections (1) and (2) of this section, but shall either
136 be used for a reallocation of moneys within the state agency or shall revert, depending on the use
137 specified for those particular federal moneys.

138 (4) If the savings realized result in savings of moneys from public or private grants,
139 gifts, awards, or donations where the use of such moneys is restricted, such restricted moneys shall
140 not be distributed as specified in this paragraph but shall either be used for a reallocation of moneys
141 within the state agency or shall revert, depending on the use specified for such particular restricted
142 moneys.

143 (5) (a) Excepting the [department of transportation], a state agency may use the
144 distribution for any projects that would increase that state agency's efficiency or improve services
145 provided to state residents, but the distribution shall not be used to hire additional full-time
146 equivalent employees or for personnel services expenditures.

147 (b) Any savings distributed to the [department of transportation] pursuant to
148 this section shall be transferred to the [state Highway Fund] created in [insert citation] and shall only
149 be used for material costs of road and bridge repairs.

150 (J) Nothing in this section shall be construed to provide employees with any grievance,
151 dispute resolution, or appeals process with regard to any idea application submitted by the employee.

152
153 Section 4. [*Severability.*] [Insert severability clause.]

154
155 Section 5. [*Repealer.*] [Insert repealer clause.]

156
157 Section 6. [*Effective Date.*] [Insert effective date.]

Surplus Lines Insurance Multi-State Compliance Compact Statement

In July 2010 President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act. As part of the agreement, Congress incorporated the Nonadmitted Insurance and Reinsurance Reform Act (NRRA) as Title V, Subtitle B, Part I. In NRRA Congress insisted that states adopt uniform requirements, forms, and procedures to facilitate the reporting, payment, collection, and allocation of premium taxes for the surplus lines insurance industry. Currently, there are two competing models states can consider to do this. One is the National Association of Insurance Commissioners' (NAIC) Non-Admitted Insurance Multi-state Agreement (NIMA). The other is the Surplus Lines Insurance Multi-State Compliance Compact (SLIMPACT), which was developed by The Council of State Governments (CSG) National Center for Interstate Compacts (NCIC), the National Conference of Insurance Legislators (NCOIL), and a variety of industry stakeholders.

NIMA is a model state law. Actions taken under NIMA's authority are advisory in nature, serving primarily as recommendations. These actions are not binding on the member states, meaning the uniformity insisted upon by Congress in the Dodd Frank reform bill is lost. NIMA language does not allow the joining states to form a joint regulatory body with the authority to promulgate rules, establish uniform payment methods and reporting requirements, and establish formulas governing the allocation of surplus lines premiums. NIMA allows an Executive Branch official (e.g., a state insurance commissioner) to join a state to the agreement without legislative consent or approval. There are no terms pre-empting conflicting legislation or regulation in the member states and state enactment is not conditioned upon the adoption of the statute by other member states. These factors could allow a state to unilaterally repeal or amend that law without limitation or recourse of the other member states.

SLIMPACT authorizes member states to form a governing commission to establish allocation formulas, uniform payment methods and reporting requirements, insurer eligibility standards and a single policyholder notice to replace the various forms currently in use across the country. The compact streamlines the taxation process and ensures each member state receives its fair share of tax premiums. It allows member states to create a single tax rate for surplus lines insurance, charge their own rates on multi-state risks, and choose among uniform payment dates. SLIMPACT is sustainable and enforceable over time, and provides sufficient flexibility to ensure member states are able to keep up with changes to insurance markets without having to amend the legislation.

The compact language requires 10 states enact it for it to activate. The NCIC reports that nine states had enacted SLIMPACT as of December 2011: Alabama, Indiana, Kansas, Kentucky, New Mexico, North Dakota, Rhode Island, Tennessee, and Vermont.

Kentucky [HB 167](#):

- Protects the premium tax revenues of the compacting states through facilitating the payment and collection of premium tax on non-admitted insurance;
- Protects the interests of the compacting states by supporting the continued availability of such insurance to consumers;
- Provides for allocation of premium tax for non-admitted insurance of multi-state risks among the states in accordance with uniform allocation formulas to be developed, adopted, and implemented by the compact's administrative commission;
- Streamlines and improves the efficiency of the surplus lines market by eliminating duplicative and inconsistent tax and regulatory requirements among the states;

- Promotes and protects the interest of surplus lines licensees who assist such insured's and surplus lines insurers, thereby ensuring the continued availability of surplus lines insurance to consumers;
- Streamlines regulatory compliance with respect to non-admitted insurance placements by providing for exclusive single-state regulatory compliance for non-admitted insurance of multi-state risks, in accordance with rules to be adopted by the commission, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions, including but not limited to insured's, regulators, surplus lines licensees, other insurance producers, and surplus lines insurers;
- Establishes a clearinghouse to receive and disseminate premium tax and clearinghouse transaction data related to non-admitted insurance of multi-state risks, in accordance with rules to be adopted by the commission;
- Improves coordination of regulatory resources and expertise between state insurance departments and other state agencies, as well as state surplus lines stamping offices, with respect to non-admitted insurance;
- Adopts uniform rules to provide for premium tax payment, reporting, allocation, data collection and dissemination for non-admitted insurance of multi-state risks and single-state risks, in accordance with rules to be adopted by the commission, thereby promoting the overall efficiency of the non-admitted insurance market;
- Adopts uniform mandatory rules with respect to regulatory compliance requirements for foreign insurer eligibility requirements and surplus lines policyholder notices;
- Creates a surplus lines insurance multi-state compliance compact commission, and
- Coordinates reporting clearinghouse transaction data.

Contact Crady deGolian, Director, [CSG National Center for Interstate Compacts](#), cdegolian@csg.org, 859-244-8068, for more information about the Surplus Lines Insurance Multi-state Compliance Compact.

Submitted as:

Kentucky

[HB 167](#)

Status: Enacted into law in 2011.

Uniform Child Witness Testimony by Alternative Method Act

This Act establishes methods by which children under 16 years old are protected from testifying in open court, face to face with a defendant in a criminal case, or in front of all parties in a non-criminal case.

According to NCCUSL:

“Increasingly, children are called to testify in court proceedings. Trauma resulting from exposure to an open courtroom or confrontation with a defendant can lead to emotional distress and inaccurate testimony. The Uniform Child Witness Testimony by Alternative Method Act (UCWTBAMA) addresses the complicated issues of child witness testimony.

In the process of revising the Uniform Rules of Evidence (URE), a project completed in 1999, the Drafting Committee eliminated what was then Rule 807(d). Rule 807 provides an exception to the hearsay rule for statements of a child victim and the deleted subdivision provided alternative methods for taking the testimony of a child victim. The provisions were removed from the URE because the Committee: (1) believed the provisions were incompatible with a child victim or witness exception to the hearsay rule and would be better dealt with in a separate rule or statute, (2) noted wide divergence among the states with respect to the use of alternative means of taking child witness testimony, supporting the argument for a uniform state law on this subject, and (3) felt that a separate uniform law on the subject would better allow states to fashion procedures based on local decisional law. Accordingly, Rule 807(a)(2) of the URE, as modified in 1999, more generally provides that the child must either testify at the proceeding “[or pursuant to an applicable state procedure for the giving of testimony by a child]” and allows a statement of a child to be introduced through an alternative method recognized under applicable state law without complicating the Rule 807 exception to the hearsay rule.

The UCWTBAMA fills the gap created in the 1999 URE by providing an “applicable state procedure” that gives presiding officers clear authority to allow children to testify using alternative methods in criminal, civil, and administrative matters. The Act does not displace existing practices, such as closed circuit television and identity screens, nor does it seek to change a state’s defined age under which such procedures are available. Instead, the Act creates a common framework that integrates a state’s existing practices and alternative means of taking testimony and applies fair and predictable standards to that process. The Act does not apply to the taking or use of evidence obtained through discovery depositions or other discovery mechanisms authorized and regulated by the Rules of Civil or Criminal Procedure of the enacting jurisdiction.

First, the Act gives the presiding officer of a criminal or noncriminal proceeding the power to order a hearing, upon a motion by a party, child witness, or other individual determined to have standing, and with good cause shown, to determine whether to allow a child to testify by an alternative method. While this hearing must be conducted on the record after reasonable notice to all parties, the child’s presence is not required. The presiding officer is bound only by the rules of privilege and not by the other normal rules of evidence.

In a criminal proceeding, if the presiding officer finds, upon clear and convincing evidence, that the child would suffer serious emotional trauma which would substantially impair the child’s ability to communicate with the finder of fact, the officer may allow the child to testify other than: (1) in an open forum in the presence and full view of the finder of fact or (2) face-to-face with the defendant. This standard follows the holding of *Maryland v. Craig* (497 U.S. 836, 1990) and adopts the standard of proof set by a number of states and the persuasive holding of *Reutter v. State*, 886 P.2d 1298 (Alaska Ct. App. 1994).

In a noncriminal proceeding, if the presiding officer finds, upon a preponderance of the evidence, that allowing the child to testify by an alternative method is necessary to serve the best interests of the child or to enable the child to communicate with the trier of fact, the officer may allow the child to testify by an alternative method. The presiding officer is directed in this circumstance to consider the nature of the proceeding, age and maturity of the child, relationship of the child to the parties in the proceeding, nature and degree of emotional trauma the child may suffer in testifying, and any other relevant factor(s).

If either of the above standards are met, the Act directs the presiding officer to consider a number of additional factors, including the nature of the alternative means of testimony reasonably available, other alternatives for reducing emotional trauma to the child, nature of the case, relative rights of the parties, importance of the proposed testimony, nature and degree of emotional trauma the child may suffer if an alternative method is not used, and other related factor(s). After considering these factors, the court may issue an order which states the method(s) to be used, the parties allowed in or excluded from the child's presence, any special conditions relative to a party's right to examine or cross-examine the child, and conditions or limitations upon the participation of individuals present during the child's testimony. The Act directs the presiding officer to employ an alternative method that is no more restrictive of the rights of the parties than is necessary under the circumstances to serve the purposes of the order and requires that the method chosen must permit a full and fair opportunity for cross-examination of the child witness by each party.

The Uniform Child Witness Testimony by Alternative Methods Act provides judges, administrative officers, and other presiding officers with a clear and legally sound means of protecting child witnesses from the emotional trauma associated with giving testimony, while at the same time protecting the 6th Amendment rights of defendants and respondents. It creates a sound procedural basis for the use of alternative methods of testimony, and clear standards for the use of these methods, without displacing an enacting state's existing mechanisms and means of addressing this issue.”

NCCUSL reports Idaho, Nevada, New Mexico, and Oklahoma had enacted this Uniform Law as of May, 2012.

Submitted as:

New Mexico

[HB 196](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as the “Uniform Child Witness Testimony by
2 Alternative Method Act.”

3
4 Section 2. [*Definitions.*] As used in the Uniform Child Witness Testimony by Alternative
5 Method Act:

6 A. “Alternative method” means:

7 (1) in a criminal proceeding in which a child witness does not give testimony in an
8 open forum in full view of the finder of fact, a videotaped deposition of the child witness that
9 complies with the following requirements:

10 (a) the deposition was presided over by a district judge;

11 (b) the defendant was represented by counsel at the deposition or waived
12 counsel;

13 (c) the defendant was present at the deposition; and

14 (d) the defendant was given an adequate opportunity to cross-examine the
15 child witness, subject to such protection of the child witness as the judge deemed necessary;

16 (2) in a criminal proceeding in which a child witness does not give testimony face-to-
17 face with the defendant, a videotaped deposition of the child witness that complies with the
18 following requirements:

19 (a) the deposition was presided over by a district judge;

20 (b) the defendant was represented by counsel at the deposition or waived
21 counsel;

22 (c) the defendant was able to view the deposition, including the child witness,
23 through closed circuit television or equivalent technology, and the defendant and counsel were able
24 to communicate with each other during the deposition through headsets and microphones or
25 equivalent technology; and

26 (d) the defendant was given an adequate opportunity to cross-examine the
27 child witness, subject to such protection of the child witness as the judge deemed necessary; or

28 (3) in a noncriminal proceeding, testimony by closed-circuit television, deposition,
29 testimony in a closed forum or any other method of testimony that does not include one or more of
30 the following:

31 (a) having the child testify in person in an open forum;

32 (b) having the child testify in the presence and full view of the finder of fact
33 and presiding officer; and

34 (c) allowing all of the parties to be present, to participate and to view and be
35 viewed by the child;

36 B. "Child witness" means:

37 (1) an individual under the age of sixteen who has been or will be called to testify in a
38 noncriminal proceeding; or

39 (2) an alleged victim under the age of sixteen who has been or will be called to testify
40 in a criminal proceeding;

41 C. "Criminal proceeding" means a trial or hearing before a court in a prosecution of a person
42 charged with violating a criminal law of [insert state] or a delinquency proceeding pursuant to the
43 [insert citation] involving conduct that if engaged in by an adult would constitute a violation of a
44 criminal law of [this state];

45 D. "Noncriminal proceeding" means a trial or hearing before a court or an administrative
46 agency of [this state] having judicial or quasi-judicial powers in a civil case, an administrative
47 proceeding or any other case or proceeding other than a criminal proceeding; and

48 E. "Presiding officer" means the person under whose supervision and jurisdiction the
49 proceeding is being conducted. "Presiding officer" includes a judge in whose court a case is being
50 heard, a quasi-judicial officer or an administrative law judge or hearing officer.

51
52 Section 3. [Applicability.]

53 A. The Uniform Child Witness Testimony by Alternative Method Act applies to the
54 testimony of a child witness in a criminal or noncriminal proceeding. However, the Uniform Child
55 Witness Testimony by Alternative Method Act does not preclude, in a criminal or noncriminal
56 proceeding, any other procedure permitted by law:

57 (1) for a child witness to testify by an alternative method, however denominated; or

58 (2) for protecting the interests of or reducing mental or emotional harm to a child
59 witness.

60 B. The Supreme Court may adopt rules of procedure and evidence to implement the
61 provisions of the Uniform Child Witness Testimony by Alternative Method Act.

62
63 Section 4. [*Hearing Whether to Allow Testimony by Alternative Method.*]

64 A. The presiding officer in a criminal or noncriminal proceeding may order a hearing to
65 determine whether to allow a child witness to testify by an alternative method. The presiding officer,
66 for good cause shown, shall order the hearing upon motion of a party, a child witness or an
67 individual determined by the presiding officer to have sufficient standing to act on behalf of the
68 child.

69 B. A hearing to determine whether to allow a child witness to testify by an alternative
70 method shall be conducted on the record after reasonable notice to all parties, to any nonparty
71 movant and to any other person the presiding officer specifies. The child's presence is not required at
72 the hearing unless ordered by the presiding officer.

73
74 Section 5. [*Standards for Determining Whether a Child Witness May Testify by Alternative*
75 *Method.*]

76 A. In a criminal proceeding, the presiding officer may allow a child witness to testify by an
77 alternative method in the following situations:

78 (1) the child may testify otherwise than in an open forum in the presence and full
79 view of the finder of fact upon a showing that the child witness may be unable to testify without
80 suffering unreasonable and unnecessary mental or emotional harm; and

81 (2) the child may testify other than face-to-face with the defendant if the presiding
82 officer makes specific findings that the child witness would be unable to testify face-to-face with the
83 defendant without suffering unreasonable and unnecessary mental or emotional harm.

84 B. In a noncriminal proceeding, the presiding officer may allow a child witness to testify by
85 an alternative method if the presiding officer finds that allowing the child to testify by an alternative
86 method is necessary to serve the best interests of the child or enable the child to communicate with
87 the finder of fact. In making this finding, the presiding officer shall consider:

- 88 (1) the nature of the proceeding;
89 (2) the age and maturity of the child;
90 (3) the relationship of the child to the parties in the proceeding;
91 (4) the nature and degree of mental or emotional harm that the child may suffer in
92 testifying; and
93 (5) any other relevant factor.

94
95 Section 6. [*Factors for Determining Whether to Permit Alternative Method.*] If the presiding
96 officer determines that a standard pursuant to Section 5 of the Uniform Child Witness Testimony by
97 Alternative Method Act has been met, the presiding officer shall determine whether to allow a child
98 witness to testify by an alternative method and in doing so shall consider:

99 A. alternative methods reasonably available for protecting the interests of or reducing mental
100 or emotional harm to the child;

101 B. available means for protecting the interests of or reducing mental or emotional harm to the
102 child without resort to an alternative method;

103 C. the nature of the case;

104 D. the relative rights of the parties;

105 E. the importance of the proposed testimony of the child;

106 F. the nature and degree of mental or emotional harm that the child may suffer if an
107 alternative method is not used; and

108 G. any other relevant factor.

109
110 Section 7. [*Order Regarding Testimony by Alternative Method.*]
111 A. An order allowing or disallowing a child witness to testify by an alternative method shall
112 state the findings of fact and conclusions of law that support the presiding officer's determination.
113 B. An order allowing a child witness to testify by an alternative method shall:
114 (1) state the method by which the child is to testify;
115 (2) list any individual or category of individuals allowed to be in, or required to be
116 excluded from, the presence of the child during the testimony;
117 (3) state any special conditions necessary to facilitate a party's right to examine or
118 cross-examine the child;
119 (4) state any condition or limitation upon the participation of individuals present
120 during the testimony of the child; and
121 (5) state any other condition necessary for taking or presenting the testimony.
122 C. The alternative method ordered by the presiding officer shall be no more restrictive of the
123 rights of the parties than is necessary under the circumstances to serve the purposes of the order and
124 shall be subject to the other provisions of the Uniform Child Witness Testimony by Alternative
125 Method Act.
126
127 Section 8. [*Right of Party to Examine Child Witness.*] An alternative method ordered by the
128 presiding officer shall permit a full and fair opportunity for examination or cross examination of the
129 child witness by each party, subject to such protection of the child witness as the presiding officer
130 deems necessary.
131
132 Section 9. [*Uniformity of Application and Construction.*] In applying and construing the
133 Uniform Child Witness Testimony by Alternative Method Act, consideration shall be given to the
134 need to promote uniformity of the law with respect to its subject matter among states that enact it.
135
136 Section 10. [*Severability.*] If any part or application of the Uniform Child Witness Testimony
137 by Alternative Method Act is held invalid, the remainder or its application to other situations or
138 persons shall not be affected.
139
140 Section 11. [*Effective Date.*] The effective date of the provisions of this Act is [insert date].

Uniform Electronic Legal Material Act

Increasingly, state governments are publishing laws, statutes, agency rules, and court rules and decisions online. In some states, important state-level legal material is no longer published in books, but is only available online. While electronic publication of legal material has facilitated public access to the material, it has also raised concerns. Is the legal material official, authentic, government data that has not been altered? For the long term, how will this electronic legal material be preserved? How will the public access the material 10, 50, or 100 years from now? The Uniform Electronic Legal Material Act (UELMA) provides states with an outcomes-based approach to the authentication and preservation of electronic legal material. The goals of the authentication and preservation program outlined in the Act are to enable end-users to verify the trustworthiness of the legal material they are using and to provide a framework for states to preserve legal material in perpetuity in a manner that allows for permanent access.

The Act requires that official electronic legal material be:

- Authenticated, by providing a method to determine that it is unaltered;
- Preserved, either in electronic or print form; and
- Accessible, for use by the public on a permanent basis.

If electronic legal material is authenticated, it is presumed to be an accurate copy of the legal material. If a state enacts UELMA, the presumption that its authenticated electronic legal material is accurate applies in every other state that has enacted UELMA. If another state enacts UELMA, and authenticates its electronic legal material, its legal material is presumed to be an accurate copy for use in your state. Adoption of UELMA will harmonize standards for acceptance of electronic legal material across jurisdictional boundaries.

If a state preserves legal material electronically, it must provide for backup and recovery, and ensure the integrity and continuing usability of the material. The Act has no special requirements if a state chooses to preserve its legal material in print format, in recognition of the years of experience all states have in the preservation of print materials.

State policy and discretion allow each state to determine which categories of legal information will be included in the Act's coverage. For each category of legal information, an official publisher is named. The Act requires that the official publisher be responsible for implementing the terms of the Act, regardless of where or by whom the legal material is actually printed or distributed. For the purposes of the Act, only a state agency, officer, or employee can be the official publisher, although state policy may allow a commercial entity to produce an official version of the state's legal material. The UELMA does not interfere with the contractual relationship between a state and a commercial publisher with which the state contracts for the production of its legal material.

The UELMA does not require specific technologies, leaving the choice of technology for authentication and preservation up to the states. Giving states the flexibility to choose any technology that meets the required outcomes allows each state to choose the best and most cost-effective method for that state. In addition, this flexible, outcomes-based approach anticipates that technologies will change over time; the Act does not tie a state to any specific technology at any time.

The UELMA is intended to be complementary to the Uniform Commercial Code (UCC), which covers sales and many commercial transactions, the Uniform Real Property Electronic Recording Act (URPERA), which provides for electronic recording of real property instruments, and the Uniform Electronic Transactions Act (UETA), which deals with electronic commerce.

Submitted as:
Colorado
[HB12-1209](#)
Status: Enacted into law in 2012.

Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] This [Act] may be cited as the Uniform Electronic Legal Material
2 Act.
3
- 4 Section 2. [*Definitions.*] In this [Act]:
5 (1) “Electronic” means relating to technology having electrical, digital, magnetic, wireless,
6 optical, electromagnetic, or similar capabilities.
7 (2) “Legal material” means, whether or not in effect:
8 (a) the [insert name of constitution of this state];
9 (b) the [insert name of session laws];
10 (c) the [insert name of state code]; [or]
11 (d) a state agency rule that has or had the effect of law[;] [or]
12 [(e) the following categories of state administrative agency decisions [insert
13 categories of decisions to be included]][:]; [or]
14 [(f) reported decisions of the following state courts: [specify courts]][:]; [or]
15 [(g) state court rules]][:]; [or]
16 [(h) [list any other category of legal material to be included]].
17 (3) “Official publisher” means:
18 (a) for [insert name of constitution of this state], the [insert appropriate agency or
19 official];
20 (b) for [insert name of session laws], the [insert appropriate agency or official];
21 (c) for [insert name of state code], the [insert appropriate agency or official]; [or]
22 (d) for a rule published in the [insert name of administrative code], the [insert
23 appropriate agency or official]][:]; [or]
24 [(e) for a rule not published in the [insert name of administrative code], the state
25 agency adopting the rule]][:]; [or]
26 [(f) for a state administrative agency decision included under paragraph (2)(e), the
27 [insert appropriate agency or official]][:]; [or]
28 [(g) for a state court decision included under paragraph (2)(f), the [insert appropriate
29 agency or official]][:]; [or]
30 [(h) for state court rules, the [insert appropriate agency or official]][:]; [or]
31 [(i) for [any other category of legal material included], [insert appropriate agency or
32 official]].
33 (4) “Publish” means to display, present, or release to the public, or cause to be displayed,
34 presented, or released to the public, by the official publisher.
35 (5) “Record” means information that is inscribed on a tangible medium or that is stored in an
36 electronic or other medium and is retrievable in perceivable form.
37 (6) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
38 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the
39 United States.
40

41 Section 3. [*Applicability.*] This [Act] applies to all legal material in an electronic record that
42 is designated as official under section 4 and first published electronically on or after [the effective
43 date of this [Act].
44

45 Section 4. [*Legal Material in Official Electronic Record.*]

46 (a) If an official publisher publishes legal material only in an electronic record, the publisher
47 shall:

48 (1) designate the electronic record as official; and

49 (2) comply with sections 5, 7, and 8.

50 (b) An official publisher that publishes legal material in an electronic record and also
51 publishes the material in a record other than an electronic record may designate the electronic record
52 as official if the publisher complies with sections 5, 7, and 8.
53

54 Section 5. [*Authentication of Official Electronic Record.*] An official publisher of legal
55 material in an electronic record that is designated as official under section 4 shall authenticate the
56 record. To authenticate an electronic record, the publisher shall provide a method for a user to
57 determine that the record received by the user from the publisher is unaltered from the official record
58 published by the publisher.
59

60 Section 6. [*Effect of Authentication.*]

61 (a) Legal material in an electronic record that is authenticated under section 5 is presumed to
62 be an accurate copy of the legal material.

63 (b) If another state has adopted a law substantially similar to this [Act], legal material in an
64 electronic record that is designated as official and authenticated by the official publisher in that state
65 is presumed to be an accurate copy of the legal material.

66 (c) A party contesting the authentication of legal material in an electronic record
67 authenticated under section 5 has the burden of proving by a preponderance of the evidence that the
68 record is not authentic.
69

70 Section 7. [*Preservation and Security of Legal Material in Official Electronic Record.*]

71 (a) An official publisher of legal material in an electronic record that is or was designated as
72 official under section 4 shall provide for the preservation and security of the record in an electronic
73 form or a form that is not electronic.

74 (b) If legal material is preserved under subsection (a) in an electronic record, the official
75 publisher shall:

76 (1) ensure the integrity of the record;

77 (2) provide for backup and disaster recovery of the record; and

78 (3) ensure the continuing usability of the material.
79

80 Section 8. [*Public Access to Legal Material in Official Electronic Record.*] An official
81 publisher of legal material in an electronic record that is required to be preserved under section 7
82 shall ensure that the material is reasonably available for use by the public on a permanent basis.
83

84 Section 9. [*Standards.*] In implementing this [Act], an official publisher of legal material in
85 an electronic record shall consider:

86 (1) standards and practices of other jurisdictions;

87 (2) the most recent standards regarding authentication of, preservation and security of, and
88 public access to, legal material in an electronic record and other electronic records, as promulgated
89 by national standard-setting bodies;

90 (3) the needs of users of legal material in an electronic record;
91 (4) the views of governmental officials and entities and other interested persons; and
92 (5) to the extent practicable, methods and technologies for the authentication of, preservation
93 and security of, and public access to, legal material which are compatible with the methods and
94 technologies used by other official publishers in this state and in other states that have adopted a law
95 substantially similar to this [Act].
96

97 Section 10. [*Uniformity of Application and Construction.*] In applying and construing this
98 Uniform Act, consideration must be given to the need to promote uniformity of the law with respect
99 to its subject matter among states that enact it.
100

101 Section 11. [*Relation to Electronic Signatures in Global and National Commerce Act.*] This
102 [Act] modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce
103 Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that
104 Act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in
105 section 103(b) of that Act, 15 U.S.C. Section 7003(b).
106

107 Section 12. [*Effective Date.*] This [Act] takes effect

Uniform Partition of Heirs Property Act

This uniform law has made the tenancy in common, a common ownership structure under which two or more cotenants own undivided interests in a parcel of property, the default ownership structure for two or more family members who inherit real property. In addition, the law presumes that two or more people who acquire undivided interests in real property by conveyance or devise take ownership to the property as tenants in common and not as joint tenants unless the intention to create a joint tenancy is very clear. However, certain key features of tenancy-in-common ownership can create serious problems for those seeking to maintain ownership of the property for themselves and their relatives. For example, any cotenant may sell his or her interest or convey it by gift during his or her lifetime without the consent of his or her cotenants, making it easy for non-family members – including real estate speculators – to acquire interests in family real estate. Or at a cotenant’s death, his or her interest in the property may be transferred by will or pursuant to intestacy laws. Once someone acquires even a small interest in tenancy-in-common property, this new cotenant can initiate a partition action and request the court to order a forced sale of the entire property, called a partition by sale, even if all of the other cotenants do not consent and wish to retain ownership of the property.

Although a surprising number of relatively wealthy families face problems with tenancy-in-common ownership, low to moderate-income landowners experience particularly acute problems with such ownership, including problems with partition actions. Scholars and practitioners alike recognize that within this demographic, families own property at a high rate under the default rules of a tenancy in common. In many circumstances this is due to the fact that low to middle-income property owners transfer their property by intestate succession at a higher rate than by will. Further, these property owners are typically much less likely than wealthier families to have entered into a tenancy-in-common agreement or another private agreement governing the partition of the property. As a result of this pattern, within many communities across the country with a significant number of property owners of modest means, family property is owned under a tenancy-in-common ownership structure, and commonly referred to as “heirs property.” The number of cotenants often multiplies significantly under heirs property ownership, further destabilizing individual ownership interests given that any one of the cotenants can ask a court to order a partition by sale. Many who own heirs property have little to no understanding of the legal rules governing partition. Payment of property taxes, productive land use, residence, or a near consensus on maintaining ownership within the family will not secure a family’s ownership, and their first exposure to the often counterintuitive rules governing partition often only occurs after an action has been filed and critical stages in the litigation have passed.

The Uniform Law Commission promulgated the Uniform Partition of Heirs Property Act (UPHPA) in 2010 to address issues specific to heirs property in partition actions. The Act does not limit or prohibit the filing of a partition action, and does not replace in any comprehensive way existing partition laws with respect to non-heirs property or property that has a binding agreement among cotenants on how to handle partition. It provides narrowly focused statutory procedures and a hierarchy of remedies for use in partition actions involving heirs property, and a systematic approach that will help protect holders of covered family-owned, ancestral property from real estate speculation and efforts to strip them of their real property and real property wealth without adequate recourse. Key highlights of the Act include:

- “Heirs property” is defined as real property that is held under a tenancy in common in which there is no binding agreement among the cotenants governing partition of the property. Additionally, one or more of the cotenants must have acquired title from a relative, and either: 20% or more of the interests are held by cotenants who are relatives; 20% or more of the interests are held

by an individual who acquired title from a relative; or 20% or more of the cotenants themselves are relatives.

- When an action for partition of real property is filed, the court must determine whether the property is heirs property – the Act will trump existing provisions in conflict, for heirs property.

- Any court-appointed commissioner may not have any interest or participation in the action.

- Under the Act, the court appoints a disinterested real estate appraiser to assess the fair market value of the property unless all the cotenants agree to a different valuation method or the court determines that the cost of the appraisal will outweigh its evidentiary value.

- After the value of the property is determined, the Act provides all of the cotenants who did not request partition by sale with a right to buy out all of the interests of those who have done so, at a price equal to the court-determined value of the property multiplied by the fractional interest of the cotenant that is bought out. The Act provides for procedures in the event multiple cotenants wish to buy out those petitioning for sale. It also provides for co-tenants absent from the action in a second buyout, which, in many circumstances, can help to make partition in kind of the property more feasible and to consolidate ownership of the property to facilitate its long term management.

- If all of the interests of those seeking partition by sale are not purchased by other cotenants, or if there is a cotenant remaining who seeks partition in kind after the court has concluded the operation of the Act’s buyout provisions, then the court shall proceed with a partition in kind unless great or manifest prejudice to the cotenants as a group would result. The Act provides a list of economic and noneconomic factors which a court shall consider in determining whether great or manifest prejudice would occur if partition in kind were ordered.

- If the court does not order partition in kind, it shall order partition by sale unless none of the cotenants have requested partition by sale, in which case the court shall dismiss the action.

- A partition by sale, if ordered, must be an open-market sale unless a sale by sealed bid or an auction would be economically more advantageous and of greater benefit to the cotenants as a group. The parties may agree on a broker or a licensed one may be appointed by the court. The broker shall offer the property for sale in a commercially reasonable manner and shall list the property for sale at the court-determined value. If an offer at or above the court-determined value is received within a reasonable time, the broker may complete the sale according to state law after complying with the Act’s reporting requirements. If no offer at or above the court-determined value is received within a reasonable time, the Act provides procedures and alternatives to effectuate a fair sale with the goal of maximizing value to the extent possible.

For questions about the Uniform Partition of Heirs Property Act, please contact Kieran Marion or Katie Robinson at 312-450-6600.

Submitted as:

Nevada

[AB 244 \(Enrolled Version\)](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The Uniform Partition of Heirs Property
2 Act.”

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

(1) “Ascendant” means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.

(2) “Collateral” means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual’s ascendant or descendant.

(3) “Descendant” means an individual who follows another individual in lineage, in the direct line of descent from the other individual.

(4) “Determination of value” means an order of a court determining the fair market value of heirs property under section 6 or 10 of this Act or adopting the valuation of the property agreed to by all cotenants.

(5) “Heirs property” means real property held in tenancy in common which satisfies all the following requirements as of the filing of a partition action:

A. there is no agreement in a record binding all the cotenants which governs the partition of the property.

B. one or more of the cotenants acquired title from a relative, whether living or deceased.

C. any of the following applies:

(i) 20 percent or more of the interests are held by cotenants who are relatives;

(ii) 20 percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or

(iii) 20 percent or more of the cotenants are relatives.

(6) “Partition by sale” means a court-ordered sale of the entire heirs property, whether by auction, sealed bids or open-market sale conducted under Section 10.

(7) “Partition in kind” means the division of heirs property into physically distinct and separately titled parcels.

(8) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) “Relative” means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this state other than this Act.

Section 3. [*Applicability; Relation to Other Law.*]

(a) This Act applies to partition actions filed on or after [the effective date of this Act].

(b) In an action to partition real property under [insert citation], the court shall determine whether the property is heirs property. If the court determines that the property is heirs property, the property must be partitioned under this Act, unless all the cotenants agree otherwise in a record.

(c) This Act supplements [insert citation] and, if an action is governed by this Act, replaces provisions of [insert citation(s)] that are inconsistent with this Act.

Section 4. [*Service; Notice by Posting.*]

(a) This Act does not limit or affect the method by which service of a [complaint] in a partition action may be made.

(b) If the plaintiff in a partition action seeks [an order of notice] by publication and the court determines that the property may be heirs property, the plaintiff, not later than 10 days after the court’s determination, shall post, [and maintain while the action is pending], a conspicuous sign on the property that is the subject of the action. The sign must state that the action has commenced and identify the name and address of the court and the common designation by which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

52
53 Section 5. [*Commissioners.*] If the court appoints [commissioner] pursuant to [insert
54 citation], each [commissioner], in addition to the requirements and disqualifications applicable to
55 [commissioners] in [insert citation], must be disinterested, impartial, and neither a party to nor a
56 participant in the action.

57
58 Section 6. [*Determination of Value.*]
59 (a) Except as otherwise provided in subsections (b) and (c), if the court determines that the
60 property which is the subject of the partition action is heirs property, the court shall determine the
61 fair market value of the property by ordering an appraisal pursuant to subsection (d).

62 (b) If all cotenants have agreed to the value of the property or to another method of valuation,
63 the court shall adopt that value or the value produced by the agreed method of valuation.

64 (c) If the court determines that the evidentiary value of an appraisal is outweighed by the cost
65 of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the
66 property and send notice to the parties of the value.

67 (d) If the court orders an appraisal, the court shall appoint a disinterested real estate
68 appraiser licensed in this state to determine the fair market value of the property assuming sole
69 ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or
70 verified appraisal with the court.

71 (e) If an appraisal is conducted pursuant to subsection (d), not later than 10 days after the
72 appraisal is filed, the court shall send notice to each party with a known address, stating:

- 73 (1) the appraised fair market value of the property;
74 (2) that the appraisal is available at the clerk of the court's office; and
75 (3) that a party may object to the appraisal not later than 30 days after the notice is
76 sent, stating the grounds for the objection.

77 (f) If an appraisal is filed with the court pursuant to subsection (d), the court shall conduct a
78 hearing to determine the fair market value of the property not earlier than 30 days after a copy of the
79 notice of appraisal is sent to each party under subsection (e), whether or not an objection to the
80 appraisal is filed under subsection (e)(3). In addition to the court-ordered appraisal, the court may
81 consider any other evidence of value that is offered by a party.

82 (g) After the hearing under subsection (f), but before considering the merits of the partition
83 action, the court shall determine the fair market value of the property and send notice to the parties
84 of the value.

85
86 Section 7. [*Cotenant Buyout.*]

87 (a) If any cotenant requested partition by sale, after the determination of value under Section
88 6 of this Act, the court shall send notice to the parties that any cotenant except a cotenant that
89 requested partition by sale may buy the interest of any cotenant that requested partition by sale.

90 (b) Not later than 45 days after the notice is sent under subsection (a), any cotenant except a
91 cotenant that requested partition by sale may give notice to the court that it elects to buy all the
92 interests of the cotenants that requested partition by sale.

93 (c) The purchase price for each of the interests of a cotenant that requested partition by sale is
94 the value of the entire parcel determined under Section 6 multiplied by that cotenant's fractional
95 ownership of the entire parcel.

96 (d) After expiration of the period in subsection (b), the following rules apply:

97 (1) If only one cotenant elects to buy all the interests of the cotenants that requested
98 partition by sale, the court shall notify all the parties of that fact.

99 (2) If more than one cotenant elects to buy all the interests of the cotenants that
100 requested partition by sale, the court shall allocate the right to buy those interests among the electing

101 cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided
102 by the total existing fractional ownership of all cotenants electing to buy and send notice to all the
103 parties of that fact and of the price to be paid by each electing cotenant.

104 (3) If no cotenant elects to buy all the interests of the cotenants that requested
105 partition by sale, the court shall send notice to all the parties of that fact and resolve the partition
106 action under Section 8 (a) and (b).

107 (e) If the court sends notice to the parties under either subsection (d) (1) or (2), the court shall
108 set a date, not earlier than 60 days after the date the notice was sent, by which electing cotenants
109 must pay their apportioned price into the court. After this date, the following rules apply:

110 (1) If all electing cotenants timely pay their apportioned price, the court shall issue an
111 order reallocating all the interests of the cotenants and disburse the amounts held by the court to the
112 persons entitled to them.

113 (2) If no electing cotenant timely pays its apportioned price, the court shall resolve
114 the partition action under Section 8 (a) and (b) as if the interests of the cotenants that requested
115 partition by sale were not purchased.

116 (3) If one or more but not all the electing cotenants fail to timely pay their
117 apportioned price, the court [, on motion,] shall give notice to the electing cotenants that paid their
118 apportioned price of the interest remaining and the price for all that interest.

119 (f) Not later than 20 days after the court gives the notice pursuant to subsection (e) (3), any
120 cotenant that paid may elect to purchase all the remaining interest by paying the entire price to the
121 court. After the 20-day period, the following rules apply:

122 (1) If only one cotenant pays the entire price for the remaining interest, the court shall
123 issue an order reallocating the remaining interest to that cotenant. The court shall issue promptly an
124 order reallocating all the interests of all the cotenants and disburse the amounts held by the court to
125 the persons entitled to them.

126 (2) If no cotenant pays the entire price for the remaining interest, the court shall
127 resolve the partition action under Section 8 (a) and (b) as if the interests of the cotenants that
128 requested partition by sale were not purchased.

129 (3) If more than one cotenant pays the entire price for the remaining interest, the court
130 shall reapportion the remaining interest among those paying cotenants, based on each paying
131 cotenant's original fractional ownership of the entire parcel divided by the total original fractional
132 ownership of all cotenants that paid the entire price for the remaining interest. The court shall issue
133 promptly an order reallocating all the cotenants' interests, disburse the amounts held by the court to
134 the persons entitled to them, and promptly refund any excess payment held by the court.

135 (g) Not later than 45 days after the court sends notice to the parties pursuant to subsection (a),
136 any cotenant entitled to buy an interest under this section may request the court to authorize the sale
137 as part of the pending action of the interests of cotenants named as defendants and served with the
138 complaint but that did not appear in the action.

139 (h) If the court receives a timely request under subsection (g), the court, after hearing, may
140 deny the request or authorize the requested additional sale on such terms as the court determines are
141 fair and reasonable, subject to the following limitations:

142 (1) a sale authorized under this subsection may occur only after the purchase prices
143 for all interests subject to sale under subsections (a) through (f) have been paid into the court and
144 those interests have been reallocated among the cotenants as provided in those subsections; and

145 (2) the purchase price for the interest of a nonappearing cotenant is based on the
146 court's determination of value under Section 6.

147
148 Section 8. [*Partition Alternatives.*]

149 (a) If all the interests of all cotenants that requested partition by sale are not purchased by
150 other cotenants pursuant to Section 7, or if after conclusion of the buyout under Section 7, a cotenant
151 remains that has requested partition in kind, the court shall order partition in kind unless the court,
152 after consideration of the factors listed in Section 9, finds that partition in kind will result in great
153 prejudice to the cotenants as a group. In considering whether to order partition in kind, the court
154 shall approve a request by two or more parties to have their individual interests aggregated.

155 (b) If the court does not order partition in kind under subsection (a), the court shall order
156 partition by sale pursuant to Section 10 or, if no cotenant requested partition by sale, the court shall
157 dismiss the action.

158 (c) If the court orders partition in kind pursuant to subsection (a), the court may require that
159 one or more cotenants pay one or more other cotenants amounts so that the payments, taken together
160 with the value of the in-kind distributions to the cotenants, will make the partition in kind just and
161 proportionate in value to the fractional interests held.

162 (d) If the court orders partition in kind, the court shall allocate to the cotenants that are
163 unknown, unlocatable or are the subject of a default [entry] [judgment], if their interests were not
164 bought out pursuant to Section 7, a part of the property representing the combined interests of these
165 cotenants as determined by the court [and this part of the property shall remain undivided].
166

167 Section 9. [*Considerations for Partition in Kind.*]

168 (a) In determining under Section 8 (a) whether partition in kind would result in great
169 prejudice to the cotenants as a group, the court shall consider the following:

170 (1) whether the heirs property practicably may be divided among the cotenants;

171 (2) whether partition in kind would apportion the property in such a way that the
172 aggregate fair market value of the parcels resulting from the division would be materially less than
173 the value of the property if it were sold as a whole, taking into account the condition under which the
174 court-ordered sale likely would occur;

175 (3) evidence of the collective duration of ownership or possession of the property by a
176 cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are
177 or were relatives of that cotenant or each other;

178 (4) a cotenant's sentimental attachment to the property, including, without limitation,
179 any attachment arising because the property has ancestral or other unique or special value to the
180 cotenant;

181 (5) the lawful use being made of the property by a cotenant and the degree to which
182 the cotenant would be harmed if the cotenant could not continue the same use of the property;

183 (6) the degree to which the cotenants have contributed their pro rata share of the
184 property taxes, insurance and other expenses associated with maintaining ownership of the property
185 or have contributed to the physical improvement, maintenance or upkeep of the property; and

186 (7) any other relevant factor.

187 (b) The court may not consider any one factor in subsection (a) to be dispositive without
188 weighing the totality of all relevant factors and circumstances.
189

190 Section 10. [*Open-Market Sale, Sealed Bids, or Auction.*]

191 (a) If the court orders a sale of heirs property, the sale must be an open-market sale unless the
192 court finds that a sale by sealed bids or an auction would be more economically advantageous and in
193 the best interest of the cotenants as a group.

194 (b) If the court orders an open-market sale and the parties, not later than 10 days after the
195 entry of the order, agree on a real estate broker licensed in this state to offer the property for sale, the
196 court shall appoint that broker and establish a reasonable commission. If the parties do not agree on a
197 broker, the court shall appoint a disinterested real estate broker licensed in this state to offer the

198 property for sale and shall establish a reasonable commission. The broker shall offer the property for
199 sale in a commercially reasonable manner at a price not lower than the determination of value and on
200 the terms and conditions established by the court.

201 (c) If the broker appointed under subsection (b) obtains within a reasonable time an offer to
202 purchase the property for at least the determination of value:

203 (1) the broker shall comply with the reporting requirements set forth in Section 11;
204 and

205 (2) the sale may be completed in accordance with state law other than this Act.

206 (d) If the broker appointed under subsection (b) does not obtain within a reasonable time an
207 offer to purchase the property for at least the determination of value, the court, after hearing, may:

208 (1) approve the highest outstanding offer, if any;

209 (2) redetermine the value of the property and order that the property continue to be
210 offered for an additional time; or

211 (3) order that the property be sold by sealed bids or at an auction.

212 (e) If the court orders a sale by sealed bids or an auction, the court shall set terms and
213 conditions of the sale. If the court orders an auction, the auction must be conducted under the
214 provisions of [insert citation] or [insert reference to foreclosure sale.]

215 (f) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a
216 credit against the price in an amount equal to the purchaser's share of the proceeds.

217

218 Section 11. [*Report of Open-Market Sale.*]

219 (a) Unless required to do so within a shorter time by [insert citation], a broker appointed
220 under Section 10 (b) to offer heirs property for open-market sale shall file a report not later than
221 seven days after receiving an offer to purchase the property for at least the value determined under
222 Section 6 or 10.

223 (b) The report required by subsection (a) must contain the following information:

224 (1) a description of the property to be sold to each buyer;

225 (2) the name of each buyer;

226 (3) the proposed purchase price;

227 (4) the terms and conditions of the proposed sale, including, without limitation, the
228 terms of any owner financing;

229 (5) the amounts to be paid to lienholders;

230 (6) a statement of contractual or other arrangements or conditions of the broker's
231 commission; and

232 (7) other material facts relevant to the sale.

233

234 Section 12. [*Uniformity of Application and Construction.*] In applying and construing this
235 uniform act, consideration must be given to the need to promote uniformity of the law with respect
236 to its subject matter among states that enact it.

237

238 Section 13. [*Relation to Electronic Signatures in Global and National Commerce.*] This Act
239 modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce
240 Act, 15 U.S.C. §§ 7001 et seq., but does not modify, limit or supersede section 101(c) of that Act, 15
241 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described
242 in section 103(b) of that Act, 15 U.S.C. § 7003(b).

243

244 Section 14. [*Effective Date.*] This Act takes effect ...

Veterans Benefits Appeal Services

This Act defines “veterans benefits appeal services” as services which a veteran might reasonably require in order to appeal a denial of federal or state veterans benefits, including but not limited to denials of disability, limited-income, home loan, insurance, education and training, burial and memorial, and dependent and survivor benefits. It directs that such services put in their advertising a notice that similar appeals services are offered at no cost by counties or veterans affairs offices operated by the state.

Submitted as:

Iowa

[SF 399 \(Enrolled version\)](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act Regulating Advertising Veterans
2 Benefits Appeal Services.”

3
4 Section 2. [*Regulating Advertising Veterans Benefits Appeal Services.*]

5 (A) As used in this Act:

6 (1) “Advertising” or “advertisement” means any of the following:

7 (a) Any written or printed communication made for the purpose of soliciting,
8 describing, or promoting veterans benefits appeal services, including but not limited to a brochure,
9 letter, pamphlet, newspaper, telephone listing, periodical, or other writing.

10 (b) Any directory listing caused or permitted by a person to be made available
11 which indicates that veterans benefits appeal services are being offered.

12 (c) Any radio, television, computer network, or similar airwave or electronic
13 transmission which solicits or promotes a person offering veterans benefits appeal services.

14 (d) “Advertising” or “advertisement” does not include any of the following:

15 (I) Any printing or writing used on buildings, uniforms, or badges,
16 where the purpose of the writing is for identification.

17 (II) Any printing or writing in a memorandum or other
18 communication used in the ordinary course of business where the sole purpose of the writing is other
19 than the solicitation or promotion of veterans benefits appeal services.

20 (2) “Veteran” means as defined in [insert citation].

21 (3) “Veterans benefits appeal services” means services which a veteran might
22 reasonably require in order to appeal a denial of federal or state veterans benefits, including but not
23 limited to denials of disability, limited-income, home loan, insurance, education and training, burial
24 and memorial, and dependent and survivor benefits.

25 (B) A person advertising services to represent or assist veterans in appealing a denial of
26 veterans benefits shall conspicuously disclose in the advertisement, in similar type size or voice-
27 over, that appeal services are also offered at no cost by [county commission of veteran affairs
28 offices] as maintained pursuant to [insert citation].

29 (C) A person who fails to comply with the provisions of this section is subject to a civil
30 penalty not to exceed [one thousand] dollars for each violation. Civil penalties shall be assessed by
31 the [district court] in an action initiated by the [attorney general]. For the purposes of computing the

32 amount of each civil penalty, each day of a continuing violation constitutes a separate violation.
33 Additionally, the [attorney general] may accept a civil penalty as determined by the [attorney
34 general] in settlement of an investigation of a violation of this section regardless of whether an
35 action has been filed pursuant to this section. Any civil penalty recovered shall be deposited in the
36 [Veterans Trust Fund] created in [insert citation].

37 (D) This Act shall not apply to the owner or personnel of any medium in which an
38 advertisement appears or through which an advertisement is disseminated.

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

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

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

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