



**SUGGESTED  
STATE  
LEGISLATION  
2009  
Volume 68**

Developed by the  
Committee on Suggested State Legislation

**The Council of State Governments**  
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# **The Council of State Governments**

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

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

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# Foreword

The Council of State Governments (CSG) is pleased to bring to you this **2009 *Suggested State Legislation*** volume, a valued series of compilations of draft legislation from state statutes on topics of current interest and importance to the states. The draft legislation found in this book represents many hours of work by The Council's Committee on Suggested State Legislation, CSG Policy Task Forces, and CSG staff.

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

The Council of State Governments  
Lexington, Kentucky

Daniel M. Sprague  
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## Staff Acknowledgments

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# Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Interested readers can find out more about the SSL program by visiting the SSL pages at CSG’s Internet Web site at [www.csg.org](http://www.csg.org).



## SSL Process

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

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

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

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

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

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

## SSL Criteria

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

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

# Suggested State Legislation Style

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

## Introductory Matter

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

## Submitted As

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

## Standardized Sections and Form

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

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

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

# “Sample Act” Criminal Rehabilitation Research

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

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

Submitted as:

State

Act/Bill Number

Status:

## Suggested State Legislation

(Title, enacting clause, etc.)

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

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

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

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

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

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

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

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

16  
17 \*\*\*

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

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

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

# Agricultural Biomass and Landfill Diversion Incentive

This Act establishes a program to provide grants to farmers, loggers, and others who provide agricultural biomass to facilities in the state that generate electric energy and use the best available emissions control technology.

The bill entitles farmers, loggers, or diverters \$20 per each ton of bone-dry agricultural biomass suitable for biomass conversion. The bill authorizes the department of agriculture to grant no more than \$30 million each fiscal year. The grants to the farmers, loggers, and diverters will be made by the operators of the electric generation facilities. Operators that process unsuitable biomass into a form suitable for producing electric energy are also eligible for grants under this program. The bill provides that the facility operators are reimbursed on a quarterly basis by department of agriculture, after filing out an application with the agency that verifies the amount of qualified agricultural biomass processed into a form suitable for generating electric energy. The bill limits the amount an operator can receive to no more than \$6 million.

This Act creates an Agricultural Biomass and Landfill Diversion Incentive Program Account in the state General Revenue Fund, consisting of money transferred to the account at the direction of the Legislature, gifts, grants, donations and money from any other sources to be used by the department of agriculture to implement the incentive program.

Submitted as:

Texas

[HB1090 \(Enrolled version\)](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act can be cited as “An Act to Create an Agricultural  
2 Biomass and Landfill Incentive Program.”

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

5           (1) “Farmer” means the owner or operator of an agricultural facility that produces  
6 qualified agricultural biomass.

7           (2) “Logger” means a harvester of forest wood waste, regardless of whether the harvesting  
8 occurs as a part of the harvesting of merchantable timber.

9           (3) “Diverter” means:

10                   (A) a person or facility that qualifies for an exemption under [insert citation];

11                   (B) a handler of nonhazardous industrial waste that is registered or permitted under  
12 [insert citation]; or

13                   (C) a facility that separates recyclable materials from a municipal solid waste  
14 stream and that is registered or permitted under [insert citation] as a municipal solid waste  
15 management facility; and

16                   (D) does not include a facility that uses biomass to generate electric energy.

17           (4) “Forest wood waste” includes residual tops and limbs of trees, unused cull trees, pre-  
18 commercial thinnings, and wood or debris from noncommercial tree species, slash, or brush.

19           (5) “Qualified agricultural biomass” means:

20 (A) agricultural residues that are of a type that historically have been disposed of in  
21 a landfill, relocated from their point of origin and stored in a manner not intended to enhance or  
22 restore the soil, burned in open fields in the area from which they are derived, or burned in fields  
23 and orchards that continue to be used for the production of agricultural goods, and includes:

- 24 (i) field or seed crop residues, including straw from rice or wheat;
- 25 (ii) fruit or nut crop residues, including orchard or vineyard prunings and  
26 removals;
- 27 (iii) forest wood waste or urban wood waste; and
- 28 (iv) agricultural livestock waste nutrients; and

29 (B) a crop grown and used specifically for its energy generation value, including a  
30 crop consisting of a fast-growing tree species.

31 (6) “Storm-generated biomass debris” means biomass-based residues that result from a  
32 natural weather event, including a hurricane, tornado, or flood, that would otherwise be disposed  
33 of in a landfill or burned in the open. The term includes:

34 (A) trees, brush, and other vegetative matter that have been damaged or felled by  
35 severe weather but that would not otherwise qualify as forest wood waste; and

36 (B) clean solid wood waste that has been damaged by severe weather but that  
37 would not otherwise qualify as urban wood waste.

38 (7) “Urban wood waste” means:

39 (A) solid wood waste material, other than pressure-treated, chemically treated, or  
40 painted wood waste, that is free of rubber, plastic, glass, nails, or other inorganic material; and

41 (B) landscape or right-of-way trimmings.

42  
43 Section 3. [*Agricultural Biomass and Landfill Diversion Incentive Program.*]

44 (a) The [department] shall develop and administer an Agricultural Biomass and Landfill  
45 Diversion Incentive Program to make grants to farmers, loggers, and diverters who provide  
46 qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass  
47 debris to facilities that use biomass to generate electric energy in order to provide an incentive for  
48 the construction of facilities for that purpose and to:

- 49 (1) promote economic development;
- 50 (2) encourage the use of renewable sources in the generation of electric energy;
- 51 (3) reduce air pollution caused by burning agricultural biomass, forest wood waste,  
52 urban wood waste, or storm-generated biomass debris in open fields; and
- 53 (4) divert waste from landfills.

54 (b) Subject to Section 5 of this Act, a farmer, logger, or diverter is entitled to receive a  
55 grant in the amount of [\$20] for each bone-dry ton of qualified agricultural biomass, forest wood  
56 waste, urban wood waste, or storm-generated biomass debris provided by the farmer, logger, or  
57 diverter in a form suitable for generating electric energy to a facility that:

- 58 (1) is located in this state;
- 59 (2) was placed in service after [August 31, 2009];
- 60 (3) generates electric energy sold to a third party by using qualified agricultural  
61 biomass, forest wood waste, urban wood waste, or storm-generated biomass debris;
- 62 (4) uses the best available emissions control technology, considering the technical  
63 practicability and economic reasonableness of reducing or eliminating the air contaminant  
64 emissions resulting from the facility;
- 65 (5) maintains its emissions control equipment in good working order; and
- 66 (6) is in compliance with its operating permit issued by the [Commission on  
67 Environmental Quality] under [insert citation].

68 (c) The [commissioner] by rule may authorize a grant to be made for providing each bone-  
69 dry ton of a type or source of qualified agricultural biomass, forest wood waste, urban wood  
70 waste, or storm-generated biomass debris in an amount that is greater than the amount provided by  
71 Subsection (b) if the [commissioner] determines that a grant in a greater amount is necessary to  
72 provide an adequate incentive to use that type or source of qualified agricultural biomass, forest  
73 wood waste, urban wood waste, or storm-generated biomass debris to generate electric energy.

74 (d) The [Public Utility Commission] and the [Commission on Environmental Quality] shall  
75 assist the [department] as necessary to enable the [department] to determine whether a facility  
76 meets the requirements of Subsection (b) for purposes of the eligibility of farmers, loggers, and  
77 diverters for grants under this [chapter].

78 (e) To receive a grant under this [chapter], a farmer, logger, or diverter must deliver  
79 qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass  
80 debris to a facility described by Subsection (f). The operator of each facility described by that  
81 subsection shall:

82 (1) verify and document the amount of qualified agricultural biomass, forest wood  
83 waste, urban wood waste, or storm-generated biomass debris delivered to the facility for the  
84 generation of electric energy; and

85 (2) make a grant on behalf of the [department] in the appropriate amount to each  
86 farmer, logger, or diverter who delivers qualified agricultural biomass, forest wood waste, urban  
87 wood waste, or storm-generated biomass debris to the facility.

88 (f) The [department] [quarterly] shall reimburse each operator of a facility described by  
89 Subsection (b) for grants under this [chapter] made by the operator during the [preceding quarter]  
90 to eligible farmers, loggers, and diverters. To receive reimbursement for one or more grants, an  
91 operator of a facility described by that subsection must file an application with the [department]  
92 that verifies the amount of the grants made by the operator during the preceding quarter for which  
93 the operator seeks reimbursement.

94 (g) The [department] may contract with and provide for the compensation of private  
95 consultants, contractors, and other persons to assist the [department] in administering the  
96 Agricultural Biomass and Landfill Diversion Incentive Program.

97  
98 Section 4. *[Agricultural Biomass and Landfill Diversion Incentive Program Account.]*

99 (a) There is created an [Agricultural Biomass and Landfill Diversion Incentive Program  
100 Account] as an account in the [General Revenue Fund]. The account is composed of:

101 (1) legislative appropriations;

102 (2) gifts, grants, donations, and matching funds received under Subsection (b); and

103 (3) other money required by law to be deposited in the account.

104 (b) The [department] may solicit and accept gifts in kind, donations, and grants of money  
105 from the federal government, local governments, private corporations, or other people to be used  
106 for the purposes of this [chapter].

107 (c) Money in the account may be appropriated only to the [department] for the purpose of  
108 implementing and maintaining the Agricultural Biomass and Landfill Diversion Incentive  
109 Program.

110 (d) Income from money in the account shall be credited to the account.

111 (e) The account is exempt from the [insert citation].

112  
113 Section 5. *[Limitation on Grant Amount.]*

114 (a) The total amount of grants awarded by operators of facilities under this [chapter] during  
115 each state fiscal year shall not exceed [\$30 million].

116 (b) During each state fiscal year, the [department] may not pay to an operator of a facility  
117 as reimbursements under this [chapter] an amount that exceeds [\$6 million].  
118

119 Section 6. [*Eligibility of Operators of Electric Energy Generation Facilities for Grants.*]

120 (a) Except as provided by Subsection (b), an operator of a facility that uses biomass to  
121 generate electric energy is not eligible to receive a grant under this [chapter] or under any other  
122 state law for the generation of electric energy with qualified agricultural biomass, forest wood  
123 waste, urban wood waste, or storm-generated biomass debris for which a farmer, logger, or  
124 diverter has received a grant under this [chapter].

125 (b) An operator of a facility that uses biomass to generate electric energy may receive a  
126 grant from the [department] under this [chapter] for generating electric energy with qualified  
127 agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris  
128 that arrives at the facility in a form unsuitable for generating electric energy and that the facility  
129 processes into a form suitable for generating electric energy.

130 (c) To receive a grant from the department under Subsection (b), an operator of a facility  
131 must file an application with the [department] that verifies the amount of qualified agricultural  
132 biomass, forest wood waste, urban wood waste, or storm-generated biomass debris that the facility  
133 processed into a form suitable for generating electric energy. The [department] shall make grants  
134 to eligible operators of facilities quarterly, subject to appropriations. The provisions of this  
135 [chapter] governing grants to farmers, loggers, and diverters, including the provisions governing  
136 the amount of a grant, apply to a grant from the department under Subsection (b) to the extent they  
137 can be made applicable.  
138

139 Section 7. [*Rules.*] The [commissioner], in consultation with the [Public Utility  
140 Commission] and the [Commission on Environmental Quality], shall adopt rules to implement this  
141 [chapter].  
142

143 Section 8. [*Availability of Funds.*] Notwithstanding any other provision of this [chapter],  
144 the [department] is not required to administer this [chapter] or adopt rules under this [chapter], and  
145 the operator of a facility is not required to make a grant on behalf of the [department], until funds  
146 are appropriated for those purposes.  
147

148 Section 9. [*Expiration of Program and Chapter.*] The Agricultural Biomass and Landfill  
149 Diversion Incentive Program terminates on [August 31, 2019]. On [September 1, 2019] any  
150 unobligated funds remaining in the Agricultural Biomass and Landfill Diversion Incentive  
151 Program Account shall be transferred to the undedicated portion of the [General Revenue Fund];  
152 and this [chapter] expires.  
153

154 Section 10. [*Severability.*] [Insert severability clause.]  
155

156 Section 11. [*Repealer.*] [Insert repealer clause.]  
157

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



# Alzheimer’s Disease Task Force

This legislation requires the state to bring together state leaders, long-term care industry representatives, social services organizations serving persons with dementia, and families living with dementia to create a comprehensive state government strategy to serve people with dementia. The strategy is required to identify service gaps and provide date-specific recommendations, including suggested legislation, in order to fill those service gaps.

Submitted as:

Tennessee

[Public Chapter 566](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Create an Alzheimer’s  
2 Disease Task Force.”

3  
4           Section 2. [*Alzheimer’s Disease Task Force Established.*]

5           (a) A [state] Alzheimer’s Disease Task Force is established. This task force shall consist of  
6 [fourteen (14)] volunteer members, which shall include the [chairs of the Senate General Welfare  
7 Committee and the House Health and Human Resources Committee or their designees, one  
8 member of the Senate to be appointed by the Speaker of the Senate, one member of the House of  
9 Representatives to be appointed by the Speaker of the House of Representatives, at least one  
10 person with Alzheimer’s disease, one caregiver of a person with Alzheimer’s disease, a  
11 representative of the Health Care Association, a representative of the Association of Homes and  
12 Services for the Aging, a representative of the Association for Adult Day Services, a  
13 representative of the medical care provider community, an Alzheimer’s disease researcher, and  
14 [two (2)] representatives of the Alzheimer’s Association]. Non-legislative members of the task  
15 force shall be appointed by the [governor].

16           (b) Appointments shall be made within [sixty (60)] days after the effective date of this Act.  
17 The [governor] shall designate the chair of the task force and shall set the date of the first meeting  
18 of the task force. At the organizational meeting, a vice chair and secretary shall be elected from  
19 the committee's membership.  
20

21           Section 3. [*Task Force Administrative Support.*]

22           (a) The [executive director] of the [Commission on Aging and Disability] shall provide  
23 necessary administrative support to the Alzheimer’s Disease Task Force. The task force is also  
24 authorized to request and receive assistance from any department, agency or entity of state  
25 government, upon request of the chair.

26           (b) Members of the task force are volunteers and serve without pay, except that non-  
27 legislative members may be reimbursed for travel expenses in accordance with travel regulations  
28 promulgated by the [Commissioner of Finance and Administration] and approved by the [attorney  
29 general]. Members of the [general assembly] shall be compensated in accordance with the  
30 provisions of [insert citation]. In order to encourage participation by persons with Alzheimer’s  
31 disease and their caretakers, a reasonable allowance may be made to reimburse travel expenses  
32 and respite care in circumstances of need for such people.  
33

34 Section 4. [*Duties of Alzheimer’s Disease Task Force.*]

35 (a) The Alzheimer’s Disease Task Force is directed to assess the current and future impact  
36 of Alzheimer’s disease on residents in this state; to examine the existing industries, services and  
37 resources addressing the needs of people with Alzheimer’s, their families, and caregivers; and to  
38 develop a strategy to mobilize a state response to this public health crisis.

39 (b) The Alzheimer’s Disease Task Force shall include an examination of the following in  
40 its assessment and recommendations:

41 (1) Trends in state Alzheimer’s population and needs, including the changing  
42 population with dementia, including, but not limited to:

43 (A) State role in long-term care, family caregiver support, and assistance to  
44 people with early-stage and early onset of Alzheimer’s; and

45 (B) State policy regarding people with Alzheimer’s and developmental  
46 disabilities.

47 (2) Existing services, resources, and capacity, including, but not limited to the:

48 (A) Type, cost and availability of dementia services;

49 (B) Dementia-specific training requirements for long-term care staff;

50 (C) Quality care measures for residential care facilities;

51 (D) Capacity of public safety and law enforcement to respond to people  
52 with Alzheimer’s;

53 (E) Availability of home- and community-based resources for people with  
54 Alzheimer’s and respite care to assist families;

55 (F) Inventory of long-term care dementia care units;

56 (G) Adequacy and appropriateness of geriatric-psychiatric units for people  
57 with behavioral disorders associated with Alzheimer’s and related dementia;

58 (H) Assisted living residential options for people with dementia; and

59 (I) State support of Alzheimer’s research through universities and other  
60 resources; and

61 (3) Needed state policies or responses, including, but not limited to directions for  
62 the provision of clear and coordinated services and supports to people and families living with  
63 Alzheimer’s and related disorders and strategies to address any identified gaps in services.

64 (c) The Alzheimer’s Disease Task Force shall hold public meetings and use technological  
65 means, such as web casts, to gather feedback on the recommendations from people and families  
66 affected by Alzheimer’s disease and the general public. The task force shall conduct at least [one  
67 (1)] public hearing in each of the state’s [three (3) grand divisions]. The primary purpose of such  
68 public hearings shall be the receipt of public testimony relevant to the task force’s assigned topics  
69 of inquiry. Public hearings and all other meetings of the task force shall comply with the  
70 provisions of [insert citation].

71 (d) The Alzheimer’s Disease Task Force shall submit a progress report of its findings to  
72 the [general assembly] no later than [February 15, 2008]. The Alzheimer’s Disease Task Force  
73 shall also submit a report of its findings and date-specific recommendations, including any  
74 suggested legislation, to the [general assembly and the governor] in the form of a State  
75 Alzheimer’s Plan no later than [February 15, 2009].

76 (e) The Alzheimer’s Disease Task Force shall meet after the state plan is submitted at least  
77 [annually] to review the need for new components to the state plan.

78  
79 Section 5. [*Severability.*] [Insert severability clause.]

80  
81 Section 6. [*Repealer.*] [Insert repealer clause.]

82  
83 Section 7. [*Effective Date.*] [Insert effective date.]

# Bicycle and Pedestrian Ways (FL)

This Act requires bicycle and pedestrian ways be included when planning transportation facilities, particularly within one mile of an urban area. The Act requires the state department of transportation establish design and construction standards for bicycle and pedestrian ways.

Submitted as:

Florida

[Chapter 335, Section 065](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Promote Bicycle and  
2 Pedestrian Ways.”

3  
4           Section 2. [*Planning Bicycle and Pedestrian Ways Along State Roads and Transportation*  
5 *Facilities.*]

6           (a) Bicycle and pedestrian ways shall be given full consideration in the planning and  
7 development of transportation facilities, including the incorporation of such ways into state,  
8 regional, and local transportation plans and programs. Bicycle and pedestrian ways shall be  
9 established in conjunction with the construction, reconstruction, or other change of any state  
10 transportation facility, and special emphasis shall be given to projects in or within [1 mile] of an  
11 urban area.

12           (b) Notwithstanding the provisions of [paragraph (a)], bicycle and pedestrian ways are not  
13 required to be established where their establishment would be contrary to public safety; when the  
14 cost would be excessively disproportionate to the need or probable use; or where other available  
15 means or factors indicate an absence of need.

16           (c) The [department of transportation] shall establish construction standards and a uniform  
17 system of signage for bicycle and pedestrian ways.

18           (d) The [department of transportation], in cooperation with the [department of  
19 environmental protection], shall establish a statewide integrated system of bicycle and pedestrian  
20 ways in such a manner as to take full advantage of any such ways which are maintained by any  
21 governmental entity. For the purposes of this section, bicycle facilities may be established as part  
22 of or separate from the actual roadway and may use existing road rights-of-way or other rights-of-  
23 way or easements acquired for public use.

24  
25           Section 3. [*Severability.*] [Insert severability clause.]

26  
27           Section 4. [*Repealer.*] [Insert repealer clause.]

28  
29           Section 5. [*Effective Date.*] [Insert effective date.]

# Bicycle and Pedestrian Ways (IL)

This Act requires bicycle and pedestrian ways be included when planning transportation facilities, particularly within one mile of an urban area. The Act requires the state department of transportation establish design and construction standards for bicycle and pedestrian ways.

Submitted as:

Illinois

[Public Act 95-0665](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Promote Bicycle and  
2 Pedestrian Ways.”

3  
4           Section 2. [*Bicycle and Pedestrian Ways.*]

5           (a) Bicycle and pedestrian ways shall be given full consideration in the planning and  
6 development of transportation facilities, including the incorporation of such ways into state plans  
7 and programs.

8           (b) In or within [one mile] of an urban area, bicycle and pedestrian ways shall be  
9 established in conjunction with the construction, reconstruction, or other change of any state  
10 transportation facility except:

11                 (1) in pavement resurfacing projects that do not widen the existing traveled way or  
12 do not provide stabilized shoulders; or

13                 (2) where approved by the [secretary of transportation] based upon documented  
14 safety issues, excessive cost or absence of need.

15           (c) Bicycle and pedestrian ways may be included in pavement resurfacing projects when  
16 local support is evident or bicycling and walking accommodations can be added within the overall  
17 scope of the original roadwork.

18           (d) The [department of transportation] shall establish design and construction standards for  
19 bicycle and pedestrian ways. Beginning [July 1, 2007], this Section shall apply to planning and  
20 training purposes only. Beginning [July 1, 2008], this Section shall apply to construction projects.

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

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

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

# Broadband Over Power Lines

This Act permits an electric utility, an affiliate of an electric utility, or a person unaffiliated with an electric utility to own, construct, maintain, and operate a broadband system and provide broadband services on an electric utility’s electric delivery system.

Submitted as:

Arkansas

[Act 739 of 2007](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as the “Broadband over Power Lines  
2 Enabling Act.”

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

5                   (1) “Broadband affiliate” or “affiliate” means an entity that is at least [ten percent  
6 (10%)] owned or controlled, directly or indirectly, by the electric utility formed to provide  
7 regulated or non-regulated broadband services;

8                   (2) “Broadband Internet service provider” means an entity that provides Internet  
9 broadband services to others on a wholesale basis or to end-use customers on a retail basis;

10                  (3) “Broadband operator” means an entity that owns or operates a broadband  
11 system on the electric power lines and related facilities of an electric utility;

12                  (4) “Broadband services” means the provision of regulated or non-regulated  
13 connectivity to a high-speed, high-capacity transmission medium that can carry signals from  
14 multiple independent network carriers over electric power lines and related facilities, whether  
15 above or below ground;

16                  (5) “Broadband system” means the materials, equipment, and other facilities  
17 installed to facilitate the provision of broadband services;

18                  (6) “Electric delivery system” means the power lines and related facilities used by  
19 an electric utility to deliver electric energy;

20                  (7) “Electric utility” means a public utility as defined under [insert citation] that  
21 produces, generates, transmits, delivers, or furnishes electricity to or for the public for  
22 compensation;

23                  (8) “Non-regulated broadband services” means broadband services and  
24 technologies that are not provided for the operational performance of an electric utility, including  
25 without limitation, the provision of broadband services at wholesale or at retail; and

26                  (9) “Regulated broadband services” means broadband services and technologies  
27 that are used and useful for the operational performance and service reliability of an electric  
28 utility, including without limitation:

29                           (A) Automated meter reading;

30                           (B) Real-time system monitoring;

31                           (C) Remote service control;

32                           (D) Outage detection and restoration;

33                           (E) Predictive maintenance and diagnostics; and

34 (F) Monitoring and enhancement of power quality.

35  
36 Section 3. [*Permissible Broadband Systems.*]

37 (a) An electric utility, an affiliate of an electric utility, or a person unaffiliated with an  
38 electric utility may own, construct, maintain, and operate a broadband system and provide  
39 broadband services on an electric utility's electric delivery system consistent with the  
40 requirements of this Act.

41 (b) This Act does not require an electric utility to implement a broadband system, provide  
42 broadband services, or allow others to install broadband facilities or use the electric utility's  
43 facilities to provide broadband services.

44 (c) An electric utility, a broadband affiliate, or a broadband operator may elect to install  
45 and operate a broadband system on part or all of its electric delivery system in any part or all of its  
46 certified service territory.

47  
48 Section 4. [*Ownership and Operation of Broadband System.*]

49 (a) An electric utility may:

50 (1) Own or operate a broadband system on the electric utility's electric delivery  
51 system;

52 (2) Allow an affiliate to own or operate a broadband system on the electric utility's  
53 electric delivery system;

54 (3) Allow an unaffiliated entity to own or operate a broadband system on the  
55 electric utility's electric delivery system;

56 (4) Provide broadband service, including without limitation, Internet service over a  
57 broadband system; and

58 (5) Allow an affiliate or unaffiliated entity to provide broadband service, including  
59 without limitation, Internet service over a broadband system.

60 (b) The electric utility shall determine which broadband Internet service providers may  
61 have access to broadband capacity on the broadband system.

62  
63 Section 5. [*Jurisdiction.*]

64 (a) Except as provided in this Act, neither the state nor any agency, instrumentality, or  
65 political subdivision of the state has jurisdiction over:

66 (1) An electric utility's ownership or operation of a broadband system; or

67 (2) The provision of broadband services by the electric utility, a broadband affiliate,  
68 or a broadband operator.

69 (b) Nothing in this Act shall interfere with the [Public Service Commission's] authority to  
70 regulate public utilities as defined under [insert citation].

71  
72 Section 6. [*Fees and Charges.*]

73 (a) An electric utility may charge a broadband affiliate, an unaffiliated broadband Internet  
74 service provider, or a broadband operator for the costs of the construction, installation, operation,  
75 and maintenance of the broadband system of the broadband affiliate, unaffiliated broadband  
76 Internet service provider, or broadband operator.

77 (b) (1) The costs incurred by an electric utility to own, operate, construct, and maintain  
78 a broadband system and to provide broadband services on its electric delivery system either by  
79 itself or through a broadband affiliate or broadband operator shall be allocated to the electric  
80 utility's accounts between regulated broadband services and non-regulated broadband services in  
81 accordance with applicable accounting principles and standards.

82 (2) (A) Costs allocated to non-regulated broadband services:

83 (i) Are outside the scope of an electric utility's providing of electric  
84 service to the public;  
85 (ii) Shall not be recoverable through its rates for the providing of  
86 electric service; and  
87 (iii) Are not subject to the jurisdiction of the state or any agency,  
88 instrumentality, or political subdivision of the state.

89 (B) Revenues received by an electric utility attributable to the providing of  
90 nonregulated broadband services shall not be included as revenues to the electric utility for  
91 purposes of establishing its rates for the providing of electric service.

92 (c) (1) If all or part of a broadband system is installed on poles or other structures of a  
93 telephone utility and the broadband operator is unaffiliated with the electric utility that owns the  
94 electric delivery system, before installing equipment the unaffiliated broadband operator shall  
95 enter into the customary agreement used by the telephone utility for access to the electrical  
96 delivery system and shall pay the telephone utility an annual fee consistent with the usual and  
97 customary charges for access to the space occupied by that portion of the broadband system.

98 (2) If all or part of a broadband system is installed on poles or other structures of a  
99 telephone utility and the broadband operator is an electric utility or broadband affiliate, the  
100 existing contract governing placement of the electric utility's attachments on poles or other  
101 structures shall apply and no additional annual fee or approval shall be required if the broadband  
102 system is installed within the space allocated for electric service under the contract.

103 (d) An electric utility shall not:

104 (1) Charge an affiliate under this section an amount less than the electric utility  
105 would charge an unaffiliated entity for the same item or class of items; or

106 (2) Pay an affiliate under this section an amount more than the affiliate would  
107 charge an unaffiliated entity for the same item or class of items.

108 (e) A transaction between an electric utility and an affiliate and allocations between an  
109 electric utility account and a nonutility account with respect to broadband services and broadband  
110 systems are subject to this Act.

111  
112 Section 7. [*Reliability of Electric Systems Maintained.*]

113 (a) An electric utility that installs or operates or permits the installation or operation of a  
114 broadband system on its electric delivery system shall employ all reasonable measures to ensure  
115 that the operation of the broadband system does not interfere with or diminish the reliability of the  
116 electric utility's electric delivery system.

117 (b) If a disruption in the provision of electric service occurs, the electric utility shall be  
118 governed by the terms and conditions of the retail electric delivery service tariff.

119 (c) The provision of broadband services shall be at all times secondary to the reliable  
120 provision of electric delivery services.

121  
122 Section 8. [*Compliance with Federal Law.*]

123 (a) A broadband operator shall comply with all applicable federal laws, including those  
124 protecting licensed spectrum users from interference by broadband systems.

125 (b) To the extent required by Federal Communications Commission rules, the operator of a  
126 radio frequency device shall discontinue using a radio frequency device that causes harmful  
127 interference.

128  
129 Section 9. [*Municipal Jurisdiction to Impose Franchise Fees on Utilities that Provide*  
130 *Broadband Services Over Power Lines.*]

131 (a) No city or town may impose additional franchise fees upon any provider of regulated  
132 broadband services under this Broadband Over Power Lines Enabling Act.

133 (b) A city or town may impose franchise fees upon any provider of non-regulated  
134 broadband services under this Broadband Over Power Lines Enabling Act at the same rates that  
135 the city or town charges other providers of broadband network services.  
136

137 Section 10. [*Electric Utility Broadband Service Easements.*]

138 (a) (1) (A) Any electric utility organized or domesticated under the laws of this  
139 state for the purpose of generating, transmitting, distributing, or supplying electricity to or for the  
140 public for compensation or for public use may construct, operate, and maintain such lines of wire,  
141 cables, poles, or other structures necessary for the transmission or distribution of electricity and  
142 broadband services:

143 (i) Along and over the public highways and the streets of the cities  
144 and towns of the state;

145 (ii) Across or under the waters of the state;

146 (iii) Over any lands or public works belonging to the state;

147 (iv) On and over the lands of private individuals or other persons;

148 (v) Upon, along, and parallel to any railroad or turnpike of the state;

149 and

150 (vi) On and over the bridges, trestles, and structures of railroads.

151 (B) In constructing such dams as the electric utility may be authorized to  
152 construct for the purpose of generating electricity by water power, the electric utility may flow the  
153 lands above the dams with backwater resulting from construction.

154 (2) (A) However, the ordinary use of the public highways, streets, works,  
155 railroads, bridges, trestles, or structures and turnpikes shall not be obstructed, nor the navigation of  
156 the waters impeded, and just damages shall be paid to the owners of such lands, railroads, and  
157 turnpikes.

158 (B) The permission of the proper municipal authorities shall be obtained for  
159 the use of the streets.

160 (b) (1) In the event that an electric utility, upon application to the individual, railroad,  
161 turnpike company, or other people, should fail to secure by consent, contract, or agreement, a  
162 right-of-way for the purposes enumerated in subsection (a) of this section, then the electric utility  
163 shall have the right to proceed to procure the condemnation of the property, lands, rights,  
164 privileges, and easements in the manner prescribed in this Act.

165 (2) However, no electric utility shall be required to secure by consent, contract, or  
166 agreement or to procure by condemnation the right to provide broadband services over its own  
167 lines of wire, cables, poles, or other structures that are in service at the time that the electric utility  
168 provides broadband services over the lines of wire, cables, poles, or other structures.

169 (c) Whenever an electric utility desires to construct its line on or along the lands of an  
170 individual or other people or on the right-of-way and the structures of any railroad or upon and  
171 along any turnpike, the electric utility, by its agent, shall have the right to enter peacefully upon  
172 the lands, structures, or right-of-way and survey, locate, and lay out its line thereon, being liable,  
173 however, for any damage that may result by reason of the acts.  
174

175 Section 11. [*Petitions to Assess Damages for Installing Wire, Cables, Pole, or Other*  
176 *Structures to Provide Broadband Services Over Electric Power Lines.*]

177 (a) No electric utility shall be required to petition a court in order to provide broadband  
178 services over its own lines of wire, cables, poles, or other structures that are in service at the time



179 that the electric utility provides broadband services over the lines of wire, cables, poles, or other  
180 structures.

181 (b) An owner of property upon which an electric utility's lines of wire, cables, poles, or  
182 other structures are located may petition the [circuit court of the county in which the property is  
183 situated] for any compensation to which it might be entitled under this Act.  
184

185 Section 12. [*Assessment of Damages for Installing Wire, Cables, Poles, or Other*  
186 *Structures to Provide Broadband Services Over Electric Power Lines.*]

187 (a) The amount of damages to be paid the owner of the lands for the right-of-way for the  
188 use of the electric utility shall be determined and assessed irrespective of any other benefit that the  
189 owner may receive from any improvement proposed by the electric utility.

190 (b) If an owner of property petitions a court for damages related to installing new wire,  
191 cables, poles, or other structures to provide broadband services over electric power lines, the  
192 amount of damages, if any, payable to the owner shall be limited to an amount sufficient to  
193 compensate the property owner for the increased interference, if any, with the owner's use of the  
194 property caused by any new or additional physical attachments to any existing power facilities for  
195 the purpose of providing broadband services.

196 (c) Evidence of revenues or profits derived by an electric utility from providing broadband  
197 services is not admissible for any purpose in a proceeding under [section 11 of this Act.]  
198

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

200  
201 Section 14. [*Repealer.*] [Insert repealer clause.]  
202

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

# Child Custody and Visitation During Military Temporary Duty, Deployment, or Mobilization

This Act establishes procedures to expedite hearings on child custody and visitation issues for service members who are absent or about to depart for duty.

Submitted as:

North Carolina

[Session Law 2007-175](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Facilitate a Fair Process to  
2 Resolve Child Custody and Visitation Disputes for Parents Serving Military Duty.”

3  
4           Section 2. [*Purpose.*] It is the purpose of this Act to provide a means by which to facilitate  
5 a fair, efficient, and swift process to resolve matters regarding custody and visitation when a  
6 parent receives temporary duty, deployment, or mobilization orders from the military.

7  
8           Section 3. [*Definitions.*] As used in this Act:

9                   (1) The term ‘deployment’ means the temporary transfer of a service member  
10 serving in an active-duty status to another location in support of combat or some other military  
11 operation.

12                   (2) The term ‘mobilization’ means the call-up of a National Guard or Reserve  
13 service member to extended active duty status. For purposes of this definition, ‘mobilization’ does  
14 not include National Guard or Reserve annual training.

15                   (3) The term ‘temporary duty’ means the transfer of a service member from one  
16 military base to a different location, usually another base, for a limited period of time to  
17 accomplish training or to assist in the performance of a noncombat mission.

18  
19           Section 4. [*Custody and Visitation upon Military Temporary Duty, Deployment, or*  
20 *Mobilization.*]

21           (a) When a parent who has custody, or has joint custody with primary physical custody,  
22 receives temporary duty, deployment, or mobilization orders from the military that involve  
23 moving a substantial distance from the parent's residence or otherwise have a material effect on  
24 the parent's ability to exercise custody responsibilities:

25                   (1) any temporary custody order for the child during the parent’s absence shall end  
26 no later than [10] days after the parent returns, but shall not impair the discretion of the court to  
27 conduct a hearing for emergency custody upon return of the parent and within [10] days of the  
28 filing of a verified motion for emergency custody alleging an immediate danger of irreparable  
29 harm to the child; and

30                   (2) the temporary duty, mobilization, or deployment and the temporary disruption  
31 to the child’s schedule shall not be a factor in a determination of change of circumstances if a  
32 motion is filed to transfer custody from the service member.

33 (b) If the parent with visitation rights receives military temporary duty, deployment, or  
34 mobilization orders that involve moving a substantial distance from the parent's residence or  
35 otherwise have a material effect on the parent's ability to exercise visitation rights, the court may  
36 delegate the parent's visitation rights, or a portion thereof, to a family member with a close and  
37 substantial relationship to the minor child for the duration of the parent's absence, if delegating  
38 visitation rights is in the child's best interest.

39 (c) Upon motion of a parent who has received military temporary duty, deployment, or  
40 mobilization orders, the court shall, for good cause shown, hold an expedited hearing in custody  
41 and visitation matters instituted under this section when the military duties of the parent have a  
42 material effect on the parent's ability, or anticipated ability, to appear in person at a regularly  
43 scheduled hearing.

44 (d) Upon motion of a parent who has received military temporary duty, deployment, or  
45 mobilization orders, the court shall, upon reasonable advance notice and for good cause shown,  
46 allow the parent to present testimony and evidence by electronic means in custody and visitation  
47 matters instituted under this section when the military duties of the parent have a material effect on  
48 the parent's ability to appear in person at a regularly scheduled hearing. The phrase 'electronic  
49 means' includes communication by telephone, video teleconference, or the Internet.

50 (e) Nothing in this section shall alter the duty of the court to consider the best interest of  
51 the child in deciding custody or visitation matters.

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

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

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

# Clean Contracting Standards Statement

\*Connecticut Public Act 07-1 establishes a State Contracting Standards Board (SCSB) as an independent Executive Branch agency. The new board has various responsibilities associated with the state contracting processes, including reviewing, monitoring, and auditing state contracting agencies' procurement processes. "State contracting agencies" are state Executive Branch agencies, boards, commissions, departments, offices, institutions, or council. These do not include the Judicial Branch, the Legislative Branch, or the offices of the Secretary of the State, the State Treasurer, the State Comptroller or the Attorney General with respect to their constitutional functions, or any state agency with respect to contracts specific to the responsibilities of the Office of the State Treasurer. However, the bill requires the Judicial and Legislative branches to prepare their own procurement codes by February 1, 2011 and state constitutional officers to adopt one by June 1, 2011.

The bill requires the SCSB to adopt rules to conduct its internal affairs, including appellate rules of procedure and reviews of appeals by bidders. The bill allows the SCSB to disqualify contactors and state agencies to suspend them. It requires all state contracts that take effect on or after the bill's passage to contain provisions to ensure accountability, transparency, and results-based outcomes, as the SCSB prescribes.

Under the Act, "contract" or "state contract" means an agreement or a combination or series of agreements between a state contracting agency or quasi-public agency and a business for:

- a project for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building, public work, mass transit, rail station, parking garage, rail track or airport;
- services, including, but not limited to, consultant and professional services;
- acquiring or disposing personal property;
- providing goods and services, including, using purchase of services contracts and personal service agreements;
- providing information technology, state agency information system or telecommunication system facilities, equipment or services; or
- a lease or a licensing agreement;

"Contract" or "state contract" does not include a contract between a state agency or a quasi-public agency and a political subdivision of the state.

Under the Act, the SCSB is responsible for:

- recommending the repeal of repetitive, conflicting, or obsolete state procurement laws;
- making recommendations regarding information systems for state procurement including data element and design and the state contracting portal;
- developing a guide to state statutes and regulations concerning procurement for use by all state contracting agencies;
- providing guidance, models, advice, and practical assistance to agencies related to buying the best service at the best price, properly selecting contractors, and drafting contracts that protect taxpayers' interests; and
- adopting regulations and policies to carry out state procurement laws in order to facilitate consistent application and require the implementation of best procurement practices.

The SCSB must also make recommendations about proposed legislation and regulations about procuring, managing, controlling, and disposing supplies, services, and construction, including:

- prequalification, suspension, debarment, and reinstatement of prospective bidders and contractors;
  - small purchase procedures;
  - conditions and procedures for delegating procurement authority, procuring perishables and items for resale, using source selection methods authorized by statute or regulation, emergency procurements, and selecting contractors by processes or methods that restrict full and open competition;
  - opening or rejecting bids and offers and waiving errors in bids and offers;
  - confidentiality of technical data and trade secrets submitted by actual or prospective bidders;
  - partial, progressive, and multiple awards;
  - supervising storerooms and inventories, including determining appropriate stock levels and the management, transfer, sale, or other disposal of publicly owned supplies;
  - defining classes of contractual services and procedures for acquiring them;
  - regulations for conducting cost and price analysis;
  - using payment and performance bonds;
  - guidelines for using cost principles in negotiations, adjustments, and settlements;
- and
- identifying procurement best practices.

The Act directs the SCSB to train and oversee the procurement and contracting officers in each state contracting agency.

The bill requires each state contracting agency appoint a liaison between the agency and the SCSB to help the agency implement and comply with board statutes, regulations or policies and to help coordinate the training and education of agency procurement employees. The agency must assure that contractors are properly screened before a contract is awarded, evaluate their performances during and at the end of a contract, submit written evaluations to a central data repository that the board designates, and create a project management plan that includes annual reports to the board on the agency's procurement projects.

This Act requires the board to review and certify that a state contracting agency's procurement processes comply with procurement statutes and regulations. It must accomplish this by establishing procurement and project management education and training criteria; certifying agency procurement and contracting officers; and approving, in consultation with the Office of State Ethics, an ethics training course, including a course for state employees involved in procurement and prequalified state contractors and substantial subcontractors. The Office of State Ethics or any person, firm, or corporation can develop and provide the training, but the SCSB must approve the course. Employees must maintain the certification in good standing at all times while performing procurement functions, and the board must recertify each state contracting agency's procurement processes at least every three years, notify them about any certification deficiency, and exercise its enforcement authority if it finds noncompliance.

The SCSB, with the advice and assistance of the administrative services commissioner, must develop a standardized state procurement and project management education and training program. The board must adopt implementing regulations. The program must develop education, training, and professional development opportunities for state contracting agencies' employees with procurement responsibilities. It must educate agency staff about general business acumen and on proper purchasing procedures as established in procurement statutes and regulations. The program must emphasize ethics, fairness, consistency, and project management.

The bill requires state contracting agencies' employees responsible for buying, purchasing, renting, leasing, or otherwise acquiring any supplies, service, or construction to participate in the

program. The SCSB must give agency employees who complete the program a document acknowledging their participation. It must give the governor and legislature an annual status report about the training and education program.

The bill requires the SCSB to audit state contracting agencies at least once every three years and report on their compliance with procurement statutes and regulations. During the audit, the bill gives the board access to all of the agencies' contracting and procurement records and authority to interview people responsible for awarding and negotiating contracts or procurement. The board can contract with the state auditors to conduct the audit.

This Act requires the board to "define the contract data reporting requirements to the board for state agencies." While this is unclear, Connecticut staff suggests it could mean that the board must inform state agencies of their duties to report data on:

- the number and type of state contracts of each state contracting agency currently in effect statewide;
  - the contracts' terms and dollar values;
  - their client agencies;
  - services purchased under such contracts;
  - contractor names;
  - their evaluations of contractors' performances, including records on suspensions or disqualifications and assurances that the information is available on the state contracting portal;
- and
- all contracts and contractors awarded without full and open competition, including the reasons for the decisions and the names of the authorities that approved them.

The board must identify in a compliance report any process or procedure that is inconsistent with procurement laws and regulations and corrective measures to achieve compliance. It must deliver the report, which is a public record, to the contracting agency within 30 days after the audit is completed.

The SCSB can review, terminate, or recommend to a state contracting agency terminating a contract or procurement agreement for cause after consulting with the attorney general and giving the agency and contractor 15 days notice. "For cause" means engaging in activities prohibited under the State Ethics Code as determined by a Citizen's Ethics Advisory Board; wanton or reckless disregard of any state contracting and procurement process by anyone substantially involved in the contract or with the state contracting agency; or notification from the attorney general to the state contracting agency that a whistleblower investigation indicates that the contract process was compromised by fraud, collusion, or any other criminal violation.

The decision to terminate a contract must be preceded by the board's consultation with the contracting agency to determine the impact of an immediate termination and a joint decision by the board and the agency that immediate termination will not cause imminent peril to public health, safety, or welfare. The board's decision to terminate must be approved by a two-thirds vote of its members present and voting, including at least one board member appointee by a legislative leader. The board must notify the state contracting agency and the contractor of the opportunity for a hearing under the UAPA.

The bill establishes a Contracting Standards Advisory Council consisting of representatives from the state Office of Policy and Management; the departments of transportation, administrative services, public works, and information technology; three other contracting agencies that the governor designates, including one human services-related state agency; and the chief procurement officer who serves as chairperson.

The council must meet at least four times a year to discuss state procurement issues and recommend improvements to the procurement process to the SCSB. It may conduct studies,

research, and analyses, and make reports and recommendations with respect to matters within SCSB's jurisdiction.

On or before July 1, 2010, the SCSB must submit to the governor and legislature necessary legislation to permit state contracting agencies, other than quasi-publics, institutions of higher education, and municipal procurement processes using state funds to comply with procurement laws and regulations. Within the next year, the board must submit legislation necessary to have procurement statutes apply to constituent units of higher education and privatization and procurement statutes and regulations apply to quasi-public agencies. By July 1, 2012, the board must submit legislation to the governor and legislature necessary to have procurement statutes and regulations apply to municipalities when state funds are involved.

The Act requires the Judicial and Legislative branches prepare procurement codes to use when contracting for, buying, renting, leasing, or otherwise acquiring or disposing of supplies, equipment, or services, including consultant, personal, and construction services. These codes must:

- establish uniform contracting standards and practices;
- ensure the fair and equitable treatment of all businesses and people involved in the procurement system;
- include a process for maximizing the use of small contractors and minority business enterprises;
- provide increased economy in procurement activities and maximize purchasing value to the fullest extent possible;
- ensure that they procure supplies, materials, equipment, services, real property, and construction in a cost-effective and responsive manner;
- include a process to ensure accountability between contractors and the Judicial and Legislative branches;
- simplify and clarify contracting standards and procurement policies and practices, including procedures for competitive sealed bids or proposals, small purchases, and sole source, special, and emergency procurements; and
- provide a process for competitive sealed bids and proposals, small purchases, sole source, emergency, and special procurements, best-value selection, and qualification-based selection, and the conditions for their use.

Under the Act, “best-value selection” means a process to award contracts based on quality, timeliness, and costs. “Qualification-based selection” means a process to award contracts based primarily on contractor qualifications and a fair and reasonable price. “Emergency procurements” are those necessary because of a sudden, unexpected occurrence that poses a clear and imminent danger to public safety or that requires immediate action to prevent or reduce loss or impairment of life, health, property, or essential public services, or needed in response to a court order, settlement agreement, or other similar legal judgment.

This Act also establishes a procedure for privatizing state contracts. The procedure includes a requirement for cost-benefit analyses and business cases. Before privatizing any state service that is not currently privatized, a state contracting agency must develop a cost-benefit analysis and a business case. The cost-benefit analysis must document the direct and indirect costs, savings, and qualitative and quantitative benefits of the privatization contract. The analysis must specify the minimum schedule required to achieve any estimated savings and clearly identify any cost factor. Cost factors must be supported by all applicable records and reports. The state contracting agency’s head must certify that, based on the data and information, all projected costs, savings and benefits are valid and achievable. “Costs” means all reasonable, relevant and verifiable expenses, including salary, materials, supplies, services, equipment, capital depreciation,

rent, maintenance, repairs, utilities, insurance, travel, overhead, interim and final payments and the normal cost of fringe benefits, as calculated by the comptroller. "Savings" means the difference between the current annual direct and indirect costs of providing the service and the projected, annual direct and indirect costs of contracting to provide them in any succeeding state fiscal year during the term of such proposed privatization contract.

If such cost-benefit analysis identifies a cost savings of less than 10%, the contract will not diminish the quality of services, and there is a significant public policy reason to privatize, the state contracting agency may develop a business case to evaluate the feasibility of entering the contract and to identify its potential results, effectiveness, and efficiency.

If the contract would result in at least 100 layoffs, transfers, or reassignments, after consulting with unions, the contracting agency must notify the affected employees after the cost-benefit analysis is completed, give them the opportunity to reduce the costs of providing the services to be privatized, and give them resources to encourage and help them organize and bid on the contract. The state contracting agency retains sole discretion in determining whether to proceed with the privatization contract if the SCSB approves the business case.

Any business case must include:

- the cost-benefit analysis;
- a detailed description of the service or activity that is the subject of such business case;
- a description and analysis of the state contracting agency's current performance of such service or activity;
- the goals to be achieved through the proposed privatization contract and the rationale for such goals;
- a description of available options for achieving such goals;
- an analysis of the advantages and disadvantages of each option, including potential performance improvements and risks attendant to terminating or rescinding the contract;
- a description of the current market for the services or activities that are the subject of the business case;
- an analysis of the quality of services as determined by standardized measures and key performance requirements, including compensation, turnover, and staffing ratios;
- a description of the specific results-based performance standards that must be met to ensure adequate performance by any party performing the service or activity;
- the projected time frame for key events from the beginning of the procurement process through the expiration of a contract, if applicable;
- a specific and feasible contingency plan that addresses contractor nonperformance and a description of the tasks involved in and costs required for implementing the plan; and
- a transition plan, if appropriate, for addressing changes in the number of agency personnel, affected business processes, employee transition issues, and communications with affected stakeholders, such as agency clients and members of the public, if applicable.

The transition plan must contain a reemployment and retraining assistance plan for employees who are not retained by the state or employed by the contractor.

If the primary purpose of the proposed privatization contract is to provide a core governmental function, the business case must also include information sufficient to rebut the presumption that the core governmental function should not be privatized. The presumption cannot be construed to prohibit a state contracting agency from contracting for specialized technical expertise not available within the agency; however, the agency must retain responsibility for the core governmental function. "Core governmental function" means a function for which the primary purpose is:



- to inspect for adherence to health and safety standards because public health or safety may be jeopardized if the inspection is not done or is not done in a timely or proper manner;
  - to establish statutory, regulatory, or contractual standards for a regulated person, entity, or state contractor;
  - to enforce public health or safety statutory, regulatory, or contractual requirements;
- or
- criminal or civil law enforcement.

If any part of the business case is based upon evidence that the state contracting agency is not sufficiently staffed to provide the core governmental function required by the privatization contract, the state contracting agency must also include within the business case a plan to remediate the understaffing to allow the services to be provided directly by the state contracting agency in the future.

Once the business case is completed, the state contracting agency must submit it to the SCSB. If the privatization contract is projected to cost in excess of \$150 million annually or \$600 million over the life of such contract, the state contracting agency must also submit the business case to the governor, the Senate president pro tempore, the House speaker, and any collective bargaining unit affected by the proposed privatization contract. Each state contracting agency that submits a business case for review must give the board all information, documents, or other material required by the privatization contract committee to complete its review and evaluation of such business case. The SCSB cannot engage in any ex parte communications with a lobbyist, contractor, or union representative during the review.

Upon receipt of any such business case from a state contracting agency, the SCSB must immediately refer it to a five-member privatization contract committee, which must employ a standard process for reviewing, evaluating, and approving business cases. The process must include due consideration of:

- the state contracting agency's cost-benefit analysis;
- the agency's business case, including any facts, documents, or other materials that are relevant to the business case;
- any adverse effect that the privatization contract may have on minority, small, and women-owned businesses that do, or are attempting to do business with the state; and
- the value of having services performed in the state and within the United States.

The privatization committee must evaluate the business case and submit its evaluation to the SCSB for review and approval. During the review or consideration, no board member can engage in any ex parte communication with any lobbyist, contractor, or union representative.

Within 60 days after receiving a business case, the SCSB must transmit a report detailing its review, evaluation, and disposition to the state contracting agency that submitted it and, in the case of a privatization contract with a projected cost of at least \$150 million dollars annually or \$600 million dollars over the life of the contract, also send the report to the governor, the Senate president pro tempore, the House speaker, and any collective bargaining unit affected by the proposed privatization contract. The 60 days may be extended for an additional 30 days upon a majority vote of the board or the privatization contract committee and for good cause shown. A business is deemed approved if the SCSB does not act on it within the 60 days, except that no business case may be approved because the board fails to meet.

The board's report must include the business case, the privatization contract committee's evaluation of the business case, the reasons for approval or disapproval, any recommendations of the board, and sufficient information to help the state contracting agency determine if additional steps are necessary to move forward with a privatization contract.

Generally, a majority vote of the board is required to approve a business case. However, a two-thirds vote, including the vote of at least one board member appointed by a legislative leader, is required to approve a business case to privatize a core governmental function. Before approval, the state contracting agency must provide sufficient evidence to rebut the presumption that the core governmental function should not be privatized and there is a significant policy reason to approve the business case. In no case can a state contracting agency's staffing level constitute a significant policy reason to approve a business case for privatizing a core governmental function.

Any state contracting agency may request an expedited review if there is a compelling public interest for doing so. If the board approves the agency's request, the review must be completed no later than 30 days after receipt. If the board fails to complete an expedited review within the 30 days, the business case is deemed approved.

A state contracting agency may publish notice soliciting bids for a privatization contract only after the board approves the business case. A contract that is estimated to cost in excess of \$150 million dollars annually or \$600 million or more over its life must also be pre-approved by the legislature. The legislature, by a majority vote in either chamber, must either reject or approve the contract in its entirety. If the legislature is in session, it must approve or reject the contract within 30 days after it is filed. If the legislature is not in session when the contract is filed, the contract must be submitted not later than 10 days after the first day of the next regular session or special session called for that purpose.

A contract is deemed approved if the legislature fails to vote to approve or reject it within the 30 days, which period cannot begin or expire unless the legislature is in regular session. Any contract filed with the clerks within 30 days before the start of a regular session is deemed to be filed on the first day of such session.

Not later than 30 days after the board decides to approve a business case, any collective bargaining agent of any employee adversely affected by the proposed privatization contract may file a motion for an order to show cause in the Hartford Superior Court on the grounds that the contract fails to comply with the bill's substantive or procedural requirements regarding privatization. The court may: (1) deny the motion; (2) grant the motion if it finds that the proposed contract would substantively violate the bill's privatization provisions; or (3) stay the effective date of the contract until any substantive or procedural defect has been corrected.

The SCSB may review existing privatization contracts and must review at least one contracting area each year that is currently privatized. During the review, no board member can engage in any ex parte communication with any lobbyist, contractor, or union representative. For each privatization contract that the board selects for review, the appropriate state contracting agency must develop a cost-benefit analysis. Any affected party may petition the board to review the business case of any existing privatization contract. The SCSB cannot engage in any ex parte communications with a lobbyist, contractor, or union representative during the review.

If the cost-benefit analysis identifies cost savings of at least 10% and the contract does not diminish the quality of the service provided, the state contracting agency must develop a business case to renew the contract. The board must review the contract just as it does proposed privatization contracts and may approve the renewal by the applicable vote of the board, provided any renewal that is estimated to cost in excess of \$150 million annually or \$600 million dollars or more over the life of the contract must also be pre-approved by the General Assembly. If the renewal is approved by the board and the General Assembly, if applicable, the bill's provision on proposed amendments applies.

If the cost-benefit analysis identifies a cost savings of less than 10%, the state contracting agency must prepare and begin to implement a plan to have the service provided by state employees. However, (1) after the plan is prepared but before it is implemented the state contracting agency may develop a business case for the privatization contract that achieves at least

a 10% cost savings and must submit the plan to the SCSB for review and approval; (2) the privatization contract cannot be renewed with the vendor currently providing the service unless there is a significant public interest in doing so and the renewal is approved by a two-thirds vote of the board, including the vote of at least one member appointed by a legislative leader; (3) until the state contracting agency implements the plan, it may contract for the services for up to one year; and (4) funds may be transferred from the General Fund to allocate necessary resources to carry out this provision upon the governor's recommendation and after approval of the Finance Advisory Committee.

Renewal of a privatization contract with a nonprofit organization cannot be denied if the cost of increasing compensation to employees performing the privatized service is the only reason for the contract not achieving a 10% cost savings.

This Act directs that when an affected party suspects collusion or other anticompetitive practices among any bidders or proposers for a state contract, the party must give the attorney general notice of the relevant facts. Affected parties include the state contracting agency or a bidder or proposer. A proposer is a business submitting a proposal in response to a request for proposals or other competitive sealed proposal by a state contracting agency.

The bill allows the SCSB to disqualify any contractor, bidder, or proposer from bidding on, applying for, or participating as contractor or subcontractor under state contracts. The disqualification can run for up to five years.

In order to disqualify a contractor, bidder, or proposer, the board must consult with the relevant contracting agency and the attorney general; provide reasonable notice and hold a hearing; and act through a subcommittee of three members, including at least one legislative appointee, appointed by the board's chairperson. In determining whether to disqualify a contractor, bidder or proposer, the board must consider the seriousness of the affected party's acts or omissions and any mitigating factors.

Grounds for disqualification include:

- conviction of, or entry of a plea of guilty or nolo contendere (no contest) or admission to, the commission of a criminal offense in connection with obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract; the violation of any state or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or other offenses indicating a lack of business integrity or honesty that affects responsibility as a contractor; or a violation of any state or federal antitrust, collusion or conspiracy law arising from the submission of bids or proposals on a public or private contract or subcontract;
- accumulation of two or more suspensions under the uniform procurement code within a 24-month period;
- a willful, negligent or reckless failure to meet the terms of one or more state contracts or subcontracts, agreements, or transactions;
- a history of failure to perform or of unsatisfactory performance on one or more state contracts, agreements, or transactions;
- a willful violation of a statutory or regulatory provision or requirement applicable to a state contract, agreement of transaction;
- a willful or egregious violation of State Ethics Code provisions on prohibited activities and prohibited activities by consultants and independent contractors as determined by a Citizen's Ethics Advisory Board; or
- any other cause or conduct the board determines to be so serious and compelling as to affect responsibility as a state contractor.

The last category includes disqualification by another state for cause; the existence of an informal or formal business relationship with a contractor who has been disqualified from bidding or proposing on state contracts of any state contracting agency; and the fraudulent or criminal conduct of any officer, director, shareholder, partner, employee or other individual associated with a contractor, bidder or proposer, if the conduct was connected with the individual's performance of duties for, or on behalf of, the contractor, bidder or proposer and the contractor, bidder or proposer knew or had reason to know of the conduct.

This bill establishes a process for bidders or proposers on state contracts to contest the way the contracts were solicited or awarded or to contest an unauthorized or unwarranted, noncompetitive selection process. A bidder may contest to a SCSB subcommittee consisting of three members, including at least one legislative appointee, appointed by the chairperson. The contest must be in writing and submitted within 14 days after the bidder knew or should have known about the facts forming the basis for the contest. The contest must be limited to the solicitation or awarding procedures or claims of unauthorized or unwarranted noncompetitive selection.

The Act authorizes the subcommittee to resolve or settle the contest. If the complaint is not resolved, the bill requires the subcommittee to issue a written decision within 30 days after receiving the contest and provide a copy to the complaining bidder.

The Act permits contractors, bidders, or proposers to appeal a subcommittee's suspension decision to the SCSB within 14 days after receiving it. Each bidder or proposer must state the facts supporting his claim in enough detail for the SCSB to determine whether procedural elements of the solicitation or award failed to comply with the code or whether an unauthorized or unwarranted, noncompetitive selection process was utilized. The appeal does not automatically prohibit the award or execution of the contested contract.

The legislation requires the SCSB to create a subcommittee of three of its members, including one legislative appointee, to review these appeals and vote on whether a bidder's allegation has been demonstrated. The appeals committee may not include any SCSB member who originally heard the case. A unanimous vote is dispositive. If the vote is split, the full membership must review the appeal and dispose of it by a vote of two-thirds of its members present and voting, including at least one vote by a legislative appointee. (The bill does not specify what happens if the vote of the full board is less than two-thirds. ) And any three board members may request that the full board review an agency's deliberative or awards process.

The subcommittee, or the full board in the event of a split vote, must issue a written decision, or take other appropriate action, on each appeal and provide a copy of any decision to the bidder. The subcommittee must act within 90 days after receiving the appeal. The full committee must act within 90 days after receiving the appeal from the subcommittee. If the subcommittee or full board decides in the bidder's favor, the board must direct the state contracting agency to take corrective action within 30 days after the decision date. A decision by the full board or the appeals review committee is final and not subject to appeal.

The bill also requires the Department of Administrative Services (DAS) to maintain a single electronic portal for posting most contracting opportunities in the state.

Submitted as:

Connecticut

[September Special Session, Public Act 07-1](#)

Status: Enacted into law in 2007.

\*CSG used language from Public Act 07-1 and from a state legislative staff report to compile this statement.

# Collecting and Recycling Covered Electronic Devices

This Act is based upon Connecticut law enacting model legislation by The Council of State Governments/Eastern Regional Conference (CSG/ERC) and the Northeast Recycling Council, Inc. (NERC). In February 2005, CSG/ERC and NERC launched a collaborative project to develop a coordinated legislative approach to end-of-life electronics management in the Northeast. As part of the project, CSG/ERC and NERC facilitated an effort among state legislators, legislative and environmental agency staff from ten states, the U.S. Virgin Islands, Puerto Rico and Quebec to craft model legislation.

During the course of this effort, participants solicited input from nearly 100 stakeholders, including electronics manufacturers, retailers, recyclers, leasing companies, reuse organizations, environmental groups and local government representatives.

Following an intensive 14-month-long process, the group released An Act Providing for the Recovery and Recycling of Used Electronic Devices.

As of February 2007, the CSG/ERC - NERC Model Electronics Legislation was filed in the following states and territories:

- Connecticut: HB 7249
- New Jersey: A3572
- New York: A3200 / S7165
- Pennsylvania: HB7
- Puerto Rico: HB 2955
- Vermont: S.17

As of July 2007, Connecticut was among the first (and possibly, only) state to enact the ERC/NERC model. That model legislation establishes a comprehensive recycling system to ensure safe and environmentally sound management of electronic devices and components, encourages the design of electronic devices and components that are less toxic and more recyclable; and promotes the development of a statewide infrastructure for collection and recycling of end-of-life electronics.

Covered electronic devices (CEDs) the model addresses include desktop/personal computers, computer monitors, portable computers (laptops), CRT-based televisions, non-CRT-based televisions. The model does not address motor vehicle components; industrial, commercial, or medical equipment, including diagnostic, monitoring, or control equipment; clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifiers; or telephones of any type unless they contain a video display area greater than 4 inches measured diagonally. Covered electronic devices (CEDs) are those purchased at retail.

To help fund the program, the model legislation requires all manufacturers to pay a \$5,000 annual registration fee and additionally, manufacturers must either pay a fee to cover the cost of collection, transportation, and recycling of their total obligation, or collect, transport, and recycle the equivalent amount themselves.

To determine the manufacturer obligation (or share) under the model Act, the state environmental agency sets a State recycling rate. The state recycling rate is equivalent to the ratio of the weight of total overall returns of CEDs in the state to the weight of total overall sales of CEDs in the state during the previous calendar year. A manufacturer is required to either pay a fee calculated as the state recycling rate multiplied by the weight of the manufacturer's CEDs sold in the state during the previous calendar year, multiplied by no more than \$0.50 per pound; or collect, transport, and recycle a quantity of CEDs equal to the weight of the manufacturer's CEDs sold in the State during the previous calendar year, multiplied by the State recycling rate.

Under the model, in order to be eligible for the second option, a manufacturer must submit a plan for such a program that is approved by the state environmental agency. If a manufacturer fails to comply with all of the terms of an approved plan, it must submit a payment to cover the cost of collecting, transporting, and recycling the unmet portion of its obligation, plus a 10% penalty. Manufacturers can obtain credits if they collect, transport, and recycle in excess of their obligation – and apply the credits to their obligation in the following year, or sell them. No end-of-life fees are permitted.

Manufacturers must annually report the total CEDS sold in state, by weight; pay an annual registration fee of \$5,000 registration fee; pay an annual fee covering the cost of collection, transportation, and recycling of its obligation; or establish and implement a program that collects, transports, and recycles the total amount of its obligation. A manufacturer may establish a program in cooperation with other manufacturers.

Retailers can only sell products of manufacturers that are in full compliance with law and must post and provide public information that describes where and how to recycle the covered electronic device and opportunities and locations for the collection or return of the device.

This SSL draft Act creates a mandatory recycling program for discarded computers and televisions. Starting January 1, 2009, manufacturers must participate in a program to implement and finance the collection, transportation, and recycling of these covered electronic devices (CEDs). They may participate in the statewide program or a private program.

It requires each CED manufacturer to register with the Department of Environmental Protection (DEP) and pay an annual registration fee, which DEP must use to administer the program. Each registered manufacturer also must pay recyclers the reasonable costs of transporting and recycling its CEDs. The Act sets a maximum transportation and recycling reimbursement rate of 50 cents per pound.

The Act prohibits, with some exceptions, retailers from selling CEDs manufactured by noncompliant manufacturers. It requires municipalities to provide for the convenient recycling of CEDs generated within their borders and arrange for bringing CEDs to DEP-approved recyclers.

The Act prohibits, starting January 1, 2011, anyone from knowingly discarding a CED at a solid waste disposal facility other than a transfer station, and charging a fee to state residents bringing seven or fewer CEDs to a collector at any one time.

It creates two separate, nonlapsing accounts within the Environmental Quality Fund. DEP must use funds from a “electronic device recycling program account” to carry out the Act’s provisions and a “covered electronic recycler reimbursement account” to reimburse recyclers for their unpaid qualified expenses.

The DEP commissioner must adopt regulations to implement the Act. The regulations must include provisions establishing:

- annual registration and reasonable fees for administering the program;
- a process for approving recyclers;
- a table of qualified reimbursable costs for recyclers;
- standards for the operation, accounting, and auditing of recyclers;
- a list of CEDs not limited to those the Act specifies, such as printers; and
- any other requirements needed to carry out the Act. The commissioner may help create and implement a regional, multi-state organization or compact to help carry out its provisions.

Submitted as:

Connecticut

[Public Act No. 07-189](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act Concerning the Collection and  
2 Recycling of Covered Electronic Devices.”

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

5                   (1) “Department” means the [Department of Environmental Protection];

6                   (2) “Commissioner” means the [Commissioner of Environmental Protection];

7                   (3) “Cathode ray tube” or “CRT” means a vacuum tube or picture tube used to  
8 convert an electronic signal into a visual image;

9                   (4) “Computer” means an electronic, magnetic, optical, electrochemical, or other  
10 highspeed data processing device performing logical, arithmetic or storage function, and may  
11 include, but not be limited to, both a computer central processing unit and a monitor, but does not  
12 include an automated typewriter or typesetter, a portable handheld calculator, a portable digital  
13 assistant or other similar device;

14                   (5) “Covered Electronic Device” or “CED” means desktop or personal computers,  
15 computer monitors, portable computers, CRT-based televisions and non-CRT-based televisions or  
16 any other similar or peripheral electronic device specified in regulations adopted pursuant to  
17 [section 12 of this Act], sold to consumers, but does not include:

18                           (A) an electronic device that is a part of a motor vehicle or any component  
19 part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchise dealer, including  
20 replacement parts for use in a motor vehicle;

21                           (B) an electronic device that is functionally or physically a part of a larger  
22 piece of equipment designed and intended for use in an industrial, commercial or medical setting,  
23 including diagnostic, monitoring or control equipment;

24                           (C) an electronic device that is contained within a clothes washer, clothes  
25 dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range,  
26 dishwasher, room air conditioner, dehumidifier or air purifier;

27                           (D) telephones of any type unless they contain a video display area greater  
28 than four inches measured diagonally; or

29                           (E) any handheld device used to access commercial mobile radio service, as  
30 such service is defined in 47 CFR 20.3;

31                   (6) “Covered electronic recycler” means a recycler that is approved to recycle  
32 covered electronic devices by the department;

33                   (7) “Manufacturer” means any person who:

34                           (A) manufactures or manufactured covered electronic devices under a brand  
35 that it licenses, owns or owned, for sale in this state;

36                           (B) manufactures or manufactured covered electronic devices without  
37 affixing a brand, for sale in this state;

38                           (C) resells or has resold in this state under its own brand or label a covered  
39 electronic device produced by other suppliers, including retail establishments that sell covered  
40 electronic products under their own brand names;

41                           (D) imports or imported into the United States or exports from the United  
42 States covered electronic devices for sale in this state;

43 (E) sells at retail a covered electronic device acquired from an importer that  
44 is the manufacturer as described in subparagraph (D) of this subdivision, and elects to register in  
45 lieu of the importer as the manufacturer for those products; or

46 (F) manufactures or manufactured covered electronic devices, supplies them  
47 to any person or persons within a distribution network that includes wholesalers or retailers in this  
48 state, and benefits from the sale in this state of those covered electronic devices through such  
49 distribution network;

50 (8) "Manufacturer's brands" means a manufacturer's name, brand name or brand  
51 label, and all manufacturer's names, brand names and brand labels for which the manufacturer has  
52 legal responsibility, including those names, brand names and brand labels of companies that have  
53 been acquired by the manufacturer;

54 (9) "Monitor" means a separate video display component of a computer that does  
55 not contain a tuner, whether sold separately or together with a computer central processing unit or  
56 computer box, and includes a cathode ray tube, liquid crystal display, gas plasma, digital light  
57 processing or other image projection technology greater than four inches when measured  
58 diagonally, and its case, interior wires and circuitry;

59 (10) "Person" means an individual, trust firm, joint stock company, business  
60 concern and corporation, including, but not limited to, a government department, partnership,  
61 limited liability company or association;

62 (11) "Portable computer" means a computer and video display greater than four  
63 inches in size that can be carried as one unit by an individual, including, but not limited to, a  
64 laptop computer;

65 (12) "Purchase" means the taking, by sale, of title in exchange for consideration;

66 (13) "Recycling" means any process by which covered electronic devices that  
67 would otherwise become solid waste or hazardous waste are collected, separated and processed to  
68 be returned to use in the form of raw materials or products, in accordance with environmental  
69 standards established by the department;

70 (14) "Registrant" means a manufacturer or group of manufacturers of covered  
71 electronic devices that is, or who are, in compliance with the requirements of [sections 2 to 13,  
72 inclusive, of this Act];

73 (15) "Retail sales" includes sales of products through sales outlets, via the Internet,  
74 mail order or other means, whether or not the seller has a physical presence in this state;

75 (16) "Retailer" means a person who owns or operates a business that sells new  
76 covered electronic devices in this state by any means to a consumer;

77 (17) "Sell" or "sale" means any transfer of title for consideration, including, but not  
78 limited to, transactions conducted through sales outlets, catalogs or the Internet, or any other  
79 similar electronic means, and excluding leases;

80 (18) "Television" means a stand-alone display system containing a CRT or any  
81 other type of display primarily intended to receive video programming via broadcast, having a  
82 viewable area greater than four inches when measured diagonally, able to adhere to standard  
83 consumer video formats such as PAL, SECAM, NTSC, ATSC and HDTV and having the  
84 capability of selecting different broadcast channels and support sound capability;

85 (19) "Video display" means an output surface having a viewable area greater than  
86 four inches when measured diagonally that displays moving graphical images or a visual  
87 representation of image sequences or pictures, showing a number of quickly changing images on a  
88 screen in fast succession to create the illusion of motion, including, but not limited to, a device  
89 that is an integral part of the display that cannot be easily removed from the display by the  
90 consumer and that produces the moving image on the screen and includes technology using a



91 cathode ray tube, liquid crystal display, gas plasma, digital light processing or other image  
92 projection technology;

93 (20) "Orphan device" means a covered electronic device for which no  
94 manufacturer, as defined in this section, can be identified or for which the manufacturer is no  
95 longer in business and has no successor in interest; and

96 (21) "Market share" means a manufacturer's national sales of CEDs expressed as a  
97 percentage of the total of all manufacturers' national sales for a category of CEDs based on data  
98 that is publicly available.

99  
100 Section 3. [*Posting List of Manufacturers in Compliance with this Act.*]

101 (a) Not later than [June 1, 2009], the [Commissioner of Environmental Protection] shall  
102 post a list of all manufacturers in compliance with the requirements of [sections 2 to 13, inclusive,  
103 of this Act] on the [department's] Internet web site and shall maintain such list after said date.  
104 Retailers shall consult the list prior to selling covered electronic devices. A retailer shall not offer  
105 for sale in this state a covered electronic device of a manufacturer that is not in compliance with  
106 such requirements. A retailer shall be considered to have complied with this responsibility if, on  
107 the date that the product was ordered from the manufacturer or its agent, the manufacturer was  
108 listed as being in compliance on the department's Internet web site.

109 (b) Notwithstanding subsection (a) of this section, a retailer may sell any CEDs ordered or  
110 in stock at the time of the initial posting of such list by the [commissioner], regardless of whether  
111 the manufacturer of such CED is on such list, until [six months after the initial posting] or until  
112 [December 1, 2009], whichever is earlier.

113  
114 Section 4. [*Labeling.*] On and after [January 1, 2008], a manufacturer or retailer shall not  
115 sell or offer for sale a covered electronic device in the state unless it is labeled with the  
116 manufacturer's brand, and the label is permanently affixed and readily visible.

117  
118 Section 5. [*Registration.*]

119 (a) Each manufacturer of covered electronic devices shall register with the [Department of  
120 Environmental Protection] not later than [January 1, 2008], and [annually] thereafter, on a form  
121 prescribed by the [Commissioner of Environmental Protection] and accompanied by a fee set by  
122 the [Commissioner of Environmental Protection] in accordance with this section and any  
123 regulations adopted pursuant to this section. The [department] may review, at a public hearing, as  
124 necessary, the CED recycling and registration fees. The [commissioner] shall deposit the proceeds  
125 of the fees received from registrants in the [Electronic Device Recycling Program Account]  
126 established under [section 14 of this Act] for the purposes of covering the cost for the [department]  
127 to administer the program created in [sections 2 to 13, inclusive, of this Act] except as otherwise  
128 provided.

129 (b) Not later than [January 1, 2008], each manufacturer that has sold more than [one  
130 hundred CEDs in calendar year 2007] shall pay an initial registration fee of [five thousand  
131 dollars]. On or after [January 1, 2008], each manufacturer that has not sold CEDs by any means in  
132 the state prior to [January 1, 2008], shall pay an initial registration fee of [five thousand dollars]  
133 and an additional fee equivalent to the greater of: (1) [one per cent of the prior year's total share of  
134 orphan devices expressed in pounds multiplied by fifty cents], or (2) [one thousand dollars]. Such  
135 additional fee shall be deposited in the [Covered Electronic Recycler Reimbursement Account]  
136 established under [section 14 of this Act] for the purpose of reimbursing covered electronic  
137 recyclers for unpaid qualified expenses incurred under [section 6 of this Act]. The initial  
138 registration fee of [five thousand dollars] shall be deposited in the [Electronic Device Recycling

139 Program Account] established under [section 14 of this Act] for the purposes of covering the cost  
140 for the [department] to administer the program created in [sections 2 to 13, inclusive, of this Act].

141 (c) Commencing [January 1, 2009], all manufacturers shall pay an annual registration  
142 renewal fee as determined by the [commissioner] in accordance with [subsection (d) of this  
143 section].

144 (d) Not later than [October 1, 2008], the [commissioner] shall adopt regulations, in  
145 accordance with the provisions of [insert citation], to establish annual registration and reasonable  
146 fees for administering the program established by this Act. All fees charged shall be based on  
147 factors relative to the costs of administering such program and be based on a sliding scale that is  
148 representative of the manufacturer's market share of covered electronic devices in the state.  
149 Market share information shall be based on available national market share data. Fees shall be  
150 established in amounts to fully cover but not to exceed expenses incurred by the commissioner for  
151 the implementation of such program, including the cost of any education or outreach necessary to  
152 carry out such program.

153  
154 Section 6. *[Required Participation in State-Wide Electronics Program.]*

155 (a) On and after [January 1, 2009], each manufacturer shall participate in the state-wide  
156 electronics recycling program established in this section to implement and finance the collection,  
157 transportation and recycling of covered electronic devices, and may participate in a private  
158 electronics recycling program.

159 (b) On and after [January 1, 2009], each municipality shall provide for the recycling of  
160 CEDs generated within its boundaries by participating in the state-wide electronics recycling  
161 program. Municipalities that participate in a regional recycling program may elect to participate in  
162 the state-wide electronics program through such regional authority. Each municipality or regional  
163 authority shall

164 (1) provide for the collection of CEDs from residents within such municipality or  
165 region,

166 (2) arrange for the transportation of collected CEDs to a covered electronic  
167 recycler, and

168 (3) make information readily available to residents of the municipality or region of  
169 the time and location of the collection of CEDs. In providing collection and recycling  
170 opportunities to its residents each municipality shall give priority to convenience and accessibility.

171 (c) On and after [January 1, 2009], each covered electronic recycler shall:

172 (1) cooperate with any municipality or regional authority to provide for the  
173 collection and transportation of CEDs,

174 (2) reimburse a municipality or regional authority for such municipality's or such  
175 authority's qualified costs of transportation,

176 (3) recycle all collected CEDs in accordance with the minimum standards  
177 established in [section 9 of this Act],

178 (4) maintain a written log that identifies responsible manufacturers by recording the  
179 brand and weight of each CED delivered to a covered electronic recycler and identified upon  
180 receipt as generated by a household in the state,

181 (5) report to the [commissioner] any manufacturer that is in arrears for more than  
182 [ninety days],

183 (6) file a plan for carrying out the provisions of this section on a form approved by  
184 the [commissioner], and

185 (7) invoice manufacturers quarterly for the reasonable costs of transporting and  
186 recycling that the manufacturer is responsible for pursuant to this section. Such costs shall be  
187 calculated on a per pound basis and shall not exceed [fifty cents per pound] or an amount

188 determined by the [commissioner] in regulations adopted pursuant to [section 12 of this Act].  
189 Nothing in this subsection shall prohibit a registered manufacturer from entering into a  
190 cooperative agreement with a covered electronic recycler to return such manufacturer's CEDs for  
191 subsequent recycling by the manufacturer provided the manufacturer certifies to the  
192 [commissioner] that such CEDs have been recycled in accordance with [subsection (e) of this  
193 section] and the manufacturer reimburses the covered electronic recycler for such recycler's  
194 qualified costs, as determined by the [commissioner].

195 (d) On and after [January 1, 2009], each manufacturer shall pay the reasonable costs of  
196 transportation and recycling incurred by a covered electronic recycler for the CEDs attributed to  
197 such manufacturer and the manufacturer's pro rata share of orphan devices processed by a covered  
198 electronic recycler. A manufacturer's pro rata share of orphan devices shall be calculated as a  
199 manufacturer's market share for the preceding calendar year divided by the total market share of  
200 all registered manufacturers for the same year multiplied by the total, in pounds, of orphan devices  
201 returned. The pro rata share of orphan devices shall be calculated separately for CEDs consisting  
202 of computer-related components, including desktop or personal computers, computer monitors,  
203 portable computers and for CEDs consisting of television-related components, including CRT-  
204 based and non-CRT-based televisions. Manufacturers of only CEDs consisting of television-  
205 related components or only CEDs consisting of computer-related components shall only be liable  
206 for their corresponding pro rata share. The [commissioner] may suspend the registration of any  
207 manufacturer in arrears for more than [ninety days]. A manufacturer that has had such  
208 manufacturer's registration suspended in accordance with this subsection shall demonstrate that all  
209 past due payments and a penalty equivalent to [ten per cent of such past due payments] has been  
210 paid to the [commissioner] prior to seeking reinstatement of such registration. The [commissioner]  
211 shall deposit such penalty in the [Covered Electronic Recycler Reimbursement Account]  
212 established under [section 14 of this Act] for the purpose of reimbursing covered electronic  
213 recyclers for unpaid qualified expenses in accordance with this section and any regulations  
214 adopted pursuant to [section 12 of this Act]. Any covered electronic recycler seeking  
215 reimbursement for such qualified expenses shall file a request with the [commissioner] and certify  
216 that such expenses are qualified. The [commissioner] shall reimburse each covered electronic  
217 recycler to the extent that funds are available.

218 (e) Any private program for the collection, transportation and recycling of CEDs shall  
219 comply with the standards established in [section 9 of this Act]. Any manufacturer participating in  
220 a private program shall file a description of such program with such manufacturer's annual  
221 registration, including:

222 (1) the methods that will be used to collect the covered electronic devices,  
223 including, but not limited to, the name and locations of all collection and consolidation points;

224 (2) the processes and methods that will be used to recycle recovered covered  
225 electronic devices, including a description of the disassembly and physical recovery operation  
226 such as crushing, shredding, grinding, glass-to-glass recycling or other operations that will be  
227 used;

228 (3) the name and location of all facilities to be utilized;

229 (4) documentation of audits of each processor used in the plan and compliance with  
230 processing standards established in [section 9 of this Act];

231 (5) a description of the means that will be utilized to publicize the collection  
232 opportunities; and

233 (6) the total weight of CEDs collected, transported and recycled the previous year.  
234

235 Section 7. [*Consumer Information.*]

236 (a) On and after [July 1, 2010], a retailer shall provide consumers with information  
237 provided by the [Department of Environmental Protection], including a toll-free telephone number  
238 and Internet web site. Such information shall be provided in a clear written form and shall be  
239 included in the packaging of the covered electronic device or accompany the sale of the covered  
240 electronic device. If applicable, each manufacturer shall make readily available to all retailers  
241 selling such manufacturer's CEDs information concerning such manufacturer's private program  
242 for the collection, transportation and recycling of CEDs that has been submitted to the department,  
243 in accordance with [section 6 of this Act].

244 (b) No resident of this state giving [seven or fewer] covered electronic devices to a  
245 collector at any one time shall be charged any fees or costs for the collection, transportation or  
246 recycling of such covered electronic devices.

247  
248 Section 8. [*State-Wide Per-Capita Collection and Recycling Goals.*]

249 (a) Not later than [October 1, 2010], and every [three] years thereafter, the [commissioner]  
250 shall prepare an electronics recycling plan that establishes state-wide per-capita collection and  
251 recycling goals and identifies any necessary actions to achieve such goals. Such report shall be  
252 posted on the [department's] web site and a copy of such report submitted to the [joint standing  
253 committee of the General Assembly] having cognizance of matters relating to the environment.

254 (b) Not later than [October 1, 2010], and [annually] thereafter, the [commissioner] shall  
255 gather information from registrants and prepare a report regarding the status of the electronics  
256 recycling program. The [commissioner] shall submit such report to the [joint standing committee  
257 of the General Assembly] having cognizance of matters relating to the environment, in accordance  
258 with the [insert citation]. Such report shall contain:

259 (1) sufficient data, as determined by the [commissioner], and analysis of such data  
260 to evaluate the effectiveness of the state-wide recycling program and the components of such  
261 program, and

262 (2) if at any time the federal government establishes a national program for the  
263 collection and recycling of electronic devices and the [department] determines that the federal law  
264 substantially meets or exceeds the requirements of [sections 2 to 13, inclusive, of this Act],  
265 information about the federal law.

266  
267 Section 9. [*Complying with Federal Requirements.*]

268 (a) On and after [January 1, 2009], covered electronic devices collected through any  
269 program in this state, whether by manufacturers, retailers, for-profit or not-for-profit corporations,  
270 units of government or organized by the [commissioner], shall be recycled in a manner that is in  
271 compliance with all applicable federal, state and local laws, regulations and ordinances, and shall  
272 not be exported for disposal in a manner that poses a significant risk to the public health or to the  
273 environment.

274 (b) The [commissioner] shall establish performance requirements in order for collectors,  
275 transporters and recyclers of covered electronic devices to be eligible to receive funds from the  
276 [department]. All entities shall, at a minimum, demonstrate compliance with the United States  
277 Environmental Protection Agency's Plug-In to eCycling Guidelines for Materials Management as  
278 issued and available on said agency's Internet web site in addition to any other requirements  
279 mandated by state or federal law.

280  
281 Section 10. [*Prohibiting Disposing Covering Electronic Devices in Solid Waste Facilities.*]

282 (a) On and after [January 1, 2011], no person shall knowingly place a covered electronic  
283 device or any of the components or subassemblies of such device in any solid waste facility. An

284 owner or operator of a solid waste facility shall not be found in violation of this section if such  
285 owner or operator has:

- 286 (1) made a good faith effort to comply with this section,  
287 (2) posted, in a conspicuous location at the facility, a sign stating that covered  
288 electronic devices or any components thereof shall not be accepted at such facility, and  
289 (3) notified, in writing, all collectors registered to haul solid waste to such facility  
290 that such devices or components shall not be accepted at the facility.

291 (b) For the purposes of this section, “solid waste facility” means “solid waste facility” as  
292 defined in [insert citation], but does not include transfer stations.  
293

294 Section 11. [*Cease and Desist Orders.*] On and after [January 1, 2009], the [Commissioner  
295 of Environmental Protection] may issue cease and desist orders in accordance with [insert citation]  
296 for any violation of [sections 2 to 13, inclusive, of this Act], and to suspend or revoke any  
297 registration issued by the [commissioner] under [section 5 of this Act] upon a showing of cause  
298 and after a hearing. The courts may grant such restraining orders and such temporary and  
299 permanent injunctive relief as may be necessary to secure compliance with [sections 2 to 13,  
300 inclusive, of this Act]. Civil proceedings to enforce [sections 2 to 13, inclusive, of this Act] may  
301 be brought by the [Attorney General] in the [superior court for any judicial district] affected by the  
302 violation.  
303

304 Section 12. [*Regulations to Implement this Act.*] The [Commissioner of Environmental  
305 Protection] shall adopt regulations, in accordance with [insert citation], to carry out the provisions  
306 of [sections 2 to 13, inclusive, of this Act]. Such regulations shall include, but not be limited to,  
307 provisions that establish:

- 308 (1) a process for approving covered electronic recyclers,  
309 (2) a table of qualified reimbursable costs for covered electronic recyclers,  
310 (3) standards for operation, accounting and auditing of covered electronic recyclers,  
311 (4) a list of covered electronic devices and such list may include additional devices  
312 other than those specified in [section 2], such as printers, and  
313 (5) any other requirements necessary to carry out the provisions of [sections 2 to  
314 13, inclusive, of this Act].  
315

316 Section 13. [*Regional Multistate Organization or Compact.*] The [commissioner] may  
317 participate in the establishment and implementation of a regional, multistate organization or  
318 compact to assist in carrying out the requirements of [sections 2 to 13, inclusive, of this Act].  
319

320 Section 14. [*Environmental Quality Fund.*]

321 (a) There is established a fund to be known as the “Environmental Quality Fund” which  
322 shall be held by the [Treasurer]. Within the [Environmental Quality Fund], there is established and  
323 created an account to be known as the “Environmental Quality Account.” The [Environmental  
324 Quality Fund] may include other accounts separate and apart from the [Environmental Quality  
325 Account]. Notwithstanding any provision of state law to the contrary, any moneys required by law  
326 to be deposited in the [Environmental Quality Fund] shall be deposited therein and credited to the  
327 [Environmental Quality Account]. Any balance remaining in the [Environmental Quality Account]  
328 at the end of any fiscal year shall be carried forward in the [Environmental Quality Account] for  
329 the fiscal year next succeeding. The [Environmental Quality Account] shall be used by the  
330 [Department of Environmental Protection] for the administration of the [central office and  
331 environmental quality programs] authorized by state law.

332 (b) Notwithstanding any provision of state law, on and after [July 1, 1990], the amount of  
333 any fee received by the [Department of Environmental Protection] which is attributable to the  
334 [insert citation], or any regulation adopted or amended pursuant to [insert citation] or pursuant to  
335 any other provision of [insert citation], shall be deposited directly into the [Environmental Quality  
336 Fund] established by [subsection (a) of this section] and credited to the [Environmental Quality  
337 Account]. The [Commissioner of Environmental Protection] shall [annually] certify to the  
338 [Treasurer], with respect to each such fee received on and after [July 1, 1990], the amount of such  
339 fee which shall be credited to the [General Fund].

340 (c) There is established an account to be known as the “Covered Electronic Recycler  
341 Reimbursement Account” which shall be a separate, nonlapsing account within the  
342 [Environmental Quality Fund]. The account shall contain any moneys required by law to be  
343 deposited in the account. Moneys in the account shall be expended by the [Department of  
344 Environmental Protection] for the purpose of reimbursing covered electronic recyclers for unpaid  
345 qualified expenses in accordance with [section 6 of this Act] and any regulations adopted pursuant  
346 to [section 12 of this Act].

347 (d) There is established an account to be known as the “Electronic Device Recycling  
348 Program Account” which shall be a separate, nonlapsing account within the [Environmental  
349 Quality Fund]. The account shall contain any moneys required by law to be deposited in the  
350 account. Moneys in the account shall be expended by the [Department of Environmental  
351 Protection] for the purposes of carrying out the provisions of [sections 2 to 13, inclusive, of this  
352 Act].

353

354 Section 15. [*Severability.*] [Insert severability clause.]

355

356 Section 16. [*Repealer.*] [Insert repealer clause.]

357

358 Section 17. [*Effective Date.*] [Insert effective date.]

# Cybercrimes Against Children Statement

Florida Chapter 143 of 2007 enhances penalties for existing crimes related to:

- possession of child pornography when the offender possesses ten or more images and at least one image includes a child under the age of five; sadomasochistic abuse, sexual battery or sexual bestiality involving a child; or any video or live movie involving a child;
- expands the scope of state law to include using the Internet to seduce, solicit, lure or entice a child or a person thought to be a child to commit certain acts relating to sexual abuse of children;
- expands the scope of state law to include all acts of sexual conduct with a child or a person thought to be a child, actions directed at persuading the child's guardian to consent to the child's participation in sexual conduct;
- provides that each separate contact is a separate offense;
- creates a new second degree felony that applies to offenders who misrepresent their age in the course of committing an offense;
- creates a new felony offense of traveling to meet a minor for the purpose of committing specified crimes of sexual abuse of a child or any other unlawful sexual conduct with a child, or attempting to persuade the child's guardian to consent to the child's participation in sexual conduct;
- requires sexual offenders and sexual predators register any e-mail address and any instant message name they use with the state department of law enforcement and to update any changes to that information to the state department of law enforcement;
- requires the state department of law enforcement establish a method for offenders to register e-mail addresses and instant message names online;
- authorizes the state department of law enforcement to provide the e-mail addresses and instant message names of sexual offenders and sexual predators to commercial social networking websites;
- enables operators of such sites to screen for those users;
- expressly states that it does not impose civil liability on commercial social networking websites;
- authorizes prosecutors to charge an act that relates to sexual performance of a child or child pornography under any other applicable statute, including one with greater penalties;
- expands investigative and prosecutorial authority of certain law enforcement officials when a crime is facilitated by or connected to use of the Internet or an electronic data storage or transmission device;
- authorizes alternative venues for trial of any crime facilitated by communication by mail, telephone, newspaper, radio, television, Internet, or other means of electronic data communication; and
- updates statutes to incorporate new technologies used to facilitate sexual abuse of children and transfer of images of sexual abuse of children.

Submitted as:

Florida

[Chapter 2007-143](#)

Status: Enacted into law in 2007.

# Electronic Communications and Sex Offenders

This Act:

- requires a registered sex offender to provide their online identifier and the name of any website or Internet communication service where they use the identifier to a sheriff;
- requires an offender to confirm the identifier each year and to notify a sheriff in person or electronically of any changes to the identifier;
- mandates that a sheriff must forward any changes of an offender's required online identifier to the state department of public safety (DPS);
- requires the DPS must to update the offender's identifier in the DPS database and requires the sheriff and the DPS to complete their requirements within 3 days;
- directs the DPS to maintain a separate database and search function on the DPS sex offender website that contains the required online identifiers of any Level 2 or Level 3 sex offenders and the name of any website or Internet communication service where the required online identifiers are being used;
- allows the DPS to disseminate an offender's required online identifier and name of any corresponding website or Internet communication service to a business/organization that offers electronic communication services;
- enables a business/organization to use the identifier to compare with its information;
- requires the business/organization to notify the DPS when a comparison shows that the offender's required online identifier is being used on the business's/organization's system;
- prohibits the business/organization from further disseminating the information that the person is a registered sex offender; and
- defines an online identifier as any electronic email address information or instant message, chat, social networking or other similar Internet communication name that the sex offender uses, but does not include the sex offender's social security number, date of birth or PIN number.

Submitted as:

Arizona

[Chapter 84 of 2007](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act Relating to Sex Offenders and  
2 Electronic Communication.”  
3

4           Section 2. [*People Required To Register; Procedure; Identification Card; Definitions.*]

5           A. A person who has been convicted of a violation or attempted violation of any of the  
6 following offenses or who has been convicted of an offense committed in another jurisdiction that  
7 if committed in this state would be a violation or attempted violation of any of the following  
8 offenses or an offense that was in effect before [September 1, 1978] and that, if committed on or  
9 after [September 1, 1978], has the same elements of an offense listed in this section or who is  
10 required to register by the convicting jurisdiction, within [ten days] after the conviction or within



11 [ten days] after entering and remaining in any county of this state, shall register with the sheriff of  
12 that county:

13 1. unlawful imprisonment pursuant to [insert citation] if the victim is under  
14 [eighteen] years of age and the unlawful imprisonment was not committed by the child's parent.

15 2. kidnapping pursuant to [insert citation] if the victim is under [eighteen] years of  
16 age and the kidnapping was not committed by the child's parent.

17 3. sexual abuse pursuant to [insert citation] if the victim is under [eighteen] years of  
18 age.

19 4. sexual conduct with a minor pursuant to [insert citation].

20 5. sexual assault pursuant to [insert citation].

21 6. sexual assault of a spouse if the offense was committed before [August 12,  
22 2005].

23 7. molestation of a child pursuant to [insert citation].

24 8. continuous sexual abuse of a child pursuant to [insert citation].

25 9. taking a child for the purpose of prostitution pursuant to [insert citation].

26 10. child prostitution pursuant to [insert citation].

27 11. commercial sexual exploitation of a minor pursuant to [insert citation].

28 12. sexual exploitation of a minor pursuant to [insert citation].

29 13. luring a minor for sexual exploitation pursuant to [insert citation].

30 14. sex trafficking of a minor pursuant to [insert citation].

31 15. a second or subsequent violation of indecent exposure to a person under  
32 [fifteen] years of age pursuant to [insert citation].

33 16. a second or subsequent violation of public sexual indecency to a minor under  
34 the age of [fifteen] years pursuant to [insert citation].

35 17. a third or subsequent violation of indecent exposure pursuant to [insert  
36 citation].

37 18. a third or subsequent violation of public sexual indecency pursuant to [insert  
38 citation].

39 19. a violation of [insert citation].

40 B. Before the person is released from confinement the [state department of corrections] in  
41 conjunction with the [department of public safety] and each county sheriff shall complete the  
42 registration of any person who was convicted of a violation of any offense listed under subsection  
43 A of this section. Within [three] days after the person's release from confinement, the [state  
44 department of corrections] shall forward the registered person's records to the [department of  
45 public safety] and to the sheriff of the county in which the registered person intends to reside.  
46 Registration pursuant to this subsection shall be consistent with subsection E of this section.

47 C. Notwithstanding subsection A of this section, the judge who sentences a defendant for  
48 any violation of [insert citation] or for an offense for which there was a finding of sexual  
49 motivation pursuant to [insert citation] may require the person who committed the offense to  
50 register pursuant to this section.

51 D. The court may require a person who has been adjudicated delinquent for an act that  
52 would constitute an offense specified in subsection A or C of this section to register pursuant to  
53 this section. Any duty to register under this subsection shall terminate when the person reaches  
54 [twenty-five] years of age.

55 E. A person who has been convicted of or adjudicated delinquent and who is required to  
56 register in the convicting state for an act that would constitute an offense specified in subsection A  
57 or C of this section and who is not a resident of this state shall be required to register pursuant to  
58 this section if the person is either:

59 1. employed full-time or part-time in this state, with or without compensation, for  
60 more than [fourteen] consecutive days or for an aggregate period of more than [thirty] days in a  
61 calendar year.

62 2. enrolled as a full-time or part-time student in any school in this state for more  
63 than [fourteen] consecutive days or for an aggregate period of more than [thirty] days in a calendar  
64 year. For the purposes of this paragraph, “school” means an educational institution of any  
65 description, public or private, wherever located in this state.

66 F. Any duty to register under subsection D or E of this section for a juvenile adjudication  
67 terminates when the person reaches [twenty-five] years of age.

68 G. The court may order the termination of any duty to register under this section on  
69 successful completion of probation if the person was under [eighteen] years of age when the  
70 offense for which the person was convicted was committed.

71 H. At the time of registering, the person shall sign or affix an electronic fingerprint to a  
72 statement giving such information as required by the [director of the department of public safety],  
73 including all names by which the person is known, any required online identifier and the name of  
74 any website or Internet communication service where the identifier is being used. The sheriff shall  
75 fingerprint and photograph the person and within [three] days thereafter shall send copies of the  
76 statement, fingerprints and photographs to the [department of public safety] and the chief of  
77 police, if any, of the place where the person resides. The information that is required by this  
78 subsection shall include the physical location of the person’s residence and the person’s address. If  
79 the person has a place of residence that is different from the person’s address, the person shall  
80 provide the person’s address, the physical location of the person’s residence and the name of the  
81 owner of the residence if the residence is privately owned and not offered for rent or lease. If the  
82 person receives mail at a post office box, the person shall provide the location and number of the  
83 post office box. If the person does not have an address or a permanent place of residence, the  
84 person shall provide a description and physical location of any temporary residence and shall  
85 register as a transient not less than every [ninety] days with the sheriff in whose jurisdiction the  
86 transient is physically present.

87 I. On the person’s initial registration and every year after the person’s initial registration,  
88 the person shall confirm any required online identifier and the name of any website or Internet  
89 communication service where the identifier is being used. The person shall obtain a new non-  
90 operating identification license or a driver license from the [motor vehicle division in the  
91 department of transportation] and shall carry a valid non-operating identification license or a  
92 driver license. Notwithstanding [insert citation], the license is valid for [one] year from the date of  
93 issuance, and the person shall submit to the [department of transportation] proof of the person’s  
94 address and place of residence. The [motor vehicle division] shall annually update the person’s  
95 address and photograph and shall make a copy of the photograph available to the [department of  
96 public safety] or to any law enforcement agency. The [motor vehicle division] shall provide to the  
97 [department of public safety] daily address updates for people required to register pursuant to this  
98 section.

99 J. Except as provided in subsection E or K of this section, the [clerk of the superior court]  
100 in the county in which a person has been convicted of a violation of any offense listed under  
101 subsection A of this section or has been ordered to register pursuant to subsection C or D of this  
102 section shall notify the sheriff in that county of the conviction within [ten] days after entry of the  
103 judgment.

104 K. Within [ten] days after entry of judgment, a court not of record shall notify the arresting  
105 law enforcement agency of an offender's conviction of a violation of [insert citation]. Within [ten]  
106 days after receiving this information, the law enforcement agency shall determine if the offender is  
107 required to register pursuant to this section. If the law enforcement agency determines that the

108 offender is required to register, the law enforcement agency shall provide the information required  
109 by [insert citation] to the [department of public safety] and shall make community notification as  
110 required by law.

111 L. A person who is required to register pursuant to this section because of a conviction for  
112 the unlawful imprisonment of a minor or the kidnapping of a minor is required to register, absent  
113 additional or subsequent convictions, for a period of [ten] years from the date that the person is  
114 released from prison, jail, probation, community supervision or parole and the person has fulfilled  
115 all restitution obligations. Notwithstanding this subsection, a person who has a prior conviction for  
116 an offense for which registration is required pursuant to this section is required to register for life.

117 M. A person who is required to register pursuant to this section and who is a student at a  
118 public or private institution of postsecondary education or who is employed, with or without  
119 compensation, at a public or private institution of postsecondary education or who carries on a  
120 vocation at a public or private institution of postsecondary education shall notify the county sheriff  
121 having jurisdiction of the institution of postsecondary education. The person required to register  
122 pursuant to this section shall also notify the sheriff of each change in enrollment or employment  
123 status at the institution.

124 N. At the time of registering, the sheriff shall secure a sufficient sample of blood or other  
125 bodily substances for Deoxyribonucleic Acid testing and extraction from a person who has been  
126 convicted of an offense committed in another jurisdiction that if committed in this state would be a  
127 violation or attempted violation of any of the offenses listed in subsection A of this section or an  
128 offense that was in effect before [September 1, 1978] and that, if committed on or after  
129 [September 1, 1978], has the same elements of an offense listed in subsection A of this section or  
130 who is required to register by the convicting jurisdiction. The sheriff shall transmit the sample to  
131 the [department of public safety].

132 O. Any person required to register under subsection A of this section shall register their  
133 required online identifier and the name of any website or Internet communication service where  
134 the identifier is being used or intends to use the identifier with the sheriff from and after  
135 [December 31, 2007], regardless of whether the person was required to register an identifier at the  
136 time of their initial registration under this section.

137 P. For the purposes of this section:

- 138 1. "address" means the location at which the person receives mail.
- 139 2. "required online identifier" means any electronic email address information or  
140 instant message, chat, social networking or other similar internet communication name, but does  
141 not include Social Security Number, date of birth, or PIN number.
- 142 3. "residence" means the person's dwelling place, whether permanent or temporary.  
143

144 Section 3. *[Notice of Moving from Place of Residence or Change of Name or Electronic*  
145 *Information; Forwarding of Information; Definitions.]*

146 A. Within [seventy-two] hours, excluding weekends and legal holidays, after moving from  
147 the person's residence within a county or after changing the person's name, a person who is  
148 required to register under this Act shall inform the sheriff in person and in writing of the person's  
149 new residence, address or new name. If the person moves to a location that is not a residence and  
150 the person receives mail anywhere, including a post office box, the person shall notify the sheriff  
151 of the person's address. If the person does not have an address or a permanent place of residence,  
152 the person shall register as a transient not less than every [ninety] days with the sheriff in whose  
153 jurisdiction the transient is physically present. Within [three] days after receipt of such  
154 information, the sheriff shall forward it to the [department of public safety] and the chief of police,  
155 if any, of the place from which the person moves, and shall forward a copy of the statement,

156 fingerprints and photograph of the person to the chief of police, if any, of the place to which the  
157 person has moved.

158 B. Within [seventy-two] hours after a person moves from a county in which the person is  
159 registered, the person shall notify in writing the sheriff of the county from which the person  
160 moves. If the person is subject to community notification requirements, the sheriff of the county  
161 from which the person moves shall advise the local law enforcement agency of the county to  
162 which the person moves of the move. If the person moves out of this state, the sheriff of the  
163 county from which the person moves shall advise the local law enforcement agency in the  
164 jurisdiction to which the person moves. The local law enforcement agency shall contact the  
165 [department of public safety] following [ten] days after being notified to determine if the person  
166 has reregistered. If the person has not reregistered, the local law enforcement agency shall notify  
167 the local law enforcement agency in the county in which the person last resided. Any law  
168 enforcement agency in the county in which the person last resided shall conduct an investigation  
169 and shall submit a report to the appropriate county attorney.

170 C. A person who is required to register pursuant to this Act shall notify the sheriff either in  
171 person or electronically within [seventy-two] hours, excluding weekends and legal holidays, after  
172 a person makes any change to any required online identifier, and before any use of a changed or  
173 new required online identifier to communicate on the internet. Within [three] days after receipt of  
174 the information, the sheriff shall forward the information to the [department of public safety].  
175 Within [three] days after receipt of the information from the sheriff, the [department of public  
176 safety] shall update the person's information in the [department of public safety database].

177 D. For the purposes of this section:

- 178 1. "address" means the location at which the person receives mail.
- 179 2. "required online identifier" means any electronic email address information or  
180 instant message, chat, social networking or other similar internet communication name, but does  
181 not include Social Security Number, date of birth, or PIN number.
- 182 3. "residence" means the person's dwelling place, whether permanent or temporary.  
183

184 Section 4. [*Internet Sex Offender Website; Investigation of Records; Immunity.*]

185 A. The [department of public safety] shall establish and maintain an Internet Sex Offender  
186 Website for offenders whose risk assessment has been determined to be a [level two or level  
187 three]. The purpose of the Internet Sex Offender Website is to provide sex offender information to  
188 the public.

189 B. The Internet Sex Offender Website shall include the following information for each  
190 convicted sex offender in this state who is required to register pursuant to section 1 of this Act:

- 191 1. the offender's name, address and age.
- 192 2. a current photograph.
- 193 3. the offense committed and notification level pursuant to [insert citation], if a risk  
194 assessment has been completed pursuant to [insert citation].

195 C. The [department of public safety] shall [annually] update on the Website the name,  
196 address and photograph of each sex offender.

197 D. The [department of public safety] shall maintain a separate database and search function  
198 on the Website that contains any required online identifier of sex offenders whose risk  
199 assessments have been determined to be a [level two or level three] and the name of any website  
200 or Internet communication service where the required online identifier is being used. This  
201 information shall not be publicly connected to the name, address and photograph of a registered  
202 sex offender on the Website.

203 E. The [department of public safety] may disseminate a registered sex offender's required  
204 online identifier and the name of any corresponding website or Internet communication service to

205 a business or organization that offers electronic communication services for comparison with  
206 information that is held by the requesting business or organization. The requesting business or  
207 organization shall notify the [department of public safety] when a comparison of the information  
208 indicates that a registered sex offender’s required online identifier is being used on the business's  
209 or organization's system. The requesting business or organization shall not further disseminate that  
210 the person is a registered sex offender.

211 F. The [motor vehicle division of the department of transportation] shall send copies of  
212 each sex offender’s non-operating identification license or driver license photograph to the  
213 [department of public safety] for inclusion on the Internet Sex Offender Website.

214 G. The [department of public safety] shall [annually] verify the addresses of all sex  
215 offender registration records contained within the state [criminal justice information system].  
216 Before including the address of a sex offender on the Website, the [department of public safety]  
217 shall confirm that the address is correct. To confirm a sex offender’s address, the [department]  
218 shall conduct a search of the state [criminal justice information system]. If this search does not  
219 provide the necessary confirmation, the [department] shall use alternative public and private sector  
220 resources that are currently used for criminal investigation purposes to confirm the address. The  
221 [department of public safety] is prohibited from using or releasing the information from the  
222 alternative public and private sector resources except pursuant to this section. A custodian or  
223 public or private sector resource that releases information pursuant to this subsection is not civilly  
224 or criminally liable in any action alleging a violation of confidentiality.

225 H. The [department of public safety] may petition the [superior court] for enforcement of  
226 subsection G of this section if a public or private sector resource refuses to comply. The court shall  
227 grant enforcement if the [department] has reasonable grounds to believe the records sought to be  
228 inspected are relevant to confirming the identity and address of a sex offender.

229 I. A person who provides or fails to provide information required by this section is not  
230 civilly or criminally liable unless the act or omission is wanton or willful.

231 J. For the purpose of this section “required online identifier” means any electronic email  
232 address information or instant message, chat, social networking or other similar Internet  
233 communication name, but does not include Social Security Number, date of birth, or PIN number.  
234

235 Section 5. [*Implementation.*] The [department of public safety] shall begin collection of  
236 online identifier information no later than [ninety] days after this Act is enacted. Penalties will not  
237 be imposed until [January 1, 2008], but sex offender registrants are encouraged to submit current  
238 online identity information before this date.  
239

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

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

242 Section 8. [*Effective Date.*] [Insert effective date.]  
243  
244

# Employing Illegal Aliens

This Act establishes penalties for knowingly employing an illegal alien. It defines “knowingly” as having actual knowledge that a person is an illegal alien or having a duty imposed by law to determine the immigration status of an illegal alien and failing to perform such duty. Violators can have their business license suspended.

The Act also permits local governments in the state to enter into a written agreement with the United States Department of Homeland Security to help enforce federal immigration laws concerning investigating, detaining, and removing illegal aliens.

Submitted as:

Tennessee

[Public Chapter No. 529](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Prohibit Employing Illegal  
2 Aliens.”

3  
4           Section 2. [*Definitions.*]

5           (a) As used in this section, unless the context otherwise requires:

6                   (1) “Commissioner” means the [commissioner of labor and workforce  
7 development].

8                   (2) “Department” means the [department of labor and workforce development].

9                   (3) “Employ” or “employment” means any work engaged in for compensation in  
10 money or other valuable consideration and for which a person paying the compensation for the  
11 work performed is required to file a “Form W-2” Wage and Tax Statement with the Federal  
12 Internal Revenue Service.

13                   (4) “Illegal alien” means a person who is at the time of employment neither an alien  
14 who is lawfully admitted for permanent residence in the United States pursuant to the Federal  
15 Immigration and Naturalization Act nor authorized to be employed by the Federal Immigration  
16 and Naturalization Act or the United States Attorney General.

17                   (5) “Knowingly” means having actual knowledge that a person is an illegal alien or  
18 having a duty imposed by law to determine the immigration status of an illegal alien and failing to  
19 perform such duty.

20                   (6) “Lawful resident alien” means a person who is entitled to lawful residence in  
21 the United States pursuant to the Federal Immigration and Naturalization Act.

22                   (7) “Lawful resident verification information” means the documentation that is  
23 required by the United States Department of Homeland Security when completing the  
24 employment eligibility verification form commonly referred to as the federal “Form I-9.”  
25 Documentation that later proves to be falsified, but that at the time of employment satisfies the  
26 requirements of the “Form I-9,” is lawful resident verification information.

27                   (8) “License” means any certificate, approval, registration or similar form of  
28 permission required by law.

29 (9) "Person" means an individual, corporation, partnership, association or any other  
30 legal entity.

31 (b) A person shall not knowingly employ, recruit or refer for a fee for employment, an  
32 illegal alien.

33 (c) A person has not violated subsection (b) with respect to a particular employee if the  
34 person:

35 (1) Requested from the employee, received, and documented in the employee  
36 record at least [fourteen (14) calendar days] after commencement of employment lawful resident  
37 verification information consistent with employer requirements under the Immigration Reform  
38 and Control Act of 1986; and

39 (2) The lawful resident verification information provided by the person later was  
40 determined to be false.

41 (d) A person has not violated subsection (b) with respect to a particular employee if the  
42 person verified the immigrant status of the person at least [fourteen (14) calendar days] after  
43 commencement of employment by using the Federal Electronic Work Authorization Verification  
44 Service provided by the United States Department of Homeland Security pursuant to the Federal  
45 Basic Pilot Program Extension and Expansion Act of 2003.

46 (e) If any state or local governmental agency, officer, employee or entity has reason to  
47 believe that a violation of subsection (b) has occurred, the agency, officer, employee or entity shall  
48 file a complaint with the [department]. Upon receipt of the complaint, the [commissioner] shall  
49 conduct an investigation. If there is substantial evidence that a violation of subsection (b) has  
50 occurred, the [commissioner] shall conduct a contested case hearing pursuant to the Uniform  
51 Administrative Procedures Act, complied in [insert citation], on the question of whether such  
52 person has violated subsection (b). If the [commissioner] or the [commissioner's] designee  
53 determines that there is clear and convincing evidence that a person has violated subsection (b)  
54 and such violation occurred while the person was acting within the scope of practice of a license  
55 issued by this state pursuant to [insert citation], the [commissioner] shall request an order  
56 consistent with [insert citation], requiring the appropriate regulatory board or local government  
57 with respect to business licensure pursuant to [insert citation], to revoke, suspend, or deny the  
58 person's license. The [commissioner] shall state in their findings of fact and conclusions of law  
59 whether there have been previous violations of subsection (b).

60 (1) For the first violation of subsection (b), the [commissioner] shall order that the  
61 regulatory board or local government suspend the person's license until the person shows to the  
62 satisfaction of the [commissioner] that the person is no longer in violation of subsection (b). Such  
63 showing may be made by the person filing a sworn statement with the [commissioner] stating that  
64 the person is no longer employing illegal aliens.

65 (2) For a second or subsequent violation of subsection (b) occurring within [three  
66 (3)] years from the issuance of the [commissioner's] first order, the [commissioner] shall order  
67 that the regulatory agency or local government suspend the license for [one (1)] year.

68  
69 Section 3. *[Inter-Branch Agreements to Enforce this Act.]*

70 (a) For purposes of enforcing federal immigration laws, including, if applicable, federal  
71 laws relating to the employment of illegal aliens, the legislative body of a municipality or county,  
72 or the chief law enforcement officer of the county upon approval by the governing legislative  
73 body, may enter into a written Memorandum of Understanding, in accordance with federal law,  
74 between the municipality or county and the United States Department of Homeland Security  
75 concerning the enforcement of federal immigration laws, detention and removals, and  
76 investigations in the municipality or county.

77 (b) If a Memorandum of Understanding with the United States Department of Homeland  
78 Security is executed pursuant to subsection (a), municipal and county law enforcement officers  
79 shall be designated from local law enforcement agencies which, by written designation and  
80 recommendation of a commanding officer, shall be trained pursuant to such Memorandum of  
81 Understanding. Funding for such training shall be provided pursuant to the Federal Homeland  
82 Security Appropriation Act of 2006, Public Law 109-90 or subsequent federal funding sources.

83

84 Section 4. [*Commissioner Authorized to Promulgate Rules and Regulations to Implement*  
85 *this Act.*] The [commissioner] is authorized to promulgate rules and regulations to effectuate the  
86 purposes of this Act. All such rules and regulations shall be promulgated in accordance with the  
87 provisions of [insert citation].

88

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

90

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

92

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



# Enhanced Drivers' Licenses and Identicards

According to Washington legislative staff, “The federal Intelligence Reform and Terrorism Prevention Act of 2004 mandated that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement a plan to require United States citizens and foreign nationals to present a passport or other secure document when entering the United States. In April 2005, the Departments of State and Homeland Security announced the Western Hemisphere Travel Initiative, which will require people entering or re-entering the United States to present a passport or other acceptable secure identification. When announcing the Western Hemisphere Travel Initiative, the Departments of State and Homeland Security identified the passport as the document of choice for entry or re-entry into the United States, but acknowledged that certain other documents might be acceptable in lieu of a passport.”

This Act permits the state department of licensing (DOL) to enter into a memorandum of understanding with a federal agency to facilitate border crossing between the state and Canada. The DOL may enter into an agreement with a Canadian province to implement a border crossing initiative. The DOL may issue an enhanced driver's license or identicard to an applicant who, in addition to meeting all other driver's license or identicard requirements, provides the DOL with proof of United States citizenship, identity, and state residency. The enhanced driver's license or identicard must include a one-to-many biometric matching system. The DOL must adopt rules and may set fees for the issuance of enhanced drivers' licenses and identicards.

Submitted as:

Washington

[Chapter 7, Laws of 2007](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act Relating to the Issuance of  
2 Enhanced Drivers' Licenses and Identicards to Facilitate Crossing the Canadian Border.”

3  
4           Section 2. [*Memorandum of Understanding, Enhanced Driver License, Identicard.*]

5           (1) The [department] may enter into a Memorandum of Understanding with any federal  
6 agency for the purposes of facilitating the crossing of the border between this state and the  
7 [Canadian province of British Columbia].

8           (2) The [department] may enter into an agreement with the [Canadian province of British  
9 Columbia] for the purposes of implementing a border-crossing initiative.

10           (3)   (a) The [department] may issue an enhanced driver's license or Identicard for the  
11 purposes of crossing the border between this state and the [Canadian province of British  
12 Columbia] to an applicant who provides the [department] with proof of: United States citizenship,  
13 identity, and state residency. The [department] shall continue to offer a standard driver's license  
14 and Identicard. If the [department] chooses to issue an enhanced driver's license, the [department]  
15 must allow each applicant to choose between a standard driver's license or Identicard, or an  
16 enhanced driver's license or Identicard.

17           (b) The [department] shall implement a one-to-many biometric matching system  
18 for the enhanced driver's license or Identicard. An applicant for an enhanced driver's license or

19 Identocard shall submit a biometric identifier as designated by the [department]. The biometric  
20 identifier must be used solely for the purpose of verifying the identity of the holders and for any  
21 purpose set out in [insert citation]. Applicants are required to sign a declaration acknowledging  
22 their understanding of the one-to-many biometric match.

23 (c) The enhanced driver’s license or Identocard must include reasonable security  
24 measures to protect the privacy of state residents, including reasonable safeguards to protect  
25 against unauthorized disclosure of data about this state’s residents. If the enhanced driver’s license  
26 or Identocard includes a Radio Frequency Identification Chip, or similar technology, the  
27 [department] shall ensure that the technology is encrypted or otherwise secure from unauthorized  
28 data access.

29 (d) The requirements of this subsection are in addition to the requirements  
30 otherwise imposed on applicants for a driver’s license or Identocard. The [department] shall adopt  
31 such rules as necessary to meet the requirements of this subsection. From time to time the  
32 [department] shall review technological innovations related to the security of identity cards and  
33 amend the rules related to enhanced driver’s licenses and Identocards as the [director] deems  
34 consistent with this section and appropriate to protect the privacy of residents of this state.

35 (e) Notwithstanding [insert citation], the [department] may make images associated  
36 with enhanced drivers’ licenses or Identocards from the negative file available to United States  
37 Customs and Border Agents for the purposes of verifying identity.

38 (4) The [department] may set a fee for the issuance of enhanced drivers’ licenses and  
39 Identocards under this section.

40  
41 Section 3. [*Statewide Education Campaign about this Act.*] The [department] shall develop  
42 and implement a statewide education campaign to educate citizens about the border crossing  
43 initiative authorized by this Act. The educational campaign must include information on the forms  
44 of travel for which the existing and enhanced driver’s license can be used. The campaign must  
45 include information on the time frames for implementation of laws that impact identification  
46 requirements at the border with [Canada].

47  
48 Section 4. [*Severability.*] [Insert severability clause.]

49  
50 Section 5. [*Repealer.*] [Insert repealer clause.]

51  
52 Section 6. [*Effective Date.*] [Insert effective date.]

# Fair and Legal Employment

This Act directs that an employer shall not intentionally employ an unauthorized alien or knowingly employ an unauthorized alien. On receipt of a complaint that an employer allegedly intentionally employs an unauthorized alien or knowingly employs an unauthorized alien, the attorney general or county attorney shall investigate. When investigating a complaint, the attorney general or county attorney shall verify the work authorization of the alleged unauthorized alien with the federal government pursuant to 8 United States Code Section 1373(c). A state, county or local official shall not attempt to independently make a final determination on whether an alien is authorized to work in the United States. An alien's immigration status or work authorization status shall be verified with the federal government pursuant to 8 United States Code Section 1373(c). If, after an investigation, the attorney general or county attorney determines that the complaint is not frivolous, the attorney general or county attorney shall notify United States Immigration and Customs Enforcement of the unauthorized alien. The attorney general or county attorney shall notify the local law enforcement agency of the unauthorized alien.

On February 7, 2008 the United States District Court for the District of Arizona dismissed a suit challenging the Act and also denied a temporary restraining order that would prohibit enforcing the Act.

Generally, the Court found:

- the Immigration Reform and Control Act (IRCA) expressly authorizes, rather than preempts, the licensing sanctions in the Act;
- the plain language of 8 U.S.C. § 1324a(h)(2) authorizes state licensing sanctions;
- the licensing sanction authorization is not conditioned on completed federal proceedings against the violator;
- the structure and purpose of IRCA do not support plaintiffs' restrictive interpretation of the savings clause;
- IRCA does not clearly evidence congressional intent to prevent states from independently revoking the business licenses of those who knowingly employ unauthorized aliens;
- the Act does not impermissibly regulate in the field of immigration;
- the Act does not conflict with the purposes and objectives of Congress;
- the Act provides employers with procedural due process;
- plaintiffs have not shown that their interpretation fails due process; and
- the Superior Court process is fair and adequate.

Submitted as:

Arizona

[Chapter 279 of 2007](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] This Act shall be cited as “The Fair and Legal Employment Act.”
- 2
- 3 Section 2. [*Definitions.*] As used in this Act:

4 1. “agency” means any [agency, department, board or commission] of this state or a  
5 county, city or town that issues a license for purposes of operating a business in this state.

6 2. “basic pilot program” means the Basic Employment Verification Pilot Program  
7 as jointly administered by the United States Department of Homeland Security and the Social  
8 Security Administration or its successor program.

9 3. “employee” means any person who performs employment services for an  
10 employer pursuant to an employment relationship between the employee and employer.

11 4. “employer” means any individual or type of organization that transacts business  
12 in this state, that has a license issued by an agency in this state and that employs [one or more]  
13 people who perform employment services in this state. Employer includes this state, any political  
14 subdivision of this state and self-employed people.

15 5. “intentionally” has the same meaning prescribed in [insert citation].

16 6. “knowingly employ an unauthorized alien” means the actions described in 8  
17 United States Code Section 1324a. This term shall be interpreted consistently with 8 United States  
18 Code Section 1324a and any applicable federal rules and regulations.

19 7. “license:”

20 (a) means any agency permit, certificate, approval, registration, charter or  
21 similar form of authorization that is required by law and that is issued by any agency for the  
22 purposes of operating a business in this state.

23 (b) includes:

24 (i) articles of incorporation under [insert citation].

25 (ii) a certificate of partnership, a partnership registration or articles  
26 of organization under [insert citation].

27 (iii) a grant of authority issued under [insert citation].

28 (iv) any transaction privilege tax license.

29 (c) does not include:

30 (i) any license issued pursuant to [insert citation] or rules adopted  
31 pursuant to those [titles].

32 (ii) any professional license.

33 8. “unauthorized alien” means an alien who does not have the legal right or  
34 authorization under federal law to work in the United States as described in 8 United States Code  
35 Section 1324a(h)(3).

36  
37 Section 3. *[Employment of Unauthorized Aliens; Prohibition; False and Frivolous*  
38 *Complaints; Violation; Classification; License Suspension and Revocation.]*

39 A. An employer shall not intentionally employ an unauthorized alien or knowingly  
40 employ an unauthorized alien.

41 B. On receipt of a complaint that an employer allegedly intentionally employs an  
42 unauthorized alien or knowingly employs an unauthorized alien, the [attorney general] or county  
43 attorney shall investigate whether the employer has violated subsection A. When investigating a  
44 complaint, the [attorney general] or county attorney shall verify the work authorization of the  
45 alleged unauthorized alien with the federal government pursuant to 8 United States Code Section  
46 1373(c). A state, county or local official shall not attempt to independently make a final  
47 determination on whether an alien is authorized to work in the United States. An alien's  
48 immigration status or work authorization status shall be verified with the federal government  
49 pursuant to 8 United States Code Section 1373(c). A person who knowingly files a false and  
50 frivolous complaint under this subsection is guilty of a [class 3 misdemeanor].

51 C. If, after an investigation, the [attorney general] or county attorney determines that the  
52 complaint is not frivolous:

53 1. The [attorney general] or county attorney shall notify the United States  
54 Immigration and Customs Enforcement of the unauthorized alien.

55 2. The [attorney general] or county attorney shall notify the local law enforcement  
56 agency of the unauthorized alien.

57 3. The [attorney general] shall notify the appropriate county attorney to bring an  
58 action pursuant to subsection d if the complaint was originally filed with the [attorney general].

59 D. An action for a violation of subsection A of this Section shall be brought against the  
60 employer by the county attorney in the county where the unauthorized alien employee is  
61 employed. The county attorney shall not bring an action against any employer for any violation of  
62 subsection A that occurs before [January 1, 2008]. A second violation of this section shall be  
63 based only on an unauthorized alien who is employed by the employer after an action has been  
64 brought for a violation of subsection A.

65 E. For any action in [superior court under this section] the court shall expedite the action,  
66 including assigning the hearing at the earliest practicable date.

67 F. On a finding of a violation of subsection A:

68 1. For a [first violation during a three year period] that is a knowing violation of  
69 subsection A, the court:

70 (a) shall order the employer to terminate the employment of all  
71 unauthorized aliens.

72 (b) shall order the employer to be subject to a [three year probationary  
73 period]. During the probationary period the employer shall file [quarterly] reports with the county  
74 attorney of each new employee who is hired by the employer at the specific location where the  
75 unauthorized alien performed work.

76 (c) shall order the employer to file a signed sworn affidavit with the county  
77 attorney within [three business days] after the order is issued. The affidavit shall state that the  
78 employer has terminated the employment of all unauthorized aliens and that the employer will not  
79 intentionally or knowingly employ an unauthorized alien. The court shall order the appropriate  
80 agencies to suspend all licenses subject to this subdivision that are held by the employer if the  
81 employer fails to file a signed sworn affidavit with the county attorney within [three business  
82 days] after the order is issued. All licenses that are suspended under this subdivision shall remain  
83 suspended until the employer files a signed sworn affidavit with the county attorney.  
84 Notwithstanding any other law, on filing of the affidavit the suspended licenses shall be reinstated  
85 immediately by the appropriate agencies for the purposes of this subdivision, the licenses that are  
86 subject to suspension under this subdivision are all licenses that are held by the employer and that  
87 are necessary to operate the employer's business at the employer's business location where the  
88 unauthorized alien performed work. If a license is not necessary to operate the employer's business  
89 at the specific location where the unauthorized alien performed work, but a license is necessary to  
90 operate the employer's business in general, the licenses that are subject to suspension under this  
91 subdivision are all licenses that are held by the employer at the employer's primary place of  
92 business. On receipt of the court's order and notwithstanding any other law, the appropriate  
93 agencies shall suspend the licenses according to the court's order. The court shall send a copy of  
94 the court's order to the [attorney general] and the [attorney general] shall maintain the copy  
95 pursuant to subsection G.

96 (d) may order the appropriate agencies to suspend all licenses described in  
97 subdivision (c) of this paragraph that are held by the employer for not to exceed ten business days.  
98 The court shall base its decision to suspend under this subdivision on any evidence or information  
99 submitted to it during the action for a violation of this subsection and shall consider the following  
100 factors, if relevant:

101 (i) the number of unauthorized aliens employed by the employer.

102 (ii) any prior misconduct by the employer.  
103 (iii) the degree of harm resulting from the violation.  
104 (iv) whether the employer made good faith efforts to comply with  
105 any applicable requirements.  
106 (v) the duration of the violation.  
107 (vi) the role of the directors, officers or principals of the employer in  
108 the violation.  
109 (vii) any other factors the court deems appropriate.

110 2. For a [first violation during a five year period] that is an intentional violation of  
111 subsection A, the court shall:

112 (a) order the employer to terminate the employment of all unauthorized  
113 aliens.  
114 (b) order the employer to be subject to a [five year probationary period.]  
115 During the probationary period the employer shall file [quarterly] reports with the county attorney  
116 of each new employee who is hired by the employer at the specific location where the  
117 unauthorized alien performed work.  
118 (c) order the appropriate agencies to suspend all licenses, described in  
119 subdivision (d) of this paragraph that are held by the employer for a minimum of [ten days]. The  
120 court shall base its decision on the length of the suspension under this subdivision on any evidence  
121 or information submitted to it during the action for a violation of this subsection and shall consider  
122 the following factors, if relevant:

123 (i) the number of unauthorized aliens employed by the employer.  
124 (ii) any prior misconduct by the employer.  
125 (iii) the degree of harm resulting from the violation.  
126 (iv) whether the employer made good faith efforts to comply with  
127 any applicable requirements.  
128 (v) the duration of the violation.  
129 (vi) the role of the directors, officers or principals of the employer in  
130 the violation.  
131 (vii) any other factors the court deems appropriate.

132 (d) order the employer to file a signed sworn affidavit with the county  
133 attorney. The affidavit shall state that the employer has terminated the employment of all  
134 unauthorized aliens and that the employer will not intentionally or knowingly employ an  
135 unauthorized alien. All licenses that are suspended under this subdivision shall remain suspended  
136 until the employer files a signed sworn affidavit with the county attorney. For the purposes of this  
137 subdivision, the licenses that are subject to suspension under this subdivision are all licenses that  
138 are held by the employer and that are necessary to operate the employer's business at the  
139 employer's business location where the unauthorized alien performed work. If a license is not  
140 necessary to operate the employer's business at the specific location where the unauthorized alien  
141 performed work, but a license is necessary to operate the employer's business in general, the  
142 licenses that are subject to suspension under this subdivision are all licenses that are held by the  
143 employer at the employer's primary place of business. On receipt of the court's order and  
144 notwithstanding any other law, the appropriate agencies shall suspend the licenses according to the  
145 court's order. The court shall send a copy of the court's order to the [attorney general] and the  
146 [attorney general] shall maintain the copy pursuant to subsection G.

147 3. For a [second violation of subsection A during the period of probation], the court  
148 shall order the appropriate agencies to permanently revoke all licenses that are held by the  
149 employer and that are necessary to operate the employer's business at the employer's business  
150 location where the unauthorized alien performed work. If a license is not necessary to operate the

151 employer's business at the specific location where the unauthorized alien performed work, but a  
152 license is necessary to operate the employer's business in general, the court shall order the  
153 appropriate agencies to permanently revoke all licenses that are held by the employer at the  
154 employer's primary place of business. On receipt of the order and notwithstanding any other law,  
155 the appropriate agencies shall immediately revoke the licenses.

156 G. The [attorney general] shall maintain copies of court orders that are received pursuant to  
157 subsection F and shall maintain a database of the employers who have a first violation of  
158 subsection A and make the court orders available on the [attorney general's] website.

159 H. On determining whether an employee is an unauthorized alien, the court shall consider  
160 only the federal government's determination pursuant to 8 United States Code Section 1373(c).  
161 The federal government's determination creates a rebuttable presumption of the employee's lawful  
162 status. The court may take judicial notice of the federal government's determination and may  
163 request the federal government to provide automated or testimonial verification pursuant to 8  
164 United States Code Section 1373(c).

165 I. For the purposes of this section, proof of verifying the employment authorization of an  
166 employee through the Basic Pilot Program creates a rebuttable presumption that an employer did  
167 not intentionally employ an unauthorized alien or knowingly employ an unauthorized alien.

168 J. For the purposes of this section, an employer who establishes that it has complied in  
169 good faith with the requirements of 8 United States Code Section 1324b establishes an affirmative  
170 defense that the employer did not intentionally or knowingly employ an unauthorized alien.

171  
172 Section 4. [*Employer Actions; Federal or State Law Compliance.*] This Act shall not be  
173 construed to require an employer to take any action that the employer believes in good faith would  
174 violate federal or state law.

175  
176 Section 5. [*Verification of Employment Eligibility; Basic Pilot Program.*] After [December  
177 31, 2007], every employer, after hiring an employee, shall verify the employment eligibility of the  
178 employee through the Basic Pilot Program.

179  
180 Section 6. [*Employer Notice.*] On or before [October 1, 2007], the [department of revenue]  
181 shall provide a notice to every employer that is required to withhold tax pursuant to [insert  
182 citation]. The notice shall explain the requirements of this Act, including the following:

183 1. A new state law prohibits employers from intentionally employing an unauthorized alien  
184 or knowingly employing an unauthorized alien.

185 2. For a [first violation] of this new state law during a [three year period] that is a knowing  
186 violation, the court will order the appropriate licensing agencies to suspend all licenses held by the  
187 employer unless the employer files a signed sworn affidavit with the county attorney within [three  
188 business days]. The filed affidavit must state that the employer has terminated the employment of  
189 all unauthorized aliens and that the employer will not intentionally or knowingly employ an  
190 unauthorized alien. A license that is suspended will remain suspended until the employer files a  
191 signed sworn affidavit with the county attorney. A copy of the court order will be made available  
192 on the [attorney general's] website.

193 3. For a [first violation] of this new state law during a [five year period] that is an  
194 intentional violation, the court will order the appropriate licensing agencies to suspend all licenses  
195 held by the employer for a minimum of [ten days]. The employer must file a signed sworn  
196 affidavit with the county attorney. The filed affidavit must state that the employer has terminated  
197 the employment of all unauthorized aliens and that the employer will not intentionally or  
198 knowingly employ an unauthorized alien. A license that is suspended will remain suspended until

199 the employer files a signed sworn affidavit with the county attorney. A copy of the court order will  
200 be made available on the [attorney general's] website.

201 4. For a [second violation] of this new state law, the court will order the appropriate  
202 licensing agencies to permanently revoke all licenses that are held by the employer.

203 5. Proof of verifying the employment authorization of an employee through the Basic Pilot  
204 Program, as defined in this Act, will create a rebuttable presumption that an employer did not  
205 violate the new state law.

206 6. After [December 31, 2007], every employer, after hiring an employee, is required to  
207 verify the employment eligibility of the employee through the basic pilot program as defined in  
208 this Act.

209 7. Instructions for the employer on how to enroll in the Basic Pilot Program, as defined in  
210 this Act.

211  
212 Section 7. [*Employer Sanctions Legislative Study Committee.*]

213 A. An [Employer Sanctions Legislative Study Committee] is established consisting of the  
214 following members:

215 1. [Three members of the senate who are appointed by the president of the senate,  
216 not more than two of whom shall be members of the same political party. The president of the  
217 senate shall designate one of these members to co-chair the committee].

218 2. [Three members of the house of representatives who are appointed by the  
219 speaker of the house of representatives, not more than two of whom shall be members of the same  
220 political party. The speaker of the house of representatives shall designate one of these members to  
221 co-chair the committee].

222 3. A citizen of this state appointed by the [president of the senate] who owns a  
223 business in this state with no more than [30 employees].

224 4. A citizen of this state appointed by the [speaker of the house of representatives]  
225 who owns a business in this state with more than [30 employees].

226 B. The [Committee] shall:

227 1. Examine the laws and regulations pertaining to employers sanctions in this state.  
228 2. Examine the effects of these laws and whether such laws are being properly  
229 implemented.

230 3. Examine if these laws are being applied to all businesses in this state in a fair  
231 manner.

232 4. Examine if the complaint process is being implemented in a fair and just manner.

233 5. Submit a report of its findings and recommendations to the [governor, the  
234 president of the senate and speaker of the house of representatives on or before December 31,  
235 2008] and submit a copy of its report to the [secretary of state] and the [director of the state,  
236 library archives and public records].

237 C. [Committee] members are not eligible to receive compensation or reimbursement of  
238 expenses.

239  
240 Section 8. [*Appropriation; Attorney General Enforcement; Exemption.*]

241 A. The sum of [\$100,000] is appropriated from the [state general fund] in [fiscal year  
242 2007-2008] to the [attorney general] for the purpose of enforcing any immigration related matters  
243 added by this Act.

244 B. The appropriation made in subsection A of this section is exempt from the provisions of  
245 [insert citation] relating to lapsing of appropriations.

246 C. The sum of [\$2,430,000] is appropriated from the [state general fund] in [fiscal year  
247 2007-2008] to the [department of administration] to be distributed to the county attorneys in this



248 state for the purpose of enforcing any immigration related matters and this Act. The [department  
249 of administration] shall distribute these monies to each county attorney as follows:

250 1. [\$1,430,000] to each county attorney of a county in this state having a population  
251 of [one million five hundred thousand] or more people.

252 2. [\$500,000] to each county attorney of a county in this state having a population  
253 of [eight hundred thousand or more people but less than one million five hundred thousand  
254 people].

255 3. The remainder of monies to be distributed as equally as possible to each county  
256 attorney of counties in this state having a population of less than [five hundred thousand people].

257 B. The sum of [\$70,000] is appropriated from the [state general fund] in [fiscal year 2007-  
258 2008] to the [department of revenue] for the purposes prescribed in section 3 of this Act.

259 C. The appropriation made in subsection A of this section is exempt from the provisions of  
260 [insert citation] relating to lapsing of appropriations.

261

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

263

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

265

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

# False Medicaid Claims

This Act provides a partial remedy for false Medicaid claims by providing specific procedures whereby the state, and private citizens acting for and on behalf of the state, may bring civil actions against people and entities who have obtained state funds through the submission of false or fraudulent claims to state agencies. This Act, in its provision for double and sometimes treble damages, is remedial in purpose, and is intended not to punish, but insofar as possible to make the state treasury whole for both the direct and indirect losses caused by the submission of false or fraudulent claims resulting in payments by this state or state agencies. By receiving a portion of the recovery in civil actions brought under the Act, “whistleblowers” are encouraged to come forward when they have information about the submission of false claims to the state Medicaid program, and rewarded when their initiative results in civil recoveries for this state.

Submitted as:

Georgia

[HB 551](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be known and may be cited as the “State False  
2 Medicaid Claims Act.”

3  
4           Section 2. [*Legislative Findings.*] The [General Assembly] recognizes that the submission  
5 of false or fraudulent claims to the state Medicaid Program can and does cause the state treasury to  
6 incur serious financial losses which results in direct harm to the taxpayers of this state. This Act is  
7 intended to provide a partial remedy for this problem by providing specific procedures whereby  
8 this state, and private citizens acting for and on behalf of this state, may bring civil actions against  
9 people and entities who have obtained state funds through the submission of false or fraudulent  
10 claims to state agencies. This Act, in its provision for double and sometimes treble damages, is  
11 remedial in purpose, and is intended not to punish, but insofar as possible to make the state  
12 treasury whole for both the direct and indirect losses caused by the submission of false or  
13 fraudulent claims resulting in payments by this state or state agencies. By receiving a portion of  
14 the recovery in civil actions brought under this Act, “whistleblowers” are encouraged to come  
15 forward when they have information about the submission of false claims to the Medicaid  
16 Program, and rewarded when their initiative results in civil recoveries for this state.

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

19           (1) ‘Claim’ includes any request or demand, whether under a contract or otherwise,  
20 for money, property, or services, which is made to the Medicaid Program, or to any officer,  
21 employee, fiscal intermediary, grantee or contractor of the Medicaid Program, or to other people  
22 or entities if it results in payments by the Medicaid Program, if the Medicaid Program provides or  
23 will provide any portion of the money or property requested or demanded, or if the Medicaid  
24 Program will reimburse the contractor, grantee, or other recipient for any portion of the money or  
25 property requested or demanded. A claim includes a request or demand made orally, in writing,  
26 electronically, or magnetically. Each claim may be treated as a separate claim.

27 (2) ‘Knowing’ and ‘knowingly’ mean that a person, with respect to information:  
28 (A) Has actual knowledge of the information;  
29 (B) Acts in deliberate ignorance of the truth or falsity of the information; or  
30 (C) Acts in reckless disregard of the truth or falsity of the information. No  
31 proof of specific intent to defraud is required.

32 (3) ‘Person’ means any natural person, corporation, company, association, firm,  
33 partnership, society, joint-stock company, or any other entity with capacity to sue or be sued.  
34

35 Section 4. [*Penalties for Presenting a False Claim for Payment to the State Medicaid*  
36 *Program.*]

37 (a) Any person who:

38 (1) Knowingly presents or causes to be presented to the Medicaid Program a false  
39 or fraudulent claim for payment or approval;

40 (2) Knowingly makes, uses, or causes to be made or used, a false record or  
41 statement to get a false or fraudulent claim paid or approved by the Medicaid program;

42 (3) Conspires to defraud the state Medicaid Program by getting a false or fraudulent  
43 claim allowed or paid;

44 (4) Has possession, custody, or control of property or money used, or to be used by  
45 the Medicaid Program and, intending to defraud the Medicaid Program or willfully to conceal the  
46 property, delivers, or causes to be delivered, less property than the amount for which the person  
47 receives a certificate of receipt;

48 (5) Being authorized to make or deliver a document certifying receipt of property  
49 used, or to be used, by the state Medicaid Program and, intending to defraud the Medicaid  
50 Program, makes or delivers the receipt without completely knowing that the information on the  
51 receipt is true;

52 (6) Knowingly buys, or receives as a pledge of an obligation or debt, public  
53 property from an officer or employee of the Medicaid Program, who lawfully may not sell or  
54 pledge the property; or

55 (7) Knowingly makes, uses, or causes to be made or used, a false record or  
56 statement to conceal, avoid, or decrease an obligation to pay, repay or transmit money or property  
57 to this state, shall be liable to this state for a [civil penalty of not less than \$5,500.00 and not more  
58 than \$11,000.00 for each false or fraudulent claim], plus [three times the amount of damages  
59 which the Medicaid Program sustains] because of the act of such person.

60 (b) The provisions of subsection (a) of this Code section notwithstanding, if the court finds  
61 that:

62 (1) The person committing the violation of this subsection furnished officials of the  
63 Medicaid Program with all information known to such person about the violation within [30] days  
64 after the date on which the defendant first obtained the information;

65 (2) Such person fully cooperated with any government investigation of such  
66 violation; and

67 (3) At the time such person furnished the state Medicaid Program with the  
68 information about the violation, no criminal prosecution, civil action, or administrative action had  
69 commenced under this Act with respect to such violation, and the person did not have actual  
70 knowledge of the existence of an investigation into such violation, the court may assess not more  
71 than [two times the amount of the actual damages which the Medicaid Program sustained because  
72 of the act of such person].

73 (c) A person violating any provision of this subsection shall also be liable to this state for  
74 all costs of any civil action brought to recover the damages and penalties provided under this Act.  
75

76 Section 5. *[Bringing Civil Actions Against People Who Violate this Act.]*

77 (a) The [Attorney General] shall be authorized to investigate suspected, alleged, and  
78 reported violations of this Act. If the [Attorney General] finds that a person has violated or is  
79 violating this Act, then the [Attorney General] may bring a civil action against such person under  
80 this article.

81 (b) Subject to the exclusions set forth in this section, a civil action under this Act may also  
82 be brought by a private person. A civil action shall be brought in the name of the state. The civil  
83 action may be dismissed only if the court and the [Attorney General] give written consent to the  
84 dismissal and state the reasons for consenting to such dismissal.

85 (c) Where a private person brings a civil action under this Act, such person shall follow the  
86 following special procedures:

87 (1) A copy of the complaint and written disclosure of substantially all material  
88 evidence and information the person possesses shall be served on the [Attorney General];

89 (2) The complaint shall be filed in camera, shall remain under seal for at least [60]  
90 days, and shall not be served on the defendant until the court so orders. The purpose of the period  
91 under seal shall be to allow the [Attorney General] to investigate the allegations of the complaint.  
92 The [Attorney General] may elect to intervene and proceed with the civil action within [60] days  
93 after it receives both the complaint and the material evidence and information;

94 (3) The [Attorney General] may, for good cause shown, move the court for  
95 extensions of the time during which the complaint remains under seal under paragraph (2) of this  
96 subsection. Any such motions may be supported by affidavits or other submissions in camera;

97 (4) Before the expiration of the [60] day period or any extensions obtained under  
98 paragraph (3) of this subsection, the [Attorney General] shall:

99 (A) Proceed with the civil action, in which case the civil action shall be  
100 conducted by the [Attorney General]; or

101 (B) Notify the court that it declines to take over the civil action, in which  
102 case the person bringing the civil action shall have the right to proceed with the civil action;

103 (5) The defendant shall not be required to respond to any complaint filed under this  
104 section until [30] days after the complaint is unsealed and served upon the defendant; and

105 (6) When a person brings a civil action under this subsection, no person other than  
106 the [Attorney General] may intervene or bring a related civil action based on the facts underlying  
107 the pending civil action.

108 (d) (1) If the [Attorney General] elects to intervene and proceed with the civil action,  
109 he or she shall have the primary responsibility for prosecuting the civil action, and shall not be  
110 bound by an act of the person bringing such civil action. Such person shall have the right to  
111 continue as a party to the civil action, subject to the limitations set forth in this subsection.

112 (2) The [Attorney General] may dismiss the civil action, notwithstanding the  
113 objections of the person initiating the civil action, if the person has been notified by the [Attorney  
114 General] of the filing of the motion and the court has provided the person with an opportunity for  
115 a hearing on the motion.

116 (3) The [Attorney General] may settle the civil action with the defendant  
117 notwithstanding the objections of the person initiating the civil action if the court determines, after  
118 a hearing, that the proposed settlement is fair, adequate, and reasonable under all the  
119 circumstances. Upon a showing of good cause, such hearing may be held in camera.

120 (4) Upon a showing by the [Attorney General] that unrestricted participation during  
121 the course of the litigation by the person initiating the civil action would interfere with or unduly  
122 delay the [Attorney General's] litigation of the case, or would be repetitious, irrelevant, or for  
123 purposes of harassment, the court may, in its discretion, impose limitations on the person's  
124 participation, such as:

- (A) Limiting the number of witnesses the person may call;
- (B) Limiting the length of the testimony of such witnesses;
- (C) Limiting the person's cross-examination of witnesses; or
- (D) Otherwise limiting the participation by the person in the litigation.

(e) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the civil action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(f) If the [Attorney General] elects not to proceed with the civil action, the person who initiated the civil action shall have the right to conduct the civil action. If the [Attorney General] so requests, he or she shall be served with copies of all pleadings filed in the civil action and shall be supplied with copies of all deposition transcripts. When a person proceeds with the civil action, the court may nevertheless permit the [Attorney General] to intervene at a later date for any purpose, including, but not limited to, dismissal of the civil action notwithstanding the objections of the person initiating the civil action if such person has been notified by the [Attorney General] of the filing of such motion and the court has provided such person with an opportunity for a hearing on such motion.

(g) Whether or not the [Attorney General] proceeds with the civil action, upon a showing by the [Attorney General] that certain actions of discovery by the person initiating the civil action would interfere with the [Attorney General's] investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than [60] days. Such a showing shall be conducted in camera. The court may extend the [60] day period upon a further showing in camera that the [Attorney General] has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(h) Notwithstanding subsections (b) and (c) of this section, the [Attorney General] may elect to pursue this state's claim through any alternate remedy available to the [Attorney General], including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the civil action shall have the same rights in such proceeding as such person would have had if the civil action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to a civil action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of this state, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(i) (1) If the [Attorney General] proceeds with a civil action brought by a private person under subsection (b) of this section, such person shall, subject to the second sentence of this paragraph, receive [at least 15 percent but not more than 25 percent of the proceeds of the civil action or settlement of the claim], depending upon the extent to which the person substantially contributed to the prosecution of the civil action. Where the civil action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the civil action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or [Attorney General] hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case [more than 10 percent of the proceeds], taking into account the significance of the information and the role of the person bringing such civil action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. The remaining proceeds shall be payable to an [Indigent Care Trust Fund] as defined under [insert citation] to be used for the purposes set forth

174 in [insert citation]. Any such person shall also receive an amount for reasonable expenses which  
175 the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All  
176 such expenses, fees, and costs shall be awarded against the defendant.

177 (2) If the [Attorney General] does not proceed with a civil action under this section,  
178 the person bringing the civil action or settling the claim shall receive an amount which the court  
179 decides is reasonable for collecting the civil penalty and damages. Such amount shall be not [less  
180 than 25 percent and not more than 30 percent of the proceeds of the civil action or settlement] and  
181 shall be paid out of such proceeds. The remaining proceeds shall be payable to the [Indigent Care  
182 Trust Fund] established under [insert citation] to be used for the purposes set forth in [insert  
183 citation]. Such person shall also receive an amount for reasonable expenses which the court finds to  
184 have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees,  
185 and costs shall be awarded against the defendant.

186 (3) Whether or not the [Attorney General] proceeds with the civil action, if the  
187 court finds that the civil action was brought by a person who planned and initiated the violation of  
188 this Act upon which the civil action was brought, then the court may, to the extent the court  
189 considers appropriate, reduce the share of the proceeds of the civil action which the person would  
190 otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that  
191 person in advancing the case to litigation and any relevant circumstances pertaining to the  
192 violation. If the person bringing the civil action is convicted of criminal conduct arising from his  
193 or her role in the violation of this Act, such person shall be dismissed from the civil action and  
194 shall not receive any share of the proceeds of the civil action. Such dismissal shall not prejudice  
195 the right of this state of Georgia to continue the civil action, represented by the [Attorney  
196 General].

197 (4) If the [Attorney General] does not proceed with the civil action and the person  
198 bringing the civil action conducts the civil action, the court may award to the defendant its  
199 reasonable attorney's fees and expenses against the person bringing the civil action if the  
200 defendant prevails in the civil action and the court finds that the claim of the person bringing the  
201 civil action was clearly frivolous, clearly vexatious, or brought primarily for purposes of  
202 harassment.

203 (5) The state shall not be liable for expenses which a private person incurs in  
204 bringing a civil action under this Act.

205 (j) For purposes of this subsection, 'public employee,' 'public official,' and 'public  
206 employment' shall include federal, state, and local employees and officials.

207 (1) No civil action may be brought under this Act by a person who is or was a  
208 public employee or public official if the allegations of such action are substantially based upon:

209 (A) Allegations of wrongdoing or misconduct which such person had a duty  
210 or obligation to report or investigate within the scope of his or her public employment or office; or

211 (B) Information or records to which such person had access as a result of  
212 his or her public employment or office.

213 (2) No court shall have jurisdiction over a civil action under this Act based upon  
214 the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in  
215 a legislative, administrative, or [Attorney General] report, hearing, audit, or investigation, or from  
216 the news media, unless the civil action is brought by the [Attorney General] or unless the person  
217 bringing the civil action is an original source of the information. For purposes of this paragraph,  
218 'original source' means an individual who has direct and independent knowledge of the  
219 information on which the allegations are based and has voluntarily provided the information to  
220 this state before filing a civil action under this section based on such information.

221 (3) In no event may a person bring a civil action under this Act which is based upon  
222 allegations or transactions which are the subject of a civil or administrative proceeding to which  
223 the state is already party.

224 (4) No civil action may be brought under this Act with respect to any claim relating  
225 to the assessment, payment, nonpayment, refund or collection of taxes pursuant to any provisions  
226 of [insert citation].

227 (k) In any civil action brought under this Act, the state or person bringing the civil action  
228 shall be required to prove all essential elements of the cause of civil action, including damages, by  
229 a preponderance of the evidence.

230 (l) Except as otherwise provided in this Act, all civil actions brought under this Act shall  
231 be governed by [insert citation].

232  
233 Section 6. [*Relief for Employees Harmed Because They Helped Enforce this Act.*]

234 Any employee who is discharged, demoted, suspended, threatened, harassed, or in any  
235 other manner discriminated against in the terms and conditions of employment by his or her  
236 employer because of lawful acts done by the employee, on behalf of the employee or others, in  
237 furtherance of a civil action under this Act, including investigation for, initiation of, testimony for,  
238 or assistance in a civil action filed or to be filed under this Act, shall be entitled to all relief  
239 necessary to make the employee whole. Such relief shall include reinstatement with the same  
240 seniority status such employee would have had but for the discrimination, two times the amount of  
241 back pay, interest on the back pay award, and compensation for any special damages sustained as  
242 a result of the discrimination, including litigation costs and reasonable attorney's fees. An  
243 employee may bring a civil action in an appropriate court of this state for the relief provided in this  
244 section.

245  
246 Section 7. [*Limitations on Filing a Civil Action Under this Act.*]

247 All civil actions under this Act shall be filed pursuant to [insert citation] within [six years  
248 after the date] the violation was committed, or [three years after the date] when facts material to  
249 the right of civil action are known or reasonably should have been known by the state official  
250 charged with the responsibility to act in the circumstances, whichever occurs last; provided,  
251 however, that in no event shall any civil action be filed more than [ten years after the date] upon  
252 which the violation was committed.

253  
254 Section 8. [*Civil Actions to Originate in Counties Where Defendant(s) Resides.*]

255 All civil actions brought against natural persons under this Act shall be brought in the  
256 county where the defendant or, in the case of multiple defendants, or of defendants who are not  
257 residents of this state, in any county where any one defendant resides, can be found, transacts  
258 business or commits an act in furtherance of the submittal of a false or fraudulent claim to the state  
259 Medicaid Program.

260  
261 Section 9. [*Severability.*] [Insert severability clause.]

262  
263 Section 10. [*Repealer.*] [Insert repealer clause.]

264  
265 Section 11. [*Effective Date.*] [Insert effective date.]

# Fast Track to College

This Act allows colleges and universities to offer programs to enable qualified students to earn a high school diploma while earning credits for a certificate program, an associate's or a baccalaureate degree. This Act also establishes a Double Up for College Dual High School-College Credit Program enabling high schools to offer at least two dual credit and advanced placement courses each year to high school students.

Submitted as:

Indiana

[HB 1347 \(enrolled version\)](#)

Status: Enacted into law in 2006.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “The Fast Track to College Act.”

2  
3           Section 2. [*Fast Track to College Program Established.*]

4           (a) A state educational institution as defined by [insert citation] may establish a High  
5 School Fast Track to College Program that offers qualified people an opportunity to earn a high  
6 school diploma while earning credits for a degree.

7           (b) To be eligible to earn a high school diploma under this section, an individual must be  
8 either:

9                   (1) at least [nineteen (19)] years of age and not enrolled in a school; or

10                   (2) at least [seventeen (17)] years of age and have consent from the high school the  
11 individual attended most recently. The school corporation in which an individual to whom this  
12 subdivision applies resides shall pay the individual's tuition for high school level courses taken at  
13 the state educational institution during each year the individual is included in the school  
14 corporation's [ADM].

15           (c) To complete the requirements for a high school diploma under this section, the  
16 individual must have:

17                   (1) passed:

18                           (A) the graduation examination given under [insert citation];

19                           (B) an examination for a General Educational Development Diploma as  
20 defined under [insert citation];

21                           (C) an examination equivalent to the graduation examination:

22                                   (i) administered by the state educational institution; and

23                                   (ii) approved by the state [department of education]; or

24                           (D) an examination that demonstrates the student is ready for college level

25 work:

26                                   (i) administered by the state educational institution; and

27                                   (ii) approved by the state [department of education]; and

28                   (2) completed the coursework necessary to meet:

29                           (A) the minimum high school course requirements established by the state  
30 [Board of Education]; and

31                           (B) the requirements of the state educational institution.



32 (d) In addition to meeting the requirements set forth in subsections (b) and (c), an  
33 individual must have the credits toward graduation that the individual successfully completed in  
34 high school transferred to the state educational institution.

35 (e) The state educational institution shall notify the [state board of education] that an  
36 individual has successfully completed the requirements of a program established under this  
37 section. Upon receiving the notification, the [state board] shall:

38 (1) grant to the individual a high school diploma that states the name of the state  
39 educational institution at which the individual earned the high school diploma; and

40 (2) provide the diploma to the state educational institution to award to the  
41 individual.

42 (f) A state educational institution that establishes a program under this section shall report  
43 annually to [insert agency] as defined by [insert citation] the number of program participants and  
44 diplomas granted.

45  
46 Section 3. *[Double Up For College Program Established.]*

47 (a) As used in this section of this Act:

48 (1) “postsecondary credit” means credit toward an associate degree, a baccalaureate  
49 degree, or a vocational certification granted by a state educational institution as defined under  
50 [insert citation] upon the successful completion of a course taken under the program.

51 (2) “program” refers to the Double Up For College Program established under this  
52 section of this Act.

53 (3) “secondary credit” means credit toward high school graduation requirements  
54 granted by a student's school corporation upon the successful completion of a course taken under  
55 the program.

56 (b) The Double Up For College Program is established for secondary school students in  
57 grades 11 and 12. School corporations as defined under [insert citation] and state educational  
58 institutions as defined under [insert citation] may collaborate to offer early college, dual credit, or  
59 dual enrollment programs that meet the educational objectives of the school corporation and are  
60 offered by the state educational institutions.

61 (c) A student may enroll in courses offered by a state educational institution under the  
62 program on a full-time or part-time basis during grade 11 or grade 12, or both.

63 (d) A state educational institution that participates in an early college, a dual credit, or a  
64 dual enrollment program may, by agreement with a school corporation:

65 (1) ensure that the content and rigor of each course offered is adequate to warrant  
66 providing credit to a student as if the student took the course as a student at the state educational  
67 institution;

68 (2) set the criteria for the faculty member, instructor, or other individual  
69 responsible for teaching each course with the:

70 (A) state educational institution responsible for hiring the personnel to  
71 instruct dual credit courses taught by the state educational institution; and

72 (B) school corporation responsible for hiring personnel to instruct dual  
73 credit courses taught by the high school; and

74 (3) determine with the school corporation the terms and conditions under which:

75 (A) students may be admitted to the program while attending high school;

76 (B) the state educational institution will award credit, if any, for specified  
77 courses successfully completed by students through the school corporation; and

78 (C) the school corporation will award credit, if any, for specified courses  
79 successfully completed through the state educational institution.

80 (e) A student is entitled to credit toward graduation requirements for each course the student  
81 successfully completes at the eligible institution.

82 (f) Courses offered under the program that are listed in the statewide core transfer library  
83 shall include courses that are transferable on all campuses of the state educational institutions in  
84 accordance with the principles in [insert citation] or articulation agreements that apply to any  
85 campus in the [state community college system] as defined in [insert citation] to draw from liberal  
86 arts and the technical, professional, and occupational fields; are among those eligible for the  
87 program.

88 (g) If a student passes a course through the program that is part of an articulation agreement  
89 between the state educational institution offering the course and other state educational  
90 institutions, the course shall transfer under the terms and standards of the articulation agreement  
91 between the state educational institutions.

92 (h) Based on the demand for enrollment in the identified courses and the resources  
93 available to the state educational institutions, the identified courses may be offered through:

94 (1) onsite instruction;

95 (2) telecommunication; or

96 (3) a combination of methods described in subdivisions (1) and (2).

97 (i) A school corporation may, by agreement with an institution of higher education, offer  
98 counseling concerning early college, dual credit, or dual enrollment courses that the school  
99 corporation considers appropriate, including:

100 (1) notice of the courses and schedule;

101 (2) available post-secondary credit;

102 (3) responsibilities of the student;

103 (4) any tuition and other costs;

104 (5) the consequences of the failure to complete a course; and

105 (6) opportunities presented by the program.

106 (j) A state educational institution may grant financial assistance to a student for courses  
107 taken under this program based on the student's:

108 (1) financial need; or

109 (2) academic achievement; or

110 (3) any other criteria.

111 (k) A state educational institution shall waive tuition for a student who is:

112 (1) eligible for free or reduced lunch in high school;

113 (2) accepted into the program; and

114 (3) accepted for admission to the state educational institution.

115 (l) A student shall receive postsecondary credit toward meeting the degree requirements at  
116 the state educational institution at which the student successfully completed a dual credit course. If  
117 the student enrolls in a state educational institution other than the state educational institution at  
118 which a dual credit course was completed, the other state educational institution:

119 (1) shall grant credit for courses that are in the core transfer library or subject to an  
120 articulation agreement; and

121 (2) may grant credit for other courses.

122 (m) After [June 30, 2008], a state educational institution or campus of a state educational  
123 institution that offers dual credit courses in liberal arts, professional, or career and technical  
124 disciplines must be accredited by the National Alliance of Concurrent Enrollment Partnerships.

125  
126 Section 4. [*Severability*.] [Insert severability clause.]

127  
128 Section 5. [*Repealer*.] [Insert repealer clause.]

129

130

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

# Foreclosure Consulting Statement

According to a Maryland Legislative Services Fiscal Note, Maryland Chapter 509 of 2005 provides some protection for homeowners who deal with foreclosure “rescuers.” It requires “foreclosure consultants” enter into consulting contracts with homeowners that lay out the terms of their agreements, give disclosures, and affords basic consumer protections such as a three-day rescission period.

Maryland Chapter 6 of 2008 prohibits a foreclosure consultant from engaging in, arranging, promoting, promising, soliciting, participating in, assisting with, or carrying out a “foreclosure rescue transaction.” A foreclosure rescue transaction is defined as a transaction in which a residence in default is conveyed by a homeowner who retains a legal or equitable interest in all or part of the property and that is designed or intended by the parties to prevent or delay foreclosure proceedings, either actual or anticipated. The interest retained by the homeowner includes an interest under a lease-purchase agreement, an option to reacquire the property, or any other legal or equitable interest in the property conveyed.

That Act requires a foreclosure consulting contract include a statement about the duty of the foreclosure consultant to provide the homeowner with written copies of any research that the consultant has regarding the value of the residence in default. This research includes any information about the sales of comparable properties or any appraisals.

Chapter 6 of 2008 requires a notice in all foreclosure consulting contracts specifying how much money a homeowner must pay; how much money a homeowner will receive, if any; and how much money the foreclosure consultant will receive from any source under the contract. The notice must also inform the homeowner about the right to rescind the contract and the homeowner’s liability after rescission. The bill specifies such contracts can be cancelled within 5 days after signing. After any such rescission, the homeowner must repay any money spent under the agreement on the homeowner’s behalf, within 60 days, along with interest calculated at 8% per year.

The Act requires a foreclosure consultant who provides real estate brokerage services to be licensed as such. The consultant must present a copy of that license to a homeowner before a foreclosure consulting contract is executed.

Maryland Chapter 6 of 2008 directs that if a tenancy agreement is included in a contract for the sale or transfer of a residence in default, the purchaser must provide to a homeowner a specific document about tenancy.

The Act prohibits a foreclosure consultant from receiving a commission for the sale of a residence in default that exceeds 8% of the sales price. The bill also prohibits such consultants from receiving any money to be held in escrow or on a contingent basis on behalf of the homeowner.

This Act grants the state Commissioner of Financial Regulation concurrent jurisdiction with the Attorney General to investigate, enforce, and enjoin action in cases involving violations of the Act. It also requires that the commissioner receive notice containing the name and address of any person convicted under the statute, along with a copy of the judgment, within 30 days of the conviction.

Submitted as:

Maryland

[Chapter 6, 2008](#)

Status: Enacted into law in 2008.

# Freedom of Speech in School-Sponsored Media

This Act establishes general criteria to protect student journalists in public schools or public colleges from censure by school or college officials because of the content of school-sponsored or school-affiliated media such as student newspapers, and regardless of whether such media is funded by the school or produced on school property. Generally, in order to censure, school or college officials must prove that publishing the material in question will produce “a material and substantial disruption of the orderly operation” of the school or college.

Submitted as:

Oregon

[Chapter 763 \(HB 3279\)](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Prevent Libelous,  
2 Slanderous, or Other Unlawful Speech in School Media.”

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

5                   (a) “Public High School” means a school as defined under [insert citation];

6                   (b) “Public Institution of Higher Education” means:

7                           (I) a community college; or

8                           (II) a state institution of higher education as defined under [insert citation];

9                   (c) “School-sponsored media” means materials that are prepared, substantially  
10 written, published or broadcast by student journalists, that are distributed or generally made  
11 available, either free of charge or for a fee, to members of the student body and that are prepared  
12 under the direction of a student media adviser. “School-sponsored media” does not include media  
13 intended for distribution or transmission solely in the classrooms in which they are produced.

14                   (d) “Student journalist” means a public high school student or a student enrolled in  
15 a public institution of higher education who gathers, compiles, writes, edits, photographs, records  
16 or prepares information for dissemination in school sponsored media.

17                   (e) “Student media adviser” means a person who is employed, appointed or  
18 designated by a school district or the public institution of higher education to supervise, or provide  
19 instruction relating to, school-sponsored media.

20  
21           Section 3. [*Rights of Student Journalists.*]

22                   (1) Except as provided in subsection (3) of this section, student journalists have the right to  
23 exercise freedom of speech and of the press in school-sponsored media, whether or not the media  
24 are supported financially by the school or by use of school facilities or are produced in conjunction  
25 with a class.

26                   (2) Student journalists are responsible for determining the news, opinion and feature  
27 content of school-sponsored media subject to the limitations of subsection (3) of this section. This  
28 subsection does not prevent a student media adviser from teaching professional standards of  
29 English and journalism to the student journalists.

30                   (3) Nothing in this section may be interpreted to authorize expression by students that:

31 (a) is libelous or slanderous;  
32 (b) constitutes an unwarranted invasion of privacy;  
33 (c) violates federal or state statutes, rules or regulations or state common law; or  
34 (d) so incites students as to create a clear and present danger of:  
35 (I) the commission of unlawful acts on or off school premises;  
36 (II) the violation of school policies; or  
37 (III) the material and substantial disruption of the orderly operation of the  
38 school.

39 (4) A school official in a public high school or public institution of higher education must  
40 base a forecast of material and substantial disruption on specific facts, including past experience in  
41 the public high school or public institution of higher education, and current events influencing  
42 student behavior, and not on undifferentiated fear or apprehension.

43 (5) Any student, individually or through the student's parent or guardian, enrolled in a  
44 public high school, or any student enrolled in a public institution of higher education, may  
45 commence a civil action to obtain damages under this subsection and appropriate injunctive or  
46 declaratory relief as determined by a court for a violation of subsections (1) or (2) of this section,  
47 the First Amendment to the United States Constitution, or under [insert citation] of the [state  
48 constitution]. Upon a motion, a court may award [\$100 in damages and injunctive and declaratory  
49 relief] to a prevailing plaintiff in a civil action brought under this subsection.

50 (6) Each school district that includes a public high school shall adopt a written student  
51 freedom of expression policy in accordance with this section. The policy shall include reasonable  
52 provisions for the time, place and manner of student expression.

53  
54 Section 4. [*Severability.*] [Insert severability clause.]

55  
56 Section 5. [*Repealer.*] [Insert repealer clause.]

57  
58 Section 6. [*Effective Date.*] [Insert effective date.]

# Health Plan Coverage of Prescriptions During Emergencies or Disasters

Prescription drugs are typically authorized on a “days supply” basis where the amount of medication is dispensed for a set number of days, typically a “30-day supply.” “Refill too soon” policies used by many health benefit plans restrict people from refilling prescription medications until a few days before the end of their current supply. This Act allows people in counties declared a disaster or under a state of emergency to refill current prescriptions under their health benefit plan without “refill too soon” limitations if their prescriptions were originally filled or refilled within a period 29 or days or less from the declaration of an emergency or disaster.

Submitted as:

North Carolina

[Session Law 2007-133](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Waive Limits on Refilling  
2           Prescriptions During a State of Emergency or Disaster.”

3  
4           Section 2. [*Coverage for Extra Prescriptions During a State of Emergency or Disaster.*]

5           (a) All health benefit plans as defined in [insert citation], and any optional plans or  
6           programs operating under [insert citation], and other stand-alone prescription medication plans  
7           issued by entities that are licensed by the [Department] shall have, when an event described in  
8           subdivision (b)(1) of this section occurs and the requirements of subdivisions (b)(2) and (b)(3) of  
9           this section are satisfied, a procedure in place to waive time restrictions on filling or refilling  
10          prescriptions for medication if requested by the covered person or subscriber. The procedure shall  
11          include waiver or override of electronic “refill too soon” edits to pharmacies and shall include  
12          provision for payment to the pharmacy in accordance with the prescription benefit plan and  
13          applicable pharmacy provider agreement. The procedure shall enable covered people or  
14          subscribers to:

15                   (1) Obtain one refill on a prescription if there are authorized refills remaining, or

16                   (2) Fill one replacement prescription for one that was recently filled, as prescribed  
17                   or approved by the prescriber of the prescription that is being replaced and not contrary to the  
18                   dispensing authority of the dispensing pharmacy.

19          (b) All entities subject to this section shall authorize payment to pharmacies for any  
20          prescription dispensed in accordance with subsection (a) of this section regardless of the date upon  
21          which the prescription had most recently been filled by a pharmacist, if all of the following  
22          conditions apply:

23                   (1) The [commissioner of insurance] issues a [Bulletin Advisory] notifying all  
24                   insurance carriers licensed in this state of a declared state of disaster or state of emergency in this  
25                   state as defined under [insert citation]. The [Department] shall provide a copy of the [Bulletin] to  
26                   the [state board of pharmacy].

27 (2) The covered person requesting coverage of the refill or replacement prescription  
28 resides in a county that:

29 a. Is covered under a proclamation of state of disaster issued by the  
30 [governor] or by a resolution of the [General Assembly] under [insert citation], or a declaration of  
31 major disaster issued by the President of the United States under the Robert T. Stafford Disaster  
32 Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended; or

33 b. Is declared to be under a state of emergency in a proclamation issued by  
34 the [governor] under [insert citation].

35 (3) The prescription medication is requested within [29 days] after the origination  
36 date of the conditions stated in subdivision (b)(1) of this section.

37 (c) The time period for the waiver of prescription medication refills may be extended in  
38 [30-day increments] by an order issued by the [Commissioner]. Additional refills still remaining  
39 on a prescription shall be covered by the insurer as long as consistent with the orders of the  
40 prescriber or authority of the dispensing pharmacy.

41 (d) This section does not excuse or exempt an insured or subscriber from any other terms  
42 of the policy or certificate providing coverage for prescription medications.

43 (e) Quantity limitations shall be consistent with the original prescription and the extra or  
44 replacement fill may recognize proportionate dosage use prior to the disaster.

45 (f) No requirements additional to those under the pharmacy provider agreement or the  
46 prescription benefit plan may be placed upon the provider for coverage of the replacement fill or  
47 extra fill.

48 (g) Nothing in this section is intended to affect the respective authority or scope of practice  
49 of prescribers or pharmacies.

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

51  
52 Section 4. [*Repealer.*] [Insert repealer clause.]

53  
54 Section 5. [*Effective Date.*] [Insert effective date.]  
55



# Homecare Option Program for the Elderly Statement

Connecticut Public Act No. 07-130 establishes a program and trust fund to help people pay for certain services which allows people to remain in their homes or live in a non-institutional setting as they age.

The Act allows people to establish Individual Savings Accounts within the trust fund and allows an account's designated beneficiary to withdraw funds from their accounts for qualified home care expenses. It exempts interest earned on trust fund accounts from the state income tax and makes any unspent funds remaining in an account part of the beneficiary's estate.

Covered services include companion services; adult day care; preparing meals; home-delivered meals; and transportation. These services must be performed by a licensed home care services provider, a homemaker or companion service registered with the state department of consumer protection, a personal care assistant, or licensed transportation services. These must also be recommended by a physician. Before a beneficiary can withdraw money from an account, a physician must certify to the trust that the beneficiary needs the qualified services to live independently in his or her home or another non-institutional setting.

Submitted as:

Connecticut

[Public Act No. 07-130](#)

Status: Enacted into law in 2007.

# Immigrant Survivors of Human Trafficking and Other Serious Crimes

According to Florida legislative staff, the federal Victims of Trafficking and Violence Protection Act of 2000 enables immigrant victims of human trafficking to get certain federal benefits once their status in the U.S. is determined.

Florida Chapter 2007-162 directs the state department of children and family services to establish a state-funded benefit program for immigrant victims of human trafficking, domestic violence and other serious crimes while their eligibility for federal benefits under the aforementioned federal Act is being determined.

The Florida Act:

- applies to “immigrant victims of human trafficking, domestic violence and other serious crimes” who have filed or are preparing to file specified federal applications;
- states that victims of human trafficking, domestic violence and other serious crimes are eligible for state funded benefits to the same extent as people who are admitted to the United States as refugees under specified circumstances;
- provides a list of documents that in addition to a sworn statement, suffices as evidence that an applicant has been a victim of human trafficking; and
- permits the state department of children and family services to develop a public awareness campaign about the program.

Submitted as:

Florida

[Chapter 2007-162](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be entitled “An Act to Provide State Services  
2 Relating to Immigrant Survivors of Human Trafficking and Other Serious Crimes.”

3  
4           Section 2. [*Services to Immigrant Survivors of Serious Crimes.*] The [Department of  
5 Children and Family Services] shall:

6           (1) Provide services to immigrant survivors of human trafficking, domestic violence, and  
7 other serious crimes, during the interim period between the time the survivor applies for a visa  
8 and receives such visa from the United States Department of Homeland Security or receives  
9 certification from the United States Department of Health and Human Services;

10           (2) Ensure that immigrant survivors of serious crimes are eligible to receive existing state  
11 and local benefits and services to the same extent that refugees receive those benefits and services;

12           (3) Ensure that immigrant survivors of serious crimes have access to state-funded services  
13 that are equivalent to the federal programs that provide cash, medical services, and social service  
14 for refugees;

15           (4) Provide survivors of serious crimes with medical care, mental health care, and basic  
16 assistance in order to help them secure housing, food, and supportive services;

17 (5) Create a state-funded component of the cash, medical, and social services programs for  
18 refugees for the purpose of serving immigrant survivors during the temporary period while they  
19 wait for federal processing to be completed;

20 (6) Provide that a sworn statement by a survivor is sufficient evidence for the purposes of  
21 determining eligibility if that statement is supported by at least one item of additional evidence,  
22 including, but not limited to:

23 (a) police and court records;

24 (b) news articles;

25 (c) documentation from a professional agency;

26 (d) physical evidence; or

27 (e) a statement from an individual having knowledge of the circumstances providing  
28 the basis for the claim; and

29 (7) Develop a public-awareness program for employers and other organizations that may  
30 come into contact with immigrant survivors of human trafficking in order to provide education  
31 and raise awareness of the problem.

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.]

# Immigration Status - Cooperating with Federal Officials

This Act is aimed at preventing local governments from designating their localities as sanctuaries for illegal aliens. The Act prohibits local governments from passing any ordinance or policy that limits or prohibits peace officers, local officials, or local government employees from communicating or cooperating with federal officials about the immigration status of people living in the state.

The Act requires peace officers who have probable cause to believe that an arrestee for a criminal offense is not legally present in the United States to report the person to the Federal Immigration and Customs Enforcement Office if the arrestee is not held at a detention facility. If the arrestee is held at a detention facility and the county sheriff reasonably believes that the arrestee is not legally present in the United States, the sheriff must report the arrestee to the Federal Immigration and Customs Enforcement Office.

This Act also prohibits local governments that violate the Act from receiving certain grants.

Submitted as:

Colorado

[Chapter 177 of 2006](#)

Status: Enacted into law in 2006.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act Requiring Local Officials to  
2 Cooperate with Federal Immigration Officials Regarding the Legal Status of People Residing in  
3 this State.”

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

6           (1) The [general assembly] hereby finds, determines, and declares that:

7                   (a) sanctuary policies are local government ordinances or policies that prohibit  
8 local officials, including peace officers, from communicating or cooperating with federal officials  
9 about the immigration status of people within the state;

10                   (b) the matters contained in this Act have important statewide ramifications for  
11 compliance with and enforcement of federal immigration laws;

12                   (c) sanctuary policies allow illegal immigrants to reside within this state and to  
13 undermine federal immigration law.

14           (2) the [general assembly] therefore declares that the matters addressed in this Act  
15 are matters of statewide concern.

16  
17           Section 3. [*Definitions.*] As used in this Act, “local government” means a town, city, or  
18 county.

19  
20           Section 4. [*Cooperating with Federal Officials Regarding Immigration Status.*]

21 (1) No local government, whether acting through its governing body or by an initiative,  
22 referendum, or any other process, shall enact any ordinance or policy that limits or prohibits a  
23 peace officer, local official, or local government employee from communicating or cooperating  
24 with federal officials with regard to the immigration status of any person within this state.

25 (2) (a) (i) A peace officer who has probable cause that an arrestee for a criminal  
26 offense is not legally present in the United States shall report such arrestee to the United States  
27 Immigration and Customs Enforcement Office if the arrestee is not held at a detention facility. If  
28 the arrestee is held at a detention facility and the county sheriff reasonably believes that the  
29 arrestee is not legally present in the United States, the sheriff shall report such arrestee to the  
30 Federal Immigration and Customs Enforcement Office.

31 (ii) This subsection (2) shall not apply to arrestees who are arrested for a  
32 suspected act of domestic violence as defined by [insert citation], until such time as the arrestee is  
33 convicted of a domestic violence offense.

34 (b) The governing body of each local government shall provide notice in writing to  
35 peace officers of the peace officers' duty to cooperate with state and federal officials with regards  
36 to enforcement of state and federal laws regarding immigration and to comply with paragraph (a)  
37 of this subsection. Each governing body shall provide written confirmation to the [general  
38 assembly] that it has provided such notice and shall annually, on or before [March 1] of each year,  
39 report to the [legislative council of the general assembly] the number of reports made to the United  
40 States Immigration and Customs Enforcement Office pursuant to this Act.

41 (c) The [general assembly] finds and declares that the [state attorney general] and  
42 all appropriate state and local law enforcement agencies should vigorously pursue all federal  
43 moneys to which the state may be entitled for the reimbursement of moneys spent to enforce  
44 federal immigration laws.

45 (3) a local government that violates subsection (1) of this section or paragraph (b) of  
46 subsection (2) of this section shall not be eligible to receive local government financial assistance  
47 through grants administered by the [department of local affairs] until such time as the ordinance or  
48 policy is no longer in effect.

49  
50 Section 5. [*Safety Clause.*] The [general assembly] hereby finds, determines, and declares  
51 that this Act is necessary for the immediate preservation of the public peace, health, and safety.

52  
53 Section 6. [*Severability.*] [Insert severability clause.]

54  
55 Section 7. [*Repealer.*] [Insert repealer clause.]

56  
57 Section 8. [*Effective Date.*] [Insert effective date.]

# Independence, Dignity and Choice in Long-Term Care

This Act is designed to balance funding between programs that pay for nursing home care and programs that pay for home and community-based care to people who need long-term care. The Act defines “funding parity between nursing home care and home and community-based care” to mean that the distribution of the amounts expended for these two categories of long-term care under the Medicaid program reflects an appropriate balance between the service delivery costs of those people whose needs and preferences can most appropriately be met in a nursing home and those people whose needs and preferences can most appropriately be met in a home or community-based setting.

The Act directs the state commissioners of aging and human services to adopt modifications to the Medicaid Long-Term Care Intake System to promote increased use of home and community-based services. These include:

- implementing a comprehensive data system to track long-term care expenditures and services and consumer profiles and preferences;
- implementing a system of statewide long-term care service coordination and management designed to minimize administrative costs, improve access to services, and minimize obstacles to the delivery of long-term care services to people in need;
- identifying home and community-based long-term care service models that are determined to be efficient and cost-effective alternatives to nursing home care, and develop clear and concise performance standards for those services;
- developing and implementing a comprehensive consumer assessment instrument that is designed to facilitate an expedited process to authorize the provision of home and community-based care to a person prior to completion of a formal financial eligibility determination;
- developing and implementing a comprehensive quality assurance system with appropriate and regular assessments that is designed to ensure that all forms of long-term care available to consumers in the state are financially viable, cost-effective, and promote and sustain consumer independence; and
- seeking to make information available to the general public, through print and electronic media, on the various forms of long-term care available in the state and the rights accorded to long-term care consumers by statute and regulation.

This Act establishes a 15-member Medicaid Long-Term Care Funding Advisory Council. The Advisory Council is to monitor the implementation of the Act to develop recommendations to help recruit and train a stable workforce of home care providers and for changes to provider reimbursement under Medicaid home and community-based care programs. The Advisory Council is to meet at least quarterly during each fiscal year until such time as the state commissioner of aging certifies to the Governor and the Legislature that funding parity has been achieved.

Finally, the Act establishes a Unique Global Budget Appropriation Line Item for Medicaid long-term care expenditures in the Annual Appropriations Act for FY 2008 and each succeeding fiscal year in order to provide flexibility to align these expenditures with services to be provided during each fiscal year as necessary to effectuate the purposes of the bill.

Submitted as:

New Jersey

[Chapter 23, Public Laws of 2006](#)

Status: Enacted into law in 2006.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as the “Independence, Dignity and Choice  
2 in Long-Term Care Act.”

3  
4           Section 2. [*Findings, Declarations Relative to Long-Term Care for Medicaid Recipients.*]  
5 The Legislature finds and declares that:

6           a. The current population of adults [60] years and older in this state is [insert  
7 number] and this number is expected to [double] in size over the next [25] years;

8           b. A primary objective of public policy governing access to long-term care in this  
9 state shall be to promote the independence, dignity and lifestyle choice of older adults and people  
10 with physical disabilities or Alzheimer’s disease and related disorders;

11           c. Many states are actively seeking to “rebalance” their long-term care programs  
12 and budgets in order to support consumer choice and offer more choices to older adults and people  
13 with disabilities to live in their homes and communities;

14           d. This state has been striving to redirect long-term care away from an over-reliance  
15 on institutional care toward home and community-based options;

16           e. It is still easier for older adults and people with disabilities to qualify for  
17 Medicaid long-term care coverage if they are admitted to a nursing home than if they seek to  
18 obtain services through one of the Medicaid home and community-based long-term care options  
19 available in this state;

20           f. Older adults and those with physical disabilities or Alzheimer’s disease and  
21 related disorders that require a nursing facility level of care should not be forced to choose  
22 between going into a nursing home or giving up the medical assistance that pays for their needed  
23 services, and thereby be denied the right to choose where they receive those services;

24           g. Eligibility for home and community-based long-term care services under  
25 Medicaid should be based upon the same income and asset standards as those used to determine  
26 eligibility for long-term care in an institutional setting; and

27           h. This bill ensures that, in the case of Medicaid-funded long-term care services,  
28 “the money follows the person” to allow maximum flexibility between nursing homes and home  
29 and community-based settings.

30  
31           Section 3. [*Definitions Relative to Long-Term Care for Medicaid Recipients.*] As used in  
32 this Act:

33           a. “Commissioner” means the [Commissioner of Health and Senior Services].

34           b. “Funding parity between nursing home care and home and community-based  
35 care” means that the distribution of the amounts expended for these two categories of long-term  
36 care under the Medicaid program reflects an appropriate balance between the service delivery  
37 costs of those people whose needs and preferences can most appropriately be met in a nursing  
38 home and those people whose needs and preferences can most appropriately be met in a home or  
39 community-based setting.

40           c. “Home and community-based care” means Medicaid home and community-  
41 based long-term care options available in this state, including, but not limited to, the [Community  
42 Care Program for the Elderly and Disabled, Assisted Living, Adult Family Care, Caregiver  
43 Assistance Program, Adult Day Health Services, Traumatic Brain Injury, AIDS Community Care  
44 Alternatives Program, Community Resources for People with Disabilities, and Community  
45 Resources for People with Disabilities Private Duty Nursing].

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Section 4. *[Process to Rebalance Allocation of Funding for Expansion of Long-Term Care Services; Pilot Program, Use Statewide.]*

(1) a. Beginning in [fiscal year 2008, and in each succeeding fiscal year through fiscal year 2013], the [commissioner of aging], in consultation with the [State Treasurer] and the [Commissioner of Human Services] and in accordance with the provisions of this section, shall implement a process that rebalances the overall allocation of funding within the [Department of Health and Senior Services] for long-term care services through the expansion of home and community-based services for people eligible for long-term care as defined by regulation of the [commissioner]. The expansion of home and community-based services shall be funded, within the existing level of appropriations, by diverting people in need of long-term care to allow maximum flexibility between nursing home placements and home and community-based services. The [State Treasurer], after review and analysis, shall determine the transfer of such funding to home and community-based services provided by the [Departments of Health and Senior Services] and [Human Services] as is necessary to effectuate the purposes of this Act.

b. Beginning in [fiscal year 2008], and in each succeeding [fiscal year through fiscal year 2013], funds equal to the amount of the reduction in the projected growth of Medicaid expenditures for nursing home care pursuant to paragraph (1) of this subsection, for state dollars only plus the percentage anticipated for programs and people that will receive federal matching dollars, shall be reallocated to home and community-based care through a global budget and expended solely for such care, until the [commissioner] determines that total Medicaid expenditures for long-term care have been sufficiently rebalanced to achieve funding parity between nursing home care and home and community-based care. Any funds so reallocated, which are not expended in the fiscal year in which they are reallocated, shall be reserved for expenditures for home and community-based care in a subsequent fiscal year.

c. Subject to federal approval, the home and community-based services to which funds are reallocated pursuant to this Act shall include services designated by the [commissioner], in consultation with the [Commissioner of Human Services] and the [Medicaid Long-Term Care Funding Advisory Council] established pursuant to this Act.

d. Notwithstanding the provisions of this subsection to the contrary, this Act shall not be construed to authorize a reduction in funding for Medicaid-approved services based upon the approved State Medicaid nursing home reimbursement methodology, including existing cost screens used to determine daily rates, annual rebasing and inflationary adjustments.

(2) The [commissioner], in consultation with the [Commissioner of Human Services], shall adopt modifications to the Medicaid Long-Term Care Intake System that promote increased use of home and community-based services. These modifications shall include the following:

a. commencing [March 1, 2007], on a pilot basis in [counties] pursuant to [insert citation]:

(i) the provision of home and community-based services available under Medicaid, as designated by the [commissioner], in consultation with the [Commissioner of Human Services] and the [Medicaid Long-Term Care Funding Advisory Council] established pursuant to this Act, pending completion of a formal Medicaid Financial Eligibility Determination for the recipient of services, for a period that does not exceed a time limit established by the [commissioner]; except that the cost of any services provided pursuant to this subparagraph to a person who is subsequently determined to be ineligible for Medicaid may be recovered from that person; and

(ii) the use of mechanisms for making fast-track Medicaid eligibility determinations, a revised clinical assessment instrument, and a computerized tracking system for Medicaid long-term care expenditures; and



95 b. commencing [March 1, 2008], expansion of the services and measures provided  
96 for in paragraph (1) of this subsection to all of the remaining counties in the state, subject to the  
97 [commissioner] conducting or otherwise providing for an evaluation of the pilot programs in  
98 [counties] prior to that date and determining from that evaluation that the pilot programs are cost-  
99 effective and should be expanded statewide.

100  
101 Section 5. *[Duties of Commissioner Relative to Report on Budget, Management Plan.]*

102 (1) The [commissioner], in consultation with the [Medicaid Long-Term Care Funding  
103 Advisory Council] established pursuant to this Act, shall:

104 a. No later than [October 1, 2007], present a report to the [Governor and the  
105 Legislature] pursuant to [insert citation], that provides a detailed budget and management plan for  
106 effectuating the purposes of this Act, including a projected schedule and procedures for the  
107 implementation and operation of the Medicaid long-term care expenditure reforms required  
108 pursuant thereto; and

109 b. No later than [January 1, 2008], present a report to the [Governor], and to the  
110 [Legislature] pursuant to [insert citation], that documents the reallocation of funds to home and  
111 community-based care pursuant to this Act, and present an updated report no later than [January 1]  
112 of each succeeding year until the [commissioner] determines that total Medicaid expenditures for  
113 long-term care have been sufficiently rebalanced to achieve funding parity between nursing home  
114 care and home and community-based care, at which point the [commissioner] shall document and  
115 certify to the [Governor and the Legislature] that such funding parity has been achieved.

116  
117 Section 6. *[Duties of Commissioner Relative to Funding Parity, Coordination, Assessment*  
118 *Instrument.]*

119 (1) The [commissioner], in consultation with the [Medicaid Long-Term Care Funding  
120 Advisory Council] established pursuant to this Act, shall:

121 a. Implement, by such time as the [commissioner] certifies to the [Governor and the  
122 Legislature] that funding parity has been achieved pursuant to this Act, a comprehensive data  
123 system to track long-term care expenditures and services and consumer profiles and preferences.  
124 The data system shall include, but not be limited to: the number of vacant nursing home beds  
125 annually and the number of nursing home residents transferred to home and community-based  
126 care pursuant to this Act; annual long-term care expenditures for nursing home care and each of  
127 the home and community based long-term care options available to Medicaid recipients; and  
128 annual percentage changes in both long-term care expenditures for, and the number of Medicaid  
129 recipients utilizing, nursing home care and each of the home and community based long-term care  
130 options, respectively;

131 b. Commence the following no later than [January 1, 2008]:

132 (i) implement a system of statewide long-term care service coordination and  
133 management designed to minimize administrative costs, improve access to services, and minimize  
134 obstacles to the delivery of long-term care services to people in need;

135 (ii) identify home and community based long-term care service models that  
136 are determined by the [commissioner] to be efficient and cost-effective alternatives to nursing  
137 home care, and develop clear and concise performance standards for those services for which  
138 standards are not already available in a home and community-based services waiver;

139 (iii) develop and implement with the [Commissioner of Human Services] a  
140 Comprehensive Consumer Assessment Instrument that is designed to facilitate an expedited  
141 process to authorize the provision of home and community-based care to a person through fast  
142 track eligibility prior to completion of a formal financial eligibility determination; and

143 (iv) develop and implement a comprehensive quality assurance system with  
144 appropriate and regular assessments that is designed to ensure that all forms of long-term care  
145 available to consumers in this state are financially viable, cost-effective, and promote and sustain  
146 consumer independence; and

147 c. Seek to make information available to the general public on a statewide basis,  
148 through print and electronic media, regarding the various forms of long-term care available in this  
149 state and the rights accorded to long-term care consumers by statute and regulation, as well as  
150 information about public and nonprofit agencies and organizations that provide informational and  
151 advocacy services to assist long-term care consumers and their families.

152  
153 Section 7. *[Medicaid Long-Term Care Funding Advisory Council.]*

154 (1) There is established the [Medicaid Long-Term Care Funding Advisory Council] within  
155 the [Department of Health and Senior Services]. The [advisory council] shall meet at least  
156 [quarterly each fiscal year] until such time as the [commissioner] certifies to the [Governor and the  
157 Legislature] that funding parity has been achieved pursuant to this Act, and shall be entitled to  
158 receive such information from the [Departments of Health and Senior Services, Human Services]  
159 and the [Treasury] as the [advisory council] deems necessary to carry out its responsibilities under  
160 this Act.

161 (2) The [advisory council] shall:

162 a. monitor, assess, and advise the [commissioner] about the implementation and  
163 operation of the Medicaid long-term care expenditure reforms and other provisions of this Act;  
164 and

165 b. develop recommendations for a program to recruit and train a stable workforce  
166 of home care providers, including recommendations for changes to provider reimbursement under  
167 Medicaid home and community-based care programs.

168 c. The [advisory council] shall comprise [15 members] as follows:

169 (1) the [commissioner], the [Commissioner of Human Services and the  
170 State Treasurer], or their designees, as ex officio members; and

171 (2) [12 public members] to be appointed by the [commissioner] as follows:  
172 [one person appointed upon the recommendation of AARP; one person upon the recommendation  
173 of the state Association of Area Agencies on Aging, one person upon the recommendation of the  
174 state Association of County Offices for the Disabled; one person upon the recommendation of the  
175 Health Care Association of the state; one person upon the recommendation of the state  
176 Association of Non-Profit Homes for the Aging; one person upon the recommendation of the state  
177 Hospital Association; one person upon the recommendation of the (Center for State Health  
178 Policy); one person upon the recommendation of the Elder Rights Coalition; one person upon the  
179 recommendation of the County Welfare Directors Association; one person upon the  
180 recommendation of the Adult Day Services Association; one person upon the recommendation of  
181 a labor union that represents home and community-based health care workers; and one person who  
182 is a representative of the home care industry].

183 d. The [advisory council] shall organize as soon as possible after the appointment  
184 of its members, and shall annually select from its membership a [chairman] who shall serve until  
185 his successor is elected and qualifies. The members shall also select a [secretary] who need not be  
186 a member of the [advisory council].

187 e. The [department] shall provide such staff and administrative support to the  
188 [advisory council] as it requires too carry out its responsibilities.

189  
190 Section 8. *[Waiver of Federal Requirements.]* The [Commissioner of Human Services],  
191 with the approval of the [Commissioner of Health and Senior Services], shall apply to the Federal

192 Centers for Medicare and Medicaid Services for any waiver of federal requirements, or for any  
193 state plan amendments or home and community-based services waiver amendments, which may  
194 be necessary to obtain federal financial participation for state Medicaid expenditures in order to  
195 effectuate the purposes of this Act.

196

197 Section 9. [*Tracking Expenditures.*] The [commissioner], in consultation with the  
198 [Commissioner of Human Services], shall track Medicaid long-term care expenditures necessary  
199 to carry out the provisions of this Act.

200

201 Section 10. [*Inclusion of Budget Line for Medicaid Long-Term Care Expenditures.*] There  
202 shall be included a Unique Global Budget Appropriation Line Item for Medicaid Long-Term Care  
203 Expenditures in the [Annual Appropriations Act] for [fiscal year 2008] and each succeeding fiscal  
204 year in order to provide flexibility to align these expenditures with services to be provided during  
205 each fiscal year as necessary to effectuate the purposes of this Act.

206

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

208

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

210

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

# Insurance Discounts for Wellness Programs

This Act enables small employer insurance carriers to offer premium credits or discounts to small companies whose employees participate in wellness or disease management programs.

Submitted as:

Iowa

[HF 790](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Promote Wellness Programs  
2 for Employees of Small Business and Associations of Small Businesses.”

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4           Section 2. [*Small Employer Incentives; Suspension or Modification of Premium Rate*  
5 *Restrictions.*]

6           a. In order to encourage voluntary participation in wellness or disease management  
7 programs, a small employer carrier as defined under [insert citation], may offer health insurance  
8 premium credits or discounts to a small employer as defined under [insert citation] or a bona fide  
9 association as defined under [insert citation], for the benefit of eligible employees of that small  
10 employer or association who participate in such a program. An employee shall not be penalized in  
11 any way for not participating in such a program.

12           b. The [commissioner] shall adopt, by rule or order, provisions allowing suspension or  
13 modification of premium rate restrictions to enable a small employer carrier to provide premium  
14 credits or discounts to a small employer or bona fide association based on measurable reductions  
15 in costs of that small employer or association, including but not limited to tobacco use cessation,  
16 participation in established wellness or disease management programs, and economies of  
17 acquisition or administration.

18           c. A small employer carrier may offer to transfer a small employer or bona fide association  
19 into a different class of business with a lower index rate based upon claims experience,  
20 implementation of managed care or wellness programs, or health status improvement of the small  
21 employer or bona fide association since issue.

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

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

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



26 (B) “Chief executive officer” means the elected or appointed officer granted the  
27 authority to declare a local civil preparedness emergency by the charter or ordinance of his or her  
28 political subdivision.

29 (2) On and after the effective date of this Act, each political subdivision within the state  
30 shall automatically be a participating member of this compact. A participating political  
31 subdivision may withdraw from this compact by adopting a resolution indicating its intent to do  
32 so. The political subdivision shall automatically be deemed to have withdrawn from this compact  
33 upon adoption of such a resolution. The chief executive officer of such political subdivision shall  
34 submit a copy of such resolution to the [Commissioner of Emergency Management and Homeland  
35 Security] not later than ten days after the adoption of the resolution. Nothing in this article shall  
36 preclude a participating political subdivision from entering into a supplementary mutual aid  
37 agreement with another political subdivision or affect any other inter-local municipal agreement,  
38 including any other mutual aid agreement, to which a political subdivision may be a party or  
39 become a party.

40 (3) In the event of a serious disaster affecting any political subdivision of the state, the  
41 chief executive officer of that political subdivision may declare a local civil preparedness  
42 emergency. The chief executive officer of such political subdivision shall notify the  
43 [Commissioner of Emergency Management and Homeland Security] of such declaration not later  
44 than twenty-four hours after such declaration. Such a declaration shall activate the emergency plan  
45 of operations of that political subdivision, as established under [insert citation], and authorize the  
46 request or furnishing of aid and assistance, including any aid and assistance provided under the  
47 intrastate mutual aid system described in this section. No immunity, rights or privileges shall be  
48 provided for any individual who self-dispatches in response to a declaration, without authorization  
49 by such individual’s participating political subdivision.

### 50 51 Article III.

#### 52 Responsibilities of the Local and Joint Organizations of Participating Political Subdivisions

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54 The participating political subdivisions shall ensure that the duties of their local or joint  
55 organizations, as described in [insert citation], include the following:

56 (1) Identifying potential hazards that could affect the participating political subdivisions  
57 using an identification system common to all participating jurisdictions;

58 (2) Conducting of joint planning, intelligence sharing and threat assessment development  
59 with contiguous participating political subdivisions, and conduct joint training at least biennially;

60 (3) Identifying and inventorying the current services, equipment, supplies, personnel and  
61 other resources related to planning, prevention, mitigation, response and recovery activities of the  
62 participating political subdivisions; and

63 (4) Adopting and implementing the standardized incident management system approved by  
64 the [Department of Emergency Management and Homeland Security].

### 65 66 Article IV.

#### 67 Implementation

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69 Any request for assistance made by the chief executive officer of a participating political  
70 subdivision who has declared a local civil preparedness emergency shall be made to the chief  
71 executive officers of other participating political subdivisions or their designees. Requests may be  
72 oral or in writing, and shall be reported to the [Commissioner of Emergency Management and  
73 Homeland Security] not later than twenty-four hours after the request. Oral requests shall be  
74 reduced to writing not later than forty-eight hours after the request.

75  
76 Article V.  
77 Conditions  
78

79 A participating political subdivision's obligation to provide assistance in the case of a  
80 declared local civil preparedness emergency is subject to the following conditions:

81 (1) A participating political subdivision shall have declared a local civil preparedness  
82 emergency;

83 (2) A responding participating political subdivision may withhold or recall resources to the  
84 extent it deems necessary to provide reasonable protection and services for its own jurisdiction;

85 (3) Personnel of a responding participating political subdivision shall continue under the  
86 command and control of their responding jurisdiction, including emergency medical treatment  
87 protocols, standard operating procedures and other protocols, but shall be under the operational  
88 control of the appropriate officials within the incident management system of the participating  
89 political subdivision receiving assistance; and

90 (4) Assets and equipment of a responding participating political subdivision shall continue  
91 under the control of the responding jurisdiction, but shall be under the operational control of the  
92 appropriate officials within the incident management system of the participating political  
93 subdivision receiving assistance.  
94

95 Article VI.  
96 Licenses, Certificates and Permits  
97

98 (1) If a person or entity holds a license, certificate or other permit issued by a participating  
99 political subdivision or the state evidencing qualification in a profession, mechanical skill or other  
100 skill, and the assistance of that person or entity is requested by a participating political  
101 subdivision, such person or entity shall be deemed to be licensed, certified or permitted in the  
102 political subdivision requesting assistance for the duration of the declared local civil preparedness  
103 emergency, subject to any limitations and conditions as may be prescribed by the chief executive  
104 officer of the participating political subdivisions, by executive order or otherwise; or by the person  
105 or entity's sponsor hospital.

106 (2) The officers, members and employees of the responding political subdivision,  
107 including, but not limited to, public works, firefighting, police or other assigned personnel  
108 rendering aid or assistance pursuant to the compact and this section shall have the same duties,  
109 rights, privileges and immunities as if they were performing their duties in the responding political  
110 subdivision.  
111

112 Article VII.  
113 Reimbursement  
114

115 (1) Participating political subdivisions shall maintain documentation of all assets provided.  
116 In the event of federal reimbursement to a requesting political subdivision, any political  
117 subdivision providing assistance under the compact and this section shall receive its appropriate  
118 share of said reimbursement.

119 (2) A participating political subdivision may donate assets of any kind to a requesting  
120 participating political subdivision. Unless requested in writing, no reimbursement shall be sought  
121 by a responding political subdivision from a requesting political subdivision that has declared a  
122 local civil preparedness emergency. Any written request for reimbursement must be made not later

123 than thirty calendar days after the response, except that notice of intent to seek reimbursement  
124 shall be given at the time the aid is rendered, or as soon as possible thereafter.

125 (3) Any dispute between political subdivisions regarding reimbursement shall be resolved  
126 by the parties not later than thirty days after written notice of the dispute by the party asserting  
127 noncompliance. If the dispute is not resolved within ninety days of the notice of the claim, either  
128 party may request that the dispute be resolved through arbitration. Any such arbitration shall be  
129 conducted under the Commercial Arbitration Rules of the American Arbitration Association.

130

## 131 Article VIII.

132

### 132 Liability

133

134 For the purposes of liability, all persons from a responding political subdivision under the  
135 operational control of the requesting political subdivision are deemed to be employees of the  
136 responding political subdivision. Neither the participating political subdivisions nor their  
137 employees, except in cases of willful misconduct, gross negligence or bad faith, shall be liable for  
138 the death of or injury to persons or for damage to property when complying or attempting to  
139 comply with the intrastate mutual aid system.



# Job Creation Through Educational Opportunity

This Act creates a program to reimburse education costs for residents who obtain an associate degree or a bachelor's degree in the state, and live, work and pay taxes in the state thereafter.

Submitted as:

Maine

[Chapter 428-C of 2007](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Encourage Job Creation  
2 Through Educational Opportunity.”

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

5           1. “Accredited junior college, college or university” means:

6                   A. any campus of the [state community college system];

7                   B. any campus of the [state university];

8                   C. any educational institution that is located in this state and has authorization to  
9 confer an associate degree or a bachelor's degree, in accordance with [insert citation];

10                  D. any educational institution that is located in this state and is exempted from  
11 [insert citation]; and

12                  E. any educational institution that is located in this state and is operating under a  
13 Certificate of Temporary Approval from the [state board] under [insert citation], to the extent that  
14 a student is ultimately able either to obtain an associate or a bachelor's degree at that institution or  
15 to transfer to and obtain a degree from an institution described in paragraphs A to E.

16           2. “Benchmark Loan Payment” means the figure described in section 3 (2)(C) of this Act.

17           3. “Educational institution” has the same meaning as in [insert citation].

18           4. “Educational opportunity tax credit” means the tax credit provided for in Section 4 of  
19 this Act.

20           5. “Resident” means an individual who qualifies as a state resident under [insert citation].

21           6. “Opportunity contract” means the contract described in section 3 (3) of this Act.

22           7. “Principal cap” means the cap described in section 3 (2) of this Act.

23  
24           Section 3. [*Job Creation Through Educational Opportunity Program Established.*]

25           1. The Job Creation Through Educational Opportunity Program, referred to in this Act as  
26 “the program,” is created to reimburse education-related costs for residents of this state who obtain  
27 an associate degree or a bachelor's degree in this state, and live, work and pay taxes in this state  
28 thereafter. The program is designed to achieve the following goals:

29                   A. promote economic opportunity for people in this state by ensuring access to the  
30 training and higher education that higher-paying jobs require;

31                   B. bring more and higher-paying jobs to this state by increasing the skill level of  
32 this state's workforce;

33 C. offer educational opportunity and retraining to people impacted by job loss,  
34 workplace injury, disability or other hardship;

35 D. keep young people in this state through incentives for educational opportunity  
36 and creation of more high-paying jobs; and

37 E. accomplish all of the goals in this subsection with as little bureaucracy as  
38 possible.

39 2. A principal cap limits the loan principal that can serve as the basis for claiming the  
40 Educational Opportunity Tax Credit. The cap is based on in-state tuition and mandatory fees for  
41 either the state community college system or the state university system, depending on whether the  
42 opportunity contract is for pursuit of an associate degree or of a bachelor's degree, respectively.

43 A. For an individual earning a degree from the [state community college system] or  
44 from the [state university], the relevant financial aid office shall certify, once the individual has  
45 earned the degree, whether or not the total principal of loans the individual received as part of that  
46 individual's financial aid package exceeds the cost of in-state tuition and mandatory fees incurred  
47 in pursuit of the degree. That cost constitutes the principal cap for such an individual.

48 B. For an individual earning a degree from any other accredited [state] junior  
49 college, college or university, the relevant financial aid office shall certify, once the individual has  
50 earned the degree, whether or not the total principal of loans the individual received as part of that  
51 individual's financial aid package exceeds the published in-state tuition and mandatory fees for  
52 full-time enrollment in the [state community college system] or in the [state university system],  
53 depending on whether the degree is an associate degree or a bachelor's degree, respectively,  
54 during the relevant years. The published in-state tuition and mandatory fees constitute the  
55 principal cap for such an individual. If the individual has not attended full time throughout the  
56 pursuit of that individual's degree, an appropriate principal cap must be determined in a manner  
57 consistent with the principles set out in this subsection.

58 C. For an individual whose student loans exceed the principal cap, a benchmark  
59 loan payment must be calculated as follows. The financial aid office shall calculate what the  
60 monthly payment would be on a loan for the amount of the principal cap, to be paid over [10]  
61 years, at the interest rate offered for federal Stafford loans under 20 United States Code, Section  
62 1077a, during the individual's last year of enrollment. The benchmark loan payment must be  
63 specified on the individual's [Opportunity Contract].

64 3. The [state board] shall draft an [Opportunity Contract] for use in enrolling people in the  
65 program. The terms of the [Opportunity Contract] must require an individual who wishes to  
66 participate in the program to:

67 A. certify that that individual is a resident of this state;

68 B. agree to attend and to obtain a specified degree, either an associate degree or a  
69 bachelor's degree, from an accredited [state] junior college, college or university. The individual  
70 need not obtain the degree from the institution in which that individual originally enrolled, so long  
71 as all course work toward the degree is performed at accredited [state] junior colleges, colleges or  
72 universities;

73 C. agree to live in this state while pursuing the degree. The individual shall also  
74 agree to live in this state after obtaining the degree during any period when that individual seeks to  
75 take advantage of the Educational Opportunity Tax Credit;

76 D. agree to maintain records relating to loan payments claimed under the  
77 Educational Opportunity Tax Credit as defined under [insert citation] for [5] years after those  
78 payments are claimed; and

79 E. with respect to educational loans, agree to the following:

80 (1) the individual may claim the Educational Opportunity Tax Credit only  
81 with respect to loans that are part of that individual's financial aid package and that have a term of  
82 at least [8] years;

83 (2) if the individual in any way accelerates repayment, the individual  
84 forfeits any right to claim an Educational Opportunity Tax Credit for that taxable year or any  
85 future taxable year; and

86 (3) the individual may refinance said loans only if they remain separate  
87 from other debt and if the effect of the refinancing is to decrease both the annual repayment and  
88 the total remaining indebtedness.

89 F. In exchange for the consideration outlined in paragraphs B to E, the state shall  
90 agree to permit the individual to take advantage of the Educational Opportunity Tax Credit.

91 G. The [Opportunity Contract] must leave space for the accredited state junior  
92 college, college or university to certify that the individual has obtained the relevant degree, and to  
93 certify whether or not the loan principal that the individual incurs in pursuing the relevant degree  
94 exceeds the principal cap.

95 4. The Program must be administered as follows.

96 A. Any resident of this state who gains admission to an accredited state junior  
97 college, college or university and who receives financial aid in the form of loans must have the  
98 opportunity to participate in the program. The financial aid office of the relevant institution shall  
99 offer to such people the chance to sign an [Opportunity Contract] with the state. The financial aid  
100 office shall retain the [Opportunity Contract] until the individual obtains the degree.

101 B. When the individual obtains the degree, the individual shall specify on the  
102 [Opportunity Contract] the source, principal amount, interest rate and term of any loans that are  
103 part of the individual's financial aid package. The [Opportunity Contract] must contain  
104 certification that the individual has obtained the relevant degree and must specify whether the  
105 individual's loans exceed the principal cap and, if appropriate, what the benchmark loan payment  
106 is. The individual shall then file the [Opportunity Contract] with the [Secretary of State]. Every  
107 accredited [state] public junior college, college and university located in this state shall develop  
108 procedures to facilitate this process, in consultation with the [Secretary of State].

109 C. When the individual files the [Opportunity Contract] with the [Secretary of  
110 State] pursuant to paragraph B, that individual becomes eligible to claim the Educational  
111 Opportunity Tax Credit, subject to the requirements of this Act. The individual may thereafter take  
112 advantage of any forbearance or deferment provisions in the relevant loan agreements without  
113 forfeiting the right to claim the Educational Opportunity Tax Credit when the individual resumes  
114 repayment.

115 5. The program must commence [the first semester after] the effective date of this Act.  
116 State residents who when the program commences are enrolled in an associate or a bachelor's  
117 degree program at an accredited junior college, college or university, may participate, subject to  
118 the same essential terms as other program participants. When such an individual obtains the  
119 relevant degree, it must be specified in the individual's [Opportunity Contract] what percentage of  
120 the course work completed in pursuit of the degree was performed while the individual was  
121 participating in the program. The principal cap and benchmark loan payment must be calculated in  
122 the ordinary way as provided in this Act, but the individual must then apply the percentage in this  
123 subsection to actual payments or to the benchmark loan payment, whichever applies, in  
124 determining the amount the individual can claim under the Educational Opportunity Tax Credit for  
125 a given year.

126 6. It is the intent of the [Legislature] that neither the existence of the program nor the  
127 benefits provided under the Educational Opportunity Tax Credit serve as justification to decrease  
128 other funds appropriated or allocated to accredited [state] junior colleges, colleges or universities,

129 including institutions in the [state community college system] and the [state university system], or  
130 to other higher education programs.

131 7. The [state board] shall adopt routine technical rules as necessary to carry out the  
132 purposes of this Act.

133  
134 Section 4. [*Credit for Educational Opportunity.*]

135 1. Definitions. As used in this section of this Act:

136 A. “Benchmark loan payment” has the same meaning as in section 2 of this Act.

137 B. “Employer” has the same meaning as the term “employing unit,” as defined in  
138 [insert citation].

139 C. “Full Time” employment means employment with a normal workweek of [32]  
140 hours or more.

141 D. “Part Time” employment means employment with a normal workweek of  
142 [between 16 and 32] hours.

143 E. “Qualified Employee” means an employee who is eligible for the credit provided  
144 in this section and who is employed at least part time.

145 F. “Opportunity Contract” means the contract described in section 3 of this Act.

146 G. “Opportunity Program Participant” means an individual who enters into an  
147 Opportunity Contract with the state, obtains the specified degree and complies with the  
148 requirements under section 3 of this Act.

149 H. “Resident Individual” has the same meaning as in [insert citation].

150 I. “Seasonal Employment” has the same meaning as in [insert citation] and in  
151 regulations promulgated under [insert citation].

152 J. “Term of Employment” includes all months when the individual is actually  
153 employed. It includes time periods when an individual is on leave or vacation. It extends to the full  
154 year for people working for employers who customarily operate only during a regularly recurring  
155 period of [9 months or more in a calendar year]. For people working for employers who  
156 customarily operate only during regularly recurring periods of [less than 9 months in a calendar  
157 year], including seasonal employment, the Term of Employment extends only to time periods  
158 when the individual is actually working.

159 2. A taxpayer constituting an Opportunity Program Participant or an employer of a  
160 qualified employee is allowed a credit against the tax imposed by this section of this Act for each  
161 taxable year under the terms established in this section. The credit is created to implement the Job  
162 Creation Through Educational Opportunity Program established under section 3 of this Act. The  
163 credit may not reduce the tax otherwise due under this Section to less than zero. A taxpayer  
164 entitled to the credit for any taxable year may carry over and apply to the tax liability for any [one  
165 or more]of the next succeeding [10] years the portion, as reduced from year to year, of any unused  
166 credits. More than [one] taxpayer may claim a credit based on loan payments actually made to a  
167 relevant lender or lenders to benefit a single opportunity program participant, but no [2] taxpayers  
168 may claim the credit based on the same payment.

169 3. The following provisions govern the calculation of the credit in this section.

170 A. If the relevant Opportunity Program Participant’s [Opportunity Contract] limits  
171 the amount of the credit to a benchmark loan payment, and the relevant Opportunity Program  
172 Participant’s actual monthly payment due is higher than that amount, then the credit claimed may  
173 not exceed the product of the benchmark loan payment and the number of months in which the  
174 taxpayer made loan payments.

175 B. If the relevant Opportunity Program Participant’s [Opportunity Contract]  
176 certifies that the principal for the relevant loans is at or below the level of the principal cap, or if  
177 the relevant opportunity program participant’s actual monthly payment is below the benchmark

178 loan payment, the taxpayer may claim a credit based only on regularly scheduled loan payments  
179 actually made.

180 C. If the credit is claimed on behalf of an individual who was already enrolled in an  
181 associate or a bachelor's degree program at an accredited junior college, college or university, as  
182 defined in section 1 of this Act, on the commencement of the Job Creation Through Educational  
183 Opportunity Program under section 3 of this Act, the percentage figure listed in the [Opportunity  
184 Contract] must be applied to the amount determined under paragraph A or B.

185 4. An Opportunity Program Participant may claim the credit only if the participant is a  
186 resident individual. The participant may claim the credit based only on regular payments made  
187 during months in which the individual was working for an employer located in this state. A  
188 married couple filing jointly under [insert citation], may claim the credit only to the extent that the  
189 spouse on whose behalf the credit is claimed meets these requirements.

190 5. A taxpayer constituting an employer may claim the credit under this section under the  
191 following circumstances. The employer may undertake to make partial or full loan payments  
192 directly to the relevant lender or lenders on behalf of a qualified employee, having taken  
193 reasonable steps to ascertain that the employee is in fact a qualified employee, and may claim a  
194 credit based on amounts that came due and were paid by the employer during the term of  
195 employment. To receive the credit, the employer must retain for [5] years any proof of eligibility  
196 that the employee or independent contractor provides.

197 6. The employer may claim a credit for the amount that the qualified employee could have  
198 claimed during any months when the qualified employee was employed, had the qualified  
199 employee made the partial or full loan payments instead, under conditions where the qualified  
200 employee had sufficient income to claim the full credit for the taxable year. If the qualified  
201 employee is employed only on a part-time basis, the employer may claim a credit only up to half  
202 of the total that the qualified employee could have claimed had the qualified employee made all  
203 payments and earned sufficient income to claim the full credit for the taxable year, but the amount  
204 the employer claims must still be based on amounts actually paid.

205 7. An employer claiming this credit on behalf of a qualified employee for a taxable year  
206 may not simultaneously claim a credit under [insert citation] on the behalf of the same employee.  
207

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

209  
210 Section 6. [*Repealer.*] [Insert repealer clause.]

211  
212 Section 7. [*Effective Date.*] [Insert effective date.]

# Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Statement

Texas established a Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) in 2001 to provide incentives to repair or replace vehicles in areas that don't meet federal air quality standards. LIRAP is tied to mandatory motor vehicle inspection, maintenance and emissions testing throughout the state. Under LIRAP, owners of vehicles that fail to meet certain emission standards are notified that they may qualify for financial assistance through LIRAP. The program originally provided \$600 for vehicle repair and \$1,000 for vehicle replacement. Originally, in order to qualify for LIRAP funds, the owner of the vehicle had to have an annual income that was equal to or less than 200% of the federal poverty level.

Senate Bill 12 of 2007 expands the LIRAP by:

- increasing the income threshold from 200% of the federal poverty level to 300% in order to broaden the LIRAP-eligible population;
- partnering with automobile manufacturers and automobile dealers to market LIRAP;
- partnering with the steel industry to scrap vehicles that are replaced and to provide proof that such vehicles were scrapped;
- increasing the replacement amount from \$1,000 to \$2,500 and requiring an owner of a LIRAP-eligible vehicle to replace the vehicle with a calendar year model or newer vehicle;
- working with the automobile industry, the steel industry, the state Commission on Environmental Quality (TCEQ), and participating counties to enhance the enforcement and fraud protection components of LIRAP;
- directing the state Commission on Environmental Quality to review emission cut-point levels and allowing the agency to make LIRAP available to owners of vehicles that do not meet a more stringent emission cut-point standard; and
- allowing participating counties to leverage state funds based on local matching dollars to support LIRAP and related activities.

Submitted as:

Texas

[S 12](#)

Status: Enacted into law in 2007.

# Medical Transparency

This Act directs the state board of medical examiners to set up and make available, primarily through the Internet, a database of information about doctors who practice in the state. The Act requires physicians who apply for a license to practice medicine in the state, or to reinstate or reactivate an existing license, disclose specific information that can be accessed by the public via the Internet.

Submitted as:

Colorado

[HB 1331](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

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

2  
3           Section 2. [*Legislative Findings.*] The [legislature] declares:

4                   (1) The people of this state need to be fully informed about the past practices of  
5 people practicing medicine in this state in order to make informed decisions when choosing a  
6 medical care provider and determining whether to proceed with a particular regimen of care  
7 recommended by a medical care provider;

8                   (2) The purpose of this Act is to provide transparency to the public regarding the  
9 competency of people engaged in the practice of medicine in this state; and

10                  (3) It is important to make information about people engaged in the practice of  
11 medicine available to the public in a manner that is efficient, cost-effective, and maintains the  
12 integrity of the information, and to that end, the [legislature] encourages people to file the required  
13 information with the [state board of medical examiners] electronically, to the extent possible.

14  
15           Section 3. [*Information Medical Practitioners Must Provide to the State Board of Medical*  
16 *Examiners.*]

17                  (a) On and after the effective date of this section, any person applying for a new license, or  
18 to renew, reinstate, or reactivate a license to practice medicine in this state, shall provide the  
19 following information to the [state board of medical examiners], in a form and manner determined  
20 by that [board] that is consistent with the requirements of this Act:

21                   (1) The applicant’s full name, including any known aliases; current address of  
22 record and telephone number; information pertaining to any license to practice medicine held by  
23 the applicant at any time, including the license number, type, status, original issue date, last  
24 renewal date, and expiration date; any board certifications and specialties, if applicable; any  
25 affiliations with hospitals or health care facilities; any business ownership interests; and  
26 information pertaining to any employment contracts with any entities;

27                   (2) Any public disciplinary action taken against the applicant by the [state board of  
28 medical examiners] or by the board or licensing agency of any other state or country. The  
29 applicant shall provide a copy of the action to the [board] at the time the application is made.

30                   (3) Any agreement or stipulation entered into between the [state board of medical  
31 examiners] or the board or licensing agency of any other state or country and the applicant  
32 whereby the applicant agrees to temporarily cease or restrict his or her practice of medicine or any

33 board order restricting or suspending the applicant's medical license. The applicant shall provide a  
34 copy of the action to the [state board of medical examiners] at the time the application is made.

35 (4) (I) Any involuntary limitation or probationary status on or reduction,  
36 nonrenewal, denial, revocation, or suspension of the applicant's medical staff membership or  
37 clinical privileges at any hospital or health care facility. To report the information required by this  
38 paragraph (4)(I), the applicant shall complete a form developed by the [state board of medical  
39 examiners] that requires the applicant to report only the following information regarding the  
40 action:

41 (i) the name of the facility or entity that took the action;

42 (ii) the date the action was taken;

43 (iii) the type of action taken, including any terms and conditions of  
44 the action;

45 (iv) the duration of the action; and

46 (v) whether the applicant has fulfilled the terms or conditions of the  
47 action, if applicable.

48 (II) Notwithstanding [insert citation], the form completed by the applicant  
49 pursuant to paragraph (4)(I) of this section shall be a public record and shall not be confidential.  
50 Compliance with paragraph (4)(I) of this section shall not constitute a waiver of any privilege or  
51 confidentiality conferred by any other applicable state or federal law.

52 (5) Any involuntary surrender of the applicant's United States Drug Enforcement  
53 Administration Registration. The applicant shall provide a copy of the order requiring the  
54 surrender of such Registration to the [board] at the time the application is made.

55 (6) Any final criminal conviction or plea arrangement resulting from the  
56 commission or alleged commission of a felony or crime of moral turpitude in any jurisdiction. The  
57 applicant shall provide a copy of the final conviction or plea arrangement to the [board] at the time  
58 the application is made.

59 (7) Any final judgment against, settlement entered into by, or arbitration award  
60 paid on behalf of the applicant for medical malpractice. To report the information required by this  
61 paragraph, the applicant shall complete a form developed by the [state board of medical  
62 examiners] that requires the applicant to report only the following information regarding the  
63 medical malpractice action:

64 (I) whether the action was resolved by a final judgment against, settlement  
65 entered into by, or arbitration award paid on behalf of the applicant;

66 (II) the date of the judgment, settlement, or arbitration award;

67 (III) the location or jurisdiction in which the action occurred or was  
68 resolved; and

69 (IV) the court in which the final judgment was ordered, the mediator that  
70 aided in the settlement, if applicable, or the arbitrator that granted the arbitration award.

71 (8) Any refusal by an issuer of medical malpractice insurance to issue a medical  
72 malpractice insurance policy to the applicant due to past claims experience. The applicant shall  
73 provide a copy of the refusal to the [board] at the time the application is made.

74 (b) The [state board of medical examiners] shall make the information specified in this  
75 subsection (a) of this section of this Act that is submitted by an applicant readily available to the  
76 public in a manner that allows the public to search the information by name, license number, board  
77 certification or specialty area, or city of the licensee's address of record. The [board] may satisfy  
78 this requirement by posting and allowing the ability to search the information on the [board's]  
79 Website. If the information is made available on its Website, the [board] shall update the Website  
80 at least monthly and shall indicate on the Website the date when the information was last updated.



81 (c) When disclosing information regarding a licensee or applicant to the public, the [board]  
82 shall include the following statement or a similar statement that communicates the same meaning:  
83

84 “Some studies have shown that there is no significant correlation between malpractice  
85 history and a doctor’s competence. At the same time, the [state board of medical examiners]  
86 believes that consumers should have access to malpractice information. To make the best health  
87 care decisions, you should view this information in perspective. You could miss an opportunity for  
88 high quality care by selecting a doctor based solely on malpractice history. When considering  
89 malpractice data, please keep in mind:

90 • Malpractice histories tend to vary by specialty. Some specialties are more likely  
91 than others to be the subject of litigation.

92 • You should take into account how long the doctor has been in practice when  
93 considering malpractice averages.

94 • The incident causing the malpractice claim may have happened years before a  
95 payment is finally made. Sometimes, it takes a long time for a malpractice lawsuit to move  
96 through the legal system.

97 • Some doctors work primarily with high-risk patients. These doctors may have  
98 malpractice histories that are higher than average because they specialize in cases or patients who  
99 are at very high risk for problems.

100 • Settlement of a claim may occur for a variety of reasons that do not necessarily  
101 reflect negatively on the professional competence or conduct of the physician. A payment in  
102 settlement of a medical malpractice action or claim should not be construed as creating a  
103 presumption that medical malpractice has occurred.

104 • You may wish to discuss information provided by the [board], and malpractice  
105 generally, with your doctor.

106 • The information posted on the [state board of medical examiners] website was  
107 provided by applicants for a medical license and applicants for renewal, reinstatement, or  
108 reactivation of a medical license.”  
109

110 (d) A person licensed by the [board] pursuant to [insert citation] shall ensure that the  
111 information required by subsection (a) of this section (3) is current and shall report any updated  
112 information and provide copies of the required documentation to the [board] within [thirty days]  
113 after the date of the action described in said subsection or as otherwise determined by the [board]  
114 by rule to ensure that the information provided to the public is as accurate as possible.

115 (e) The [board] may impose an administrative fine not to exceed [five thousand dollars]  
116 against an applicant who fails to comply with this section 3 of this Act. The imposition of an  
117 administrative fine pursuant to this paragraph shall not constitute a disciplinary action pursuant to  
118 [insert citation] and shall not preclude the [board] from taking disciplinary action against an  
119 applicant for failure to comply with this section 3 of this Act. The [board] shall not issue a license  
120 to or renew, reinstate, or reactivate the license of an applicant who has failed to pay a fine imposed  
121 pursuant to this paragraph.

122 (f) The [board] may adopt rules, as necessary, to implement this section.  
123

124 Section 4. [*Severability.*] [Insert severability clause.]  
125

126 Section 5. [*Repealer.*] [Insert repealer clause.]  
127

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

# Metal Recycling Registry

This Act requires secondary metal recyclers to require identification and maintain a registry of additional information with regard to each purchase of ferrous or nonferrous metals including copper, brass, aluminum, bronze, lead, zinc, and nickel. This allows state and local law enforcement agencies to place a hold on metal purchases by a secondary metal recycler if the metal purchased is suspected of being stolen.

The bill provides criminal penalties for stealing metal and for secondary metal recyclers who fail to comply with these requirements. This Act exempts certain charitable organizations from these requirements, and does not apply to purchases of aluminum cans.

Submitted as:

Alabama

[Act 2007-451](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Create a Metal Recycling  
2 Registry.”

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

5                   (1) “Ferrous metals” means any metals containing significant quantities of iron or  
6 steel.

7                   (2) “Law Enforcement Officer” means a duly constituted and certified peace officer  
8 of this state or of any county or municipality within the state.

9                   (3) “Metal Property” means metals as defined in this section as either ferrous or  
10 nonferrous metals.

11                   (4) “Nonferrous Metals” means metals not containing significant quantities of iron  
12 or steel, including, without limitation, copper, brass, aluminum other than aluminum cans, bronze,  
13 lead, zinc, nickel, stainless steel, and alloys thereof and including stainless steel beer kegs.

14                   (5) “Person” means an individual, partnership, corporation, joint venture, trust,  
15 association, or any other legal entity.

16                   (6) “Personal Identification Card” means a driver’s license or identification card  
17 issued by the [department of public safety] or a similar card issued by another state, a Military  
18 Identification Card, a passport, or an appropriate work authorization issued by the U.S. Citizenship  
19 and Immigration Services of the Department of Homeland Security.

20                   (7) “Purchase Transaction” means a transaction in which a secondary metals  
21 recycler gives consideration in exchange for regulated metal property.

22                   (8) “Secondary Metals Recycler” means any person who is engaged, from a fixed  
23 location or otherwise, in the business of paying compensation for ferrous or nonferrous metals that  
24 have served their original economic purpose, whether or not engaged in the business of  
25 performing the manufacturing process by which ferrous metals or nonferrous metals are converted  
26 into raw material products consisting of prepared grades and having an existing or potential  
27 economic value.

28

29 Section 3. [*Recording Metal Recycling Transactions.*]

30 (a) A secondary metals recycler shall maintain a legible record of all purchase transactions  
31 to which the secondary metals recycler is a party. The record shall include all of the following  
32 information:

33 (1) the name and address of the secondary metals recycler;

34 (2) the date of the transaction;

35 (3) the weight, quantity, or volume and a description of the type of metal property  
36 purchased in a purchase transaction. For purposes of this subdivision, the term “type of metal  
37 property” shall include a general physical description, such as wire, tubing, extrusions, or casting;

38 (4) the amount of consideration given in a purchase transaction for the metal  
39 property;

40 (5) a signed statement from the person receiving consideration in the purchase  
41 transaction stating that he or she is the rightful owner of the metal property or is entitled to sell the  
42 metal property being sold;

43 (6) the name and address of the person delivering the metal property to the  
44 secondary metals recycler;

45 (7) the distinctive number from, and type of, the personal identification card of the  
46 person delivering the metal property to the secondary metals recycler; and

47 (8) the vehicle license tag number, state of issue, and the type of vehicle, if  
48 available, used to deliver the metal property to the secondary metals recycler. For purposes of this  
49 subdivision, the term “type of vehicle” shall mean an automobile, pickup truck, van, or truck.

50 (b) For [three years] following the effective date of this Act, the secondary metal recycler  
51 shall not enter into any cash transactions in excess of [one hundred dollars (\$100)] for copper or in  
52 excess of [one thousand dollars (\$1,000)] for all other metals in payment for the purchase of the  
53 metal property. Payment shall be made by check issued to the seller of the metal. The check shall  
54 be payable to the name and address of the seller of the metal and mailed to the recorded address of  
55 the seller or picked up in person by the seller. At the end of [three years] this subdivision shall be  
56 repealed and subdivision (c) shall apply.

57 (c) Commencing [three years and one day] following the effective date of this Act, the  
58 secondary metal recycler shall not enter into any cash transactions in excess of [one thousand  
59 dollars (\$1,000)] for any metals in payment for the purchase of the metal property. Payment shall  
60 be made by check issued to the seller of the metal. The check shall be payable to the name and  
61 address of the seller or picked up in person by the seller.

62 (d) A secondary metals recycler shall maintain or cause to be maintained the information  
63 required by subsection (a) of this section for not less than [two years] from the date of the  
64 purchase transaction.

65  
66 Section 4. [*Law Enforcement Officer’s Right to Inspect Secondary Metals Recycler’s*  
67 *Property and Records.*] During the usual and customary business hours of a secondary metals  
68 recycler, a law enforcement officer, after properly identifying himself or herself as a law  
69 enforcement officer and describing the object or objects for which he or she is inspecting, shall  
70 have the right to inspect:

71 (1) All purchased metal property in the possession of the secondary metals recycler.

72 (2) All records required to be maintained under section 3 of this Act.

73  
74 Section 5. [*Hold Notice.*]

75 (a) Whenever a law enforcement officer has reasonable cause to believe that any item of  
76 metal property in the possession of a secondary metals recycler has been stolen, the law  
77 enforcement officer who has an affidavit from the alleged rightful owner of the property

78 identifying the property with specificity, including any identifying markings, may issue a Hold  
79 Notice to the secondary metals recycler. The Hold Notice shall be in writing, shall be delivered to  
80 the secondary metals recycler, shall specifically identify those items of metal property that are  
81 believed to have been stolen and that are subject to the notice, and shall inform the secondary  
82 metals recycler of the information contained in this section. Upon receipt of the notice, the  
83 secondary metals recycler may not process or remove the items of metal property identified in the  
84 notice, or any portion thereof, from the place of business of the secondary metals recycler for [15  
85 calendar days] after receipt of the notice by the secondary metals recycler, unless sooner released  
86 by a law enforcement officer.

87 (b) No later than the expiration of the [15-day] period, a law enforcement officer after  
88 receiving additional substantive evidence beyond the initial affidavit may issue a second Hold  
89 Notice to the secondary metals recycler, which shall be an Extended Hold Notice. The Extended  
90 Hold Notice shall be in writing, shall be delivered to the secondary metals recycler, shall  
91 specifically identify those items of metal property that are believed to have been stolen and that  
92 are subject to the Extended Hold Notice, and shall inform the secondary metals recycler of the  
93 information contained in this section. Upon receipt of the Extended Hold Notice, the secondary  
94 metals recycler may not process or remove the items of metal property identified in the notice, or  
95 any portion thereof, from the place of business of the secondary metals recycler for [30 calendar  
96 days] after receipt of the Extended Hold Notice by the secondary metals recycler, unless sooner  
97 released by a law enforcement officer.

98 (c) At the expiration of the hold period or, if extended in accordance with this section, at  
99 the expiration of the extended hold period, the hold is automatically released and the secondary  
100 metals recycler may dispose of the metal property unless other disposition has been ordered by a  
101 court of competent jurisdiction.

102  
103 Section 6. [*Petition to Determine Ownership of Metal Property.*]

104 (a) If the secondary metals recycler contests the identification or ownership of the metal  
105 property, the party other than the secondary metals recycler claiming ownership of any metal  
106 property in the possession of a secondary metals recycler may, provided that a timely report of the  
107 theft of the metal property was made to the proper authorities, bring an action in the [circuit court]  
108 of the county in which the secondary metals recycler is located. The petition for the action shall  
109 include a description of the means of identification of the metal property used by the petitioner to  
110 determine ownership of the metal property in the possession of the secondary metals recycler. If  
111 the person who sold the metal property to the secondary metals recycler is convicted of theft of  
112 property or criminal mischief related to the removal of the metal property, the court shall order the  
113 defendant to make full restitution to the victim including, without limitation, attorney fees, court  
114 costs, property damage which resulted from the theft of property, and other expenses.

115 (b) When a lawful owner recovers stolen metal property from a secondary metals recycler  
116 who has complied with this Act, and the person who sold the metal property to the secondary  
117 metals recycler is convicted of a violation of this Act, or theft by receiving stolen property, the  
118 court shall order the defendant to make full restitution, including, without limitation, attorneys'  
119 fees, court costs, and other expenses to the secondary metals recycler.

120  
121 Section 7. [*Exemptions.*] This Act shall not apply to purchases of metal property from any  
122 of the following:

- 123 (1) A law enforcement officer acting in an official capacity.  
124 (2) A trustee in bankruptcy, executor, administrator, or receiver who has presented  
125 proof of such status to the secondary metals recycler.

126 (3) Any public official acting under a court order who has presented proof of such  
127 status to the secondary metals recycler.

128 (4) A sale on the execution, or by virtue, of any process issued by a court if proof  
129 thereof has been presented to the secondary metals recycler.

130 (5) A manufacturing, industrial, or other commercial vendor that generates or sells  
131 regulated metal property in the ordinary course of its business.

132  
133 Section 8. [*False Statements of Ownership of Metal Property.*] It shall be unlawful for any  
134 person to give a false statement of ownership or to give a false or altered identification or vehicle  
135 tag number and receive money or other consideration from a secondary metals recycler in return  
136 for metal property.

137  
138 Section 9. [*Penalties.*]

139 (a) Any person selling metal property to a secondary metals recycler in violation of this  
140 Act shall be guilty of a [Class A misdemeanor] unless the transaction or transactions in violation  
141 of this Act are in an aggregate amount which exceeds [two hundred fifty dollars (\$250)] in which  
142 case the person shall be guilty of a [Class C felony].

143 (b) Any secondary metals recycler who knowingly and intentionally engages in any  
144 practice which constitutes a violation of this Act shall be guilty of a [misdemeanor], provided that  
145 if a secondary metals recycler knowingly and intentionally engages in a pattern of practices which  
146 constitutes a violation of this Act and the transactions included in this pattern are in an aggregate  
147 amount which exceeds [five hundred dollars (\$500)], the secondary metals recycler shall be guilty  
148 of a [Class C felony].

149 (c) This Act shall not be construed to repeal other criminal laws. Whenever conduct  
150 prescribed by any provision of this Act is also prescribed by any other provision of law, the  
151 provision which carries the more serious penalty shall be applied.

152 (d) This Act shall apply to all businesses regulated under this Act without regard to the  
153 location within this state and shall take precedence over any and all local ordinances to the  
154 contrary.

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

156  
157 Section 11. [*Repealer.*] [Insert repealer clause.]

158  
159 Section 12. [*Effective Date.*] [Insert effective date.]  
160

# Mine and Industrial Rapid Response System

This Act:

- creates a Mine and Industrial Accident Rapid Response System;
- provides requirements for protective equipment in underground mines;
- provides for criminal penalties for the unauthorized removal of or tampering with certain protective equipment;
- provides for notification requirements in the event of an accident in or about any mine and imposing a civil administrative penalty for the failure to comply with such notification requirements;
- provides rule-making authority; and
- clarifies the responsibilities of county answering points.

Submitted as:

West Virginia

[SB247 \(enrolled version\)](#)

Status: Enacted into law in 2006.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Establish a Mine and  
2 Industrial Accident Rapid Response System.”

3  
4           Section 2. [*Legislative Intent.*]

5           (a) The [Legislature] finds that the health and safety of people working in and around the  
6 mining industry and other industries is of paramount concern to the people of this state and that  
7 deaths and serious injuries resulting from dangerous working conditions cause grief and suffering  
8 to workers and their families.

9           (b) The [Legislature] further finds that there is an urgent need to provide more effective  
10 means and measures for improving emergency response and communications for dealing with  
11 mine and industrial accidents.

12           (c) The [Legislature] declares that it is in the best interest of the citizens of this state to  
13 designate an emergency telephone number for mining or industrial personnel to initiate a rapid  
14 emergency response to any mine or industrial accident. Provision of a single, primary emergency  
15 number through which emergency services can be quickly and efficiently obtained and through  
16 which the response of various state agencies charged by law with responding to mine and  
17 industrial emergencies can be coordinated will significantly contribute to the public good. The  
18 Mine and Industrial Accident Rapid Response System will provide a vital resource to the citizens  
19 of this state by providing a critical connection between the [Director of the Office of Miners’  
20 Health, Safety and Training], the [Division of Homeland Security and Emergency Management],  
21 local and regional emergency services organizations and other responsible agencies.

22  
23           Section 2. [*Mine and Industrial Accident Rapid Response System Established.*] A Mine and  
24 Industrial Accident Rapid Response System is hereby created and shall consist of:

25           (1) a Mine and Industrial Accident Emergency Operations Center established in  
26 section 3 of this Act; and

27 (2) a 24-hour-a-day statewide telephone number established by the [Director of the  
28 Division of Homeland Security and Emergency Management].  
29

30 Section 3. [*Mine and Industrial Accident Emergency Operations Center.*]

31 (a) The [Director of the Division of Homeland Security and Emergency Management],  
32 working in conjunction with the [Office of Miners' Health, Safety and Training], shall maintain  
33 the [Mine and Industrial Accident Emergency Operations Center (Emergency Operations Center)],  
34 which shall be the official and primary state government 24-hour-a-day communications center for  
35 dealing with mine and industrial accidents.

36 (b) The [emergency operations center] shall be operated [twenty-four hours a day, seven  
37 days a week] by emergency service personnel employed by the [director] to provide emergency  
38 assistance and coordination to mine and industrial accidents or emergencies.

39 (c) The [emergency operations center] shall be readily accessible twenty-four hours a day  
40 at a statewide telephone number established and designated by the [director].  
41

42 Section 4. [*Emergency Mine Response.*]

43 (a) To assist the [Division of Homeland Security and Emergency Management] in  
44 implementing and operating the Mine and Industrial Accident Rapid Response System, the [Office  
45 of Miners' Health, Safety and Training] shall, on a [quarterly] basis, provide the [emergency  
46 operations center] with a mine emergency contact list. In the event of any change in the  
47 information contained in the mine emergency contact list, such changes shall be provided  
48 immediately to the emergency operations center. The mine emergency contact list shall include the  
49 following information:

50 (1) the names and telephone numbers of the [Director of the Office of Miners'  
51 Health, Safety and Training], or his or her designee, including at least one telephone number at  
52 which the [Director] or designee may be reached at any time;

53 (2) the names and telephone numbers of all district mine inspectors, including at  
54 least one telephone number for each inspector at which each inspector may be reached at any time;

55 (3) a current listing of all regional offices or districts of the [Office of Miners'  
56 Health, Safety and Training], including a detailed description of the geographical areas served by  
57 each regional office or district; and

58 (4) the names, locations and telephone numbers of all mine rescue stations,  
59 including at least one telephone number for each station that may be called twenty-four hours a  
60 day and a listing of all mines that each mine rescue station serves in accordance with the  
61 provisions of [insert citation].

62 (b) Upon the receipt of an emergency call regarding any accident, as defined in section 8 of  
63 this Act, in or about any mine, the [emergency operations center] shall immediately notify:

64 (1) the [Director of the Office of Miners' Health, Safety and Training] or his or her  
65 designee;

66 (2) the [district mine inspector] assigned to the district or region in which the  
67 accident occurred; and

68 (3) local emergency service personnel in the area in which the accident occurred.

69 (c) The [director] or his or her designee shall determine the necessity for and contact all  
70 mine rescue stations that provide rescue coverage to the mine in question.

71 (d) In the event that an emergency call regarding any accident, as defined in [insert  
72 citation], in or about any mine, is initially received by a county answering point, as defined in  
73 [insert citation], the call shall be immediately forwarded to the [Mine and Industrial Accident  
74 Emergency Operations Center].

75 (e) Nothing in this section shall be construed to relieve an operator, as defined in [insert  
76 citation], from any reporting or notification obligation under federal law.

77 (f) The Mine and Industrial Accident Rapid Response System and the [emergency  
78 operations center] are designed and intended to provide communications assistance to emergency  
79 responders and other responsible people. Nothing in this section shall be construed to conflict with  
80 the responsibility and authority of an operator to provide mine rescue coverage in accordance with  
81 the provisions of [insert citation] or the authority of the [Director of the Office of Miners' Health,  
82 Safety and Training] to assign mine rescue teams under the provisions of [insert citation] or to  
83 exercise any other authority provided in [insert citation].  
84

85 Section 5. [*Study of Other Industrial Emergencies.*] The [Director of the Division of  
86 Homeland Security and Emergency Management] shall immediately cause a study to be conducted  
87 to determine the feasibility of providing emergency coverage to other industrial, manufacturing,  
88 chemical or other emergencies through the Mine and Industrial Accident Rapid Response System.  
89 On or before the [first day of November, two thousand six], the [director] shall submit a report to  
90 the [Governor, the President of the Senate and the Speaker of the House of Delegates] setting forth  
91 the findings of his or her study and recommendations for legislation consistent with the purposes  
92 of this Act.  
93

94 Section 6. [*Rule-Making Authority.*] The [Director of the Division of Homeland Security  
95 and Emergency Management] shall propose emergency and legislative rules for promulgation in  
96 accordance with [insert citation] regarding the implementation and administration of this [Mine  
97 and Industrial Accident Rapid Response System]. The requirements of this Act shall not be  
98 implemented until the emergency rule authorized herein has been approved.  
99

100 Section 7. [*Protective Equipment and Clothing.*]

101 (a) Welders and helpers shall use proper shields or goggles to protect their eyes. All  
102 employees shall have approved goggles or shields and use the same where there is a hazard from  
103 flying particles or other eye hazards.

104 (b) Employees engaged in haulage operations and anyone employed around moving  
105 equipment on the surface and underground shall wear snug-fitting clothing.

106 (c) Protective gloves shall be worn when material which may injure hands is handled, but  
107 gloves with gauntleted cuffs shall not be worn around moving equipment.

108 (d) Safety hats and safety-toed shoes shall be worn by everyone in or around a mine,  
109 provided that metatarsal guards are not required to be worn by people when working in those areas  
110 of underground mine workings which average less than [forty-eight inches in height as measured  
111 from the floor to the roof of the underground mine workings].

112 (e) Approved eye protection shall be worn by anyone being transported in open-type man  
113 trips.

114 (f) (1) A self-contained self-rescue device approved by the [director] shall be worn by  
115 each person underground or kept within his immediate reach and the device shall be provided by  
116 the operator. The self-contained self-rescue device shall be adequate to protect a miner for one  
117 hour or longer. Each operator shall train each miner in the use of such device and refresher  
118 training courses for all underground employees shall be held during each calendar year.

119 (2) In addition to the requirements of subdivision (1) this subsection, the operator  
120 shall also provide caches of additional self-contained self-rescue devices throughout the mine in  
121 accordance with a plan approved by the [director]. Each additional self-contained self-rescue  
122 device shall be adequate to protect a miner for one hour or longer. The total number of additional  
123 self- contained self-rescue devices, the total number of storage caches and the placement of each



124 cache throughout the mine shall be established by rule pursuant to subsection (i) of this section.  
125 Intrinsically safe battery-powered strobe lights shall be affixed to each cache and shall be capable  
126 of automatic activation in the event of an emergency. A luminescent sign with the words “SELF-  
127 CONTAINED SELF-RESCUER” or “SELF-CONTAINED SELF-RESCUERS” shall be  
128 conspicuously posted at each cache and luminescent direction signs shall be posted leading to each  
129 cache. Lifeline cords or other similar device, with reflective material at 25-foot intervals, shall be  
130 attached to each cache from the last open crosscut to the surface. The operator shall conduct  
131 weekly inspections of each cache, the affixed strobe lights and each lifeline cord or other similar  
132 device to ensure operability.

133 (3) Any person that, without the authorization of the operator or the [director],  
134 knowingly removes or attempts to remove any self-contained self-rescue device or battery-  
135 powered strobe light from the mine or mine site with the intent to permanently deprive the  
136 operator of the device or light or knowingly tampers with or attempts to tamper with such device  
137 or light shall be guilty of a [felony] and, upon conviction thereof, shall be imprisoned in a state  
138 correctional facility for not [less than one year nor more than ten years or fined not less than ten  
139 thousand dollars nor more than one hundred thousand dollars, or both].

140 (g) (1) A wireless emergency communication device approved by the [director] and  
141 provided by the operator shall be worn by each person underground. The wireless emergency  
142 communication device shall, at a minimum, be capable of receiving emergency communications  
143 from the surface at any location throughout the mine. Each operator shall train each miner in the  
144 use of the device and provide refresher training courses for all underground employees during  
145 each calendar year. The operator shall install in or around the mine any and all equipment  
146 necessary to transmit emergency communications from the surface to each wireless emergency  
147 communication device at any location throughout the mine.

148 (2) Any person that, without the authorization of the operator or the director,  
149 knowingly removes or attempts to remove any wireless emergency communication device or  
150 related equipment, from the mine or mine site with the intent to permanently deprive the operator  
151 of the device or equipment or knowingly tampers with or attempts to tamper with the device or  
152 equipment shall be guilty of a [felony] and, upon conviction thereof, shall be imprisoned in a state  
153 correctional facility for not [less than one year nor more than ten years or fined not less than ten  
154 thousand dollars nor more than one hundred thousand dollars, or both].

155 (h) (1) A wireless tracking device approved by the [director] and provided by the  
156 operator shall be worn by each person underground. In the event of an accident or other  
157 emergency, the tracking device shall, at a minimum, be capable of providing real-time monitoring  
158 of the physical location of each person underground, provided that no person shall discharge or  
159 discriminate against any miner based on information gathered by a wireless tracking device during  
160 nonemergency monitoring. Each operator shall train each miner in the use of the device and  
161 provide refresher training courses for all underground employees during each calendar year. The  
162 operator shall install in or around the mine all equipment necessary to provide real-time  
163 emergency monitoring of the physical location of each person underground.

164 (2) Any person that, without the authorization of the operator or the director,  
165 knowingly removes or attempts to remove any wireless tracking device or related equipment,  
166 approved by the director, from a mine or mine site with the intent to permanently deprive the  
167 operator of the device or equipment or knowingly tampers with or attempts to tamper with the  
168 device or equipment shall be guilty of a [felony] and, upon conviction thereof, shall be imprisoned  
169 in a state correctional facility for not [less than one year nor more than ten years or fined not less  
170 than ten thousand dollars nor more than one hundred thousand dollars, or both].

171 (i) The [director] may promulgate emergency and legislative rules to implement and  
172 enforce this section of this Act.

173 (j) The penalties set forth in this Act become effective [insert date].  
174

175 Section 8. [*Accident; Notice; Investigation by Office of Miners' Health, Safety and*  
176 *Training.*]

177 (a) For the purposes of this section, the term "accident" means:

- 178 (1) the death of an individual at a mine;  
179 (2) an injury to an individual at a mine which has a reasonable potential to cause  
180 death;  
181 (3) the entrapment of an individual;  
182 (4) the unplanned inundation of a mine by a liquid or gas;  
183 (5) the unplanned ignition or explosion of gas or dust;  
184 (6) the unplanned ignition or explosion of a blasting agent or an explosive;  
185 (7) an unplanned fire in or about a mine not extinguished within five minutes of  
186 ignition;  
187 (8) an unplanned roof fall at or above the anchorage zone in active workings where  
188 roof bolts are in use or an unplanned roof or rib fall in active workings that impairs ventilation or  
189 impedes passage;  
190 (9) a coal or rock outburst that causes withdrawal of miners or which disrupts  
191 regular mining activity for more than one hour;  
192 (10) an unstable condition at an impoundment, refuse pile or culm bank which  
193 requires emergency action in order to prevent failure, or which causes people to evacuate an area,  
194 or the failure of an impoundment, refuse pile or culm bank;  
195 (11) damage to hoisting equipment in a shaft or slope which endangers an  
196 individual or which interferes with use of the equipment for more than thirty minutes; and  
197 (12) an event at a mine which causes death or bodily injury to an individual not at  
198 the mine at the time the event occurs.

199 (b) Whenever any accident occurs in or about any coal mine or the machinery connected  
200 therewith, it is the duty of the operator or the mine foreman in charge of the mine to give notice,  
201 within [fifteen minutes] of ascertaining the occurrence of an accident, to the [Mine and Industrial  
202 Accident Emergency Operations Center] at the statewide telephone number established by the  
203 [Director of the Division of Homeland Security and Emergency Management] pursuant to this Act  
204 stating the particulars of the accident, provided that the operator or the mine foreman in charge of  
205 the mine may comply with this notice requirement by immediately providing notice to the  
206 appropriate local organization for emergency services as defined in [insert citation] or the  
207 appropriate local emergency telephone system operator as defined in [insert citation], provided  
208 however, that nothing in this subsection shall be construed to relieve the operator from any  
209 reporting or notification requirement under federal law.

210 (c) The [Director of the Office of Miners' Health, Safety and Training] shall impose,  
211 pursuant to rules authorized in this section, a [civil administrative penalty of one hundred thousand  
212 dollars] on the operator if it is determined that the operator or the mine foremen in charge of the  
213 mine failed to give immediate notice as required in this section provided that the [director] may  
214 waive imposition of the [civil administrative penalty] at any time if he or she finds that the failure  
215 to give immediate notice was caused by circumstances wholly outside the control of the operator.

216 (d) If anyone is killed, the inspector shall immediately go to the scene of the accident and  
217 make recommendations and render assistance as he or she may deem necessary for the future  
218 safety of the men and investigate the cause of the explosion or accident and make a record. He or  
219 she shall preserve the record with the other records in his or her office. The cost of the  
220 investigation records shall be paid by the [Office of Miners' Health, Safety and Training]. A copy  
221 shall be furnished to the operator and other interested parties. To enable him or her to make an

222 investigation, he or she has the power to compel the attendance of witnesses and to administer  
223 oaths or affirmations. The [director] has the right to appear and testify and to offer any testimony  
224 that may be relevant to the questions and to cross-examine witnesses.

225

226 Section 9. [*Notification of Mining Accidents.*] Each county answering point that receives a  
227 call reporting an accident in or about any mine shall immediately route the call to the [Mine and  
228 Industrial Accident Emergency Operations Center] created pursuant to this Act.

229

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

231

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

233

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

# Mine Families First

This Act establishes a program to help people whose family members are trapped, injured or awaiting rescue during an underground mine emergency.

Submitted as:

Pennsylvania

[Act No. 57](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*]This Act shall be cited as the “Mine Families First Act.”

2  
3           Section 2. [*Legislative Findings.*] The [Legislature] finds and declares it is the policy of  
4 this [state] to treat the families of miners trapped, injured or waiting rescue during a mine  
5 emergency with the dignity and respect they deserve and to make sure the families are provided  
6 updated information on rescue efforts before the public or the media and that their needs and  
7 questions are attended to during a mine emergency.

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

10           “Department” means the state [Department of Environmental Protection].

11           “Mine Emergency Response Program” means the program established under [insert  
12 citation] in the [Department of Environmental Protection] to ensure the safety of underground  
13 miners.

14  
15           Section 4. [*Mine Families First Program.*]

16           (a) The [department] shall establish a Mine Families First Program as part of the [Mine  
17 Emergency Response Program] defined under [insert citation] to ensure two-way communication  
18 between those people in command of a mine emergency response operation and the families of  
19 miners trapped, injured or waiting rescue.

20           (b) Within [90] days of the effective date of this section, the [department] shall develop a  
21 [Mine Families First Response and Communication Plan] to outline the steps that shall be taken by  
22 the [department] and mine owners and operators to communicate with families of miners involved  
23 in a mine emergency. The [Plan] shall at a minimum contain the following:

24           (1) procedures for the immediate notification of mine family members in the event  
25 of a mine emergency through people previously designated by mine workers;

26           (2) designation of and, if necessary, transportation to a physical location for mine  
27 families to gather to obtain information about the mine emergency and rescue operations;

28           (3) security provisions to ensure the privacy of mine families at the location  
29 designated for mine emergency briefings for families;

30           (4) procedures to ensure mine families are briefed regularly, before the news media,  
31 about the progress of the mine emergency response;

32           (5) designation of a [Mine Family First Liaison Staff] for each incident to serve as a  
33 24-hour point of contact for mine families to provide a two-way conduit for information about the  
34 mine emergency and rescue operation;

35 (6) procedures and a process for involving and coordinating the participation of  
36 not-for-profit and public social service organizations to provide counseling and other social  
37 services mine families may need during a mine emergency; and

38 (7) procedures to notify; and, if needed, transport miner families to medical  
39 facilities where miners extricated from mines are given follow-up medical care.

40 (c) (1) The [department] shall, within [30] days of completing the initial [Mine  
41 Families First Response and Communications Plan], submit the [Plan] for public review and  
42 comment.

43 (2) After completion of the review and comment period, the [department] shall  
44 make the necessary revisions to the [Mine Families First Response and Communication Plan] and  
45 develop a final plan for use as part of a [Mine Emergency Response Program].

46 (d) The [department] shall designate a person to serve as [Mine Families First Liaison] for  
47 each mine emergency, whose duties shall include, at a minimum:

48 (1) provide miners' families with briefings on the progress of mine emergency  
49 response operations in a timely and effective manner;

50 (2) receive and act on comments, concerns and needs of the miners' families during  
51 and immediately after the response to the mine emergency;

52 (3) coordinate with the appropriate social service, disaster aid and other public and  
53 not-for-profit agencies and organizations to provide assistance needed by mine families;

54 (4) assure information about the mine emergency response is communicated to  
55 miners' families first before information is released to the public or media; and

56 (5) ensure the wishes of the miners' families are honored with respect to the  
57 granting of interviews and access by the news media.

58 (e) The [department] shall develop a training program for [Mine Families First Liaisons]  
59 to provide a basic level of competency in handling emergency situations, in effective  
60 communications techniques and in understanding the psychological factors experienced by  
61 miners' families during mine emergency situations.

62  
63 Section 5. *[Advisory Council.]*.

64 (a) The [department] shall establish a [Mine Families First Response and Communications  
65 Advisory Council]. The [Council] shall be comprised of at least the following members:

66 (1) one member representing mine owners;

67 (2) one member representing mine labor unions;

68 (3) one member representing local emergency response professionals;

69 (4) one member representing mental health professionals;

70 (5) one member from the [state Emergency Management Agency]; and

71 (6) two at-large members selected from the general public.

72 (b) Each member shall be appointed [by the Governor, with the exception of the two at-  
73 large members, one of whom shall be appointed by the President pro tempore of the Senate and  
74 the other of whom shall be appointed by the Speaker of the House of Representatives]. All  
75 members must be residents of this state. [One] alternate member shall be appointed for each  
76 member and shall take the place of the respective member whenever that member is unable to  
77 attend an official meeting.

78 (c) Each member shall serve for a period of [three] years. A member upon expiration of  
79 that member's term shall continue to serve until a successor is appointed.

80 (d) The [Advisory Council] shall assist the [department] in developing the initial [Mine  
81 Families First Response and Communications Plan] and provide assistance in periodic review and  
82 updating of the [Plan]. The [Advisory Council] shall assist in reviewing how the [Plan] was used

83 in the event of an actual mine emergency and offer recommendations to the [department] for any  
84 needed changes to the plan resulting from its review.

85 (e) [Advisory Council] members shall not receive a salary but shall be reimbursed for all  
86 necessary expenses incurred in the performance of their duties. An alternate may not be  
87 reimbursed unless the alternate serves in place of the appointed member.

88 (f) All actions of the [Advisory Council] shall be by majority vote of the members or  
89 alternates present. A quorum shall be at least one more than half the number of the [Advisory  
90 Council] members; however, vacancies shall not be counted when calculating the number needed  
91 for a quorum. The [Advisory Council] shall elect a chairperson from among its members. The  
92 [Advisory Council] shall meet upon the call of the chairperson, after a mine emergency, or at least  
93 annually.

94  
95 Section 6. [*Interagency Coordination.*]The [department] shall coordinate the development  
96 of the [Mine Families First Response and Communication Plan] and the [Mine Families First  
97 Liaison Program] with the state [Emergency Management Agency] to ensure consistency with  
98 overall emergency response procedures and protocols.

99  
100 Section 7. [*Severability.*] [Insert severability clause.]

101  
102 Section 8. [*Repealer.*] [Insert repealer clause.]

103  
104 Section 9. [*Effective Date.*] [Insert effective date.]

# Mortgage Fraud

This Act creates a mortgage fraud statute with criminal penalties and authorizes the state Attorney General to take action to enforce the statute. The bill also authorizes a private right of action for violations of the statute in specified circumstances. Sections about seizing and disposing property involved with mortgage fraud can be found in the Maryland law but are excluded from this SSL draft.

Submitted as:

Maryland

[Chapter 4, 2008](#)

Status: Enacted into law in 2008.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as the “Mortgage Fraud Protection Act.”

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

4           (a) “Mortgage loan” means any loan or other extension of credit that is secured, in whole  
5 or in part, by any interest in residential real property in this state; and if for personal, household, or  
6 family purposes, in any amount; or if for commercial purposes, not in excess of [\$75,000].  
7 “Mortgage loan” does not include any loan for commercial purposes that is secured, in whole or in  
8 part, by any interest in residential real property in this state; in excess of [\$75,000]; and supported  
9 by independent evidence of the commercial purpose.

10          (b) “Mortgage lending process” means the process by which a person seeks or obtains a  
11 mortgage loan. “Mortgage lending process” includes the solicitation, application, origination,  
12 negotiation, servicing, underwriting, signing, closing, and funding of a mortgage loan; and the  
13 notarizing of any document in connection with a mortgage loan.

14          (c) “Mortgage fraud” means any action by a person made with the intent to defraud that  
15 involves:

16               (1) knowingly making any deliberate misstatement, misrepresentation, or omission  
17 during the mortgage lending process with the intent that the misstatement, misrepresentation, or  
18 omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending  
19 process;

20               (2) knowingly using or facilitating the use of any deliberate misstatement,  
21 misrepresentation, or omission during the mortgage lending process with the intent that the  
22 misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any  
23 other party to the mortgage lending process;

24               (3) receiving any proceeds or any other funds in connection with a mortgage  
25 closing that the person knows resulted from a violation of item (1) or (2) of this subsection;

26               (4) conspiring to violate any of the provisions of item (1), (2), or (3) of this  
27 subsection; or

28               (5) filing or causing to be filed in the land records in the county where a residential  
29 real property is located, any document relating to a mortgage loan that the person knows to contain  
30 a deliberate misstatement, misrepresentation, or omission.

31 (d) “Pattern of mortgage fraud” means [two or more] incidents of mortgage fraud that  
32 involve [two or more] residential real properties; and have similar intents, results, accomplices,  
33 victims, or methods of commission or otherwise are interrelated by distinguishing characteristics.

34 (e) “Residential real property” means property improved by [four or fewer] single family  
35 dwelling units or as defined under [insert citation].

36  
37 Section 3. [*Mortgage Fraud: Penalties.*]

38 (a) A person may not commit mortgage fraud.

39 (b) The [attorney general] or the [commissioner of financial regulation] may seek an  
40 injunction to prohibit a person who has engaged or is engaging in a violation of this Act from  
41 engaging or continuing to engage in the violation.

42 (c) A [court] may enter any order or judgment necessary to:

43 (1) prevent the use by a person of any prohibited practice;

44 (2) restore to a person any money or real or personal property acquired from the  
45 person by means of any prohibited practice; or

46 (3) appoint a receiver in the case of a willful violation of this Act.

47 (d) The [attorney general] and the [state’s attorney] are authorized to conduct a criminal  
48 investigation and prosecution of all cases of mortgage fraud under this Act.

49 (e) The [attorney general] or the [state’s attorney], as appropriate, shall promptly report a  
50 conviction under this Act to the unit of state government that has regulatory jurisdiction over the  
51 business activities of the person convicted.

52 (f) In any action brought by the [attorney general] or [commissioner] under this section, the  
53 [attorney general] or [commissioner] is entitled to recover the costs of the action for the use of the  
54 state.

55 (g) In addition to any action authorized under this Act and any other action otherwise  
56 authorized by law, a person may bring an action for damages incurred as the result of a violation  
57 of this Act.

58 (h) A person who brings an action under this Act and who is awarded damages may also  
59 seek, and the court may award, reasonable attorney’s fees.

60 (i) If the court finds that the defendant violated this Act, the court may award damages  
61 equal to [three times the amount of actual damages].

62 (j) Except as provided in subsections (k) and (l) of this Section, a person who violates this  
63 Act is guilty of a felony and on conviction is subject to a fine not exceeding [\$5,000 or  
64 imprisonment not exceeding 10] years or both.

65 (k) If a violation involves a victim who is a vulnerable adult as defined under [insert  
66 citation], a person who violates this Act is guilty of a felony and on conviction is subject to a fine  
67 not exceeding [\$15,000] or imprisonment not exceeding [15 years] or both.

68 (l) If a violation involves engaging or participating in a pattern of mortgage fraud or a  
69 conspiracy or endeavor to engage or participate in a pattern of mortgage fraud, a person who  
70 violates this Act is guilty of a felony and on conviction is subject to a fine not exceeding  
71 [\$100,000] or imprisonment not exceeding [20 years] or both.

72 (m) (1) A person convicted of violating this Act shall pay restitution to any person  
73 damaged by the violation.

74 (2) Restitution shall be ordered in addition to a fine or imprisonment or both.

75 (n) Each residential real property transaction subject to a violation of this Act constitutes a  
76 separate offense, and shall not merge with any other crimes set forth in the [insert citation].

77  
78 Section 4. [*Venue.*] For the purpose of venue under Sections 2 and 3 of this Act, a violation  
79 of this Act shall be considered to have been committed:



- 80 (1) in the county in which the residential real property is located for which a  
81 mortgage loan is being sought;  
82 (2) in the county in which an act was performed in furtherance of the violation;  
83 (3) in the county in which a person alleged to have violated this Act had control or  
84 possession of any proceeds of the violation;  
85 (4) if a closing occurred, in the county in which the closing occurred; and  
86 (5) in the county in which a document containing a deliberate misstatement,  
87 misrepresentation, or omission is filed in the land records.

88

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

90

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

92

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

# Mortgage Licensing System

This Act allows the state to participate in the National Mortgage Licensing System that the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators are implementing under a Uniform Mortgage Licensing Project.

Submitted as:

Connecticut

[Public Act No. 07-156](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Permit State Participation In  
2 the National Mortgage Licensing System.”  
3

4           Section 2. [*Definitions.*] As used in this Act, “National Mortgage Licensing System”  
5 means the National Mortgage Licensing System to be implemented pursuant to a Uniform  
6 Mortgage Licensing Project under the auspices of the Conference of State Bank Supervisors and  
7 the American Association of Residential Mortgage Regulators.  
8

9           Section 3. [*Banking Commissioner Participation in National Mortgage Licensing System.*]

10          (a) The state [Banking Commissioner] may participate in the National Mortgage Licensing  
11 System and permit such System to process applications for first mortgage lender, first mortgage  
12 correspondent lender, first mortgage broker, secondary mortgage lender, secondary mortgage  
13 correspondent lender, secondary mortgage broker and originator licenses in this state, as defined  
14 under [insert citation], and receive and maintain records related to such licenses that are allowed or  
15 required to be maintained by the [commissioner].

16          (b) Applicants for licenses listed under subsection (a) of this section, shall, at the time of  
17 making such application, pay to the National Mortgage Licensing System the required license fee  
18 and processing fee for an initial or renewal application.

19          (c) The [commissioner] may conduct a criminal history records check of applicants for  
20 licenses listed under subsection (a) of this section, of each member, partner, officer or director of  
21 such applicants, and of people with supervisory authority over the applicants, and require the  
22 fingerprints of such people as part of an application.

23          (d) Applications filed under subsection (a) of this section shall be filed with the National  
24 Mortgage Licensing System, which shall process the fingerprints through the Federal Bureau of  
25 Investigation.

26          (e) Provisions for disclosing records in the National Mortgage Licensing System of  
27 licensees in this state as defined under paragraph (a) of this Section may be disclosed as defined  
28 under [insert citation].

29          (f) Provisions for disclosing records under [insert citation] shall not apply to the disclosure  
30 of any record that is maintained by the [commissioner] with the National Mortgage Licensing  
31 System to any supervisory, governmental or law enforcement agency that is authorized to access  
32 such record on the System, provided such record shall remain the property of the [Department of  
33 Banking] and may not be further disclosed to any person without the consent of the

34 [commissioner], or any record of a licensee that is maintained by the [commissioner] with such  
35 System to such licensee.

36 (g) No person may obtain information from the National Mortgage Licensing System that  
37 could not otherwise be obtained under state law.

38 (h) No information obtained from the National Mortgage Licensing System shall be  
39 admissible as evidence in, or used to initiate, a civil proceeding in this state unless such  
40 information would otherwise be admissible in such proceeding under state law.

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.]

# Newborn Umbilical Cord Blood Bank

This Act creates a Newborn Umbilical Cord Blood Bank for postnatal tissue and fluid and creates a Commission for Saving the Cure. The legislation directs the Commission for Saving the Cure to develop a program to educate pregnant patients with respect to the banking of postnatal tissue and fluid. The program shall include:

- notice of the existence of the Newborn Umbilical Cord Blood Bank;
- an explanation of the difference between public and private banking programs;
- the medical process involved in the collection and storage of postnatal tissue and fluid;
- the current and potential future medical uses of stored postnatal tissue and fluid;
- the benefits and risks involved in the banking of postnatal tissue and fluid; and
- the availability and cost of storing postnatal tissue and fluid in public and private umbilical cord blood banks.

The Act directs physicians and hospitals in the state to tell pregnant patients about the range of options for donating postnatal tissue and fluids. The Act does not require the participation of any physician who objects to the transfusion or transplantation of blood on the basis of bona fide religious beliefs.

Submitted as:

Georgia

[SB 148](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as the “Newborn Umbilical Cord Blood  
2 Bank Act.”

3  
4           Section 2. [*Legislative Findings.*] The [General Assembly] finds that it shall be the public  
5 policy of this state to encourage the donation, collection, and storage of stem cells collected from  
6 postnatal tissue and fluid and to make such stem cells available for medical research and  
7 treatment; to promote principled and ethical stem cell research; and to encourage stem cell  
8 research with immediate clinical and medical applications.

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

11           (1) ‘amniotic fluid’ means the fluid inside the amnion.

12           (2) ‘permitted stem cell research’ means stem cell research permitted under federal law and  
13 Senate Resolution 30, the “Hope Offered through Principled and Ethical Stem Cell Research Act,”  
14 as approved by the United States Senate on April 11, 2007.

15           (3) ‘placenta’ means the organ that forms on the inner wall of the human uterus during  
16 pregnancy.

17           (4) ‘postnatal tissue and fluid’ means the placenta, umbilical cord, and amniotic fluid  
18 expelled or extracted in connection with the birth of a human being.

19           (5) ‘stem cells’ means unspecialized or undifferentiated cells that can self-renew and have  
20 the potential to differentiate into specialized cell types.

21 (6) ‘umbilical cord’ means the gelatinous tissue and blood vessels connecting an unborn  
22 human being to the placenta.  
23

24 Section 4. [*Commission for Saving the Cure.*]

25 (a) There is created a state [Commission for Saving the Cure] which shall consist of [15]  
26 members appointed as provided in this section. The [commission] shall be assigned to the  
27 [Division of Public Health of the Department of Human Resources] for administrative purposes  
28 only, as prescribed in [insert citation].

29 (b) Seven members shall be appointed by the [Governor]. The [Governor] shall appoint  
30 [four] members to serve initial terms of [three] years and [three] members to serve initial terms of  
31 [two] years. Thereafter, successors to such initial appointees shall serve terms of [three] years. The  
32 [Governor] shall designate one of the people so appointed to be the chairperson of the  
33 [commission]. If the [chief executive officer of the state research alliance] is not appointed by the  
34 [Governor] or any other appointing authority to serve on the [commission], he or she shall serve as  
35 an advisory member.

36 (c) [Four] members shall be appointed by the [Lieutenant Governor] or, if the [Lieutenant  
37 Governor] belongs to a political party other than the political party to which a majority of the  
38 members of the [Senate belong, by the Senate Committee on Assignments]. Of these [four  
39 members, there shall be at least one of each of the following: a physician licensed to practice  
40 medicine in this state; a recognized medical ethicist with an accredited degree in medicine,  
41 medical ethics, or theology; a medical researcher in permitted stem cell research; and an attorney  
42 with experience in health policy law]. The [Lieutenant Governor or Senate Committee on  
43 Assignments] shall appoint [two members to serve initial terms of three years and two members to  
44 serve initial terms of two years]. Thereafter, successors to such initial appointees shall serve terms  
45 of [three] years.

46 (d) [Four] members shall be appointed by the [Speaker of the House of Representatives]. Of  
47 these [four] members, there shall be at least [one of each of the following: a physician licensed to  
48 practice medicine in this state; a recognized medical ethicist with an accredited degree in  
49 medicine, medical ethics, or theology; a medical researcher in permitted stem cell research; and an  
50 attorney with experience in health policy law]. The [Speaker of the House of Representatives shall  
51 appoint two members to serve initial terms of three years and two members to serve initial terms  
52 of two years]. Thereafter, successors to such initial appointees shall serve terms of [three] years.

53 (e) Members of the [commission] shall be eligible to succeed themselves. The initial terms  
54 of office shall begin on [July 1, 2007]. Appointments shall be made by the respective appointing  
55 authorities no later than [June 15, 2007]. Thereafter, appointments of successors shall be made by  
56 the respective appointing authority no later than [June 1] of the year in which the member’s term  
57 of office expires. Vacancies shall be filled for the unexpired term by the respective appointing  
58 authority.

59 (f) The [commission] shall meet at least [four] times per year at the call of the chairperson  
60 or upon the request of at least [seven] members.

61 (g) The [commission] shall have the following duties and responsibilities:

62 (1) to investigate the implementation of this Act and to recommend any  
63 improvements to the [General Assembly];

64 (2) to make available to the public the records of all meetings of the [commission]  
65 and of all business transacted by the [commission];

66 (3) to oversee the operations of the Newborn Umbilical Cord Blood Bank  
67 established in section 5 of this Act, including approving all fees established to cover  
68 administration, collection, and storage costs;

69 (4) to undertake a Saving the Cure Initiative to promote awareness of the Newborn  
70 Umbilical Cord Blood Bank and encourage donation of postnatal tissue and fluid to the bank;

71 (5) to ensure the privacy of people who donate postnatal tissue and fluid to the  
72 Newborn Umbilical Cord Blood Bank pursuant to this Act and consistent with applicable federal  
73 guidelines;

74 (6) to develop a plan for making postnatal tissue and fluid collected under the  
75 Saving the Cure Initiative available for medical research and treatment and to ensure compliance  
76 with all relevant national practice and quality standards relating to such use;

77 (7) to develop a plan for private storage of postnatal tissue and fluid for medical  
78 treatment or to make potential donors aware of private storage options for said tissue and fluid as  
79 deemed in the public interest;

80 (8) to participate in the National Cord Blood Program and to register postnatal  
81 tissue and fluid collected with registries operating in connection with that program;

82 (9) to make grants and enter into agreements to support permitted stem cell  
83 research with immediate and clinical medical applications;

84 (10) to employ such staff and to enter into such contracts as may be necessary to  
85 fulfill its duties and responsibilities under this Act subject to funding by the [General Assembly];  
86 and

87 (11) to report [annually] to the [General Assembly] in [December each year]  
88 concerning the activities of the [commission] with recommendations for any legislative changes or  
89 funding necessary or desirable to fulfill the goals of this Act.

90 (h) The [commission] shall provide for protection from disclosure of the identity of people  
91 making donations to the Newborn Umbilical Cord Blood Bank.

92 (i) The [commission] may request additional funding from any additional source including,  
93 but not limited to, federal and private grants.

94 (j) The [commission] may establish a separate not for profit organization or foundation for  
95 the purposes of supporting the Newborn Umbilical Cord Blood Bank established pursuant to this  
96 Act.

97 (k) Any public funds expended for stem cell research shall conform to the requirements set  
98 forth in federal law and Senate Resolution 30, the Hope Offered through Principled and Ethical  
99 Stem Cell Research Act, as approved by the United States Senate on April 11, 2007.

100  
101 Section 5. *[Newborn Umbilical Cord Blood Bank.]*

102 (a) No later than [June 30, 2008], the [Commission for Saving the Cure], as created in  
103 section 4 of this Act, shall establish a network of postnatal tissue and fluid banks in partnership  
104 with one or more public or private colleges or universities, public or private hospitals, nonprofit  
105 organizations, or private firms in this state for the purpose of collecting and storing postnatal  
106 tissue and fluid. The bank network, which shall be known as the Newborn Umbilical Cord Blood  
107 Bank, shall make such tissue and fluid available for medical research and treatment in accordance  
108 with this Act.

109 (b) The [Commission for Saving the Cure] shall develop a program to educate pregnant  
110 patients with respect to the banking of postnatal tissue and fluid. The program shall include:

111 (1) notice of the existence of the Newborn Umbilical Cord Blood Bank;

112 (2) an explanation of the difference between public and private banking programs;

113 (3) the medical process involved in the collection and storage of postnatal tissue  
114 and fluid;

115 (4) the current and potential future medical uses of stored postnatal tissue and fluid;

116 (5) the benefits and risks involved in the banking of postnatal tissue and fluid; and

117 (6) the availability and cost of storing postnatal tissue and fluid in public and  
118 private umbilical cord blood banks.

119 (c) Beginning [June 30, 2009], all physicians and hospitals in this state shall inform  
120 pregnant patients of the full range of options for donation of postnatal tissue and fluids no later  
121 than [30] days from the commencement of the patient’s third trimester of pregnancy or at the first  
122 consultation between the attending physician or the hospital, whichever is later; provided,  
123 however, that this subsection shall not be construed to require the participation of any physician  
124 who objects to the transfusion or transplantation of blood on the basis of bona fide religious  
125 beliefs.

126 (d) Nothing in this section shall be construed to prohibit a person from donating postnatal  
127 tissue or fluid to a private blood and tissue bank or storing postnatal tissue or fluid with a private  
128 blood and tissue bank.

129 (e) Any college or university, hospital, nonprofit organization, or private firm participating  
130 in the Newborn Umbilical Cord Blood Bank shall have or be subject to an [institutional review  
131 board] as defined under [insert citation] which shall be available on an ongoing basis to review the  
132 research procedures and conduct of any person desiring to conduct research with postnatal tissue  
133 and fluid from the bank. The [institutional review board] shall establish procedures to protect and  
134 ensure the privacy rights of postnatal tissue and fluid donors consistent with applicable federal  
135 guidelines.  
136

137 Section 6. [*Donating Income Tax Refund to Commission for Saving the Cure.*]

138 (a) Each state income tax return form for taxable years beginning on or after [January 1,  
139 2007], shall contain appropriate language, to be determined by the [state revenue commissioner],  
140 offering the taxpayer the opportunity to contribute to permitted stem cell research through the  
141 [Commission for Saving the Cure] by donating either all or any part of any tax refund due, by  
142 authorizing a reduction in the refund check otherwise payable, or by contributing any amount over  
143 and above any amount of tax owed by adding that amount to the taxpayer’s payment. The  
144 instructions accompanying the income tax return form shall contain a description of the purposes  
145 for which the [commission] was established and the intended use of moneys received from the  
146 contributions. Each taxpayer required to file a state income tax return who desires to contribute to  
147 the [commission] may designate such contribution as provided in this section on the appropriate  
148 income tax return form.

149 (b) The [Department of Revenue] shall determine annually the total amount so contributed  
150 and shall transmit such amount to the [Commission for Saving the Cure].

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

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

153 Section 9. [*Effective Date.*] [Insert effective date.]  
154  
155  
156

# Nonforfeiture Benefit Requirements with Respect to Long-Term Care Policies

This Act prohibits an insurer, including an insurance company, fraternal benefit society, hospital or medical service corporation, and HMO, from issuing or delivering a long-term care policy on or after July 1, 2008 unless it had offered the prospective insured an optional nonforfeiture benefit during the policy solicitation or application process. The offer may form a rider to the policy. If the nonforfeiture option is declined, the insurer must give the insured a contingent benefit if the policy lapses (i.e., terminates because the insured stops paying the premium). The contingent benefit must be available to the insured for a period of time after any substantial premium increase.

The bill requires the insurance commissioner to adopt regulations by July 1, 2008 to implement the nonforfeiture option and contingent benefit requirements. The regulations must specify the nonforfeiture benefit standards and type; the time period a contingent benefit must be available; what constitutes a substantial premium increase; and be in accordance with the National Association of Insurance Commissioners' long-term care insurance model regulation.

Submitted as:

Connecticut

[Public Act No. 07-28](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act Concerning Nonforfeiture  
2 Benefit Requirements With Respect To Long-Term Care Policies.”

3  
4           Section 2. [*Definitions.*]

5           (a) As used in this section, “long-term care policy” means any individual health insurance  
6 policy, delivered or issued for delivery to any resident of this state on or after [July 1, 1986],  
7 which is designed to provide, within the terms and conditions of the policy, benefits on an  
8 expense-incurred, indemnity or prepaid basis for necessary care or treatment of an injury, illness  
9 or loss of functional capacity provided by a certified or licensed health care provider in a setting  
10 other than an acute care hospital, for at least [one year] after a reasonable elimination period. A  
11 long-term care policy shall provide benefits for confinement in a nursing home or confinement in  
12 the insured's own home or both. Any additional benefits provided shall be related to long-term  
13 treatment of an injury, illness or loss of functional capacity. “Long-term care policy” shall not  
14 include any such policy which is offered primarily to provide basic Medicare supplement  
15 coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage,  
16 major medical expense coverage, disability income protection coverage, accident only coverage,  
17 specified accident coverage or limited benefit health coverage.

18           (b) No insurance company, fraternal benefit society, hospital service corporation, medical  
19 service corporation or health care center may deliver or issue for delivery any long-term care  
20 policy which has a loss ratio of less than [sixty per cent] for any individual long-term care policy.  
21 An issuer shall not use or change premium rates for a long-term care insurance policy unless the



22 rates have been filed with and approved by the [Insurance Commissioner]. Any rate filings or rate  
23 revisions shall demonstrate that anticipated claims in relation to premiums when combined with  
24 actual experience to date can be expected to comply with the loss ratio requirement of this section.

25 (c) No such company, society, corporation or center may deliver or issue for delivery any  
26 long-term care policy without providing, at the time of solicitation or application for purchase or  
27 sale of such coverage, full and fair disclosure of the benefits and limitations of the policy.

28 (d) No such company, society, corporation or center may deliver or issue for delivery any  
29 long-term care policy on or after [July 1, 2008], without offering, at the time of solicitation or  
30 application for purchase or sale of such coverage, an option to purchase a policy that includes a  
31 nonforfeiture benefit. Such offer of a nonforfeiture benefit may be in the form of a rider attached  
32 to such policy. In the event the nonforfeiture benefit is declined, such company, society,  
33 corporation or center shall provide a contingent benefit upon lapse that shall be available for a  
34 specified period of time following a substantial increase in premium rates. Not later than [July 1,  
35 2008], the [Insurance Commissioner] shall adopt regulations to implement the provisions of this  
36 subsection. Such regulations shall specify the type of nonforfeiture benefit that may be offered, the  
37 standards for such benefit, the period of time during which a contingent benefit upon lapse will be  
38 available and the substantial increase in premium rates that trigger a contingent benefit upon lapse  
39 and in accordance with the Long-Term Care Insurance Model Regulation adopted by the National  
40 Association of Insurance Commissioners.

41 (e) The [Insurance Commissioner] shall adopt regulations, in accordance with which  
42 address:

43 (1) the insured's right to information prior to his replacing an accident and sickness  
44 policy with a long-term care policy,

45 (2) the insured's right to return a long-term care policy to the insurer, within a  
46 specified period of time after delivery, for cancellation, and

47 (3) the insured's right to accept by his signature, and prior to it becoming effective,  
48 any rider or endorsement added to a long-term care policy after the issuance date of such policy.

49 (f) The [Insurance Commissioner] may, upon written request by any such company,  
50 society, corporation or center, issue an order to modify or suspend a specific provision of this  
51 section or any regulation adopted pursuant thereto with respect to a specific long-term care policy  
52 upon a written finding that:

53 (1) the modification or suspension would be in the best interest of the insureds;

54 (2) the purposes to be achieved could not be effectively or efficiently achieved  
55 without such modification or suspension; and

56 (A) the modification or suspension is necessary to the development of an  
57 innovative and reasonable approach for insuring longterm care,

58 (B) the policy is to be issued to residents of a life care or continuing care  
59 retirement community or other residential community for the elderly and the modification or  
60 suspension is reasonably related to the special needs or nature of such community, or

61 (C) the modification or suspension is necessary to permit long-term care  
62 policies to be sold as part of, or in conjunction with, another insurance product.

63 (g) Whenever the commissioner decides not to issue such an order to modify or suspend  
64 provisions of this Act or regulations adopted pursuant to this Act, he shall provide written notice  
65 of such decision to the requesting party in a timely manner.

66 (h) Upon written request by any such company, society, corporation or center, the  
67 [Insurance Commissioner] may issue an order to extend the preexisting condition exclusion  
68 period, as established by regulations adopted pursuant to this section, for purposes of specific age  
69 group categories in a specific long-term care policy form whenever he makes a written finding that  
70 such an extension is in the best interest of the public.

71 (i) Whenever the [commissioner] decides not to issue such an to extend the preexisting  
72 condition exclusion period as established by regulations adopted pursuant to this section, he shall  
73 provide written notice of such decision to the requesting party in a timely manner.

74 (j) The provisions of [insert citation] shall be applicable to any such requesting party  
75 aggrieved by any order or decision of the [commissioner] made pursuant to subsections (f) and (h)  
76 of this section.

77

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

79

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

81

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

# Organized Retail Crime

This legislation allows for the amount of goods stolen to be aggregated into one charge before a defendant goes to trial. The Act also allows grouping multiple offenses together to meet a threshold that imposes stiffer charges on people who commit organized retail theft. This legislation requires establishments which accept large amounts of items for resale to make a reasonable attempt to determine if the items are stolen.

Submitted as:

Delaware

[HB 121](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The Organized Retail Crime Act.”

2  
3 Section 2. [*Legislative Intent.*]

4 (a) It is the intent of the [Legislature] in enacting this statute to define Organized Retail  
5 Crime and to help law enforcement, prosecutorial authorities, and the judiciary understand the  
6 nature of Organized Retail Crime and also provide them with additional tools to help stop  
7 Organized Retail Crime.

8 (b) It is the intent of the [Legislature] in enacting this statute to facilitate cooperation  
9 among law enforcement and prosecutorial authorities by removing jurisdictional barriers and  
10 allowing cooperation and assistance across jurisdictions.

11 (c) It is the intent of the [Legislature] in enacting this statute to limit or remove the ability  
12 of criminals engaged in Organized Retail Crime to take advantage of monetary and/or geographic  
13 jurisdictional requirements, and the anonymity provided by internet-based or other marketplaces.  
14

15 Section 3. [*Organized Retail Crime Defined.*]

16 (a) A person is guilty of “Theft: Organized Retail Crime” when the person takes, exercises  
17 control over, or obtains retail merchandise of another person intending to deprive that person of it,  
18 or receives stolen property in quantities that would not normally be purchased for personal use or  
19 consumption, with the intent to appropriate or to resell or re-enter the merchandise into commerce.

20 (b) The first violation of Theft: Organized Retail Crime is a [Class A misdemeanor].

21 (c) A series of organized retail crime thefts committed by a person or group of people may  
22 be aggregated into one count or charge, with the sum of the value of all the retail merchandise  
23 being the value considered in determining the degree of Theft: Organized Retail Crime.

24 (d) If a defendant has been convicted of Theft: Organized Retail Crime [two or more  
25 times], the offense of Theft: Organized Retail Crime is a [Class E felony].  
26

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

28  
29 Section 5. [*Repealer.*] [Insert repealer clause.]  
30

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

# Plastic Card Security

This Act limits how long companies that process credit card and related electronic transactions can retain sensitive information such as card security code data and PINs after a transaction is made.

Submitted as:

Minnesota

[S.F. No. 1574, 2nd Engrossment](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Ensure Plastic Card  
2 Security.”

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

5                   (1) “access device” means a card issued by a financial institution that contains a  
6 magnetic stripe, microprocessor chip, or other means for storage of information which includes,  
7 but is not limited to, a credit card, debit card, or stored value card;

8                   (2) “breach of the security of the system” has the meaning given in [insert citation];

9                   (3) “card security code” means the three digit or four digit value printed on an  
10 access device or contained in the microprocessor chip or magnetic stripe of an access device  
11 which is used to validate access device information during the authorization process;

12                   (4) “financial institution” means any office of a bank, bank and trust, trust company  
13 with banking powers, savings bank, industrial loan company, savings association, credit union, or  
14 regulated lender;

15                   (5) “microprocessor chip data” means the data contained in the microprocessor chip  
16 of an access device;

17                   (6) “magnetic stripe data” means the data contained in the magnetic stripe of an  
18 access device;

19                   (7) “PIN” means a personal identification code that identifies the cardholder;

20                   (8) “PIN verification code number” means the data used to verify cardholder  
21 identity when a PIN is used in a transaction; and

22                   (9) “Service provider” means a person or entity that stores, processes, or transmits  
23 access device data on behalf of another person or entity.  
24

25           Section 3. [*Security or Identification Information; Retention Prohibited.*] No service  
26 provider conducting business in this state that accepts an access device in connection with a  
27 transaction shall retain the card security code data, the PIN verification code number, or the full  
28 contents of any track of magnetic stripe data, subsequent to the authorization of the transaction or  
29 in the case of a PIN debit transaction, subsequent to 48 hours after authorization of the transaction.  
30

31           Section 4. [*Liability for Breach of the Security of the System.*]

32                   (a) Whenever a service provider violates this Act, and there is a breach of the security of  
33 the system of that service provider, the service provider shall reimburse the financial institution

34 that issued any access devices affected by the breach for the costs of reasonable actions  
35 undertaken by the financial institution as a result of the breach in order to protect the information  
36 of its cardholders or to continue to provide services to cardholders, including but not limited to,  
37 any cost incurred in connection with:

- 38 (1) the cancellation or reissuance of any access device affected by the breach;
- 39 (2) the closure of any deposit, transaction, share draft, or other accounts affected by  
40 the breach and any action to stop payments or block transactions with respect to the accounts;
- 41 (3) the opening or reopening of any deposit, transaction, share draft, or other  
42 accounts affected by the breach;
- 43 (4) any refund or credit made to a cardholder to cover the cost of any unauthorized  
44 transaction relating to the breach; and
- 45 (5) the notification of cardholders affected by the breach.

46 (b) The financial institution is also entitled to recover costs for damages paid by the  
47 financial institution to cardholders injured by a breach of the security of a system of a service  
48 provider that violates this Act. Costs do not include any amounts recovered from a credit card  
49 company by a financial institution.

50 (c) A service provider that processes fewer than 20,000 transactions by access device by  
51 transactions annually is not liable to a financial institution under this section.

52

53 Section 5. [*Remedies for Cardholders Injured by a Violation of this Act.*]

54 (a) An individual cardholder injured by a violation of the standards, duties, prohibitions, or  
55 requirements of this Act may bring a private action under [insert citation]. A private right of action  
56 by an individual cardholder under this Act is in the public interest.

57 (b) The remedies provided in this section are cumulative and do not restrict any other right  
58 or remedy otherwise available to the individual cardholder.

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.]

# Postclaims Underwriting

This Act restricts health insurers and HMOs from rescinding or limiting coverage based on information submitted with or omitted from an insurance application if the insurer or HMO did not perform a thorough medical underwriting process before issuing the policy, contract, or certificate. However, the legislation also directs the state insurance commissioner to establish a process to enable insurers to apply to the commissioner to rescind a policy holder's coverage and a method to appeal the commissioner's decision if the application to rescind is not approved by the commissioner.

Submitted as:

Connecticut

[Public Act No. 07-113](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Limit Health Insurers from  
2 Rescinding Coverage Under Certain Conditions.”

3  
4           Section 2. [*Rescinding, Cancelling or Limiting Insurance Policies or Contracts.*]

5           (a) Unless approval is granted pursuant to subsection (b) of this section, no insurer or  
6 health care center may rescind, cancel or limit any policy of insurance contract, evidence of  
7 coverage or certificate that provides coverage of the type specified in [insert citation] on the basis  
8 of written information submitted on, with or omitted from an insurance application by the insured  
9 if the insurer or health care center failed to complete medical underwriting and resolve all  
10 reasonable medical questions related to the written information submitted on, with or omitted from  
11 the insurance application before issuing the policy, contract, evidence of coverage or certificate.

12           (b) No insurer or health care center may rescind, cancel or limit any such policy, contract,  
13 evidence of coverage or certificate more than [two years] after the effective date of the policy,  
14 contract, evidence of coverage or certificate.

15           (c) An insurer or health care center shall apply for approval of such rescission, cancellation  
16 or limitation by submitting such written information to the [Insurance Commissioner] on an  
17 application in such form as the [commissioner] prescribes. Such insurer or health care center shall  
18 provide a copy of the application for such approval to the insured or the insured's representative.

19           (d) Not later than [seven business days] after receipt of the application for such approval,  
20 the insured or the insured's representative shall have an opportunity to review such application and  
21 respond and submit relevant information to the [commissioner] with respect to such application.

22           (e) Not later than [fifteen] business days after the submission of information by the insured  
23 or the insured's representative, the [commissioner] shall issue a written decision on such  
24 application.

25           (f) The [commissioner] may approve such rescission, cancellation or limitation if the  
26 commissioner finds:

27                 (1) the written information submitted on or with the insurance application was false  
28 at the time such application was made and the insured or such insured's representative knew or

29 should have known of the falsity therein, and such submission materially affects the risk or the  
30 hazard assumed by the insurer or health care center, or

31 (2) the information omitted from the insurance application was knowingly omitted  
32 by the insured or such insured's representative, or the insured or such insured's representative  
33 should have known of such omission, and such omission materially affects the risk or the hazard  
34 assumed by the insurer or health care center. Such decision shall be mailed to the insured, the  
35 insured's representative, if any, and the insurer or health care center.

36 (g) Notwithstanding the provisions of [insert citation], any insurer or insured aggrieved by  
37 any decision by the [commissioner] under this Act may, within [thirty] days after notice of the  
38 [commissioner's] decision is mailed to such insurer and insured, take an appeal therefrom to the  
39 [superior court for the judicial district] of [insert location], which shall be accompanied by a  
40 citation to the [commissioner] to appear before said court. Such citation shall be signed by the  
41 same authority, and such appeal shall be returnable at the same time and served and returned in the  
42 same manner, as is required in case of a summons in a civil action. Said court may grant such  
43 relief as may be equitable.

44 (h) The [Insurance Commissioner] may adopt regulations, in accordance with [insert  
45 citation], to implement the provisions of this section.

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.]

# Preventing and Controlling Multidrug-Resistant Organisms

This Act requires the state department of public health to implement policies and procedures for health care providers and health care facilities in the state to help prevent and control Multidrug-Resistant Organisms (MDROs).

Submitted as:

Illinois

[Public Act 095-0282](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] The Act shall be cited as “An Act to Help Prevent and Control  
2 Multidrug-Resistant Organisms.”

3  
4           Section 2. [*Definitions.*] As used in this Act, “Multidrug-Resistant Organisms (MDROs)”  
5 include, but are not limited to, Methicillin-Resistant Staphylococcus Aureus (MRSA),  
6 Vancomycin-Resistant Enterococci (VRE) and certain Gram-Negative Bacilli (GNB), as these  
7 terms are referenced by the United States Centers for Disease Control and Prevention, and as  
8 revised by the [state department of public health] or United States Centers for Disease Control and  
9 Prevention.

10  
11           Section 3. [*Policies and Procedures to Help Prevent and Control MDROs.*]

12           (A) In order to help prevent and control Multidrug-Resistant Organisms (MDROs), the  
13 [state department of public health] shall adopt administrative rules for health care facilities defined  
14 under [insert citation] and subject to licensure, certification, registration, or other regulation by the  
15 [state department of public health] that may require such facilities:

16                   (1) perform an annual infection control risk assessment;

17                   (2) develop infection control policies for MDROs which are based on the  
18 assessment under subdivision (A)(1), and incorporate, as appropriate, current recommendations  
19 from the U.S. Centers for Disease Control and Prevention to prevent and control MDROs, and

20                   (3) enforce hand hygiene requirements.

21           (B) The [state department of public health] shall:

22                   (1) publish guidelines to reduce the incidence of MDROs for health care providers,  
23 health care facilities, public health departments, prisons, jails, and the general public; and

24                   (2) provide periodic reports and updates to public officials, health professionals,  
25 and the general public about new policies and procedures to prevent and manage infections from  
26 MDROs.

27  
28           Section 4. [*Hospitals and MDROs Prevention.*]

29           (A) The [state university hospital] shall develop and implement comprehensive  
30 interventions to prevent and control MDROs and incorporate, as appropriate, current guidelines  
31 from the U.S. Centers for Disease Control and Prevention to manage MDROs in healthcare



32 settings. The [state department of public health] shall adopt administrative rules requiring the  
33 [state university hospital] to perform an annual facility-wide MDROs Infection Control Risk  
34 Assessment and enforce hand hygiene and contact precaution requirements.

35 (B) All other hospitals in the state shall develop and implement comprehensive  
36 interventions to prevent and control (MDROs), and incorporate, as appropriate, current guidelines  
37 from the U.S. Centers for Disease Control and Prevention to manage MDROs in healthcare  
38 settings. The [state department of public health] shall adopt administrative rules requiring these  
39 hospitals to perform an annual facility-wide MDROs Infection Control Risk Assessment and  
40 enforce hand hygiene and contact precaution requirements.

41  
42 Section 5. [*Reporting Incidences of MDROs.*] The [state department of public health] is  
43 authorized to require all hospitals, effective [insert date], to submit data about MDROs to the  
44 [state department of health] based on National Center for Health Statistics guidelines, in formats  
45 approved by the [state department of public health]. This data shall address, but is not limited to,  
46 MRSA and MDROs responsible for central Venous Catheter-Associated Bloodstream Infections  
47 and Ventilator-Associated Pneumonia in designated hospital units. The data reported under this  
48 section shall include the codes “present on admission” and “occurred during the stay.”

49  
50 Section 6. [*MRSA Surveillance.*]

51 (A) The [state department of public health] shall implement surveillance for designated  
52 cases of community associated MRSA infections for at least [3] years, beginning on or before  
53 [January 1, 2008].

54 (B) The [state department of public health] shall publish an annual report about the number  
55 of MRSA and Clostridium Difficile infections based on a [Hospital Discharge Dataset] as defined  
56 under [insert citation], and include related information as deemed necessary by the [state  
57 department of public health].

58  
59 Section 7. [*Severability.*] [Insert severability clause.]

60  
61 Section 8. [*Repealer.*] [Insert repealer clause.]

62  
63 Section 9. [*Effective Date.*] [Insert effective date.]

# Prisoner Admission to Certain Health Care Facilities

This Act provides that if an inmate is given an early release, pardon, or parole due to a chronic or terminal illness and is admitted to a nursing or assisted living facility, the state department of corrections or state agency placing the offender must notify the facility administrator about the offender prior to the offender's admission to the facility. The department of corrections or placing agency must also provide information to the public about the offender on the department of corrections' website. This information includes where the offender resides and the date the offender was placed at the nursing home or assisted living facility.

The bill establishes a training program for employees who work in facilities where offenders reside and it directs nursing or assisted living facility administrator to provide staff trained by the department of corrections in the safe management of offenders.

Submitted as:

Utah

[HB 114](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Prisoner Admissions  
2 to Certain Health Care Facilities.”

3  
4           Section 2. [*Definitions -- Health Care for Chronically or Terminally Ill Offenders -- Notice*  
5 *to Health Care Facility.*]

6           (1) As used in this section:

7                   (a) “Department or agency” means the [department of corrections] or government  
8 entity responsible for placing an offender in a facility located in this state.

9                   (b) “Chronically ill” has the same meaning as in [insert citation].

10                   (c) “Facility” means an assisted living facility as defined in [insert citation] and a  
11 nursing care facility as defined in [insert citation], except that transitional care units and other long  
12 term care beds owned or operated on the premises of acute care hospitals or critical care hospitals  
13 are not facilities for the purpose of this section.

14                   (d) “Offender” means an inmate whom the [department of corrections] or [agency]  
15 has given an early release, pardon, or parole due to a chronic or terminal illness.

16                   (e) “Terminally ill” is defined as [insert citation].

17           (2) If an offender from this state or any other state is admitted as a resident of a facility due  
18 to a chronic or terminal illness, the [department of corrections] or [agency] placing the offender  
19 shall:

20                   (a) provide written notice to the administrator of the facility no later than [15] days  
21 prior to the offender's admission as a resident of a facility, stating:

22                           (i) the offense for which the offender was convicted and a description of the  
23 actual offense;

24                           (ii) the offender's status with the [department of corrections] or [agency];

25 (iii) that the information provided by the [department of corrections] or  
26 [agency] about the offender shall be provided to employees of the facility no later than [ten] days  
27 prior to the offender's admission to the facility; and

28 (iv) the contact information for:

29 (A) the offender's parole officer and also a point of contact within  
30 the [department of corrections] or [agency], if the offender is on parole; and

31 (B) a point of contact within the [department of corrections] or  
32 [agency], if the offender is not under parole supervision but was given an early release or pardon  
33 due to a chronic or terminal illness;

34 (b) make available to the public on the [department of corrections'] website and  
35 upon request:

36 (i) the name and address of the facility where the offender resides; and

37 (ii) the date the offender was placed at the facility; and

38 (c) provide a training program for employees who work in a facility where  
39 offenders reside, and if the offender is placed at the facility by:

40 (i) the [department of corrections], the [department of corrections] shall  
41 provide the training program for the employees; and

42 (ii) by a [department of corrections] or [agency] from another state, that  
43 state's [department or agency] shall arrange with the [department of corrections] to provide the  
44 training required by this subsection (2), if training has not already been provided by the  
45 [department of corrections], and shall provide to the [department of corrections] any necessary  
46 compensation for this service.

47 (3) The administrator of the facility shall:

48 (a) provide residents of the facility or their guardians notice that a convicted felon  
49 is being admitted to the facility no later than [ten] days prior to the offender's admission to the  
50 facility; and

51 (b) advise potential residents or their guardians about people under Subsection (2)  
52 who are current residents of the facility; and

53 (c) provide training, offered by the [department of corrections], to all employees  
54 about how to safely manage offenders.

55 (5) The [department of corrections] shall make rules under [insert citation] establishing:

56 (a) a consistent format and procedure for providing notification to facilities and  
57 information to the public in compliance with Subsection (2); and

58 (b) a training program, in compliance with Subsection (3) for employees, who work  
59 at facilities where offenders reside to ensure the safety of facility residents and employees.

60 (6) Anyone who willfully violates Section 2 (3) of this Act is guilty of a [Class B  
61 misdemeanor].

62  
63 Section 3. [*Severability.*] [Insert severability clause.]

64  
65 Section 4. [*Repealer.*] [Insert repealer clause.]

66  
67 Section 5. [*Effective Date.*] [Insert effective date.]

# Real-Time Electronic Logbook for a Pharmacy to Record Purchases of Pseudoephedrine and Other Similar Substances

This Act directs the state crime center to develop and operate a real-time electronic logbook to enable pharmacies to record purchases of Ephedrine, Pseudoephedrine, and Phenylpropanolamine. The Act requires pharmacies to enter such purchases in the electronic logbook.

Submitted as:

Arkansas

[Act 508 of 2007](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Provide for a Real-Time  
2 Electronic Logbook for a Pharmacy to Record Purchases of Ephedrine, Pseudoephedrine, and  
3 Phenylpropanolamine.”  
4

5           Section 2. [*Legislative Findings.*] The [General Assembly] finds that:

6           (a) [insert citation] requires sales involving products containing Ephedrine,  
7 Pseudoephedrine, and Phenylpropanolamine be recorded into a written or electronic log at each  
8 individual pharmacy;

9           (b) the state has experienced a significant decrease in the manufacture of  
10 Methamphetamine;

11           (c) In order to assist law enforcement in its efforts to further combat Methamphetamine,  
12 the state needs a centralized real-time electronic logbook to document transactions made at  
13 pharmacies which involve the sale of products containing Ephedrine, Pseudoephedrine, and  
14 Phenylpropanolamine.  
15

16           Section 3. [*Pharmacy Duty to Maintain Ephedrine, Pseudoephedrine, or*  
17 *Phenylpropanolamine Sales Log.*]

18           (a) (1) A pharmacy shall:

19                           (A) maintain a written or electronic log or receipts of transactions involving  
20 the sale of Ephedrine, Pseudoephedrine, or Phenylpropanolamine; and

21                           (B) enter any transaction required to be maintained by this section into the  
22 real-time electronic logbook maintained by the state [Crime Information Center] under [section 4  
23 of this Act].

24           (2) A person buying, receiving, or otherwise acquiring Ephedrine,  
25 Pseudoephedrine, or Phenylpropanolamine is required to:

26                           (A) produce current and valid proof of identity; and

27                           (B) sign a written or electronic log or receipt that documents the date of the  
28 transaction, the name of the person, and the quantity of pseudoephedrine or ephedrine purchased,  
29 received, or otherwise acquired.

30 (3) The requirements of subdivisions (a)(1) and (a)(2)(B) are satisfied by entering  
31 the information required to be produced into the real-time electronic logbook maintained by the  
32 state [Crime Information Center] under section 4 of this Act.

33  
34 Section 4. [*Real-time Electronic Logbook.*]

35 (a) (1) the state [Crime Information Center] shall provide pharmacies in this state  
36 access to a real-time electronic logbook for the purpose of entering into the real-time electronic  
37 logbook any transaction required to be reported by this Act.

38 (2) The real-time electronic logbook shall have the capability to calculate both state  
39 and federal Ephedrine, Pseudoephedrine, or Phenylpropanolamine purchase limitations.

40 (b) The [Crime Information Center] may contract with a private vendor to implement this  
41 section.

42 (c) The [Crime Information Center] shall not charge a pharmacy any fee:

43 (1) to support the establishment or maintenance of the real-time logbook; or

44 (2) for any computer software required to be installed as part of the real-time  
45 electronic logbook.

46  
47 Section 5. [*Confidentiality of Information.*]

48 (a) Information entered into the real-time electronic logbook is confidential and is not be  
49 subject to the [insert citation].

50 (b) Except as authorized under [insert citation], the [Crime Information Center] shall not  
51 disclose any information entered, collected, recorded, transmitted, or maintained in the real-time  
52 electronic logbook.

53  
54 Section 6. [*Authorized Access to the Real-Time Electronic Logbook.*] The [Crime  
55 Information Center] shall provide access to the real-time electronic logbook to the following:

56 (1) Any person authorized to prescribe or dispense products containing Ephedrine,  
57 Pseudoephedrine, or Phenylpropanolamine for the purpose of providing medical care or  
58 pharmaceutical care;

59 (2) A local, state, or federal law enforcement official or a local, state, or federal  
60 prosecutor;

61 (3) A local, state, or federal official who requests access for the purpose of  
62 facilitating a product recall necessary for the protection of the public health and safety; and

63 (4) The [State Board of Pharmacy] for the purpose of investigating a suspicious  
64 transaction, as allowed under [insert citation].

65  
66 Section 7. [*Promulgation of Rules.*] The [Crime Information Center], after consulting with  
67 the [State Board of Pharmacy], shall promulgate rules necessary to:

68 (1) implement the provisions of this Act;

69 (2) ensure the real-time electronic logbook enables a pharmacy to monitor the  
70 sales of ephedrine, pseudoephedrine, or phenylpropanolamine occurring at that pharmacy;

71 (3) allow a pharmacy to determine whether it will access information concerning  
72 sales of ephedrine, pseudoephedrine, or phenylpropanolamine made at other pharmacies in this  
73 state; and

74 (4) ensure that the real-time electronic logbook does not allow access to a  
75 competitor's pricing information for Ephedrine, Pseudoephedrine, and Phenylpropanolamine.

76  
77 Section 8. [*Destruction of Records.*] The [Crime Information Center] shall destroy any  
78 transaction record maintained in the real-time electronic logbook within [two (2)] years from the

79 date of its entry unless the transaction record is being used in an ongoing criminal investigation or  
80 criminal proceeding.

81

82 Section 9. [*Liability of Pharmacy.*] A pharmacy in this state is not liable civilly for a sale  
83 of Ephedrine, Pseudoephedrine, or Phenylpropanolamine that occurs at another pharmacy in this  
84 state.

85

86 Section 10. [*Penalty for Unauthorized Disclosure and Unauthorized Access.*]

87 (a) A person commits an offense under this Act if he or she knowingly:

88 (1) releases or discloses to any unauthorized person any confidential information  
89 collected and maintained under this Act; or

90 (2) obtains confidential information for a purpose not authorized by this Act.

91 (b) A violation of subsection (a) of this section is a [Class A misdemeanor].

92

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

94

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

96

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

# Registered Agents Statement

All business entities created by the filing of organizational documents with the Secretary of State are required to have registered agents for service of process. The intent of this legislation is to make all statutory provisions for registered agents the same, whether the registered agent is acting for a corporation, a limited liability company, or any form of formally-organized partnership. It also applies to unincorporated nonprofit associations.

This Act:

- defines commercial registered agent and non-commercial registered agent and related terms;
- defines interest holder and related terms;
- establishes fees to file as a registered agent;
- defines the only duties of a registered agent that complies with the Act as:
  - (1) to forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand that is served on the agent;
  - (2) to provide the notices required by the Act to the entity at the address most recently supplied to the agent by the entity;
  - (3) if the agent is a noncommercial registered agent, to keep current the information in the most recent registered agent filing for the entity;
  - (4) if the agent is a commercial registered agent, to keep current the information listed for it; and
  - (5) to have an individual available during normal business hours at the registered agent's street address to accept service of process and other notices and documents.
- requires those who file as registered agents to furnish a street address and a mailing address if the two are different;
- requires registered agents to file certain information about the entity they represent;
- directs the Secretary of State to compile and make available a daily list of registered agent filings;
- permits a person or domestic or foreign entity to become listed as a commercial registered agent by filing a certain type of statement with the Secretary of State;
- directs that a commercial registered agent listing statement takes effect upon filing;
- permits a commercial registered agent to terminate their listing as a commercial registered agent by filing with the Secretary of State a commercial registered agent termination statement signed by or on behalf of the agent which states certain information;
- directs that a commercial registered agent termination statement takes effect on the thirty-first day after the day on which it is filed;
- permits a represented entity to change the information currently on file with the Secretary of State via a Statement of Change signed on behalf of the entity;
- directs that a noncommercial registered agent that changes its name or its address as currently in effect with respect to a represented entity pursuant the agent shall file with the Secretary of State, with respect to each entity represented by the agent, a Statement of Change signed by or on behalf of the agent;
- mandates that a Statement of Change takes effect upon filing;
- directs a noncommercial registered agent to promptly furnish the represented entity with a record of filing a statement of change and the changes made by the filing;
- stipulates that if a commercial registered agent changes its address without filing a Statement of Change, the Secretary of State may cancel the listing of the agent;

- directs the Secretary of State to promptly notify the entities represented by an agent whose listing has been canceled by the Secretary of State;
- enables a registered agent to resign at any time with respect to a represented entity by filing with the Secretary of State a Statement of Resignation signed by or on behalf of the agent;
- directs that a Statement of Resignation takes effect on the earlier of the thirty-first day after the day on which it is filed or the appointment of a new registered agent for the represented entity;
- directs a registered agent to promptly furnish the represented entity notice in a record of the date on which a Statement of Resignation was filed;
- directs that a domestic entity that is not a filing entity or a nonqualified foreign entity may file with the Secretary of State a Statement appointing an agent for service of process signed on behalf of the entity;
- directs that the appointment of such a registered agent does not qualify a nonqualified foreign entity to do business in the state and is not sufficient alone to create personal jurisdiction over the nonqualified foreign entity in this state;
- specifies that a Statement appointing an agent for service of process may not be rejected for filing because the name of the entity filing the Statement is not distinguishable on the records of the Secretary of State from the name of another entity appearing in those records, and that the filing of a Statement appointing an agent for service of process does not make the name of the entity filing the Statement unavailable for use by another entity;
- enables an entity that has filed a Statement appointing an agent for service of process to cancel the Statement by filing a statement of cancellation, which shall take effect upon filing, and must state the name of the entity and that the entity is canceling its appointment of an agent for service of process in this state;
- directs that a Statement appointing an agent for service of process which has not been canceled earlier is effective for a period of five years after the date of filing;
- directs that a Statement appointing an agent for service of process for a nonqualified foreign entity terminates automatically on the date the entity becomes a qualified foreign entity;
- declares that a registered agent is an agent of the represented entity authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity;
- directs that if an entity that previously filed a registered agent filing with the Secretary of State no longer has a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, addressed to the governors of the entity by name at its principal office in accordance with any applicable judicial rules and procedures;
- declares that service of process may be made by handing a copy to the manager, clerk, or other person in charge of any regular place of business or activity of the entity if the person served is not a plaintiff in the action and that other aforementioned methods cannot be used to provide service of process;
- directs that service of process, notice, or demand on a registered agent must be in the form of a written document, except that service may be made on a commercial registered agent in such other forms of a record;
- declares that the appointment or maintenance in the state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state. The address of the agent does not determine venue in an action or proceeding involving the entity.



- directs that the Act modifies, limits, and supersedes the Federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101 of that Act, 15 U.S.C. Section 7001(c), or authorize delivery of any of the notices described in Section 103 of that Act, 15 U.S.C. Section 7003(b);
- specifies that certain documents filed under the Act must be typewritten or printed or, if electronically transmitted, must be in a format that can be retrieved or reproduced in typewritten or printed form;
- directs that filed documents must be in the English language, but a corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the Certificate of Existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation;
- requires certain documents covered by the Act be executed by the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;
- enables the Secretary of State to create forms for the documents required by the Act;
- enables certain documents required by the Secretary of State to be delivered electronically to the Secretary of State;
- enables circumstances for when the terms of a plan or a filed document to be dependent upon facts objectively ascertainable outside a filed document;
- establishes fees to file or copy documents such as Articles of Incorporation; Application for use of deceptively similar name; Application for Reserved Name; Notice of Transfer of Reserved Name; Application for Registered Name; Corporation's Statement of Change of Registered Agent or Registered Office or both; Agent's Statement of Change of Registered Office for each affected corporation; Articles of Merger or share exchange; Articles of Revocation of Dissolution; Certificate of Revocation of Authority to Transact Business; and annual reports;
- prescribes how the Secretary of State must file documents required by the Act and also what the Secretary of State must do if they refuse to file a document required by the Act;
- prescribes how corporations can appeal the Secretary of State's refusal to file certain documents required by the Act;
- declares that the Secretary of State's duty to file documents is ministerial, and that filing or refusing to file a document does not affect the validity or invalidity of the document in whole or part; relate to the correctness or incorrectness of information contained in the document; or create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect;
- declares that notice required by the Act must be in writing and how that notice can be communicated;
- enables the Secretary of State to administratively dissolve a corporation if the corporation does not deliver its annual report to the Secretary of State by the date on which it is due; the corporation is without a registered agent in the state for sixty days or more; or the Secretary of State has credible information that the corporation has failed to notify the Secretary of state within sixty days after the occurrence that its registered agent has been changed or resigned; or that its registered office has been discontinued;
- directs that a corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs and notify claimants;
- defines liability for filing false information under the Act;

- requires corporate annual reports to be filed with the Secretary of State and to include the address of the corporation's registered agent; and
- establishes requirements for limited liability partnerships and registered agents.

Submitted as:

Idaho

[SB 1169](#)

Status: Enacted into law in 2007.

# Requiring State Motor Vehicle Agencies to Share Organ Donor Information with Federally Designated Organ Procurement Organizations

Generally, applicants for new driver licenses and license renewals can designate whether they wish to donate all or any of their body organs or tissues, upon their deaths, for the purposes of transplantation, therapy, medical research, or education. This Act requires the state Motor Vehicle Commission (MVC) to share its organ donor information with federally designated private-sector Organ Procurement Organizations (OPOs) operating in the state, which are charged with the responsibility of effectively procuring and equitably distributing donated organs and tissues within the state.

This Act requires the chief administrator of the MVC, in consultation with the OPOs, to establish and provide an annual education program for agency employees and personnel. The program is to focus on the benefits associated with organ and tissue donations, the scope and operation of the state’s donor program, and how MVC employees and personnel can effectively inform the public about the donor program and best assist those wishing to participate in the donor program.

The legislation directs the MVC to electronically record and store all organ donor designations and identification information and provide real time electronic access to the organ donor designation information that it collects, in the course of issuing and renewing driver licenses, to the two OPOs designated by the federal government pursuant to 42 U.S.C. s.273 to serve the state. The OPOs will not be required to incur an aggregate cost in excess of \$50,000 for these purposes.

Submitted as:

New Jersey

[Chapter 80 of 2007](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Require the State Department  
2 of Motor Vehicle Vehicles to Share Organ Donor Records with Federally Designated Organ  
3 Procurement Organizations.”  
4

5           Section 2. [*Designating Body Organs or Parts to be Donated for Medical Uses and*  
6 *Research.*]

7           A. The [chief administrator of the motor vehicle commission] shall provide with every new  
8 license, renewal license, identification card or renewal identification card the opportunity for each  
9 person pursuant to the provisions of the “Uniform Anatomical Gift Act,” [insert citation], to  
10 designate that the person shall donate all or any body organs or parts for the purposes of  
11 transplantation, therapy, medical research or education upon their death.

12           B. The designation indicating that a person is a donor pursuant to subsection A of this  
13 section shall be done in accordance with procedures prescribed by the [chief administrator]. The  
14 designation shall be displayed in print in a conspicuous form and manner on the license or

15 identification card, and electronically, by substantially the following statement: “ORGAN  
16 DONOR” and shall constitute sufficient legal authority to remove a body organ or part upon the  
17 death of the licensee or identification cardholder. The designation shall be removed in accordance  
18 with procedures prescribed by the [chief administrator].

19 C. The [chief administrator], in consultation with those organ procurement organizations  
20 designated pursuant to 42 U.S.C. s.1320b-8 to serve in this state, shall establish and provide an  
21 annual education program for [agency] employees and personnel. The program shall focus on the  
22 benefits associated with organ and tissue donations, the scope and operation of this state’s donor  
23 program, and how the [agency’s] employees and personnel can effectively inform the public about  
24 the donor program and can best assist those wishing to participate in the donor program.

25 D. The [chief administrator] shall electronically record and store all organ donor  
26 designations and identification information, and shall provide the organ procurement organizations  
27 designated pursuant to 42 U.S.C. s.1320b-8 to serve in this state with real-time electronic access to  
28 the organ donor designation information collected pursuant to subsection A of this section. An  
29 organ procurement organization designated pursuant to 42 U.S.C. s.1320b-8 to serve in this state,  
30 or any donor registry established by any such organization, shall have real time electronic access  
31 to those organ donor designations and identification at all times, without exception, for the  
32 purposes of verifying organ and tissue donation status and identity. For these purposes, the  
33 federally designated organ procurement organization shall have electronic access to each recorded  
34 donor’s name, address, date of birth, gender, color of eyes, height, and driver’s license number.  
35 Upon request, the [chief administrator] shall provide a copy of the donor’s original driver license  
36 application.

37 E. Those organ procurement organizations designated pursuant to 42 U.S.C. s.1320b-8 to  
38 serve in this state may contract with a third party, in consultation with the [chief administrator], to  
39 assess, develop, and implement any system set-up necessary to support the initial and ongoing  
40 electronic access by those organizations to the donor designation and identification information  
41 required to be made available in accordance with the provisions of this section; however, the organ  
42 procurement organizations shall not be required to incur an aggregate cost in excess of [\$50,000]  
43 for the purposes of this subsection.

44  
45 Section 3. [*Confidentiality of Motor Vehicle Records.*]

46 A. Notwithstanding the provisions of [insert citation], except as provided in this Act, the  
47 [Motor Vehicle Commission] and any officer, employee or contractor thereof shall not knowingly  
48 disclose or otherwise make available to any person personal information about any individual  
49 obtained by the [commission] in connection with a motor vehicle record.

50 B. A person requesting a motor vehicle record including personal information shall  
51 produce proper identification and shall complete and submit a written request form provided by  
52 the [chief administrator for the commission]. The written request form shall bear notice that the  
53 making of false statements therein is punishable and shall include, but not be limited to, the  
54 requestor’s name and address; the requestor’s driver’s license number or corporate identification  
55 number; the requestor’s reason for requesting the record; the driver’s license number or the name,  
56 address and birth date of the person whose driver record is requested; the license plate number or  
57 VIN number of the vehicle for which a record is requested; any additional information determined  
58 by the [chief administrator] to be appropriate and the requestor's certification as to the truth of the  
59 foregoing statements. Prior to the approval of the written request form, the [commission] may also  
60 require the requestor to submit documentary evidence supporting the reason for the request. In lieu  
61 of completing a written request form for each record requested, the [commission] may permit a  
62 person to complete and submit for approval of the [chief administrator] or the [chief  
63 administrator’s designee], on a case by case basis, a written application form for participation in a

64 public information program on an ongoing basis. The written application form shall bear notice  
65 that the making of false statements therein is punishable and shall include, but not be limited to,  
66 the applicant's name, address and telephone number; the nature of the applicant's business  
67 activity; a description of each of the applicant's intended uses of the information contained in the  
68 motor vehicle records to be requested; the number of employees with access to the information;  
69 the name, title and signature of the authorized company representative; and any additional  
70 information determined by the [chief administrator] to be appropriate. The [chief administrator]  
71 may also require the applicant to submit a copy of its business credentials, such as license to do  
72 business or certificate of incorporation. Prior to approval by the [chief administrator] or the [chief  
73 administrator's designee], the applicant shall certify in writing as to the truth of all statements  
74 contained in the completed application form.

75 C. Personal information shall be disclosed for use in connection with matters of motor  
76 vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations,  
77 recalls or advisories; performance monitoring of motor vehicles and dealers by motor vehicle  
78 manufacturers; and removal of non-owner records from the original owner records of motor  
79 vehicle manufacturers to carry out the purposes of the Automobile Information Disclosure Act,  
80 Pub.L.85-506, the Motor Vehicle Information and Cost Saving Act, Pub.L.92-513, the National  
81 Traffic and Motor Vehicle Safety Act of 1966, Pub.L.89-563, the Anti-Car Theft Act of 1992,  
82 Pub.L.102-519, and the Clean Air Act, Pub.L.88-206, and may be disclosed as follows:

83 (1) for use by any government agency, including any court or law enforcement  
84 agency in carrying out its functions, or any private person or entity acting on behalf of a federal,  
85 state or local agency in carrying out its functions.

86 (2) for use in connection with matters of motor vehicle or driver safety and theft;  
87 motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance  
88 monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research  
89 activities, including survey research; and the removal of non-owner records from the original  
90 owner records of motor vehicle manufacturers.

91 (3) for use in the normal course of business by a legitimate business or its agents,  
92 employees or contractors, but only:

93 (a) to verify the accuracy of personal information submitted by the  
94 individual to the business or its agents, employees, or contractors; and

95 (b) if such information as so submitted is not correct or is no longer correct,  
96 to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal  
97 remedies against, or recovering on a debt or security interest against the individual.

98 (4) for use in connection with any civil, criminal, administrative or arbitral  
99 proceeding in any federal, state or local court or agency or before any self-regulatory body,  
100 including service of process, investigation in anticipation of litigation, and the execution or  
101 enforcement of judgments and orders, or pursuant to an order of a federal, state or local court.

102 (5) for use in research activities, and for use in producing statistical reports, so long  
103 as the personal information is not published, re-disclosed, or used to contact individuals.

104 (6) for use by any insurer or insurance support organization, or by a self-insured  
105 entity, or its agents, employees, or contractors, in connection with claims investigation activities,  
106 antifraud activities, rating or underwriting.

107 (7) for use in providing notice to the owners of towed or impounded vehicles.

108 (8) for use by an employer or its agent or insurer to obtain or verify information  
109 relating to a holder of a commercial driver's license that is required under the "Commercial Motor  
110 Vehicle Safety Act," 49 U.S.C.App. s.2710 et seq.

111 (9) for use in connection with the operation of private toll transportation facilities.

112 (10) for use by any requester, if the requester demonstrates it has obtained the  
113 notarized written consent of the individual to whom the information pertains.

114 (11) for product and service mail communications from automotive-related  
115 manufacturers, dealers and businesses, if the [commission] has implemented methods and  
116 procedures to ensure that:

117 (a) people are provided an opportunity, in a clear and conspicuous manner,  
118 to prohibit such uses; and

119 (b) product and service mail communications from automotive-related  
120 manufacturers, dealers and businesses will not be directed at individuals who exercise their option  
121 under subparagraph (a) of this paragraph.

122 (12) for use by an organ procurement organization designated pursuant to 42  
123 U.S.C. s.1320b-8 to serve in this state or any donor registry established by any such organization,  
124 exclusively for the purposes of determining, verifying, and recording organ and tissue donor  
125 designation and identity. For these purposes, an organ procurement organization shall have  
126 electronic access at all times, without exception, to real time organ donor designation and  
127 identification information. An organ procurement organization may also have information for  
128 research activities, pursuant to paragraph (5) of subsection C of this section.

129 D. As provided by the federal "Drivers' Privacy Protection Act of 1994," Pub.L.103-322, a  
130 person authorized to receive personal information under paragraphs (1) through (10) of subsection  
131 C of this section may resell or re-disclose the personal information only for a use permitted by  
132 paragraphs (1) through (10) of subsection C of this section subject to regulation by the  
133 [commission]. A person authorized to receive personal information under paragraph (11) of  
134 subsection C of this section may resell or re-disclose the personal information pursuant to  
135 paragraph (11) of subsection C of this section subject to regulation by the [commission]. An  
136 organization authorized to receive personal information under paragraph (12) of subsection C of  
137 this section may re-disclose the personal information only for the purposes set forth in that  
138 paragraph.

139 E. As provided by the federal "Drivers' Privacy Protection Act of 1994," Pub.L.103-322, a  
140 person authorized to receive personal information under this section who resells or re-discloses  
141 personal information covered by the provisions of this Act shall keep for a period of [five] years  
142 records identifying each person or entity that receives information and the permitted purpose for  
143 which the information will be used and shall make such records available to the [commission]  
144 upon request. Any person who receives, from any source, personal information from a motor  
145 vehicle record shall release or disclose that information only in accordance with this Act.

146 F. The release of personal information under this section shall not include an individual's  
147 Social Security Number except in accordance with applicable state or federal law.

148  
149 Section 4. *[Donating Organs or Body Parts by Will.]*

150 A. A gift of all or part of the body under section 2 A of this Act may be made by will. The  
151 gift becomes effective upon the death of the testator without waiting for probate. If the will is not  
152 probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has  
153 been acted upon in good faith, is nevertheless valid and effective.

154 B. A gift of all or part of the body under section 2 A of this Act may also be made by  
155 document other than a will. The gift becomes effective upon the death of the donor. The  
156 document, which may be a card designed to be carried on the person, must be signed by the donor.  
157 If the donor cannot sign, the document may be signed for them at their direction and in their  
158 presence in the presence of [two] witnesses who must sign the document in their presence.  
159 Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

160 C. The gift may be made to a specified donee or without specifying a donee. If the latter,  
161 the gift may be accepted by the attending physician as donee upon or following death. If the gift is  
162 made to a specified donee who is not available at the time and place of death, the attending  
163 physician upon or following death, in the absence of any expressed indication that the donor  
164 desired otherwise, may accept the gift as donee. The physician who becomes a donee under this  
165 subsection shall not participate in the procedures for removing or transplanting a part.

166 D. Notwithstanding [insert citation] a donor may designate in their will, card, or other  
167 document of gift the surgeon or physician to carry out the appropriate procedures. In the absence  
168 of a designation or if the designee is not available, the donee or other person authorized to accept  
169 the gift may employ or authorize any surgeon or physician for the purpose or, in the case of a gift  
170 of eyes, they may employ or authorize a practitioner of mortuary science licensed by the [State  
171 Board of Mortuary Science], an eye bank technician or a medical student who has successfully  
172 completed a course in eye enucleation approved by the [State Board of Medical Examiners] to  
173 enucleate eyes for the gift after certification of death by a physician. A practitioner of mortuary  
174 science, an eye bank technician or a medical student acting in accordance with the provisions of  
175 this subsection shall not have any liability, civil or criminal, for the eye enucleation.

176 E. Any gift by a person under [insert citation] designated in this Act shall be made by a  
177 document signed by them or made by their telegraphic, recorded telephonic, or other recorded  
178 message.

179 F. The intent of a decedent to give all or any part of his body as a gift pursuant to this Act,  
180 as evidenced by the possession of a donor card, donor designation on a driver's license, advance  
181 directive pursuant to [insert citation], other document of gift, or by registration with a statewide  
182 organ and tissue donor registry, shall not be revoked by any person designated as [insert title] as  
183 defined under [insert citation], nor shall the consent of any such person at the time of the donor's  
184 death or immediately thereafter be necessary to render the gift valid and effective.

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

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

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

# Reselling Tickets

This Act requires prohibits reselling tickets within a certain distance from the event ticket and requires ticket resellers to provide refunds when events are cancelled.

Submitted as:

Connecticut

[Public Act 07-206](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act Concerning Reselling Tickets to  
2 Entertainment Events.”

3  
4           Section 2. [*Limiting When and Where Tickets Can be Resold.*]

5           (a) No person shall resell, offer to resell or solicit the resale of a ticket to an entertainment  
6 event, including, but not limited to, a sporting event, a concert or a theatrical or operatic  
7 performance, on the day of such event, within [one thousand five hundred feet] of the physical  
8 structure where such event is scheduled to take place, if such resale is not authorized in writing by  
9 the owner or operator of such structure or event or a duly authorized agent of such owner or  
10 operator.

11           (b) The provisions of subsection (a) of this section do not apply to a ticket reseller who  
12 resells a ticket for not greater than the face value printed on the ticket or maintains a permanent  
13 office within [one thousand five hundred feet] of the physical structure where the entertainment  
14 event is scheduled to take place provided such reseller sells, offers to resell or solicits the resale of  
15 a ticket only within the premises of such office in person, by mail, telephone or over the Internet.

16           (c) A violation of subsection (a) of this section is a [class A misdemeanor].  
17

18           Section 3. [*Requiring Ticket Resellers to Provide Refunds and Related Information to*  
19 *Ticket Purchasers.*]

20           (a) Any person who resells a ticket to an entertainment event, including, but not limited to,  
21 a sporting event, a concert or a theatrical or operatic performance, shall refund to the purchaser of  
22 such ticket the full amount, including all service fees and delivery charges, paid by the purchaser  
23 for such ticket if any of the following occurs:

24                   (1) The event for which the ticket is resold is cancelled;

25                   (2) the ticket received by the purchaser does not grant the purchaser admission to  
26 the event described on the ticket; or

27                   (3) the ticket fails to conform to its description as advertised by the ticket reseller.

28           (b) A person who resells a ticket pursuant to subsection (a) of this section shall provide the  
29 purchaser of such ticket with such ticket reseller’s name, address and telephone number or other  
30 information necessary to allow such purchaser to contact such ticket reseller to obtain a refund of  
31 the ticket price, if necessary.

32           (c) A violation of this section 3 of this Act is a [class B misdemeanor].  
33  
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Section 4. [*Severability.*] [Insert severability clause.]

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

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

# Security Assessments and Assistance for Schools and Emergency Response Plans for Institutions of Higher Education

The Act establishes a state grant program to improve security infrastructure in schools, install security systems in schools' primary entryways, purchase portable security devices, and train school personnel to use the devices and the infrastructure. The grants reimburse school districts for 20% to 80% of the eligible expenses for such security measures incurred after the Act's effective date. The reimbursement percentage is based on the district's wealth. To receive a grant, a district must show that it has conducted a uniform security assessment of its school entrances and any security infrastructure; has an emergency plan at its schools developed with applicable state and local first-responders; and periodically practices the plan. The security assessment must be carried out under the supervision of the district's local law enforcement agency and use the Safe Schools Facilities Check List published by the National Clearinghouse for Educational Facilities.

The Act also requires colleges, universities, and private occupational schools to have emergency response plans and by that date and annually thereafter, submit their plans to the public safety and emergency management and homeland security commissioners and local first-responders. Institutions must consult local first-responders in developing their plans. Each plan must include a method for notifying the institution's students, employees, and visitors of emergency information.

Submitted as

Connecticut

[Public Act 07-208](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act Concerning Security  
2 Assessments and Assistance for Schools and Emergency Response Plans for Institutions of Higher  
3 Education.”  
4

5           Section 2. [*Requiring Security Infrastructure at New or Rebuilt Entrances to Schools.*]  
6 Plans submitted to the [insert department] after [insert date] for building, extending, altering,  
7 renovating, or replacing a school entrance as defined under [insert citation] must include security  
8 infrastructure as defined under [insert citation] for such entrance.  
9

10           Section 3. [*School Security Competitive Grant Program.*]

11           (a) For the fiscal year ending [June 30, 2008], the [Department of Emergency Management  
12 and Homeland Security] shall administer, within available appropriations, a School Security  
13 Competitive Grant Program to reimburse towns for certain expenses for schools under the  
14 jurisdiction of the town's school district incurred on or after the effective date of this section for:

15           (1) the development or improvement of the security infrastructure of schools based  
16 on the results of assessments of security for the entrances of the schools including, but not limited

17 to, the installation of surveillance cameras, entry door buzzer systems, scan card systems, panic  
18 alarms or other systems; and

19 (2) (A) the training of school personnel in the operation and maintenance of the  
20 security infrastructure of school entrances, or

21 (B) the purchase of portable entrance security devices, including, but not  
22 limited to, metal detector wands, screening machines and related training.

23 (b) The [Commissioner of Emergency Management and Homeland Security], in  
24 consultation with the [Commissioner of Public Safety], shall determine which expenses are  
25 eligible for reimbursement under the program.

26 (c) Each local and regional board of education may, on behalf of its town or its member  
27 towns, apply to the [Department of Emergency Management and Homeland Security] for a grant  
28 at such time and in such manner as the [Commissioner of Emergency Management and Homeland  
29 Security] prescribes.

30 (d) A town may receive a grant equal to a percentage of its eligible expenses. The  
31 percentage shall be determined as follows:

32 (1) each town shall be ranked in descending order from [one to one hundred sixty-  
33 nine] according to town wealth, as defined in [insert citation],

34 (2) based upon such ranking, a percentage of not less than [twenty or more than  
35 eighty] shall be assigned to each town on a continuous scale, and

36 (3) the town ranked first shall be assigned a percentage of [twenty] and the town  
37 ranked last shall be assigned a percentage of [eighty]. If there are not sufficient funds to provide  
38 grants to all towns based on the percentage determined pursuant to this subsection, the  
39 [Commissioner of Emergency Management and Homeland Security], in consultation with the  
40 [Commissioner of Public Safety], shall give priority to applicants on behalf of schools with the  
41 greatest need for security infrastructure, as determined by said [commissioners] based on  
42 assessments of security for the entrances of the schools under the jurisdiction of the town's school  
43 district conducted pursuant to this subsection. Of the applicants on behalf of such schools with the  
44 greatest need for security infrastructure, said [commissioners] shall give first priority to applicants  
45 on behalf of schools that have no security infrastructure for entrances at the time of such  
46 assessment and succeeding priority to applicants on behalf of schools located in priority school  
47 districts pursuant to [insert citation].

48 (e) To be eligible for reimbursement pursuant to this section, an applicant board of  
49 education shall:

50 (1) demonstrate that it has developed and periodically practices an emergency plan  
51 at the schools under its jurisdiction and that such plan has been developed in concert with  
52 applicable state or local first-responders, and

53 (2) provide for a uniform assessment of the entrances of the schools under its  
54 jurisdiction, including any security infrastructure, using the National Clearinghouse for  
55 Educational Facilities' Safe Schools Facilities Check List. The assessment shall be conducted  
56 under the supervision of the local law enforcement agency.

57 (f) The [Commissioner of Education] shall enter into a Memorandum of Understanding  
58 with the [Commissioner of Emergency Management and Homeland Security] to transfer any funds  
59 appropriated to the [Department of Education] for grants under this section to the [Department of  
60 Emergency Management and Homeland Security] for the purpose of such grants.

61 (g) The [Department of Emergency Management and Homeland Security] may retain up to  
62 [one and five-tenths per cent] of the amount appropriated for such grants for administration of the  
63 program pursuant to this section.

66 (a) On or before [September 1, 1991], and [annually] thereafter, each institution of higher  
67 education shall prepare in such manner as the [Commissioner of Higher Education] shall prescribe  
68 a Uniform Campus Crime Report concerning crimes committed in the immediately preceding  
69 calendar year within the geographical limits of the property owned or under the control of such  
70 institution. Such report shall be in accordance with the Uniform Crime Reporting System pursuant  
71 to [insert citation], provided such report is limited to those offenses included in part I of the most  
72 recently published edition of the Uniform Crime Reports for the United States as authorized by the  
73 Federal Bureau of Investigation and the United States Department of Justice and sexual assault  
74 under sections 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b and 53a-73a. The [state  
75 police, local police departments and special police forces] established pursuant to [insert citation]  
76 shall cooperate with institutions of higher education in preparing such reports. Institutions with  
77 more than one campus shall prepare such reports for each campus.

78 (b) Each annual report prepared pursuant to subsection (a) of this section shall include

79 (1) the number of full-time equivalent students;

80 (2) the number of full-time equivalent employees;

81 (3) the number of students and employees residing in campus housing;

82 (4) for each category of offense, the number of incidents reported and the crime  
83 rate; and

84 (5) the crime rate shall be equal to the number of incidents reported divided by the  
85 total number of full-time equivalent students and employees.

86 (c) On or before [October 1, 2007], each institution of higher education and private  
87 occupational school, as defined under [insert citation] shall have an emergency response plan. On  
88 or before [October 1, 2007], and annually thereafter, each institution of higher education and  
89 private occupational school shall submit a copy of its emergency response plan to the  
90 [Commissioners of Public Safety and Emergency Management and Homeland Security], and local  
91 first responders. Such plan shall be developed in consultation with such first responders and shall  
92 include a strategy for notifying students and employees of the institution or school and visitors to  
93 such institution or school of emergency information.

94 (d) Each institution of higher education shall notify, in writing, each person who submits  
95 an application for admission to the institution, each new employee at the time of employment and  
96 all students and employees annually at the beginning of each academic year of the availability of  
97 the report prepared pursuant to subsection (a) of this section and shall, upon request, provide the  
98 most recent report to any such applicant, employee or student.

99  
100 Section 5. [*Severability.*] [Insert severability clause.]

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

102 Section 7. [*Effective Date.*] [Insert effective date.]  
103  
104

# Senior Alert Program

This Act creates a program for local, regional, or statewide notification of a missing senior adult. The bill defines a missing senior adult as an adult who is over 60 years of age, suffers from a cognitive impairment that renders them unable to care for themselves without assistance (including a diagnosis of Alzheimer’s Disease or dementia), and whose whereabouts are unknown and whose disappearance poses a credible threat to their health and safety. The program is similar to the Amber Alert Program for missing children. The bill also provides that no police or sheriff’s department shall establish or maintain any policy that requires a waiting period before a missing senior adult report will be accepted. Such departments are also required, within two hours of receiving such a report, to enter identifying and descriptive information about the missing senior adult into the state Criminal Information Network and the National Crime Information Center Systems, forward the information to the state police, notify other law-enforcement agencies in the areas, and initiate an investigation.

Submitted as:

Virginia

[Chapter 486 of 2007](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Establish a Statewide System  
2 for Notification of Missing Senior Adults.”

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

5           (1) “Missing senior adult” means an adult whose whereabouts are unknown and  
6 who is over [60 years] of age and suffers a cognitive impairment to the extent that he is unable to  
7 provide care to himself without assistance from a caregiver, including a diagnosis of Alzheimer’s  
8 Disease or dementia, and whose disappearance poses a credible threat as determined by a law-  
9 enforcement agency to the health and safety of the adult and under such other circumstances as  
10 deemed appropriate by the [state police].

11           (2) “Missing Senior Adult Report” means a report prepared in a format prescribed  
12 by the [Superintendent of State Police] for use by law-enforcement agencies to report missing  
13 senior adult information and photograph to the [state police].

14           (3) “Senior Alert Agreement” means a voluntary agreement between law-  
15 enforcement officials and members of the media whereby a senior adult will be declared missing,  
16 and the public will be notified by media outlets, and includes all other incidental conditions of the  
17 partnership as found appropriate by the [state police].

18           (4) “Senior Alert” means the notice of a missing senior adult provided to the public  
19 by the media or other methods under a Senior Alert Agreement.

20           (5) “Senior Alert Program” or “Program” means the procedures and “Senior Alert  
21 Agreements” to aid in the identification and location of a missing senior adult.

22           (6) “Media” means print, radio, television, and Internet-based communication  
23 systems or other methods of communicating information to the public.

24

25 Section 3. [*Establishment of the Senior Alert Program.*]

26 (A) The [state police] shall develop policies for the establishment of uniform standards for  
27 the creation of [Senior Alert Programs] throughout this state.

28 (B) The [state police] shall:

29 (1) inform local law-enforcement officials of the policies and procedures to be used  
30 for the [Senior Alert Programs];

31 (2) assist in determining the geographic scope of a particular [Senior Alert]; and

32 (3) establish procedures and standards by which a local law-enforcement agency  
33 shall verify that a senior adult is missing and shall report such information to the [state police].

34 (C) The establishment of a [Senior Alert Program] by a local law-enforcement agency and  
35 the media is voluntary, and nothing in this Act shall be construed to be a mandate that local  
36 officials or the media establish or participate in a [Senior Alert Program].  
37

38 Section 4. [*Senior Alert Activation.*]

39 (A) No police or sheriff's department shall establish or maintain any policy which requires  
40 the observance of any waiting period before accepting a [missing senior adult report]. Upon  
41 receipt of a [missing senior adult report] by any police or sheriff's department, the department  
42 shall immediately, but in all cases within two hours of receiving the report, enter identifying and  
43 descriptive data about the senior adult into the state [Criminal Information Network] and the  
44 National Crime Information Center Systems, forward the report to the [state police], notify all  
45 other law-enforcement agencies in the area, and initiate an investigation of the case.

46 (B) Upon receipt of a Missing Senior Adult Report from a law-enforcement agency, the  
47 [state police] shall confirm the accuracy of the information and provide assistance in the activation  
48 of the [Senior Alert Program] as the investigation dictates.

49 (C) [Senior Alerts] may be local, regional, or statewide. The initial decision to make a local  
50 [Senior Alert] shall be at the discretion of the local law-enforcement official. Prior to making a  
51 local [Senior Alert], the local law-enforcement official shall confer with the [state police] and  
52 provide information regarding the missing senior adult to the [state police]. The decision to make  
53 a regional or statewide [Senior Alert] shall be at the discretion of the [state police].

54 (D) The [Senior Alert] shall include the missing senior adult information as defined in this  
55 Act and any other such information as the law-enforcement agency deems appropriate that will  
56 assist in the safe recovery of the missing senior adult.

57 (E) The [Senior Alert] shall be cancelled under the terms of the [Senior Alert Agreement].

58 (F) Any local law-enforcement agency that locates a missing senior adult who is the  
59 subject of an alert shall notify the state police immediately that the missing senior adult has been  
60 located.  
61

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

63  
64 Section 6. [*Repealer.*] [Insert repealer clause.]

65  
66 Section 7. [*Effective Date.*] [Insert effective date.]

# Special Needs Scholarships

This Act provides for scholarships for public school students with disabilities to attend other public or private schools. It provides for qualifications and criteria for the scholarship program and establishes certain requirements for schools that participate in the scholarship program.

Submitted as:

Georgia

[SB 10](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be known and may be cited as the “Special Needs  
2 Scholarship Act.”

3  
4           Section 2. [*Legislative Findings.*]

5           The [General Assembly] finds that:

6                   (1) students with disabilities have special needs that merit educational alternatives  
7 to allow students to learn in an appropriate setting and manner;

8                   (2) parents are best equipped to make decisions for their children, including the  
9 educational setting that will best serve the interests and educational needs of their children;

10                  (3) children, parents, and families are the primary beneficiaries of the scholarship  
11 program authorized in this Act and any benefit to private schools, sectarian or otherwise, is purely  
12 incidental;

13                  (4) the scholarship program established in this Act is for the valid secular purpose  
14 of tailoring a student’s education to that student’s specific needs and enabling families to make  
15 genuine and independent private choices to direct their resources to appropriate schools; and

16                  (5) nothing in this Act shall be construed as a basis for granting vouchers or tuition  
17 tax credits for any other students, with or without disabilities.

18  
19           Section 3. [*Definitions.*]

20           As used in this Act:

21                   (1) ‘board’ means the [State Board of Education].

22                   (2) ‘department’ means the [Department of Education].

23                   (3) ‘parent’ means a biological parent, legal guardian, custodian, or other person  
24 with legal authority to act on behalf of a child.

25                   (4) ‘participating school’ means a private school that has notified the [department]  
26 of its intention to participate in the program, and that complies with the [department’s]  
27 requirements.

28                   (5) ‘prior school year in attendance’ means that the student was enrolled and  
29 reported by a public school system or school systems for funding purposes during the preceding  
30 October and March full-time equivalent (FTE) program counts in accordance with [insert citation].

31 (6) ‘private school’ means a nonpublic school, sectarian or nonsectarian, which is  
32 accredited or in the process of becoming accredited by one or more of the entities listed in [insert  
33 citation].

34 (7) ‘program’ means the scholarship program established pursuant to this Act.

35 (8) ‘resident school system’ means the public school system in which the student  
36 would be enrolled based on his or her residence.

37 (9) ‘scholarship’ means a Special Needs Scholarship awarded pursuant to this Act.

38 (10) ‘scholarship student’ means a student who receives a scholarship pursuant to  
39 this Act.

40  
41 Section 4. [*Students with Disabilities Option to Attend Schools.*]

42 (a) The resident school system shall annually notify prior to the beginning of each school  
43 year the parent of a student with a disability by letter, electronic means, or by such other  
44 reasonable means in a timely manner of the options available to the parent under this Act.

45 (b) A parent may choose for a student to attend another public school within the resident  
46 school system which has available space and which has a program with the services agreed to in  
47 the student’s existing individualized education program. If the parent chooses this option, then the  
48 parent shall be responsible for transportation to such school. The student may attend such public  
49 school pursuant to this paragraph until the student completes all grades of the school, graduates, or  
50 reaches the age of [21], whichever occurs first, in accordance with federal and state requirements  
51 for disabled students;

52 (c) The parent may choose to enroll the student in and transport the student to a public  
53 school outside of the student’s resident school system which has available space and which has a  
54 program with the services agreed to in the student’s existing individualized education program.  
55 The public school system may accept the student, and if it does, such system shall report the  
56 student for purposes of funding to the [department];

57 (d) The parent may choose for the student to attend one of the state schools for the deaf and  
58 blind operated by the [State Board of Education], if appropriate for the student’s needs. Funding  
59 for such students shall be provided in accordance with [insert citation].

60 (e) The parent may request and receive from the [department] a scholarship for the student  
61 to enroll in and attend a participating private school in accordance with this Act.

62  
63 Section 5. [*Special Needs Scholarship Qualifications.*]

64 (a) A student shall qualify for a scholarship under this Act if:

65 (1) the student’s parent currently resides within this state and has been a resident of  
66 this state for at least [one] year;

67 (2) the student has one or more of the following disabilities:

68 (A) autism;

69 (B) deaf/blind;

70 (C) deaf/hard of hearing;

71 (D) emotional and behavioral disorder;

72 (E) intellectual disability;

73 (F) orthopedic impairment;

74 (G) other health impairment;

75 (H) specific learning disability;

76 (I) speech-language impairment;

77 (J) traumatic brain injury; or

78 (K) visual impairment;



79 (3) the student has spent the prior school year in attendance at a public school in  
80 this state and has an Individualized Education Program (IEP) written by the school in accordance  
81 with federal and state laws and regulations;

82 (4) the parent obtains acceptance for admission of the student to a participating  
83 school; and

84 (5) the parent submits an application for a scholarship to the [department] no later  
85 than the deadline established by the [department].

86 (b) Upon acceptance of the scholarship, the parent assumes full financial responsibility for  
87 the education of the scholarship student, including transportation to and from the participating  
88 school.

89 (c) For a student who participates in the program whose parents request that the student  
90 take the state-wide assessments pursuant to [insert citation], the resident school system shall make  
91 available to the student locations and times to take all state-wide assessments.

92 (d) Test scores of private school students participating in the state-wide assessments shall  
93 not be applied to the system averages of the resident school system for data reported for federal  
94 and state requirements.

95 (e) Students enrolled in a school operated by the [Department of Juvenile Justice] are not  
96 eligible for the scholarship.

97 (f) The scholarship shall remain in force until the student returns to his or her assigned  
98 school in the resident public school system, graduates from high school, or reaches the age of [21],  
99 whichever occurs first.

100 (g) At any time, a student's parent may remove the student from the participating school  
101 and place the student in another participating school or public school as provided for in section 4  
102 of this Act.

103 (h) Acceptance of a scholarship shall have the same effect as a parental refusal to consent  
104 to services pursuant to the Individuals with Disabilities Education Act, 20 U.S.C.A. Section 1400,  
105 et seq.

106 (i) The creation of the program or the granting of a scholarship pursuant to this Act shall  
107 not be construed to imply that a public school did not provide a free and appropriate public  
108 education for a student or constitute a waiver or admission by the state.

109 (j) Any scholarship directed to a participating school is so directed wholly as a result of the  
110 genuine and independent private choice of the parent.

111 (k) The parent of each student participating in the scholarship program shall comply fully  
112 with the participating school's rules and policies.

113 (l) Any parent who fails to comply with the provisions of this Act and [department]  
114 regulations relating to the scholarship shall forfeit the scholarship.

115  
116 Section 6. *[Enrolling a Scholarship Student.]*

117 (a) To be eligible to enroll a scholarship student under this Act, a participating school  
118 shall:

119 (1) have a physical location in this state where the scholarship students attend  
120 classes and have direct contact with the school's teachers;

121 (2) demonstrate fiscal soundness by having been in operation for [one school year]  
122 or by submitting a financial information report for the school that complies with uniform financial  
123 accounting standards established by the [department] and conducted by a certified public  
124 accountant, and:

125 (i) the report must confirm that the school desiring to participate is insured  
126 and the owner or owners have sufficient capital or credit to operate the school for the upcoming

127 school year serving the number of students anticipated with expected revenues from tuition and  
128 other sources that may be reasonably expected; and

129 (ii) the report shall be limited in scope to those records that are necessary  
130 for the [department] to make a determination on fiscal soundness and to make payments to schools  
131 for scholarships;

132 (3) comply with the antidiscrimination provisions of 42 U.S.C. Section 2000d;

133 (4) comply with all health and safety laws or codes that apply to private schools;

134 (5) comply with all provisions of state law applicable to private schools;

135 (6) regularly report to the parent and the [department] the student's academic  
136 progress, including the results of pre-academic assessments and post-academic assessments given  
137 to the student, in accordance with [department] guidelines; and

138 (7) employ or contract with teachers who hold a bachelor's degree or higher degree  
139 or have at least [three] years of experience in education or health and annually provide to the  
140 parents the relevant credentials of the teachers who will be teaching their students.

141 (b) A home school operating under the provisions of [insert citation] shall not be eligible to  
142 enroll scholarship students.

143 (c) Residential treatment facilities licensed or approved by the state under [insert citation]  
144 shall not be eligible to enroll scholarship students.

145 (d) The creation of the program shall not be construed to expand the regulatory authority of  
146 the state, its officers, or any public school system to impose any additional regulation of nonpublic  
147 schools beyond those reasonably necessary to enforce the requirements of this Act.

148 (e) A participating school intending to enroll scholarship students shall submit an  
149 application to the [department] by [June 30] of the school year preceding the school year in which  
150 it intends to enroll scholarship students.

151 (f) The notice shall specify the grade levels and services that the school has available for  
152 students with disabilities who are participating in the scholarship program.

153 (g) A school intending to enroll scholarship students in the [2007-2008] school year shall  
154 submit an application no later than [June 30, 2007].

155 (h) The [board] shall approve a participating school's application to enroll scholarship  
156 students if the school meets the eligibility requirements of this Act and complies with [board] rules  
157 established pursuant to section 8 of this Act. The [board] shall make available to local school  
158 systems and the public a list of participating schools.

159  
160 Section 7. *[Determining Scholarship Amounts.]*

161 (a) The maximum scholarship granted a scholarship student pursuant to this Act shall be an  
162 amount equivalent to the costs of the educational program that would have been provided for the  
163 student in the resident school system as calculated under [insert citation]. This shall not include  
164 any federal funds.

165 (b) The amount of the scholarship shall be the lesser of the amount calculated in subsection  
166 (a) or the amount of the participating school's tuition and fees, if applicable. The amount of any  
167 assessment fee required by the participating school may be paid from the total amount of the  
168 scholarship.

169 (c) Scholarship students shall be counted in the enrollment of their resident school system;  
170 provided, however, that this count shall only be for purposes of determining the amount of the  
171 scholarship and the scholarship students shall not be included as enrolled for purposes of state or  
172 federal accountability requirements, including, but not limited to, the federal Elementary and  
173 Secondary Education Act, as amended by the No Child Left Behind Act of 2001 (P.L. 107-110).  
174 The funds needed to provide a scholarship shall be subtracted from the allotment payable to the  
175 resident school system.

176 (d) Each local school system shall submit quarterly reports to the [department] on dates  
177 established by the [department] stating the number of scholarship students in the resident school  
178 system. Following each notification, the [department] shall transfer from the state allotment to  
179 each school system the amount calculated under [insert citation] to a separate account for the  
180 scholarship program for quarterly disbursement to the parents of scholarship students. When a  
181 student enters the program, the [department] must receive all documentation required for the  
182 student's participation, including the participating school's and student's fee schedules at least  
183 [30] days before the first quarterly scholarship payment is made for the student. The [department]  
184 may not make any retroactive payments.

185 (e) Upon proper documentation received by the [department], the [department] shall make  
186 [quarterly] scholarship payments to the parents of scholarship students on dates established by the  
187 [department] during each academic year in which the scholarship is in force. The initial payment  
188 shall be made upon evidence of admission to the participating school, and subsequent payments  
189 shall be made on evidence of continued enrollment and attendance at the participating school.

190 (f) Payment to the parents must be made by individual warrant made payable to the  
191 student's parent and mailed by the [department] to the participating school of the parent's choice,  
192 and the parent shall restrictively endorse the warrant to the participating school for deposit into the  
193 account of such school.

194 (g) A person, on behalf of a participating school, may not accept a power of attorney from  
195 a parent to sign a warrant, and a parent of a scholarship student may not give a power of attorney  
196 designating a person, on behalf of a participating school, as the parent's attorney in fact.

197 (h) If the participating school requires partial payment of tuition prior to the start of the  
198 academic year to reserve space for students admitted to the school, that partial payment may be  
199 paid by the [department] prior to the first quarterly payment of the year in which the scholarship is  
200 awarded, up to a maximum of [\$1,000.00], and deducted from subsequent scholarship payments.  
201 If a student decides not to attend the participating school, the partial reservation payment must be  
202 returned to the [department] by such school. Only [one reservation payment per student] may be  
203 made per year.  
204

#### 205 Section 8. *[General Program Administration.]*

206 (a) The [board] shall adopt rules to administer the program regarding eligibility and  
207 participation of participating schools, including, but not limited to, timelines that will maximize  
208 student and public and private school participation, the calculation and distribution of scholarships  
209 to eligible students and participating schools, and the application and approval procedures for  
210 eligible students and participating schools.

211 (b) The [department] shall develop and use a compliance form for completion by  
212 participating schools. The [department] shall be authorized to require any pertinent information as  
213 it deems necessary from participating schools for the purpose of implementing the program.  
214 Participating schools shall be required to complete such forms and certify their accuracy.

215 (c) No liability shall arise on the part of the [department] or the state or of any local board  
216 of education based on the award or use of a scholarship awarded pursuant to this Act.

217 (d) The [department] may bar a school from participation in the program if the  
218 [department] determines that the school has intentionally and substantially misrepresented  
219 information or failed to refund to the state any scholarship overpayments in a timely manner.  
220

#### 221 Section 9. *[Reporting about Special Needs Scholarship Program.]*

222 The [Office of Student Achievement] established under [insert citation], in conjunction  
223 with the [department], shall provide the [General Assembly] not later than [December 1] of each  
224 year with a report about the Special Needs Scholarship Program for the previous fiscal year. The

225 report shall include, but not be limited to, numbers and demographics of students participating and  
226 numbers of participating schools. Such report shall also be posted on the [Office of Student  
227 Achievement's] website.  
228

229 Section 10. [*Severability.*] [Insert severability clause.]  
230

231 Section 11. [*Repealer.*] [Insert repealer clause.]  
232

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

# Student Lending Accountability, Transparency and Enforcement

The Act prohibits lenders from making gifts, defined as having not more than nominal value, to colleges and universities and their employees, in exchange for any advantage or consideration provided such lenders related to their educational loan activities. The legislation prohibits employees of colleges and universities from soliciting, accepting or receiving gifts from lenders. It prohibits employees of colleges and universities from receiving remuneration for serving as members or participants of lenders' advisory boards, or receiving any reimbursement of expenses for so serving.

The legislation prohibits lenders' employees and agents from being identified as employees or agents of colleges and universities and staffing the financial aid offices of colleges and universities.

This bill requires colleges to disclose to borrowers and potential borrowers who consult a covered institution's financial aid office, all available financing options under federal law; and prohibits lenders and colleges and universities from entering into certain quid pro quo high risk loans that prejudice other borrowers or potential borrowers toward a particular type of loan, in exchange for benefits provided to the college or university or its students in connection with a different type of loan.

This legislation prohibits a covered institution to direct potential borrowers to any electronic master promissory notes or other loan agreements that do not provide a reasonable and convenient alternative for the borrower to complete a master promissory note with any federally approved lending institution offering the relevant loan in this state.

The Act requires a lender, upon request of a college or university, to disclose the default rates, rates of interest charged to borrowers, and number of borrowers receiving those rates from such college or university.

Submitted as:

New York

[Chapter 41 of 2007](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “The Student Lending Accountability,  
2    Transparency and Enforcement Act.”

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

5           1. “Borrower” shall mean a student attending a covered institution in this state, or a parent  
6    or person in parental relation to such student, who also obtains an educational loan from a lending  
7    institution to pay for or finance higher education expenses.

8           2. “Covered institution” shall mean any college, vocational institution, or approved  
9    program as defined in [insert citation].

10          3. “Covered institution employee” shall mean any employee, agent, contractor, director,  
11    officer or trustee of a covered institution.

12 4. “Educational loan” shall mean any loan that is made, insured, or guaranteed under Part  
13 B of Title IV of the Federal Higher Education Act of 1965, as amended, any high risk loan or any  
14 private loan issued by a lending institution for the purposes of paying for or financing higher  
15 education expenses.

16 5. “Gift” shall mean any discount, favor, gratuity, inducement, loan, stock, thing of value,  
17 or other item having more than nominal value.

18 a. “Gift” shall include, but is not limited to:

19 (1) any money, service, loan, entertainment, honoraria, hospitality, lodging  
20 costs, meals, registration fees, travel expenses, discount, forbearance or promise;

21 (2) gifts provided in kind, by purchase of a ticket, payment in advance, or  
22 reimbursement after expenses have been incurred;

23 (3) any computer hardware for which the recipient pays below-market  
24 prices; and

25 (4) any printing costs or services.

26 b. “Gift” shall not include any of the following:

27 (1) a lending institution’s own brochure or promotional literature; and

28 (2) food, refreshments, training, or informational material furnished to a  
29 covered institution employee as an integral part of a training session, if such training contributes to  
30 the professional development of the covered institution employee.

31 c. Nothing in this Act shall be construed to affect the private philanthropic  
32 activities of banks or other lending institutions that are unrelated to educational loans.

33 6. “High risk loans” shall mean any agreement between a lending institution and a covered  
34 institution that provides for the lending institution to provide loans to students with a poor or no  
35 credit history, who would otherwise not be eligible for educational loans.

36 7. “Higher education expenses” shall include the following:

37 a. tuition and fees;

38 b. costs incurred for books, supplies, transportation, and miscellaneous personal  
39 expenses; and

40 c. room and board costs.

41 8. “Lending institution” shall mean:

42 a. any entity that itself or through an affiliate makes educational loans to pay for or  
43 finance higher education expenses or that securitizes such loans;

44 b. any entity, or association of entities, that guarantees educational loans; or

45 c. any industry, trade or professional association or other entity that receives  
46 money, related to educational loan activities, from any entity described above in paragraphs a and  
47 b of this subdivision.

48 9. “Preferred lender list” shall mean a list of one or more recommended or suggested  
49 lending institutions that a covered institution makes available for use, in print or any other medium  
50 or form, by borrowers, potential borrowers or others.

51 10. “Revenue sharing” shall mean any arrangement whereby a lending institution pays a  
52 covered institution or an affiliated entity or organization of such covered institution a percentage  
53 of the principal of each loan directed towards the lending institution from a borrower at the  
54 covered institution.

55  
56 Section 3. [*Prohibition of Gifts Made by Lending Institutions to Covered Institutions and*  
57 *their Employees.*]

58 1. A lending institution may not, directly or indirectly, offer or provide any gift to a  
59 covered institution or a covered institution employee, in exchange for any advantage or  
60 consideration provided to such lending institution related to its educational loan activities.

61 2. A lending institution may not engage in revenue sharing with a covered institution.

62  
63 Section 4. [*Prohibition of Receipt of Gifts by Covered Institutions.*]

64 1. A covered institution may not, directly or indirectly, solicit, accept or receive any gift  
65 from or on behalf of a lending institution, in exchange for any advantage or consideration provided  
66 to such lending institution related to its educational loan activities.

67 2. A covered institution may not engage in revenue sharing with a lending institution.

68  
69 Section 5. [*Prohibition of Receipt of Gifts by Covered Institution Employees.*]

70 1. A covered institution shall require that no covered institution employee on his or her  
71 own behalf or on behalf of another, directly or indirectly, solicits, accepts or receives any gift from  
72 or on behalf of a lending institution. Nothing in this section shall be construed as prohibiting a  
73 covered institution employee from conducting business with a lending institution, provided that  
74 such business is unrelated in any manner whatsoever to a covered institution.

75 2. A covered institution employee, on his or her own behalf or on behalf of another, shall  
76 not directly or indirectly solicit, accept or receive any gift from or on behalf of a lending  
77 institution. Nothing in this section shall be construed as prohibiting a covered institution  
78 employee from conducting business with any lending institution, provided that such business is  
79 unrelated in any manner whatsoever with the covered institution.

80 3. Covered institution employees shall report to the [department] any instance of a lending  
81 institution attempting to give a gift to such covered institution employees.

82  
83 Section 6. [*Covered Institution Employee Prohibitions and Reporting Requirements.*]

84 1. A lending institution shall require that no covered institution employee receives any  
85 remuneration for serving as a member or participant of an advisory board of a lending institution  
86 or receives any reimbursement of expenses for so serving.

87 2. A covered institution shall require that no covered institution employee of such covered  
88 institution receives any remuneration for serving as a member or participant of an advisory board  
89 of a lending institution or receives any reimbursement of expenses for so serving.

90 3. Nothing in this section shall be construed as prohibiting:

91 a. a covered institution employee's participation on an advisory board of a lending  
92 institution that is unrelated in any manner whatsoever to educational loans; or

93 b. a covered institution employee, who does not have a direct interest in or does not  
94 benefit from the functions of the covered institution's financial aid office, from serving on a board  
95 of directors of a publicly traded or privately held company.

96 4. Covered institution employees who are directly involved with or benefit from the  
97 functions of the covered institution's financial aid office shall be required to report to the  
98 [department], in a form and manner prescribed by the [department], all participation or financial  
99 interests related to any lending institution.

100  
101 Section 7. [*Misleading Identification of Lending Institution Employees.*]

102 1. A lending institution shall require that no employee or agent of such lending institution  
103 is identified to borrowers or potential borrowers of a covered institution as an employee,  
104 representative or agent of such covered institution.

105 2. A covered institution shall require that no employee or agent of a lending institution is  
106 identified to borrowers or potential borrowers of such covered institution as an employee,  
107 representative or agent of such covered institution.

108 3. No employee, representative or agent of a lending institution may staff a covered  
109 institution's financial aid offices.

110  
111 Section 8. [*Loan Disclosure and Prohibition of Quid Pro Quo High Risk Loans.*]

112 1. Should a borrower or potential borrower consult a covered institution's financial aid  
113 office in connection with obtaining an educational loan to pay for or finance higher education  
114 expenses, the covered institution shall inform the borrower or potential borrower of all available  
115 financing options under Title IV of the Federal Higher Education Act of 1965, as amended,  
116 including information about any terms and conditions of available loans under such title that are  
117 more favorable to the borrower, before a lending institution may provide a private educational  
118 loan to a borrower attending a covered institution.

119 2. A lending institution shall not enter into an agreement or otherwise provide any high  
120 risk loans, in exchange for the covered institution providing concessions or promises to the  
121 lending institution that may prejudice other borrowers or potential borrowers.

122 3. A covered institution shall not enter into an agreement or otherwise provide any high  
123 risk loans, in exchange for the covered institution providing concessions or promises to the  
124 lending institution that may prejudice other borrowers or potential borrowers.

125  
126 Section 9. [*Standards for Preferred Lender Lists.*] A covered institution that provides or  
127 makes available a preferred lender list must comply with the following standards:

128 a. a preferred lender list must disclose the process by which the covered institution  
129 selected lending institutions for such preferred lender list, including, but not limited to, the method  
130 and criteria used to choose the lending institutions and the relative importance of those criteria;

131 b. a preferred lender list must state in the same font size and same manner as the  
132 predominant text on the document that borrowers have the right and ability to select the education  
133 loan provider of their choice, are not required to use any of the lenders on such preferred lender  
134 list, and will suffer no penalty for choosing a lender that is not on such preferred lender list;

135 c. the covered institution's decision to include a lending institution on any preferred  
136 lender list and the covered institution's decision as to where on the preferred lender list the lending  
137 institution's name appears shall be determined solely by consideration of the best interests of the  
138 borrowers who may use such preferred lender list without regard to the pecuniary interests of the  
139 covered institution;

140 d. the contents of any preferred lender list shall be reviewed and updated no less  
141 than annually;

142 e. no lending institution shall be placed on a preferred lender list unless such  
143 lending institution provides assurance to the covered institution and to borrowers who take out  
144 loans from such lending institution that the advertised benefits upon repayment will continue to  
145 inure to the benefit of borrowers regardless of whether the lending institution's loans are sold;

146 f. no lending institution that, to the covered institution's knowledge after reasonable  
147 inquiry, has an agreement to sell its loans to another unaffiliated lending institution shall be  
148 included on a preferred lender list unless such agreement is disclosed therein in the same font size  
149 and same manner as the predominant text on the document in which the preferred lender list  
150 appears;

151 g. no lending institution shall be placed on a covered institution's preferred lender  
152 lists or in favored placement on a covered institution's preferred lender lists for a particular type of  
153 loan, in exchange for benefits provided to the covered institution or to the covered institution's  
154 students in connection with a different type of loan.

155  
156 Section 10. [*Proper Execution of Master Promissory Notes.*] A covered institution shall  
157 not direct in any manner whatsoever potential borrowers to any electronic master promissory notes  
158 or other loan agreements that do not provide a reasonable and convenient alternative for the



159 borrower to complete a master promissory note with any federally approved lending institution  
160 offering the relevant loan in this state.

161  
162 Section 11. [*Disclosures at Request of Covered Institutions.*] Except for educational loans  
163 made, insured, or guaranteed by the federal government, upon the request of any covered  
164 institution, a lending institution shall disclose to such covered institution, in reasonable detail and  
165 form, the historic default rates of the borrowers from such covered institution, and the rates of  
166 interest charged to borrowers from such covered institution in the year preceding the disclosures  
167 and the number of borrowers obtaining each rate of interest.

168  
169 Section 12. [*Penalties.*]

170 1. If after providing notice and an opportunity for a hearing the [department] determines  
171 that a covered institution or lending institution has violated any terms or provisions of this Act,  
172 then the covered institution or lending institution may be liable for a civil penalty. Regardless of  
173 the [department's] determination that a covered institution or lending institution is liable for a  
174 single violation or a series of violations under this Act, the maximum penalty shall not exceed  
175 [fifty thousand dollars]. In taking action against a covered institution or lending institution,  
176 consideration shall be given to the nature and severity of violations of this Act.

177 2. If after providing notice and an opportunity for a hearing the [department] determines  
178 that a covered institution employee has violated any terms or provisions of this Act, then the  
179 covered institution employee may be liable for a civil penalty. Regardless of the [department's]  
180 determination that a covered institution employee is liable for a single violation or a series of  
181 violations under this Act, the maximum penalty shall not exceed [seven thousand five hundred  
182 dollars]. In taking action against a covered institution employee, consideration shall be given to  
183 the nature and severity of violations of this Act.

184 3. If after providing notice and an opportunity for a hearing the [department] determines  
185 that a lending institution has violated a term or provision of this Act, such lending institution shall  
186 not be placed or remain on any covered institution's preferred lender list unless notice of such  
187 violation is provided to all potential borrowers of the covered institution.

188 4. Nothing in this section shall prohibit the [department] from reaching a settlement  
189 agreement with a covered institution, covered institution employee or lending institution in order  
190 to effectuate the purposes of this section. Provided, however, if such settlement agreement is  
191 reached with a covered institution or lending institution, the [department] shall provide notice of  
192 such action to all potential borrowers in a form and manner prescribed by the [department].

193 5. The [department] shall deposit the funds generated from this section into a [Student  
194 Lending Education Account], created by [insert citation]. Such funds shall be given to covered  
195 institutions upon application to the [department] for the purposes of:

196 a. educating borrowers and potential borrowers on the educational loan process,  
197 including, but not limited to, available educational loan options, understanding rates and terms of  
198 student loans, managing costs and credit responsibilities, student loan repayment and loan  
199 consolidation; and

200 b. reimbursing borrowers from inflated educational loan prices caused by revenue  
201 sharing agreements between such covered institution and a lending institution.

202  
203 Section 13. [*Rules and Regulations.*] The [commissioner and the department] shall  
204 promulgate rules and regulations necessary for the implementation of this Act.

206 Section 14. [*Non-Exclusivity of Rights or Remedies.*] Nothing in this Act shall be construed  
207 to limit, in any manner, any rights or remedies otherwise available under law to any person or  
208 entity, including, but not limited to, the [attorney general] of this state.

209

210 Section 15. [*Student Lending Education Account.*]

211 1. There is hereby established in the joint custody of the [state comptroller] and the  
212 [commissioner of taxation and finance] an account to be known as the [Student Lending Education  
213 Account].

214 2. Such account shall consist of all revenues generated pursuant to section 12 of this Act.

215 3. Moneys of the account, following appropriation by the [legislature] shall be made  
216 available to the [state education department] for the purposes of:

217 (a) supporting programs that educate students, potential students, and parents of  
218 such students on the educational loan process, including, but not limited to, available educational  
219 loan options, understanding rates and terms of student loans, managing costs and credit  
220 responsibilities, student loan repayment and loan consolidation; and

221 (b) reimbursing students from inflated educational loan prices caused by revenue  
222 sharing agreements between such covered institution and a lending institution.

223 4. Money shall be paid out of the account on the audit and warrant of the [state  
224 comptroller] on vouchers certified or approved by the [state education department].

225

226 Section 16. [*Severability.*] [Insert severability clause.]

227

228 Section 17. [*Repealer.*] [Insert repealer clause.]

229

230 Section 18. [*Effective Date.*] [Insert effective date.]

# Substitute Address for a Victim of Domestic Abuse

This Act allows victims of domestic violence or a representative to create a substitute address for them if there is a good reason to believe the victim's safety is at risk. The address will remain confidential and guarded from databases to ensure further safety of victims. These addresses can be used by the victim when interacting with any public agency, like school districts or the motor vehicle department. This helps ensure that an abuser is unable to track a victim through these agencies.

Submitted as:

New Mexico

[HB 216 \(enrolled version\)](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Enable Domestic Abuse  
2 Victims to Use a Substitute Address.”

3  
4           Section 2. [*Substitute Address.*]

5           A. A victim of domestic abuse, or the victim's representative pursuant to [insert citation],  
6 who has good reason to believe that the victim's safety is at risk may apply to the [secretary of  
7 state] for the use of the [secretary of state] as a substitute address. The application shall be on a  
8 form provided by the [secretary of state] and shall include:

9                   (1) a statement that the [secretary of state] is acting as an agent of the victim for  
10 purposes of the forwarding of mail;

11                   (2) a mailing address for forwarding received mail and a telephone number where  
12 the victim can be contacted by the [secretary of state];

13                   (3) payment of a [seventy-five-dollar (\$75.00)] fee, which may be waived if the  
14 applicant is indigent; and

15                   (4) the signature of the victim or the victim's representative.

16           B. The [secretary of state] shall maintain a confidential record of applications for a  
17 substitute address and forward any mail received on behalf of a victim of domestic abuse to the  
18 new mailing address provided on the application.

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

# Suitability in Annuity Transactions

This Act directs that in recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer when no producer is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs.

The Act requires that before the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer when no producer is involved, shall make reasonable efforts to obtain information concerning the consumer's financial status; the consumer's tax status; the consumer's investment objectives; and other information used or considered to be reasonable by the insurance producer, or the insurer when no producer is involved, in making recommendations to the consumer.

Submitted as:

North Dakota

[SB 2155](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as "An Act Relating to Suitability in  
2 Annuity Transactions."

3  
4           Section 2. [*Exemptions.*] Unless otherwise specifically included, this Act does not apply to  
5 recommendations involving:

6           1. direct response solicitations if there is no recommendation based on information  
7 collected from the consumer pursuant to this Act; and

8           2. contracts used to fund:

9                 a. an employee pension or welfare benefit plan that is covered by the [Employee  
10 Retirement and Income Security Act];

11                b. a plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the  
12 Internal Revenue Code, as amended, if established or maintained by an employer;

13                c. a government or church plan defined in section 414 of the Internal Revenue  
14 Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or  
15 local government or tax exempt organization under section 457 of the Internal Revenue Code;

16                d. a nonqualified deferred compensation arrangement established or maintained by  
17 an employer or plan sponsor;

18                e. settlements of or assumptions of liabilities associated with personal injury  
19 litigation or a dispute or claim resolution process; or

20                f. formal prepaid funeral contracts.

21  
22           Section 3. [*Definitions.*] As used in this Act:

23           1. "annuity" means a fixed annuity or variable annuity that is individually solicited,  
24 whether the product is classified as an individual or group annuity.

- 25           2. “insurance producer” means a person required to be licensed under the laws of this state  
26 to sell, solicit, or negotiate insurance, including annuities.  
27           3. “insurer” means a company required to be licensed under the laws of this state to  
28 provide insurance products, including annuities.  
29           4. “recommendation” means advice provided by an insurance producer, or an insurer when  
30 no producer is involved, to an individual consumer that results in a purchase or exchange of an  
31 annuity in accordance with that advice.

32  
33           Section 4. [*Duties of Insurers and Insurance Producers.*]

34           1. In recommending to a consumer the purchase of an annuity or the exchange of an  
35 annuity that results in another insurance transaction or series of insurance transactions, the  
36 insurance producer, or the insurer when no producer is involved, must have reasonable grounds for  
37 believing that the recommendation is suitable for the consumer on the basis of the facts disclosed  
38 by the consumer as to the consumer’s investments and other insurance products and as to the  
39 consumer’s financial situation and needs.

40           2. Before the execution of a purchase or exchange of an annuity resulting from a  
41 recommendation, an insurance producer, or an insurer when no producer is involved, shall make  
42 reasonable efforts to obtain information concerning:

- 43                   a. the consumer’s financial status;  
44                   b. the consumer’s tax status;  
45                   c. the consumer’s investment objectives; and  
46                   d. other information used or considered to be reasonable by the insurance producer,  
47 or the insurer when no producer is involved, in making recommendations to the consumer.

48           3.       a. Except as provided under subdivision b, neither an insurance producer nor an  
49 insurer when no producer is involved has an obligation to a consumer under subsection 1 related  
50 to a recommendation if a consumer:

- 51                               (1) refuses to provide relevant information requested by the insurer or  
52 insurance producer;  
53                               (2) decides to enter into an insurance transaction that is not based on a  
54 recommendation of the insurer or insurance producer; or  
55                               (3) fails to provide complete or accurate information.

56                   b. An insurer or insurance producer’s recommendation subject to subdivision a  
57 must be reasonable under all the circumstances actually known to the insurer or insurance  
58 producer at the time of the recommendation.

59           4.       a. An insurer shall ensure that a system to supervise recommendations that is  
60 reasonably designed to achieve compliance with this Act is established and maintained by  
61 complying with subdivisions c through e, or shall establish and maintain such a system, including:

- 62                               (1) maintaining written procedures; and  
63                               (2) conducting periodic reviews of its records that are reasonably designed

64 to assist in detecting and preventing violations of this Act.

65                   b. A general agent and independent agency shall adopt a system established by an  
66 insurer to supervise recommendations of its insurance producers that is reasonably designed to  
67 achieve compliance with this Act, or shall establish and maintain such a system, including:

- 68                               (1) maintaining written procedures; and  
69                               (2) conducting periodic reviews of records that are reasonably designed to

70 assist in detecting and preventing violations of this Act.

71                   c. An insurer may contract with a third party, including a general agent or  
72 independent agency, to establish and maintain a system of supervision as required by subdivision a  
73 with respect to insurance producers under contract with or employed by the third party.

74 d. An insurer shall make reasonable inquiry to ensure that the third party  
75 contracting under subdivision c is performing the functions required under subdivision a and shall  
76 take action as is reasonable under the circumstances to enforce the contractual obligation to  
77 perform the functions. An insurer may comply with its obligation to make reasonable inquiry by  
78 doing all of the following:

79 (1) the insurer annually obtains a certification from a third-party senior  
80 manager who has responsibility for the delegated functions that the manager has a reasonable basis  
81 to represent, and does represent, that the third party is performing the required functions; and

82 (2) the insurer, based on reasonable selection criteria, periodically selects  
83 third parties contracting under subdivision c for a review to determine whether the third parties are  
84 performing the required functions.

85 (3) the insurer shall perform those procedures to conduct the review that are  
86 reasonable under the circumstances.

87 e. An insurer that contracts with a third party pursuant to subdivision c and that  
88 complies with the requirements to supervise in subdivision d has fulfilled its responsibilities under  
89 subdivision a.

90 f. An insurer, general agent, or independent agency is not required by subdivision a  
91 or b to:

92 (1) review, or provide for review of, all insurance producer solicited  
93 transactions; or

94 (2) include in its system of supervision an insurance producer's  
95 recommendations to consumers of products other than the annuities offered by the insurer, general  
96 agent, or independent agency.

97 g. A general agent or independent agency contracting with an insurer pursuant to  
98 subdivision c shall promptly, when requested by the insurer pursuant to subdivision d, give a  
99 certification as described in subdivision d or give a clear statement that it is unable to meet the  
100 certification criteria.

101 h. A person may not provide a certification under paragraph 1 of subdivision d  
102 unless:

103 (1) the person is a senior manager with responsibility for the delegated  
104 functions; and

105 (2) the person has a reasonable basis for making the certification.

106 5. Compliance with the National Association of Securities Dealers conduct rules pertaining  
107 to suitability satisfies the requirements under this section for the recommendation of variable  
108 annuities. However, nothing in this subsection limits the [insurance commissioner's] ability to  
109 enforce the provisions of this Act.

110  
111 Section 5. [*Mitigation of Responsibility - Penalty.*]

112 1. The [commissioner] may order:

113 a. an insurer to take reasonably appropriate corrective action for a consumer  
114 harmed by the insurer's, or by its insurance producer's, violation of this Act;

115 b. an insurance producer to take reasonably appropriate corrective action for a  
116 consumer harmed by the insurance producer's violation of this Act; and

117 c. a general agency or independent agency that employs or contracts with an  
118 insurance producer to sell, or solicit the sale of, annuities to consumers, to take reasonably  
119 appropriate corrective action for a consumer harmed by the insurance producer's violation of this  
120 Act.

121           2. Any applicable penalty under this Act for a violation of this Act may be reduced or  
122 eliminated, according to a schedule adopted by the [commissioner], if corrective action for the  
123 consumer was taken promptly after a violation was discovered.

124  
125           Section 6. [*Recordkeeping.*]

126           1. Insurers, general agents, independent agencies, and insurance producers shall maintain  
127 or be able to make available to the [commissioner] a record of the information collected from the  
128 consumer and other information used in making the recommendations that were the basis for  
129 insurance transactions for [ten years] after the insurance transaction is completed by the insurer.  
130 An insurer is permitted, but is not required, to maintain documentation on behalf of an insurance  
131 producer.

132           2. Records required to be maintained by this Act may be maintained in paper,  
133 photographic, microprocess, magnetic, mechanical, or electronic media, or by any process that  
134 accurately reproduces the actual document.

135  
136           Section 7. [*Severability.*] [Insert severability clause.]

137  
138           Section 8. [*Repealer.*] [Insert repealer clause.]

139  
140           Section 9. [*Effective Date.*] [Insert effective date.]

# Systematic Alien Verification for Entitlements and the Department of Driver Services

This Act permits the governor to delay implementing the requirements of the Real ID Act until the federal Department of Homeland Security has issued regulations that the governor finds will adequately protect the interests of the citizens of the state.

The Act directs the state department of driver services to take the necessary steps to become a participant in the SAVE Program (Systematic Alien Verification for Entitlements), which is administered by the United States Bureau of Citizenship and Immigration Services, to help ensure that secure and verifiable identification is required in this state in order to obtain a driver's license.

Submitted as:

Georgia

[SB 5](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title*.] This Act shall be cited as “An Act Regarding Systematic Alien  
2 Verification for Entitlements and the Department of Driver Services.”

3  
4           Section 2. [*Legislative Findings*.]

5           (A) The [Legislature] finds that the Real ID Act, H.R. 1268, P.L. 109-13, enacted by  
6 Congress in 2005, established standards that state-issued drivers' licenses and identification cards  
7 must meet by May 11, 2008, if the licenses or identification cards are to be accepted as valid  
8 identification by the federal government. After May 11, 2008, federal agencies are scheduled to  
9 accept only drivers' licenses or identification cards that meet Real ID standards. Noncompliant  
10 cards will not be accepted for federal purposes such as boarding a domestic flight, opening a bank  
11 account, or any other service or activity over which the federal government claims jurisdiction.  
12 Each state will also be required to share data from their drivers' licenses or identification cards  
13 data base with other states.

14           (B) While everyone recognizes the need to make identifying documents as secure as is  
15 humanly possible, the one-size-fits-all approach required by the Real ID Act may actually increase  
16 the documents' vulnerability to counterfeiting. If criminals are able to invade one state's system,  
17 they may have access to all states' systems. On another front, a report from the National  
18 Conference of State Legislatures, the National Governors Association, and the American  
19 Association of Motor Vehicle Administrators suggests that the new requirements of the Real ID  
20 Act will cost states at least \$11 billion over the first five years of the program. Despite this  
21 massive price tag, there has been no money appropriated to help states meet the Law's demands.

22           (C) The Real ID Act gives the Department of Homeland Security the power to set federal  
23 standards and determine whether state drivers' licenses and other identification cards meet these  
24 standards. There is no provision in the Real ID Act that requires or even mentions information  
25 privacy or data security. The federal and state governments must ensure that the data needed to  
26 verify the identity of driver's license applicants is maintained securely and not used for other  
27 unrelated purposes.



28 (D) The Department of Homeland Security must include privacy protections for personal  
29 driver data as they promulgate regulations spelling out what states need to do to implement the  
30 federal law. Success of the Real ID Act depends on the Department of Homeland Security and the  
31 states collaborating to find a way of implementing its requirements in a fiscally responsible and  
32 risk adjusted manner.

33 (E) Therefore, the state [Department of Driver Services] is directed to withhold any  
34 legislation designed to implement the Real ID Act in this state until such time as the Department  
35 of Homeland Security has enacted regulations that define the exact type of information that is to  
36 be required on a state driver's license.

37 (F) Furthermore, before the Real ID Act is implemented in this state, the [Governor] is  
38 entitled to review the regulations promulgated by the Department of Homeland Security and  
39 determine if they adequately safeguard and restrict use of the information in order to protect the  
40 privacy rights of the citizens of this state.

41 (G) The citizens of this state also recognize the importance of ensuring that drivers'  
42 licenses are issued only to people legally present in this state. Therefore, the use of secure and  
43 verifiable identification will be required in this state in order to obtain a driver's license. This  
44 requirement is in harmony with the intent of the Real ID Act to secure identification processes in  
45 this country.

46 (H) The [Department of Driver Services] is instructed to take the necessary steps to  
47 become a participant in the SAVE Program (Systematic Alien Verification for Entitlements). This  
48 program, administered by the United States Bureau of Citizenship and Immigration Services, is  
49 designed to verify the immigration status of noncitizens.

50  
51 Section 3. [*Delaying Compliance with federal Real ID Act, H.R. 1268, P.L. 109-13.*]

52 (A) The [Governor], or his or her designee, is authorized to delay compliance with certain  
53 provisions of the federal Real ID Act, H.R. 1268, P.L. 109-13, enacted by Congress in 2005, until  
54 it is expressly guaranteed by the Department of Homeland Security, through adequately defined  
55 safeguards, that implementation of the Real ID Act will not compromise the economic privacy or  
56 biological sanctity of any citizen or resident of this state. This section shall not be interpreted as  
57 limiting the [Governor's] discretion or authority to delay compliance with certain provisions of the  
58 Real ID Act for any other reason.

59 (B) The [Department of Driver Services] shall not issue an identification card, license,  
60 permit, or other official document to an applicant who is a noncitizen, until the applicant has been  
61 confirmed through the SAVE Program to be lawfully present in the United States.

62 (C) This Act shall not apply to instances when a federal law mandates acceptance of a  
63 document.

64 (D) Subsection (B) of this Code section shall become effective upon the [department's] full  
65 implementation of the SAVE Program but not later than [January 1, 2008].

66  
67 Section 4. [*Severability.*] [Insert severability clause.]

68  
69 Section 5. [*Repealer.*] [Insert repealer clause.]

70  
71 Section 6. [*Effective Date.*] [Insert effective date.]

# Taxpayer and Citizen Protection

This Act makes it a felony to knowingly transport, conceal or harbor an illegal alien. Anyone found in violation and convicted may receive up to one year in prison and/or a fine not less than \$1,000. Since this is a new felony there is insufficient data available on the occurrence of this crime. The fiscal impact would be dependent upon the number of adjudicated cases.

The law requires all public employers to enter into a contract for the physical performance of services within the state or register and participate in the federal Status Verification System to verify the work authorization status of all new employees. The state department of labor is required to prescribe forms and promulgate rules and regulations necessary to administer the program and post the rules and regulations on its web site.

The Act directs the Attorney General to negotiate a Memorandum of Understanding between the state and the United States Department of Justice or the United States Department of Homeland Security concerning the enforcement of federal immigration and custom laws, detention and removals, and investigations in the state.

Submitted as:

Oklahoma

[HB1804](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

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

3  
4           Section 2. [*Legislative Findings.*]

5           A. Illegal immigration is causing economic hardship and lawlessness in this state and that  
6 illegal immigration is encouraged when public agencies within this state provide public benefits  
7 without verifying immigration status.

8           B. When illegal immigrants have been harbored and sheltered in this state and encouraged  
9 to reside in this state through the issuance of identification cards that are issued without verifying  
10 immigration status, these practices impede and obstruct the enforcement of federal immigration  
11 law, undermine the security of our borders, and impermissibly restrict the privileges and  
12 immunities of the citizens of this state.

13           C. Therefore, the people of this state declare that it is a compelling public interest of this  
14 state to discourage illegal immigration by requiring all agencies within this state to fully cooperate  
15 with federal immigration authorities in the enforcement of federal immigration laws.

16           D. Other measures are necessary to ensure the integrity of various governmental programs  
17 and services.

18  
19           Section 3. [*Definitions.*] As used in this Act:

20           1. “Status Verification System” means an electronic system operated by the federal  
21 government, through which an authorized official of an agency of this state or of a political  
22 subdivision therein may make an inquiry, by exercise of authority delegated pursuant to Section  
23 1373 of Title 8 of the United States Code, to verify or ascertain the citizenship or immigration

24 status of any individual within the jurisdiction of the agency for any purpose authorized by this  
25 Act. The Status Verification System shall be deemed to include:

26 a. the electronic verification of the Work Authorization Program of the  
27 Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208, Division  
28 C, Section 403(a); 8 U.S.C., Section 1324a, and operated by the United States Department of  
29 Homeland Security, known as the Basic Pilot Program,

30 b. any equivalent federal program designated by the United States  
31 Department of Homeland Security or any other federal agency authorized to verify the work  
32 eligibility status of newly hired employees, pursuant to the Immigration Reform and Control Act  
33 of 1986 (IRCA), D.L. 99-603,

34 c. any other independent, third-party system with an equal or higher degree  
35 of reliability as the programs, systems, or processes described in this paragraph, or

36 d. the Social Security Number Verification Service, or such similar online  
37 verification process implemented by the United States Social Security Administration;

38 2. "Public employer" means every department, agency, or instrumentality of the  
39 state or a political subdivision of the state;

40 3. "Subcontractor" means a subcontractor, contract employee, staffing agency, or  
41 any contractor regardless of its tier; and

42 4. "Unauthorized alien" means an alien as defined in Section 1324a(h)(3) of Title 8  
43 of the United States Code.

44  
45 Section 4. [*Transporting or Harboring Aliens Illegally.*]

46 A. It shall be unlawful for any person to transport, move, or attempt to transport in this  
47 state any alien knowing or in reckless disregard of the fact that the alien has come to, entered, or  
48 remained in the United States in violation of law, in furtherance of the illegal presence of the alien  
49 in the United States.

50 B. It shall be unlawful for any person to conceal, harbor, or shelter from detection any  
51 alien in any place within this state, including any building or means of transportation, knowing or  
52 in reckless disregard of the fact that the alien has come to, entered, or remained in the United  
53 States in violation of law.

54 C. Nothing in this section shall be construed so as to prohibit or restrict the provision of  
55 any state or local public benefit described in 8 U.S.C., Section 1621(b), or regulated public health  
56 services provided by a private charity using private funds.

57 D. Any person violating the provisions of subsections A or B of this section shall, upon  
58 conviction, be guilty of a felony punishable by imprisonment in the custody of the [Department of  
59 Corrections] for not less than [(1) year] or by a fine of not less than [one thousand dollars  
60 (\$1,000.00)], or by both such fine and imprisonment.

61  
62 Section 5. [*Entities Which Can Create Identification Documents for U.S. Citizens.*]

63 A. The following entities may create, publish or otherwise manufacture an identification  
64 document, identification card, or identification certificate and may possess an engraved plate or  
65 other such devise device for the printing of such identification; provided, the name of the issuing  
66 entity shall be clearly printed upon the face of the identification:

67 1. businesses, companies, corporations, service organizations and federal, state and  
68 local governmental agencies for employee identification which is designed to identify the bearer  
69 as an employee;

70 2. businesses, companies, corporations and service organizations for customer  
71 identification which is designed to identify the bearer as a customer or member;

72 3. federal, state and local government agencies for purposes authorized or required  
73 by law or any legitimate purpose consistent with the duties of such an agency, including, but not  
74 limited to, voter identification cards, driver licenses, non-driver identification cards, passports,  
75 birth certificates and social security cards;

76 4. any public school or state or private educational institution, as defined by [insert  
77 citation], to identify the bearer as an administrator, faculty member, student or employee;

78 5. any professional organization or labor union to identify the bearer as a member  
79 of the professional organization or labor union; and

80 6. businesses, companies or corporations which manufacture medical-alert  
81 identification for the wearer thereof.

82 B. All identification documents as provided for in paragraph 3 or 4 of subsection A of this  
83 section shall be issued only to United States citizens, nationals and legal permanent resident  
84 aliens.

85 C. The provisions of subsection B of this section shall not apply when an applicant  
86 presents, in person, valid documentary evidence of:

87 1. a valid, unexpired immigrant or nonimmigrant visa status for admission into the  
88 United States;

89 2. a pending or approved application for asylum in the United States;

90 3. admission into the United States in refugee status;

91 4. a pending or approved application for temporary protected status in the United  
92 States;

93 5. approved deferred action status; or

94 6. a pending application for adjustment of status to legal permanent residence status  
95 or conditional resident status.

96 D. Upon approval, the applicant may be issued an identification document provided for in  
97 paragraph 3 or 4 of subsection A of this section. Such identification document shall be valid only  
98 during the period of time of the authorized stay of the applicant in the United States or, if there is  
99 no definite end to the period of authorized stay, a period of [one (1)] year. Any identification  
100 document issued pursuant to the provisions of this subsection shall clearly indicate that it is  
101 temporary and shall state the date that the identification document expires. Such identification  
102 document may be renewed only upon presentation of valid documentary evidence that the status  
103 by which the applicant qualified for the identification document has been extended by the United  
104 States Citizenship and Immigration Services or other authorized agency of the United States  
105 Department of Homeland Security.

106 E. The provisions of subsection B of this section shall not apply to an identification  
107 document described in paragraph 4 of subsection A of this section that is only valid for use on the  
108 campus or facility of that educational institution and includes a statement of such restricted  
109 validity clearly and conspicuously printed upon the face of the identification document.

110 F. Any driver license issued to a person who is not a United States citizen, national or legal  
111 permanent resident alien for which an application has been made for renewal, duplication or  
112 reissuance shall be presumed to have been issued in accordance with the provisions of subsection  
113 C of this section; provided that, at the time the application is made, the driver license has not  
114 expired, or been cancelled, suspended or revoked. The requirements of subsection C of this section  
115 shall apply, however, to a renewal, duplication or reissuance if the [Department of Public Safety]  
116 is notified by a local, state or federal government agency of information in the possession of the  
117 agency indicating a reasonable suspicion that the individual seeking such renewal, duplication or  
118 reissuance is present in the United States in violation of law. The provisions of this subsection  
119 shall not apply to United States citizens, nationals or legal permanent resident aliens.

120

121 Section 6. [*Determining Citizenship of People Who are Jailed.*]

122 A. When a person charged with a felony or driving under the influence pursuant to [insert  
123 citation] is confined, for any period, in the jail of the county, any municipality or a jail operated by  
124 a regional jail authority, a reasonable effort shall be made to determine the citizenship status of the  
125 person so confined.

126 B. If the prisoner is a foreign national, the keeper of the jail or other officer shall make a  
127 reasonable effort to verify that the prisoner has been lawfully admitted to the United States and, if  
128 lawfully admitted, that such lawful status has not expired. If verification of lawful status cannot be  
129 made from documents in the possession of the prisoner, verification shall be made within [forty-  
130 eight (48)] hours through a query to the Law Enforcement Support Center of the United States  
131 Department of Homeland Security or other office or agency designated for that purpose by the  
132 United States Department of Homeland Security. If the lawful immigration status of the prisoner  
133 cannot be verified, the keeper of the jail or other officer shall notify the United States Department  
134 of Homeland Security.

135 C. For the purpose of determining the grant of or issuance of bond, it shall be a rebuttable  
136 presumption that a person whose citizenship status has been verified pursuant to subsection B of  
137 this section to be a foreign national who has not been lawfully admitted to the United States is at  
138 risk of flight.

139  
140 Section 7. [*Verifying Public Employee Status.*]

141 A. Every public employer shall register with and use the Status Verification System as  
142 described in this Act to verify the federal employment authorization status of all new employees.

143 B. 1. After [July 1, 2008], no public employer shall enter into a contract for the  
144 physical performance of services within this state unless the contractor registers and participates in  
145 the Status Verification System to verify the work eligibility status of all new employees.

146 2. After [July 1, 2008], no contractor or subcontractor who enters into a contract  
147 with a public employer shall enter into such a contract or subcontract in connection with the  
148 physical performance of services within this state unless the contractor or subcontractor registers  
149 and participates in the Status Verification System to verify information of all new employees.

150 3. The provisions of this subsection shall not apply to any contracts entered into  
151 prior to the effective date of this section even though such contracts may involve the physical  
152 performance of services within this state after [July 1, 2008].

153 C. 1. It shall be a discriminatory practice for an employing entity to discharge an  
154 employee working in this state who is a United States citizen or permanent resident alien while  
155 retaining an employee who the employing entity knows, or reasonably should have known, is an  
156 unauthorized alien hired after [July 1, 2008], and who is working in this state in a job category that  
157 requires equal skill, effort, and responsibility, and which is performed under similar working  
158 conditions, as defined by 29 U.S.C., Section 206(d)(1), as the job category held by the discharged  
159 employee.

160 2. An employing entity which, on the date of the discharge in question, was  
161 currently enrolled in and used a Status Verification System to verify the employment eligibility of  
162 its employees in this state hired after [July 1, 2008], shall be exempt from liability, investigation,  
163 or suit arising from any action under this section.

164 3. No cause of action for a violation of this subsection shall arise anywhere in  
165 [state] law but from the provisions of this subsection.

166  
167 Section 8. [*Verifying Lawful Presence of People 14 years or Older Who Apply for Public*  
168 *Benefits.*]

169 A. Except as provided in subsection C of this section or where exempted by federal law,  
170 every agency or a political subdivision of this state shall verify the lawful presence in the United  
171 States of any natural person [fourteen (14)] years of age or older who has applied for state or local  
172 public benefits, as defined in 8 U.S.C., Section 1621, or for federal public benefits, as defined in 8  
173 U.S.C., Section 1611, that is administered by an agency or a political subdivision of this state.

174 B. The provisions of this section shall be enforced without regard to race, religion, gender,  
175 ethnicity, or national origin.

176 C. Verification of lawful presence under the provisions of this section shall not be  
177 required:

178 1. for any purpose for which lawful presence in the United States is not restricted  
179 by law, ordinance, or regulation;

180 2. for assistance for health care items and services that are necessary for the  
181 treatment of an emergency medical condition, as defined in 42 U.S.C., Section 1396b(v)(3), of the  
182 alien involved and are not related to an organ transplant procedure;

183 3. for short-term, noncash, in-kind emergency disaster relief;

184 4. for public health assistance for immunizations with respect to diseases and for  
185 testing and treatment of symptoms of communicable diseases whether or not such symptoms are  
186 caused by a communicable disease; or

187 5. for programs, services, or assistance such as soup kitchens, crisis counseling and  
188 intervention, and short-term shelter specified by the United States Attorney General, in the sole  
189 and unreviewable discretion of the United States Attorney General after consultation with  
190 appropriate federal agencies and departments which:

191 a. deliver in-kind services at the community level, including through public  
192 or private nonprofit agencies,

193 b. do not condition the provision of assistance, the amount of assistance  
194 provided, or the cost of assistance provided on the income or resources of the individual recipient,  
195 and

196 c. are necessary for the protection of life or safety.

197 D. Verification of lawful presence in the United States by the state agency or political  
198 subdivision shall require that the applicant execute an affidavit under penalty of perjury that:

199 1. he or she is a United States citizen; or

200 2. he or she is a qualified alien under the federal Immigration and Nationality Act  
201 and is lawfully present in the United States.

202 E. The agency or political subdivision providing the state or local public benefits shall  
203 provide notary public services at no cost to the applicant.

204 F. For any applicant who has executed the affidavit described in paragraph 2 of subsection  
205 D of this section, eligibility for benefits shall be verified through the Systematic Alien Verification  
206 for Entitlements (SAVE) Program operated by the United States Department of Homeland  
207 Security or an equivalent program designated by the United States Department of Homeland  
208 Security. Until such eligibility verification is made, the affidavit may be presumed to be proof of  
209 lawful presence for the purposes of this section.

210 G. Any person who knowingly and willfully makes a false, fictitious, or fraudulent  
211 statement of representation in an affidavit executed pursuant to subsection D of this section shall  
212 be subject to criminal penalties applicable in this state for fraudulently obtaining public assistance  
213 program benefits. If the affidavit constitutes a false claim of U.S. citizenship under 18 U.S.C.,  
214 Section 911, a complaint shall be filed by the agency requiring the affidavit with the United States  
215 Attorney General for the applicable district based upon the venue in which the affidavit was  
216 executed.

217 H. Agencies or political subdivisions of this state may adopt variations to the requirements  
218 of the provisions of this section which demonstrably improve the efficiency or reduce delay in the  
219 verification process, or to provide for adjudication of unique individual circumstances where the  
220 verification procedures in this section would impose unusual hardship on a legal resident of this  
221 state.

222 I. It shall be unlawful for any agency or a political subdivision of this state to provide any  
223 state, local, or federal benefit, as defined in 8 U.S.C., Section 1621, or 8 U.S.C., Section 1611, in  
224 violation of the provisions of this section.

225 J. Each state agency or department which administers any program of state or local public  
226 benefits shall provide an annual report to the [Governor, the President Pro Tempore of the Senate  
227 and the Speaker of the House of Representatives] with respect to its compliance with the  
228 provisions of this section. Each agency or department shall monitor the Systematic Alien  
229 Verification for Entitlements Program for application verification errors and significant delays and  
230 shall provide an annual public report on such errors and significant delays and recommendations  
231 to ensure that the application of the Systematic Alien Verification of Entitlements Program is not  
232 erroneously denying benefits to legal residents of this state. Errors shall also be reported to the  
233 United States Department of Homeland Security by each agency or department.  
234

235 Section 9. [*Requiring Contractors to Withhold State Income Taxes of Unauthorized Alien*  
236 *Laborers.*]

237 A. If an individual independent contractor, contracting for the physical performance of  
238 services in this state, fails to provide to the contracting entity documentation to verify the  
239 independent contractor's employment authorization, pursuant to the prohibition against the use of  
240 unauthorized alien labor through contract set forth in 8 U.S.C., Section 1324a(a)(4), the  
241 contracting entity shall be required to withhold state income tax at the top marginal income tax  
242 rate as provided in [insert citation] as applied to compensation paid to such individual for the  
243 performance of such services within this state which exceeds the minimum amount of  
244 compensation the contracting entity is required to report as income on United States Internal  
245 Revenue Service Form 1099.

246 B. Any contracting entity who fails to comply with the withholding requirements of this  
247 subsection shall be liable for the taxes required to have been withheld unless such contracting  
248 entity is exempt from federal withholding with respect to such individual pursuant to a properly  
249 filed Internal Revenue Service Form 8233 or its equivalent.

250 C. Nothing in this section is intended to create, or should be construed as creating, an  
251 employer-employee relationship between a contracting entity and an individual independent  
252 contractor.  
253

254 Section 10. [*Memorandum of Understanding to Enforce Immigrations and Customs Laws.*]

255 A. The [Attorney General] is authorized and directed to negotiate the terms of a  
256 Memorandum of Understanding between [state] and the United States Department of Justice or the  
257 United States Department of Homeland Security, as provided by Section 1357(g) of Title 8 of the  
258 United States Code, concerning the enforcement of federal immigration and customs laws,  
259 retention and removals, and investigations in this state.

260 B. The Memorandum of Understanding negotiated pursuant to subsection A of this section  
261 shall be signed on behalf of this state by the [Attorney General and the Governor] or as otherwise  
262 required by the appropriate federal agency.

263 C. No local government, whether acting through its governing body or by an initiative,  
264 referendum, or any other process, shall enact any ordinance or policy that limits or prohibits a law  
265 enforcement officer, local official, or local government employee from communicating or

266 cooperating with federal officials with regard to the immigration status of any person within this  
267 state.

268 D. Notwithstanding any other provision of law, no government entity or official within this  
269 state may prohibit, or in any way restrict, any government entity or official from sending to, or  
270 receiving from, the United States Department of Homeland Security, information regarding the  
271 citizenship or immigration status, lawful or unlawful, of any individual.

272 E. Notwithstanding any other provision of law, no person or agency may prohibit, or in any  
273 way restrict, a public employee from doing any of the following with respect to information  
274 regarding the immigration status, lawful or unlawful, of any individual:

275 1. sending such information to, or requesting or receiving such information from,  
276 the United States Department of Homeland Security;

277 2. maintaining such information; or

278 3. exchanging such information with any other federal, state, or local government  
279 entity.

280 F. The provisions of this section shall allow for a private right of action by any natural or  
281 legal person lawfully domiciled in this state to file for a writ of mandamus to compel any non-  
282 cooperating local or state governmental agency to comply with such reporting laws.

283 G. Except as otherwise provided in [insert citation], an individual who is not lawfully  
284 present in the United States shall not be eligible on the basis of residence within the state for:

285 1. any postsecondary education benefit, including, but not limited to, scholarships  
286 or financial aid; or

287 2. resident tuition.

288 H. The provisions of subsection A of this section shall not apply to a student enrolled in a  
289 degree program at a postsecondary educational institution within this state's system of higher  
290 education during the [2006-2007] school year or any prior year who received a resident tuition  
291 benefit pursuant to [insert citation] at that institution.

292

293 Section 11. [*Fraudulent Documents Identification Unit.*] Subject to the availability of  
294 funding, the [Department of Public Safety] shall establish a [Fraudulent Documents Identification  
295 (FDI) Unit] for the primary purpose of investigating and apprehending people or entities that  
296 participate in the sale or distribution of fraudulent documents used for identification purposes. The  
297 [unit] shall additionally specialize in fraudulent identification documents created and prepared for  
298 people who are unlawfully residing within this state. The [Department] shall employ sufficient  
299 employees to investigate and implement an [FDI Unit].

300

301 Section 12. [*Student Eligibility for Resident Tuition.*]

302 A. The [State Regents for Higher Education] may adopt a policy which allows a student to  
303 enroll in an institution within state system of higher education and allows a student to be eligible  
304 for resident tuition if the student:

305 1. graduated from a public or private high school in this state; and

306 2. resided in this state with a parent or legal guardian while attending classes at a  
307 public or private high school in this state for at least [two (2)] years prior to graduation.

308 B. To be eligible for the provisions of subsection A of this section, an eligible student  
309 shall:

310 1. satisfy admission standards as determined by the [State Regents for Higher  
311 Education] for the appropriate type of institution and have secured admission to, and enrolled in,  
312 an institution within state system of higher education; and

313 2. if the student cannot present to the institution valid documentation of United  
314 States nationality or an immigration status permitting study at a postsecondary institution:



315 a. provide to the institution a copy of a true and correct application or a  
316 petition filed with the United States Citizenship and Immigration Services to legalize the student's  
317 immigration status, or  
318 b. file an affidavit with the institution stating that the student will file an  
319 application to legalize his or her immigration status at the earliest opportunity the student is  
320 eligible to do so, but in no case later than:  
321 I. [one (1)] year after the date on which the student enrolls for study  
322 at the institution, or  
323 II. if there is no formal process to permit children of parents without  
324 lawful immigration status to apply for lawful status without risk of deportation, [one (1)] year after  
325 the date the United States Citizenship and Immigration Services provide such a formal process,  
326 and  
327 c. if the student files an affidavit pursuant to subparagraph b of this  
328 paragraph, present to the institution a copy of a true and correct application or petition filed with  
329 the United States Citizenship and Immigration Services no later than:  
330 I. one (1) year after the date on which the student enrolls for study at  
331 the institution, or  
332 II. if there is no formal process to permit children of parents without  
333 lawful immigration status to apply for lawful status without risk of deportation, [one (1)] year after  
334 the date the United States Citizenship and Immigration Services provide such a formal process,  
335 which copy shall be maintained in the institution's records for that student.  
336 C. Any student who completes the required criteria prescribed in subsection A and of this  
337 section, paragraph 1 of subsection B of this section, and subparagraph a of paragraph 2 of  
338 subsection B of this section shall not be disqualified on the basis of the student's immigration  
339 status from any scholarships or financial aid provided by this state.  
340 D. The provisions of this section shall not impose any additional conditions to maintain  
341 resident tuition status at a postsecondary educational institution within the state system of higher  
342 education on a student who was enrolled in a degree program and first received such resident  
343 tuition status at that institution during the [2006-2007] school year or any prior year.

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

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

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

# Trans Fats and Schools

This Act limits prohibits schools from offering or providing access to students in kindergarten through high school foods containing artificial trans fat. The measure applies to vending machines and schools' food service establishments before and during school hours.

Submitted as:

California

[Chapter 648](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Limit School Offerings of  
2 Foods Containing Trans Fats to Students.”  
3

4           Section 2. [*Legislative Findings.*] The [Legislature] finds and declares as follows:

5           (a) Trans fatty acids, also known as trans fats, have a detrimental impact on a person's  
6 health by:

7                   (1) increasing blood insulin level in response to glucose load;

8                   (2) affecting immune response;

9                   (3) decreasing the response of the red blood cells to insulin;

10                  (4) causing alterations in physiological properties of biological membranes;

11                  (5) causing alterations in adipose cell size, cell number, lipid class, and fatty acid  
12 composition;

13                  (6) lowering serum HDL cholesterol; and

14                  (7) impairing endothelial function.

15           (b) In 1997, a New England Journal of Medicine study found eating one gram of trans fats  
16 a day for a decade increased the risk of cardiovascular disease by 20 percent.

17           (c) Recent research by Harvard Medical School shows that high trans fat intake represents  
18 a significant risk for developing premature diabetes.

19           (d) Trans fats increase the risk of heart disease and stroke by increasing levels of so-called  
20 bad cholesterol, known as LDL, and reducing levels of so-called good cholesterol, known as HDL.

21           (e) There is an overwhelming amount of evidence revealing the damage trans fat can do to  
22 the health of an individual.

23  
24           Section 3. [*Limiting the Availability of Foods Containing Trans Fat at Schools.*]

25           (a) For purposes of this section of this Act, a food contains artificial trans fat if a food  
26 contains vegetable shortening, margarine, or any kind of partially hydrogenated vegetable oil,  
27 unless the manufacturer's documentation or the label required on the food, pursuant to applicable  
28 federal and state law, lists the trans fat content as less than 0.5 grams of trans fat per serving.

29           (b) For purposes of this section, “school food service establishment” means a place that  
30 regularly sells or serves a food item or meal on a school campus.

31           (c) Commencing on [insert date] a school or school district, through a vending machine or  
32 school food service establishment [during school hours and up to one-half of an hour before and  
33 after school hours], shall not make available to pupils enrolled in kindergarten, or any of grades 1

34 to 12, inclusive, food containing artificial trans fat, as defined in subdivision (a) of this section or  
35 use food containing artificial trans fat in the preparation of a food item served to those pupils.  
36 (d) This section does not apply to food provided as part of a USDA meal program.

37

38 Section 4. [*State Reimbursement to Local Agencies.*]

39 If the [Commission on State Mandates] determines this Act contains costs mandated by the  
40 state, reimbursement to local agencies and school districts for those costs shall be made pursuant  
41 to [insert citation].

42

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

44

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

46

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

# Two-Year College Transfer Grant Program

This Act establishes a program to provide grants of up to \$2,000 per year to state residents who successfully complete an associate degree program at a public two-year institution of higher education and subsequently enroll in a four-year institution.

Submitted as:

Virginia

[Chapter 850 of 2007](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Establish a Two-Year  
2 College Transfer Grant Program.”  
3

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

5                 1. “Accredited institution” means any institution approved to confer degrees  
6 pursuant to [insert citation].

7                 2. “Council” means the [State Council of Higher Education] established under  
8 [insert citation].

9                 3. “Grant” means the amount of financial assistance awarded under this Act  
10 whether disbursed by warrant directly to an institution of higher education or directly to a student.

11                4. “Institution of higher education” means a four-year public or private nonprofit  
12 educational institution within this state with a primary purpose to provide undergraduate collegiate  
13 education and not to provide religious training or theological education.

14                5. “Student” means an undergraduate student who is entitled to in-state tuition  
15 charges pursuant to the provisions of [insert citation].  
16

17           Section 3. [*Two-Year College Transfer Grant Program Created; State Council of Higher*  
18 *Education To Promulgate Regulations.*] There is hereby created a Two-Year College Transfer  
19 Grant Program to provide financial assistance to eligible students, beginning with the freshman  
20 class of the [fall 2007] academic year, for the costs of attending a public or private institution of  
21 higher education in this state. Funds may be paid to any institutions of higher education on behalf  
22 of students who have been awarded financial assistance pursuant to section 4 of this Act. The  
23 [Council] shall promulgate regulations for the implementation of the provisions of this Act and the  
24 disbursement of funds consistent therewith and appropriate to the administration of the program.  
25

26           Section 4. [*Eligibility Criteria.*]

27           A. Under this program, grants shall be made to or on behalf of eligible domiciles in this  
28 state who:

29                 1. have received an associate degree at a two-year public institution of higher  
30 education located in this state,

31                 2. have enrolled in a four-year public or private institution of higher education  
32 located in this state by the Fall following the award of the Associate Degree,

33                 3. have applied for financial aid, and

34 4. have financial need, defined by an Expected Family Contribution (EFC) of no  
35 more than [\$8,000] as calculated by the federal government using the family's financial  
36 information reported on the Free Application for Federal Student Aid (FAFSA) form. Only  
37 students who maintained a cumulative grade point average of at least 3.0 on a scale of 4.0 or its  
38 equivalent while enrolled in an Associate Degree program at a two-year public institution of  
39 higher education located in this state shall be eligible to receive a grant under this Act.

40 B. Eligibility for a higher education grant under this program shall be limited to [three  
41 academic years or 70 credit hours] and shall be used only for undergraduate collegiate work in  
42 educational programs other than those providing religious training or theological education. To  
43 remain eligible for a grant under this program, a student must continue to demonstrate financial  
44 need, as defined in this section, maintain a 3.0 on a scale of 4.0 or its equivalent, and make  
45 satisfactory academic progress towards a degree.

46 C. People who fail to meet the federal requirement to register for the Selective Service  
47 shall not be eligible to receive grants pursuant to this Act. However, a person who fails to register  
48 for the Selective Service shall not be denied a right, privilege, or benefit under this section if:

- 49 1. the requirement to so register has terminated or become inapplicable to the  
50 person, and
- 51 2. the person shows by a preponderance of the evidence that the failure to register  
52 was not a knowing and willful failure to register.

53  
54 Section 5. [*Amount of Award.*] The amount of the grant for an eligible student shall be  
55 provided in accordance with the [Appropriation Act] and shall be fixed at [\$1,000] per year. An  
56 additional [\$1,000] per year shall be provided to those students pursuing undergraduate collegiate  
57 work in engineering, mathematics, nursing, teaching, or science.

58  
59 Section 6. [*Determination of Domicile.*] For the purposes of determining the eligibility of a  
60 student for a Two-Year College Transfer Grant, domicile shall be determined by the enrolling  
61 institution, as provided in [insert citation], and the [State Council of Higher Education's]  
62 guidelines for domiciliary status determinations.

63  
64 Section 7. [*State Financial Aid Eligibility.*] The [Council] shall reduce state financial aid  
65 eligibility by the amount of the grant awarded pursuant to this Act. Tuition assistance received by  
66 a student under this program shall not be reduced by the receipt of other financial aid from any  
67 source by such student. However, a student shall not receive a grant pursuant to this Act that,  
68 when added to other financial aid received by that student, would enable the student to receive  
69 total assistance in excess of the estimated cost to the student of attending the institution in which  
70 they are enrolled.

71  
72 Section 8. [*Severability.*] [Insert severability clause.]

73  
74 Section 9. [*Repealer.*] [Insert repealer clause.]

75  
76 Section 10. [*Effective Date.*] [Insert effective date.]



24 (9) “Party” means the respondent, petitioner, guardian, conservator, or any other person  
25 allowed by the court to participate in a guardianship or protective proceeding.

26 (10) “Person,” except in the terms “incapacitated person” or “protected person,” means an  
27 individual, corporation, business trust, estate, trust, partnership, limited liability company,  
28 association, joint venture, government or governmental subdivision, agency or instrumentality,  
29 public corporation, or any other legal or commercial entity.

30 (11) “Protected person” means an adult for whom a protective order has been made.

31 (12) “Protective order” means an order appointing a conservator or another court order  
32 related to management of an adult’s property.

33 (13) “Protective proceeding” means a judicial proceeding in which a protective order is  
34 sought or has been issued.

35 (14) “Record” means information that is inscribed on a tangible medium or that is stored in  
36 an electronic or other medium and is retrievable in perceivable form.

37 (15) “Respondent” means an adult for whom a protective order or the appointment of a  
38 guardian is sought.

39 (16) “Significant-connection state” means a state, other than the home state, with which a  
40 respondent has a significant connection other than mere physical presence and in which substantial  
41 evidence concerning the respondent is available.

42 (17) “State” means a state of the United States, the District of Columbia, Puerto Rico, the  
43 United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular  
44 possession subject to the jurisdiction of the United States.

45  
46 Section 3. [*International application.*] A court of this state may treat a foreign country as if  
47 it were a state for the purpose of applying Parts 1, 2, 3, and 5 of this Chapter.

48  
49 Section 4. [*Communication between courts.*]

50 (1) A court of this state may communicate with a court in another state concerning a  
51 proceeding arising under this chapter. The court may allow the parties to participate in the  
52 communication. Except as otherwise provided in Subsection (2), the court shall make a record of  
53 the communication. The record may be limited to the fact that the communication occurred.

54 (2) Courts may communicate concerning schedules, calendars, court records, and other  
55 administrative matters without making a record.

56  
57 Section 5. [*Cooperation between courts.*]

58 (1) In a guardianship or protective proceeding in this state, a court of this state may request  
59 the appropriate court of another state to do any of the following:

60 (a) hold an evidentiary hearing;

61 (b) order a person in that state to produce evidence or give testimony pursuant to  
62 procedures of that state;

63 (c) order that an evaluation or assessment be made of the respondent;

64 (d) order any appropriate investigation of a person involved in a proceeding;

65 (e) forward to the court of this state a certified copy of the transcript or other record  
66 of a hearing under Subsection (1)(a) or any other proceeding, any evidence otherwise produced  
67 under Subsection (1)(b), and any evaluation or assessment prepared in compliance with an order  
68 under Subsection (1)(c) or (d);

69 (f) issue any order necessary to assure the appearance in the proceeding of a person  
70 whose presence is necessary for the court to make a determination, including the respondent or the  
71 incapacitated or protected person; and

72 (g) issue an order authorizing the release of medical, financial, criminal, or other  
73 relevant information in that state, including protected health information as defined in 45 Code  
74 133 of Federal Regulations Section 164.504.

75 (2) If a court of another state in which a guardianship or protective proceeding is pending  
76 requests assistance of the kind provided in Subsection (1), a court of this state has jurisdiction for  
77 the limited purpose of granting the request or making reasonable efforts to comply with the  
78 request.

79  
80 Section 6. [*Taking testimony in another state.*]

81 (1) In a guardianship or protective proceeding, in addition to other procedures that may be  
82 available, testimony of a witness who is located in another state may be offered by deposition or  
83 other means allowable in this state for testimony taken in another state. The court on its own  
84 motion may order that the testimony of a witness be taken in another state and may prescribe the  
85 manner in which and the terms upon which the testimony is to be taken.

86 (2) In a guardianship or protective proceeding, a court in this state may permit a witness  
87 located in another state to be deposed or to testify by telephone, audiovisual, or other electronic  
88 means. A court of this state shall cooperate with courts of other states in designating an  
89 appropriate location for the deposition or testimony.

90 (3) Documentary evidence transmitted from another state to a court of this state by  
91 technological means that do not produce an original writing may not be excluded from evidence  
92 on an objection based on the best evidence rule.

93  
94 Part 2.  
95 Jurisdiction  
96

97 Section 7. [*Exclusive basis -- Significant connection.*]

98 (1) This part provides the exclusive jurisdictional basis for a court of this state to appoint a  
99 guardian or issue a protective order for an adult.

100 (2) In determining under Section 9 of this Act and Section 15(5) of this Act whether a  
101 respondent has a significant connection with a particular state, the court shall consider:

102 (a) the location of the respondent's family and other people required to be notified  
103 of the guardianship or protective proceeding;

104 (b) the length of time the respondent at any time was physically present in the state  
105 and the duration of any absence;

106 (c) the location of the respondent's property; and

107 (d) the extent to which the respondent has ties to the state such as voting  
108 registration, state or local tax return filing, vehicle registration, driver license, social relationship,  
109 and receipt of services.

110  
111 Section 8. [*Jurisdiction.*] A court of this state has jurisdiction to appoint a guardian or issue  
112 a protective order for a respondent if:

113 (1) this state is the respondent's home state;

114 (2) on the date the petition is filed, this state is a significant-connection state and:

115 (a) the respondent does not have a home state or a court of the respondent's home  
116 state has declined to exercise jurisdiction because this state is a more appropriate forum; or

117 (b) the respondent has a home state, a petition for an appointment or order is not  
118 pending in a court of that state or another significant-connection state, and, before the court makes  
119 the appointment or issues the order:



- 120 (i) a petition for an appointment or order is not filed in the respondent's  
121 home state;
- 122 (ii) an objection to the court's jurisdiction is not filed by a person required  
123 to be notified of the proceeding; and
- 124 (iii) the court in this state concludes that it is an appropriate forum under the  
125 factors set forth in Section 11;
- 126 (3) this state does not have jurisdiction under either Subsection (1) or (2), the respondent's  
127 home state and all significant-connection states have declined to exercise jurisdiction because this  
128 state is the more appropriate forum, and jurisdiction in this state is consistent with the  
129 constitutions of this state and the United States; or
- 130 (4) the requirements for special jurisdiction under Section 10 are met.

131  
132 Section 9. [*Special jurisdiction.*]

133 (1) A court of this state lacking jurisdiction under Section 8 has jurisdiction to do any of  
134 the following:

- 135 (a) appoint a guardian in an emergency for a term not exceeding 90 days for a  
136 respondent who is physically present in this state;
- 137 (b) issue a protective order with respect to real or tangible personal property located  
138 in this state; and
- 139 (c) appoint a guardian or conservator for an incapacitated or protected person for  
140 whom a provisional order to transfer the proceeding from another state has been issued under  
141 procedures similar to Section 15.

142 (2) If a petition for the appointment of a guardian in an emergency is brought in this state  
143 and this state was not the respondent's home state on the date the petition was filed, the court shall  
144 dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is  
145 requested before or after the emergency appointment.

146  
147 Section 10. [*Exclusive and continuing jurisdiction.*] Except as otherwise provided in  
148 Section 9, a court that has appointed a guardian or issued a protective order consistent with this  
149 Chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the  
150 court or the appointment or order expires by its own terms.

151  
152 Section 11. [*Declining jurisdiction if another court is a more appropriate forum.*]

153 (1) A court of this state having jurisdiction under Section 8 to appoint a guardian or issue a  
154 protective order may decline to exercise its jurisdiction if it determines at any time that a court of  
155 another state is a more appropriate forum.

156 (2) If a court of this state declines to exercise its jurisdiction under Subsection (1), it shall  
157 either dismiss or stay the proceeding. The court may impose any other condition the court  
158 considers just and proper, including the condition that a petition for the appointment of a guardian  
159 or issuance of a protective order be promptly filed in another state.

160 (3) In determining whether it is an appropriate forum, the court shall consider all relevant  
161 factors, including:

- 162 (a) any expressed preference of the respondent;
- 163 (b) whether abuse, neglect, or exploitation of the respondent has occurred or is  
164 likely to occur and which state could best protect the respondent from the abuse, neglect, or  
165 exploitation;
- 166 (c) the length of time the respondent was physically located in or was a legal  
167 resident of this or another state;
- 168 (d) the distance of the respondent from the court in each state;

- 169 (e) the financial circumstances of the respondent's estate;  
170 (f) the nature and location of the evidence;  
171 (g) the ability of the court in each state to decide the issue expeditiously and the  
172 procedures necessary to present evidence;  
173 (h) the familiarity of the court of each state with the facts and issues in the  
174 proceeding; and  
175 (i) if an appointment were made, the court's ability to monitor the conduct of the  
176 guardian or conservator.

177  
178 Section 12. [*Jurisdiction declined by reason of conduct.*]

179 (1) If at any time a court of this state determines that it acquired jurisdiction to appoint a  
180 guardian or issue a protective order because of unjustifiable conduct, the court may:

- 181 (a) decline to exercise jurisdiction;  
182 (b) exercise jurisdiction for the limited purpose of fashioning an appropriate  
183 remedy to ensure the health, safety, and welfare of the respondent or the protection of the  
184 respondent's property or prevent a repetition of the unjustifiable conduct, including staying the  
185 proceeding until a petition for the appointment of a guardian or issuance of a protective order is  
186 filed in a court of another state having jurisdiction; or

- 187 (c) continue to exercise jurisdiction after considering:  
188 (i) the extent to which the respondent and all people required to be notified  
189 of the proceedings have acquiesced in the exercise of the court's jurisdiction;  
190 (ii) whether it is a more appropriate forum than the court of any other state  
191 under the factors set forth in Subsection 11(3); and

192 (iii) whether the court of any other state would have jurisdiction under  
193 factual circumstances in substantial conformity with the jurisdictional standards of Section 8.

194 (2) If a court of this state determines that it acquired jurisdiction to appoint a guardian or  
195 issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable  
196 conduct, it may assess against that party necessary and reasonable expenses, including attorney  
197 fees, investigative fees, court costs, communication expenses, witness fees and expenses, and  
198 travel expenses. The court may not assess fees, costs, or expenses of any kind against the state or a  
199 governmental subdivision, agency, or instrumentality of the state unless authorized by law other  
200 than this chapter.

201  
202 Section 13. [*Notice of proceeding.*] If a petition for the appointment of a guardian or  
203 issuance of a protective order is brought in this state and this state was not the respondent's home  
204 state on the date the petition was filed, in addition to complying with the notice requirements of  
205 this state, notice of the petition shall be given to those people who would be entitled to notice of  
206 the petition if the proceeding were brought in the respondent's home state. The notice shall be  
207 given in the same manner as notice is given in this state.

208  
209 Section 14. [*Proceedings in more than one state.*] Except for a petition for the appointment  
210 of a guardian in an emergency or issuance of a protective order limited to property located in this  
211 state as provided in Section 9(1)(a) or (b), if a petition for the appointment of a guardian or  
212 issuance of a protective order is filed in this state and in another state and neither petition has been  
213 dismissed or withdrawn, the following rules apply:

214 (1) If the court in this state has jurisdiction under Section 8, it may proceed with the case  
215 unless a court in another state acquires jurisdiction under Section 8 before the appointment or  
216 issuance of the order.

217 (2) If the court in this state does not have jurisdiction under Section 8, whether at the time  
218 the petition is filed or at any time before the appointment or issuance of the order, the court shall  
219 stay the proceeding and communicate with the court in the other state. If the court in the other  
220 state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other  
221 state determines that the court in this state is a more appropriate forum.

222  
223 Part 3.  
224 Transfer of Jurisdiction

225  
226 Section 15. [*Transfer of guardianship or conservatorship to another state.*]

227 (1) A guardian or conservator appointed in this state may petition the court to transfer the  
228 guardianship or conservatorship to another state.

229 (2) Notice of a petition under Subsection (1) must be given to the persons that would be  
230 entitled to notice of a petition in this state for the appointment of a guardian or conservator.

231 (3) On the court's own motion or on request of the guardian or conservator, the  
232 incapacitated or protected person, or other person required to be notified of the petition, the court  
233 shall hold a hearing on a petition filed pursuant to Subsection (1).

234 (4) The court shall issue an order provisionally granting a petition to transfer a  
235 guardianship and shall direct the guardian to petition for guardianship in the other state if the court  
236 is satisfied that the guardianship will be accepted by the court in the other state and the court finds  
237 that:

238 (a) the incapacitated person is physically present in or is reasonably expected to  
239 move permanently to the other state;

240 (b) an objection to the transfer has not been made or, if an objection has been made,  
241 the objector has not established that the transfer would be contrary to the interests of the  
242 incapacitated person; and

243 (c) plans for care and services for the incapacitated person in the other state are  
244 reasonable and sufficient.

245 (5) The court shall issue a provisional order granting a petition to transfer a  
246 conservatorship and shall direct the conservator to petition for conservatorship in the other state if  
247 the court is satisfied that the conservatorship will be accepted by the court of the other state and  
248 the court finds that:

249 (a) the protected person is physically present in or is reasonably expected to move  
250 permanently to the other state, or the protected person has a significant connection to the other  
251 state considering the factors in Section 7(2);

252 (b) an objection to the transfer has not been made or, if an objection has been made,  
253 the objector has not established that the transfer would be contrary to the interests of the protected  
254 person; and

255 (c) adequate arrangements will be made for management of the protected person's  
256 property.

257 (6) The court shall issue a final order confirming the transfer and terminating the  
258 guardianship or conservatorship upon its receipt of:

259 (a) a provisional order accepting the proceeding from the court to which the  
260 proceeding is to be transferred which is issued under provisions similar to Section 16; and

261 (b) the documents required to terminate a guardianship or conservatorship in this  
262 state.

263  
264 Section 16. [*Accepting guardianship or conservatorship transferred from another state.*]

265 (1) To confirm transfer of a guardianship or conservatorship transferred to this state under  
266 provisions similar to Section 15, the guardian or conservator shall petition the court in this state to  
267 accept the guardianship or conservatorship. The petition shall include a certified copy of the other  
268 state's provisional order of transfer.

269 (2) Notice of a petition under Subsection (1) shall be given by the petitioner to those  
270 people who would be entitled to notice if the petition were a petition for the appointment of a  
271 guardian or issuance of a protective order in both the transferring state and this state. The notice  
272 shall be given in the same manner as notice is given in this state.

273 (3) On the court's own motion or on request of the incapacitated or protected person, or  
274 other person required to be notified of the proceeding, the court shall hold a hearing on a petition  
275 filed pursuant to Subsection (1).

276 (4) The court shall issue an order provisionally granting a petition filed under Subsection  
277 (1) unless:

278 (a) an objection is made and the objector establishes that transfer of the proceeding  
279 would be contrary to the interests of the incapacitated or protected person; or

280 (b) the guardian or conservator is ineligible for appointment in this state.

281 (5) The court shall issue a final order accepting the proceeding and appointing the guardian  
282 or conservator as guardian or conservator in this state upon its receipt from the court from which  
283 the proceeding is being transferred of a final order issued under provisions similar to Section 15  
284 transferring the proceeding to this state.

285 (6) Not later than 90 days after issuance of a final order accepting transfer of a  
286 guardianship or conservatorship, the court shall determine whether the guardianship or  
287 conservatorship needs to be modified to conform to the law of this state.

288 (7) In granting a petition under this section, the court shall recognize a guardianship or  
289 conservatorship order from the other state, including the determination of the incapacitated or  
290 protected person's incapacity and the appointment of the guardian or conservator.

291 (8) The denial by a court of this state of a petition to accept a guardianship or  
292 conservatorship transferred from another state does not affect the ability of the guardian or  
293 conservator to seek appointment as guardian or conservator in this state under [insert citation] if  
294 the court has jurisdiction to make an appointment other than by reason of the provisional order of  
295 transfer.

#### 296 Part 4.

#### 297 Registration and Recognition of Orders from Other States

298 Section 17. [*Registration of guardianship orders.*] If a guardian has been appointed in  
299 another state and a petition for the appointment of a guardian is not pending in this state, the  
300 guardian appointed in the other state, after giving notice to the appointing court of an intent to  
301 register, may register the guardianship order in this state by filing certified copies of the order and  
302 letters of office as a foreign judgment in a court in any appropriate county of this state.  
303  
304

305 Section 18. [*Registration of protective orders.*] If a conservator has been appointed in  
306 another state and a petition for a protective order is not pending in this state, the conservator  
307 appointed in the other state, after giving notice to the appointing court of an intent to register, may  
308 register the protective order in this state by filing as a foreign judgment in a court of this state, in  
309 any county in which property belonging to the protected person is located, certified copies of the  
310 order, letters of office, and any bond.  
311

312 Section 19. [*Effect of registration.*]

314 (1) Upon registration of a guardianship or protective order from another state, the guardian  
315 or conservator may exercise in this state all powers authorized in the order of appointment except  
316 as prohibited under the laws of this state, including maintaining actions and proceedings in this  
317 state and, if the guardian or conservator is not a resident of this state, subject to any conditions  
318 imposed upon nonresident parties.

319 (2) A court of this state may grant any relief available under this Chapter and other law of  
320 this state to enforce a registered order.

321  
322 Part 5.  
323 Miscellaneous Provisions  
324

325 Section 20. [*Uniformity of application and construction.*] In applying and construing this  
326 Uniform Act, consideration shall be given to the need to promote uniformity of the law with  
327 respect to its subject matter among states that enact it.

328  
329 Section 21. [*Relation to electronic signatures in global and national commerce act.*] This  
330 chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National  
331 Commerce Act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede Section  
332 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices  
333 described in Section 103(b), 15 U.S.C. Sec. 7003(b).

334  
335 Section 22. [*Transitional provision.*]

336 (1) This Chapter applies to guardianship and protective proceedings begun on or after  
337 [January 1, 2009].

338 (2) Parts 1, 3, and 4 and Sections 20 and 21 apply to proceedings begun before [January 1,  
339 2009], regardless of whether a guardianship or protective order has been issued.

340  
341 Section 23. [*Effective date.*] This act takes effect on [January 1, 2009].

# Uniform Child Abduction Prevention Act (UCAPA)

The Uniform Child Abduction Prevention Act (UCAPA) provides states with a valuable tool for deterring both domestic and international child abductions by parents and people acting on behalf of the parents. The UCAPA complements and strengthens the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which is law in 48 states, and the federal Parental Kidnapping Prevention Act (PKPA). The Act allows the court to impose measures designed to prevent child abduction both before and after a court has entered a custody decree.

Under the Act, an Action for abduction prevention measures may be brought either by a court on its own motion, by a party to a child-custody determination or an individual with a right to seek such a determination, or by a prosecutor or public attorney. The party seeking the abduction prevention measures must file a petition with the court specifying the risk factors for abduction as well as other relevant information. Courts will rule on the petition based on a variety of factors enumerated in the Act and impose appropriate mechanisms to prevent abduction. The Act also addresses the special problems involved with international child abduction by including several risk factors specifically related to international situations.

The Act was promulgated by the Uniform Law Commission in 2006. The model uniform Act with official commentary (which also serves as legislative history) can be found at: [http://www.law.upenn.edu/bll/archives/ulc/ucapa/2006\\_finalAct.htm](http://www.law.upenn.edu/bll/archives/ulc/ucapa/2006_finalAct.htm)

Seven states enacted the UCAPA into law during its initial (2007) legislative year:

- Colorado: HB 1255; Colo. Rev. Stat. 14-13.5-101
- Kansas: SB 18
- Louisiana: SB 73 (Partial Enactment)
- Nebraska: LB 341; Nev. Rev. Stat. 43-1230
- Nevada: AB 15
- South Dakota: SB 88
- Utah: SB 35; Utah Code Ann. 78-62-101 (et al)

The version in this SSL volume is based on Kansas law.

Submitted as:

Kansas

[SB18](#)

Status: Enacted into law on April 5, 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title*.] This Act may be cited as “The Uniform Child Abduction  
2 Prevention Act.”

3

4           Section 2. In this Act:

5                   (1) “Abduction” means the wrongful removal or wrongful retention of a child.

6                   (2) “Child” means an unemancipated individual who is less than 18 years of age.

7                   (3) “Child-custody determination” means a judgment, decree, or other order of a  
8 court providing for the legal custody, physical custody, or visitation with respect to a child. The  
9 term includes a permanent, temporary, initial, and modification order.

10 (4) “Child-custody proceeding” means a proceeding in which legal custody,  
11 physical custody, or visitation with respect to a child is at issue. The term includes a proceeding  
12 for divorce, dissolution of marriage, separation, neglect, abuse, dependency, guardianship,  
13 paternity, termination of parental rights, or protection from domestic violence.

14 (5) “Court” means an entity authorized under the law of a state to establish,  
15 enforce, or modify a child-custody determination.

16 (6) “Petition” includes a motion or its equivalent.

17 (7) “Record” means information that is inscribed on a tangible medium or that is  
18 stored in an electronic or other medium and is retrievable in perceivable form.

19 (8) “State” means a state of the United States, the District of Columbia, Puerto  
20 Rico, the United States Virgin Islands, or any territory or insular possession subject to the  
21 jurisdiction of the United States. The term includes a federally recognized Indian tribe or nation.

22 (9) “Travel document” means records relating to a travel itinerary, including travel  
23 tickets, passes, reservations for transportation, or accommodations. The term does not include a  
24 passport or visa.

25 (10) “Wrongful removal” means the taking of a child that breaches rights of  
26 custody or visitation given or recognized under the law of this state.

27 (11) “Wrongful retention” means the keeping or concealing of a child that  
28 breaches rights of custody or visitation given or recognized under the law of this state.

29  
30 Section 3. [Insert citation], applies to cooperation and communications among courts in  
31 proceedings under this Act.

#### 32 Section 4.

33 (a) A court on its own motion may order abduction prevention measures in a child-custody  
34 proceeding if the court finds that the evidence establishes a credible risk of abduction of the child.

35 (b) A party to a child-custody determination or another individual or entity having a right  
36 under the law of this state or any other state to seek a child-custody determination for the child  
37 may file a petition seeking abduction prevention measures to protect the child under this Act.

38 (c) A prosecutor or public authority designated under [insert citation] may seek a warrant  
39 to take physical custody of a child under section 9, and amendments thereto, or other appropriate  
40 prevention measures.

#### 41 Section 5.

42 (a) A petition under this Act may be filed only in a court that has jurisdiction to make a  
43 child-custody determination with respect to the child at issue under the Uniform Child Custody  
44 Jurisdiction And Enforcement Act, [insert citation], and amendments thereto.

45 (b) A court of this state has temporary emergency jurisdiction under [insert citation] and  
46 amendments thereto, if the court finds a credible risk of abduction.

47  
48  
49 Section 6. A petition under this Act must be verified and include a copy of any existing  
50 child-custody determination, if available. The petition must specify the risk factors for abduction,  
51 including the relevant factors described in section 7, and amendments thereto. Subject to [insert  
52 citation], if reasonably ascertainable, the petition must contain:

53 (1) the name, date of birth, and gender of the child;

54 (2) the customary address and current physical location of the child;

55 (3) the identity, customary address, and current physical location of the respondent;

57 (4) a statement of whether a prior action to prevent abduction or domestic violence  
58 has been filed by a party or other individual or entity having custody of the child, and the date,  
59 location, and disposition of the action;

60 (5) a statement of whether a party to the proceeding has been arrested for a crime  
61 related to domestic violence, stalking, or child abuse or neglect, and the date, location, and  
62 disposition of the case; and

63 (6) any other information required to be submitted to the court for a child-custody  
64 determination under [insert citation], and amendments thereto.

65  
66 Section 7.

67 (a) In determining whether there is a credible risk of abduction of a child, the court shall  
68 consider any evidence that the petitioner or respondent:

69 (1) has previously abducted or attempted to abduct the child;

70 (2) has threatened to abduct the child;

71 (3) has recently engaged in activities that may indicate a planned abduction,  
72 including:

73 (A) abandoning employment;

74 (B) selling a primary residence;

75 (C) terminating a lease;

76 (D) closing bank or other financial management accounts, liquidating  
77 assets, hiding or destroying financial documents, or conducting any unusual financial activities;

78 (E) applying for a passport or visa or obtaining travel documents for the  
79 respondent, a family member, or the child; or

80 (F) seeking to obtain the child's birth certificate or school or medical  
81 records;

82 (4) has engaged in domestic violence, stalking, or child abuse or neglect;

83 (5) has refused to follow a child-custody determination;

84 (6) lacks strong familial, financial, emotional, or cultural ties to the state or the  
85 United States;

86 (7) has strong familial, financial, emotional, or cultural ties to another state or  
87 country;

88 (8) is likely to take the child to a country that:

89 (A) is not a party to the Hague Convention on the civil aspects of  
90 international child abduction and does not provide for the extradition of an abducting parent or for  
91 the return of an abducted child;

92 (B) is a party to the Hague Convention on the civil aspects of international  
93 child abduction but:

94 (i) the Hague Convention on the civil aspects of international child  
95 abduction is not in force between the United States and that country;

96 (ii) is noncompliant according to the most recent compliance report  
97 issued by the United States department of state; or

98 (iii) lacks legal mechanisms for immediately and effectively  
99 enforcing a return order under the Hague Convention on the civil aspects of international child  
100 abduction;

101 (C) poses a risk that the child's physical or emotional health or safety would  
102 be endangered in the country because of specific circumstances relating to the child or because of  
103 human rights violations committed against children;

104 (D) has laws or practices that would:



105 (i) enable the respondent, without due cause, to prevent the  
106 petitioner from contacting the child;  
107 (ii) restrict the petitioner from freely traveling to or exiting from the  
108 country because of the petitioner's gender, nationality, marital status, or religion; or  
109 (iii) restrict the child's ability legally to leave the country after the  
110 child reaches the age of majority because of a child's gender, nationality, or religion;  
111 (E) is included by the United States Department of State on a current list of  
112 state sponsors of terrorism;  
113 (F) does not have an official United States diplomatic presence in the  
114 country; or  
115 (G) is engaged in active military action or war, including a civil war, to  
116 which the child may be exposed;  
117 (9) is undergoing a change in immigration or citizenship status that would  
118 adversely affect the respondent's ability to remain in the United States legally;  
119 (10) has had an application for United States citizenship denied;  
120 (11) has forged or presented misleading or false evidence on government forms or  
121 supporting documents to obtain or attempt to obtain a passport, a visa, travel documents, a Social  
122 Security Card, a driver's license, or other government-issued identification card or has made a  
123 misrepresentation to the United States government;  
124 (12) has used multiple names to attempt to mislead or defraud; or  
125 (13) has engaged in any other conduct the court considers relevant to the risk of  
126 abduction.

127 (b) In the hearing on a petition under this Act, the court shall consider any evidence that  
128 the respondent believed in good faith that the respondent's conduct was necessary to avoid  
129 imminent harm to the child or respondent and any other evidence that may be relevant to whether  
130 the respondent may be permitted to remove or retain the child.

131  
132 Section 8.

133 (a) If a petition is filed under this Act, the court may enter an order that must include:

134 (1) the basis for the court's exercise of jurisdiction;  
135 (2) the manner in which notice and opportunity to be heard were given to the  
136 people entitled to notice of the proceeding;  
137 (3) a detailed description of each party's custody and visitation rights and  
138 residential arrangements for the child;  
139 (4) a provision stating that a violation of the order may subject the party in  
140 violation to civil and criminal penalties; and  
141 (5) identification of the child's country of habitual residence at the time of the  
142 issuance of the order.

143 (b) If, at a hearing on a petition under this Act or on the court's own motion, the court after  
144 reviewing the evidence finds a credible risk of abduction of the child, the court shall enter an  
145 abduction prevention order. The order must include the provisions required by subsection (a) and  
146 measures and conditions, including those in subsections (c), (d), and (e), that are reasonably  
147 calculated to prevent abduction of the child, giving due consideration to the custody and visitation  
148 rights of the parties. The court shall consider the age of the child, the potential harm to the child  
149 from an abduction, the legal and practical difficulties of returning the child to the jurisdiction if  
150 abducted, and the reasons for the potential abduction, including evidence of domestic violence,  
151 stalking, or child abuse or neglect.

152 (c) An abduction prevention order may include one or more of the following:

153 (1) an imposition of travel restrictions that require that a party traveling with the  
154 child outside a designated geographical area provide the other party with the following:  
155 (A) the travel itinerary of the child;  
156 (B) a list of physical addresses and telephone numbers at which the child  
157 can be reached at specified times; and  
158 (C) copies of all travel documents;  
159 (2) a prohibition of the respondent directly or indirectly:  
160 (A) removing the child from this state, the United States, or another  
161 geographic area without permission of the court or the petitioner's written consent;  
162 (B) removing or retaining the child in violation of a child-custody  
163 determination;  
164 (C) removing the child from school or a child-care or similar facility; or  
165 (D) approaching the child at any location other than a site designated for  
166 supervised visitation;  
167 (3) a requirement that a party to register the order in another state as a prerequisite  
168 to allowing the child to travel to that state;  
169 (4) with regard to the child's passport:  
170 (A) a direction that the petitioner to place the child's name in the United  
171 States Department Of State's child passport issuance alert program;  
172 (B) a requirement that the respondent surrender to the court or the  
173 petitioner's attorney any United States or foreign passport issued in the child's name, including a  
174 passport issued in the name of both the parent and the child; and  
175 (C) a prohibition upon the respondent from applying on behalf of the child  
176 for a new or replacement passport or visa;  
177 (5) as a prerequisite to exercising custody or visitation, a requirement that the  
178 respondent provide:  
179 (A) to the United States Department of State Office of Children's Issues and  
180 the relevant foreign consulate or embassy, an authenticated copy of the order detailing passport  
181 and travel restrictions for the child;  
182 (B) to the court:  
183 (i) proof that the respondent has provided the information in  
184 subparagraph (A); and  
185 (ii) an acknowledgment in a record from the relevant foreign  
186 consulate or embassy that no passport application has been made, or passport issued, on behalf of  
187 the child;  
188 (C) to the petitioner, proof of registration with the United States embassy or  
189 other United States diplomatic presence in the destination country and with the central authority  
190 for the Hague Convention on the civil aspects of international child abduction, if that Convention  
191 is in effect between the United States and the destination country, unless one of the parties objects;  
192 and  
193 (D) a written waiver under the Privacy Act, 5 U.S.C. Section 552a, as  
194 amended, with respect to any document, application, or other information pertaining to the child  
195 authorizing its disclosure to the court and the petitioner; and  
196 (6) upon the petitioner's request, a requirement that the respondent obtain an order  
197 from the relevant foreign country containing terms identical to the child-custody determination  
198 issued in the United States.  
199 (d) In an abduction prevention order, the court may impose conditions on the exercise of  
200 custody or visitation that:

201 (1) limit visitation or require that visitation with the child by the respondent be  
202 supervised until the court finds that supervision is no longer necessary and order the respondent to  
203 pay the costs of supervision;

204 (2) require the respondent to post a bond or provide other security in an amount  
205 sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to pay  
206 for the reasonable expenses of recovery of the child, including reasonable attorney's fees and costs  
207 if there is an abduction; and

208 (3) require the respondent to obtain education on the potentially harmful effects to  
209 the child from abduction.

210 (e) To prevent imminent abduction of a child, a court may:

211 (1) issue a warrant to take physical custody of the child under section 9, and  
212 amendments thereto, or the law of this state other than this Act;

213 (2) direct the use of law enforcement to take any action reasonably necessary to  
214 locate the child, obtain return of the child, or enforce a custody determination under this Act or the  
215 law of this state other than this Act; or

216 (3) grant any other relief allowed under the law of this state other than this Act.

217 (f) The remedies provided in this Act are cumulative and do not affect the availability of  
218 other remedies to prevent abduction.

219  
220 Section 9.

221 (a) If a petition under this Act contains allegations, and the court finds that there is a  
222 credible risk that the child is imminently likely to be wrongfully removed, the court may issue an  
223 ex parte warrant to take physical custody of the child.

224 (b) The respondent on a petition under subsection (a) must be afforded an opportunity to be  
225 heard at the earliest possible time after the ex parte warrant is executed, but not later than the next  
226 judicial day unless a hearing on that date is impossible. In that event, the court shall hold the  
227 hearing on the first judicial day possible.

228 (c) An ex parte warrant under subsection (a) to take physical custody of a child must:

229 (1) recite the facts upon which a determination of a credible risk of imminent  
230 wrongful removal of the child is based;

231 (2) direct law enforcement officers to take physical custody of the child  
232 immediately;

233 (3) state the date and time for the hearing on the petition; and

234 (4) provide for the safe interim placement of the child pending further order of the  
235 court.

236 (d) If feasible, before issuing a warrant and before determining the placement of the child  
237 after the warrant is executed, the court may order a search of the relevant databases of the national  
238 crime information center system and similar state databases to determine if either the petitioner or  
239 respondent has a history of domestic violence, stalking, or child abuse or neglect.

240 (e) The petition and warrant must be served on the respondent when or immediately after  
241 the child is taken into physical custody.

242 (f) A warrant to take physical custody of a child, issued by this state or another state, is  
243 enforceable throughout this state. If the court finds that a less intrusive remedy will not be  
244 effective, it may authorize law enforcement officers to enter private property to take physical  
245 custody of the child. If required by exigent circumstances, the court may authorize law  
246 enforcement officers to make a forcible entry at any hour.

247 (g) If the court finds, after a hearing, that a petitioner sought an ex parte warrant under  
248 subsection (a) for the purpose of harassment or in bad faith, the court may award the respondent  
249 reasonable attorney's fees, costs, and expenses.

250 (h) This Act does not affect the availability of relief allowed under the law of this state  
251 other than this Act.

252

253 Section 10. An abduction prevention order remains in effect until the earliest of:

254 (1) the time stated in the order;

255 (2) the emancipation of the child;

256 (3) the child's attaining 18 years of age; or

257 (4) the time the order is modified, revoked, vacated, or superseded by a court with  
258 jurisdiction under [insert citation], and amendments thereto.

259

260 Section 11. In applying and construing this Uniform Act, consideration must be given to  
261 the need to promote uniformity of the law with respect to its subject matter among states that enact  
262 it.

263

264 Section 12. This Act modifies, limits, and supersedes the federal Electronic Signatures in  
265 Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit,  
266 or supersede Section 101(c) of the Act, 15 U.S.C. Section 7001(c), of that Act or authorize  
267 electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. Section  
268 7003(b).

269

270 Section 13. This Act shall take effect and be in force from and after its publication in the  
271 statute book.

# Uniform Prudent Management of Institution Funds Act (UPMIFA)

The Uniform Prudent Management of Institutional Funds Act (UPMIFA) provides states a modern law for charitable funds and endowment spending which were operating in most jurisdictions under the 1972 Uniform Management of Institutional Funds Act (UMIFA). UPMIFA provides modern articulations of the prudence standards for the management and investment of charitable funds and for endowment spending. Over forty jurisdictions now have the Uniform Prudent Investor Act (UPIA) that updates their rules on investment decision making for trusts. It is important that these rules and duties also be applied to charities organized as nonprofit corporations. UPMIFA allows non-profit organizations to efficiently and inexpensively terminate obsolete and wasteful funds and transfer those dollars to more urgently needed charitable purposes.

Under the Act, the rules on investment conduct and expenditure of funds are expressly provided, giving much clearer guidance to portfolio managers. Costs must be managed prudently in relationship to the assets, the purposes of the institution and the skills available to the institution. Total return expenditure is expressly authorized under comprehensive prudent standards relating to the whole economic situation of the charitable institution. These positive changes for charitable organizations eliminates old, outdated rules such as historic dollar value and helps provide opportunities for charities to do more for communities, education, healthcare and the arts.

The Act was promulgated by the Uniform Law Commission in 2006. The model uniform Act with official commentary (which also serves as legislative history) can be found at: [http://www.law.upenn.edu/bll/archives/ulc/umoifa/2006final\\_Act.htm](http://www.law.upenn.edu/bll/archives/ulc/umoifa/2006final_Act.htm)

Thirteen states enacted the UPMIFA into law during its initial (2007) legislative year:

- Connecticut: SB 1143; C.S.G.A. § 36a-486 to 36a-498a
- Delaware: SB 139; 12 Del. C. § 4701 to 4710
- Idaho: SB 1016; I.C. § 33-5001 to 5010
- Indiana: HB 1505; IC § 30-2-12-1 to 30-2-12-18
- Montana: SB 424; M.C.A. § 72-30-101 to 110
- Nebraska: LB 136
- Nevada: SB 70
- Oklahoma: HB 1596; 60 Okla. Stat. Ann. § 300.11 to 300.21
- Oregon: HB 2905
- Tennessee: SB 0691; T.C.A. § 35-10-1 to 35-10-10
- Texas: HB 860; V.T.C.A. § 163.001 to 163.011
- South Dakota: SB 89; SDCL § 55-14A-1 to 55-14A-10
- Utah: SB 60; U.C.A. 1953 § 51-8-101 to 51-8-604

The legislation in this SSL Volume is based on Nebraska law.

Submitted as:

Nebraska

[LB 136](#)

Status: Enacted into law on August 31, 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be known and be cited as the “Uniform Prudent  
2 Management of Institutional Funds Act.”

3  
4           Section 2. For purposes of the Uniform Prudent Management of Institutional Funds Act:

5           (1) Charitable purpose means the relief of poverty, the advancement of education or  
6 religion, the promotion of health, the promotion of a governmental purpose, or any other purpose  
7 the achievement of which is beneficial to the community.

8           (2) Endowment fund means an institutional fund or part thereof that, under the terms of a  
9 gift instrument, is not wholly expendable by the institution on a current basis. The term does not  
10 include assets that an institution designates as an endowment fund for its own use.

11           (3) Gift instrument means a record or records, including an institutional solicitation, under  
12 which property is granted to, transferred to, or held by an institution as an institutional fund.

13           (4) Institution means:

14                   (A) a person, other than an individual, organized and operated exclusively for  
15 charitable purposes;

16                   (B) a government or governmental subdivision, agency, or instrumentality, to the  
17 extent that it holds funds exclusively for a charitable purpose; and

18                   (C) a trust that had both charitable and noncharitable interests, after all  
19 noncharitable interests have terminated.

20           (5) Institutional fund means a fund held by an institution exclusively for charitable  
21 purposes. The term does not include:

22                   (A) program-related assets;

23                   (B) a fund held for an institution by a trustee that is not an institution; or

24                   (C) a fund in which a beneficiary that is not an institution has an interest, other than  
25 an interest that could arise upon violation or failure of the purposes of the fund.

26           (6) Person means an individual, corporation, business trust, estate, trust, partnership,  
27 limited liability company, association, joint venture, public corporation, government or  
28 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

29           (7) Program-related asset means an asset held by an institution primarily to accomplish a  
30 charitable purpose of the institution and not primarily for investment.

31           (8) Record means information that is inscribed on a tangible medium or that is stored in an  
32 electronic or other medium and is retrievable in perceivable form.

33  
34           Section 3.

35           (a) Subject to the intent of a donor expressed in a gift instrument, an institution, in  
36 managing and investing an institutional fund, shall consider the charitable purposes of the  
37 institution and the purposes of the institutional fund.

38           (b) In addition to complying with the duty of loyalty imposed by law other than the  
39 Uniform Prudent Management of Institutional Funds Act, each person responsible for managing  
40 and investing an institutional fund shall manage and invest the fund in good faith and with the care  
41 an ordinarily prudent person in a like position would exercise under similar circumstances.

42           (c) In managing and investing an institutional fund, an institution:

43                   (1) may incur only costs that are appropriate and reasonable in relation to the  
44 assets, the purposes of the institution, and the skills available to the institution; and

45 (2) shall make a reasonable effort to verify facts relevant to the management and  
46 investment of the fund.

47 (d) An institution may pool two or more institutional funds for purposes of management  
48 and investment.

49 (e) Except as otherwise provided by a gift instrument, the following rules apply:

50 (1) In managing and investing an institutional fund, the following factors, if  
51 relevant, must be considered:

52 (A) general economic conditions;

53 (B) the possible effect of inflation or deflation;

54 (C) the expected tax consequences, if any, of investment decisions or  
55 strategies;

56 (D) the role that each investment or course of action plays within the overall  
57 investment portfolio of the fund;

58 (E) the expected total return from income and the appreciation of  
59 investments;

60 (F) other resources of the institution;

61 (G) the needs of the institution and the fund to make distributions and to  
62 preserve capital; and

63 (H) an asset's special relationship or special value, if any, to the charitable  
64 purposes of the institution.

65 (2) Management and investment decisions about an individual asset must be made  
66 not in isolation but rather in the context of the institutional fund's portfolio of investments as a  
67 whole and as a part of an overall investment strategy having risk and return objectives reasonably  
68 suited to the fund and to the institution.

69 (3) Except as otherwise provided by law other than the {state] Uniform Prudent  
70 Management of Institutional Funds Act, an institution may invest in any kind of property or type  
71 of investment consistent with this section.

72 (4) An institution shall diversify the investments of an institutional fund unless the  
73 institution reasonably determines that, because of special circumstances, the purposes of the fund  
74 are better served without diversification.

75 (5) Within a reasonable time after receiving property, an institution shall make and  
76 carry out decisions concerning the retention or disposition of the property or to rebalance a  
77 portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and  
78 distribution requirements of the institution as necessary to meet other circumstances of the  
79 institution and the requirements of the Act.

80 (6) A person that has special skills or expertise, or is selected in reliance upon the  
81 person's representation that the person has special skills or expertise, has a duty to use those skills  
82 or that expertise in managing and investing institutional funds.

#### 83 84 Section 4.

85 (a) Subject to the intent of a donor expressed in the gift instrument, an institution may  
86 appropriate for expenditure or accumulate so much of an endowment fund as the institution  
87 determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund  
88 is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are  
89 donor-restricted assets until appropriated for expenditure by the institution. In making a  
90 determination to appropriate or accumulate, the institution shall act in good faith, with the care  
91 that an ordinarily prudent person in a like position would exercise under similar circumstances,  
92 and shall consider, if relevant, the following factors:

93 (1) the duration and preservation of the endowment fund;

- 94 (2) the purposes of the institution and the endowment fund;  
95 (3) general economic conditions;  
96 (4) the possible effect of inflation or deflation;  
97 (5) the expected total return from income and the appreciation of investments;  
98 (6) other resources of the institution; and  
99 (7) the investment policy of the institution.

100 (b) To limit the authority to appropriate for expenditure or accumulate under subsection (a)  
101 of this section, a gift instrument must specifically state the limitation.

102 (c) Terms in a gift instrument designating a gift as an endowment, or a direction or  
103 authorization in the gift instrument to use only income, interest, dividends, or rents, issues, or  
104 profits, or to preserve the principal intact, or words of similar import:

105 (1) create an endowment fund of permanent duration unless other language in the  
106 gift instrument limits the duration or purpose of the fund; and

107 (2) do not otherwise limit the authority to appropriate for expenditure or accumulate  
108 under subsection (a) of this section.

109

#### 110 Section 5.

111 (a) Subject to any specific limitation set forth in a gift instrument or in law other than the  
112 Uniform Prudent Management of Institutional Funds Act, an institution may delegate to an  
113 external agent the management and investment of an institutional fund to the extent that an  
114 institution could prudently delegate under the circumstances. An institution shall act in good faith,  
115 with the care that an ordinarily prudent person in a like position would exercise under similar  
116 circumstances, in:

117 (1) selecting an agent;

118 (2) establishing the scope and terms of the delegation, consistent with the purposes  
119 of the institution and the institutional fund; and

120 (3) periodically reviewing the agent's actions in order to monitor the agent's  
121 performance and compliance with the scope and terms of the delegation.

122 (b) In performing a delegated function, an agent owes a duty to the institution to exercise  
123 reasonable care to comply with the scope and terms of the delegation.

124 (c) An institution that complies with subsection (a) of this section is not liable for the  
125 decisions or actions of an agent to which the function was delegated.

126 (d) By accepting delegation of a management or investment function from an institution  
127 that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state  
128 in all proceedings arising from or related to the delegation or the performance of the delegated  
129 function.

130 (e) An institution may delegate management and investment functions to its committees,  
131 officers, or employees as authorized by law of this state other than the [state] Uniform Prudent  
132 Management of Institutional Funds Act.

133

#### 134 Section 6.

135 (a) If the donor consents in a record, an institution may release or modify, in whole or in  
136 part, a restriction contained in a gift instrument on the management, investment, or purpose of an  
137 institutional fund. A release or modification may not allow a fund to be used for a purpose other  
138 than a charitable purpose of the institution.

139 (b) The court, upon application of an institution, may modify a restriction contained in a  
140 gift instrument regarding the management or investment of an institutional fund if the restriction  
141 has become impracticable or wasteful, if it impairs the management or investment of the fund, or  
142 if, because of circumstances not anticipated by the donor, a modification of a restriction will



143 further the purposes of the fund. The institution shall notify the Attorney General of the  
144 application, and the Attorney General must be given an opportunity to be heard. To the extent  
145 practicable, any modification must be made in accordance with the donor's probable intention.

146 (c) If a particular charitable purpose or a restriction contained in a gift instrument on the  
147 use of an institutional fund becomes unlawful, impractical, impossible to achieve, or wasteful, the  
148 court, upon application of an institution, may modify the purpose of the fund or the restriction on  
149 the use of the fund in a manner consistent with the charitable purposes expressed in the gift  
150 instrument. The institution shall notify the Attorney General of the application, and the Attorney  
151 General must be given an opportunity to be heard.

152 (d) If an institution determines that a restriction contained in a gift instrument on the  
153 management, investment, or purpose of an institutional fund is unlawful, impracticable,  
154 impossible to achieve, or wasteful, the institution, sixty days after notification to the Attorney  
155 General, may release or modify the restriction, in whole or part, if:

156 (1) the institutional fund subject to the restriction has a total value of less than  
157 twenty-five thousand dollars;

158 (2) more than twenty years have elapsed since the fund was established; and

159 (3) the institution uses the property in a manner consistent with the charitable  
160 purposes expressed in the gift instrument.

161  
162 Section 7. Compliance with the Uniform Prudent Management of Institutional Funds Act is  
163 determined in light of the facts and circumstances existing at the time a decision is made or action  
164 is taken, and not by hindsight.

165  
166 Section 8. The Uniform Prudent Management of Institutional Funds Act applies to  
167 institutional funds existing on or established after the effective date of this Act. As applied to  
168 institutional funds existing on the effective date of this Act, the Act governs only decisions made  
169 or actions taken on or after that date.

170  
171 Section 9. The Uniform Prudent Management of Institutional Funds Act modifies, limits,  
172 and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001  
173 et seq., as the Act existed on the effective date of this Act, but does not modify, limit, or supersede  
174 section 101 of that Act, 15 U.S.C. 7001(a), or authorize electronic delivery of any of the notices  
175 described in section 103 of that Act, 15 U.S.C. 7003(b).

176  
177 Section 10. In applying and construing this Uniform Act, consideration must be given to  
178 the need to promote uniformity of the law with respect to its subject matter among states that enact  
179 it.

# Uniform Real Property Electronic Recording Act (URPERA)

The Uniform Real Property Electronic Recording Act (URPERA) builds upon the work begun in the Uniform Electronic Transactions Act (UETA), and the Electronic Signatures In Global and National Commerce Act (E-Sign; 15 U.S.C. 7001 et seq.) by expressly authorizing land records officials to begin accepting records in electronic form, store electronic records, and set up systems for searching for and retrieving these land records. The Act also ensures the development of coherent standards for e-recording that will function harmoniously between recording jurisdictions and across state lines. URPERA only authorizes such activities: it does not mandate them. The Act does the following:

- equates electronic documents and electronic signatures to original paper documents and manual signatures, so that any requirement for originality (paper document or manual signature) is satisfied by an electronic document and signature.
- designates a state entity or commission responsible for setting statewide uniform standards.
- establishes the factors that the state standards entity must consider when it formulates and adopts e-recording standards.
- recognizes that counties will likely continue to accept paper documents, and allows cross-storage of electronic and paper documents.

The Act was promulgated by the Uniform Law Commission in 2004. The model uniform act with official commentary (which also serves as legislative history) can be found at: [http://www.law.upenn.edu/bll/archives/ulc/urpera/URPERA\\_Final\\_apr05-1.pdf](http://www.law.upenn.edu/bll/archives/ulc/urpera/URPERA_Final_apr05-1.pdf)

At least 19 states have enacted URPERA in recent years. The legislation in this SSL volume is based on Idaho law.

Submitted as:

Idaho

[SB1018](#)

Status: Enacted into law on March 9, 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be known and may be cited as the “Uniform Real  
2 Property Electronic Recording Act.”

3  
4           Section 2. [*Definitions.*] In this chapter:

5           (1) “Document” means information that is:

6                   (a) Inscribed on a tangible medium or that is stored in an electronic or other  
7 medium and is retrievable in perceivable form; and

8                   (b) Eligible to be recorded in the land records maintained by the recorder.

9           (2) “Electronic” means relating to technology having electrical, digital, magnetic, wireless,  
10 optical, electromagnetic or similar capabilities.

11           (3) “Electronic document” means a document that is received by the recorder in an  
12 electronic form.

13 (4) “Electronic signature” means an electronic sound, symbol or process attached to or  
14 logically associated with a document and executed or adopted by a person with the intent to sign  
15 the document.

16 (5) “Person” means an individual, corporation, business trust, estate, trust, partnership,  
17 limited liability company, association, joint venture, public corporation, government, or  
18 governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

19 (6) “State” means a state of the United States, the District of Columbia, Puerto Rico, the  
20 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the  
21 United States.

22  
23 Section 3. [*Validity of Electronic Documents.*]

24 (1) If a law requires, as a condition for recording, that a document be an original, be on  
25 paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic  
26 document satisfying this chapter.

27 (2) If a law requires, as a condition for recording, that a document be signed, the  
28 requirement is satisfied by an electronic signature.

29 (3) A requirement that a document or a signature associated with a document be notarized,  
30 acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the  
31 person authorized to perform that act, and all other information required to be included, is attached  
32 to or logically associated with the document or signature. A physical or electronic image of a  
33 stamp, impression or seal need not accompany an electronic signature.

34  
35 Section 4. [*Recording of Documents.*]

36 (1) In this section, “paper document” means a document that is received by the recorder in  
37 a form that is not electronic.

38 (2) A recorder:

39 (a) Who implements any of the functions listed in this section shall do so in  
40 compliance with standards established by the [electronic recording commission], as created in  
41 [insert citation];

42 (b) May receive, index, store, archive and transmit electronic documents;

43 (c) May provide for access to, and for search and retrieval of, documents and  
44 information by electronic means;

45 (d) Who accepts electronic documents for recording shall continue to accept paper  
46 documents as authorized by state law and shall place entries for both types of documents in the  
47 same index;

48 (e) May convert paper documents accepted for recording into electronic form;

49 (f) May convert into electronic form information recorded before the recorder  
50 began to record electronic documents;

51 (g) May accept electronically any fee that the recorder is authorized to collect; and

52 (h) May agree with other officials of a state or a political subdivision thereof, or of  
53 the United States, on procedures or processes to facilitate the electronic satisfaction of prior  
54 approvals and conditions precedent to recording and the electronic payment of fees.

55  
56 Section 5. [*Commission Created -- Officers -- Standards.*]

57 (1) An electronic recording commission consisting of seven (7) members appointed by the  
58 governor is hereby created to adopt standards to implement this chapter. A majority of the  
59 members of the commission must be recorders, and at least one (1) member shall be a  
60 representative from the title insurance industry. The governor shall appoint three (3) members,  
61 each for a term of two (2) years; two (2) members, each for a term of three (3) years; and two (2)

62 members each for a term of four (4) years. Thereafter, the term of office shall be four (4) years.  
63 Vacancies in any unexpired term shall be filled by appointment by the governor for the remainder  
64 of the unexpired term.

65 (2) The commission shall annually elect a chairman and a secretary-treasurer from among  
66 its members. The commission shall meet regularly at least once each year, and at such other times  
67 as called by the chairman or when requested by two (2) or more members of the commission.

68 (3) To keep the standards and practices of recorders in this state in harmony with the  
69 standards and practices of recording offices in other jurisdictions that enact substantially this  
70 Uniform Act and to keep the technology used by recorders in this state compatible with  
71 technology used by recording offices in other jurisdictions that enact substantially this Uniform  
72 Act, the electronic recording commission, so far as is consistent with the purposes, policies and  
73 provisions of this chapter, shall adopt, amend or repeal standards, taking into account the  
74 following considerations:

75 (a) Standards and practices of other jurisdictions;

76 (b) The most recent standards promulgated by national standard-setting bodies,  
77 such as the property records industry association;

78 (c) The views of interested people and governmental officials and entities;

79 (d) The needs of counties of varying size, population and resources; and

80 (e) Standards requiring adequate information security protection to ensure that  
81 electronic documents are accurate, authentic, adequately preserved and resistant to tampering.

82  
83 Section 6. [*Uniformity of Application and Construction.*] In applying and construing this  
84 Uniform Act, consideration must be given to the need to promote uniformity of the law with  
85 respect to its subject matter among states that enact it.

86  
87 Section 7. [*Relation to Electronic Signatures in Global and National Commerce Act.*] This  
88 chapter modifies, limits, and supersedes the Federal Electronic Signatures In Global And National  
89 Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section  
90 101(C) of that Act or authorize electronic delivery of any of the notices described in Section  
91 103(b) of that Act.

# Verifying Lawful Presence in U.S. in Order to Get Public Benefits

This Act requires people 18 years or older to prove they are lawfully present in the United States before such people can get certain public benefits. They can do this by providing:

- a state driver’s license or state identification card; or
  - a valid driver’s license or similar document issued for the purpose of identification by another state or territory of the United States, if such license or document contains a photograph if the individual or such other personal identifying information relating to the individual that the director of the department of health and welfare or, with regard to unemployment compensation benefits, the director of the department of commerce and labor finds, by rule, sufficient for purposes of this section; or
  - a United States Military Card or A Military Dependent’s Identification Card; or
  - a United States Coast Guard Merchant Mariner Card; or
  - a Native American Tribal Document;
  - a valid United States Passport; and
  - a valid Social Security Number that has been assigned to the applicant; and
- attest, under penalty of perjury and on a form designated or established by the director of the state department of health and welfare or, with regard to unemployment compensation benefits, by the director of the state department of commerce and labor, that the applicant is a United States citizen or legal permanent resident or the applicant is otherwise lawfully present in the United States pursuant to federal law.

Submitted as:

Idaho

[Chapter 311](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Require People to be  
2 Lawfully Present in the United States to Get Certain Public Benefits.”

3  
4 Section 2. [*Legislative Findings.*]

5 (1) The [Legislature] hereby finds and declares that it is the public policy of this state that  
6 people [eighteen (18) years of age or older] shall provide proof that they are lawfully present in  
7 the United States prior to receiving certain public benefits.

8 (2) The intent of the [Legislature] is not to regulate immigration but to control public  
9 expenditures for certain public benefits, not inconsistent with federal law.

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

12 (1) “emergency medical condition” shall have the same meaning as provided in 42 U.S.C.  
13 Section 1396b(v)(3).

14 (2) “federal public benefit” shall have the same meaning as provided in 8 U.S.C. Section  
15 1611(c).

16 (3) “state or local public benefit” shall have the same meaning as provided in 8 U.S.C.  
17 Section 1621(c).

18  
19 Section 4. [*Verification of Lawful Presence: Exceptions, Reporting.*]

20 (1) Except as otherwise provided in subsection (3) of this section or where exempted by  
21 federal law, each agency or political subdivision of this state shall verify the lawful presence in the  
22 United States of each natural person [eighteen (18) years of age or older] who applies for state or  
23 local public benefits or for federal public benefits for the applicant.

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

26 (3) Verification of lawful presence in the United States shall not be required:

27 (a) for any purpose for which lawful presence in the United States is not required  
28 by law, ordinance or rule;

29 (b) for obtaining health care items and services that are necessary for the treatment  
30 of an emergency medical condition of the person involved and are not related to an organ  
31 transplant procedure;

32 (c) for short-term, noncash, in-kind emergency disaster relief;

33 (d) for public health assistance for immunizations with respect to immunizable  
34 diseases and testing and treatment of symptoms of communicable diseases whether or not such  
35 symptoms are caused by a communicable disease;

36 (e) for programs, services or assistance, such as soup kitchens, crisis counseling  
37 and intervention and short-term shelter specified by federal law or regulation that:

38 (i) deliver in-kind services at the community level, including services  
39 through public or private nonprofit agencies;

40 (ii) do not condition the provision of assistance, the amount of assistance  
41 provided or the cost of assistance provided on the individual recipient’s income or resources; and

42 (iii) are necessary for the protection of life or public safety;

43 (f) for prenatal care; or

44 (g) For postnatal care not to [exceed twelve (12)] months.

45 (4) An agency or a political subdivision shall verify the lawful presence in the United  
46 States of each applicant [eighteen (18) years of age or older] for federal public benefits or state or  
47 local public benefits by requiring the applicant to produce:

48 (a) (i) a [state] driver’s license or an [state] identification card issued pursuant  
49 to [insert citation]; or

50 (ii) a valid driver’s license or similar document issued for the purpose of  
51 identification by another state or territory of the United States, if such license or document  
52 contains a photograph of the individual or such other personal identifying information relating to  
53 the individual that the [director of the department of health and welfare] or, with regard to  
54 unemployment compensation benefits, the [director of the department of commerce and labor]  
55 finds, by rule, sufficient for purposes of this section; or

56 (iii) a United States Military Card or a Military Dependent’s Identification  
57 Card;

58 (iv) a United States Coast Guard Merchant Mariner Card;

59 (v) a Native American Tribal Document;

60 (vi) a valid United States Passport; or

61 (vii) a valid Social Security Number that has been assigned to the applicant;

62 and

63 (b) attest, under penalty of perjury and on a form designated or established by the  
64 [director of the department of health and welfare] or, with regard to unemployment compensation  
65 benefits, by the [director of the department of commerce and labor], that:

66 (i) the applicant is a United States citizen or legal permanent resident; or

67 (ii) the applicant is otherwise lawfully present in the United States pursuant  
68 to federal law.

69 (5) Notwithstanding the requirements of subsection (4)(a) of this section, the [director of  
70 the department of health and welfare] or, with regard to unemployment compensation benefits, the  
71 [director of the department of commerce and labor] may promulgate such rules as are necessary to  
72 ensure that certain people lawfully present in the United States receive authorized benefits  
73 including, but not limited to, homeless state citizens.

74 (6) For an applicant who has attested pursuant to subsection (4)(b) of this section stating  
75 that the applicant is an alien lawfully present in the United States, verification of lawful presence  
76 for federal public benefits or state or local public benefits shall be made through the federal  
77 Systematic Alien Verification of Entitlement Program, which may be referred to as the “SAVE”  
78 program, operated by the United States Department of Homeland Security or a successor program  
79 designated by the United States Department of Homeland Security. Until such verification of  
80 lawful presence is made, the attestation may be presumed to be proof of lawful presence for  
81 purposes of this section.

82 (a) Errors and significant delays by the SAVE program shall be reported to the  
83 United States Department of Homeland Security to ensure that the application of the SAVE  
84 program is not wrongfully denying benefits to legal residents of this state.

85 (b) Agencies or political subdivisions may adopt variations of the requirements of  
86 subsection (4)(b) of this section to improve efficiency or reduce delay in the verification process  
87 or to provide for adjudication of unique individual circumstances in which the verification  
88 procedures in this section would impose unusual hardship on a legal resident of this state; except  
89 that the variations shall be no less stringent than the requirements of subsection (4)(b) of this  
90 section.

91 (c) A person who knowingly makes a false, fictitious or fraudulent statement or  
92 representation in an attestation executed pursuant to subsection (4)(b) or (6)(b) of this section shall  
93 be guilty of a [misdemeanor].

94 (7) It shall be unlawful for an agency or a political subdivision of this state to provide a  
95 federal public benefit or a state or local public benefit in violation of this section.

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

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

100  
101 Section 7. [*Effective Date.*] [Insert effective date.]

# Warranty Adjustment Programs

This Act establishes requirements to notify consumers about motor vehicle manufacturer warranty adjustment programs.

Submitted as

Maryland

[Chapter 343 of 2007](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act Concerning Motor Vehicle  
2 Manufacturers Warranty Adjustment Programs.”

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

5           (a) “Adjustment program” means a program or policy that expands or extends a warranty  
6 beyond its stated limit or under which a manufacturer undertakes or offers to pay or reimburse a  
7 consumer, whether directly or indirectly, for all or a part of the cost of repairing a condition that  
8 may substantially affect the durability, reliability, or performance of a motor vehicle. “Adjustment  
9 program” does not include service provided under a safety or emissions related recall campaign or  
10 adjustments made by a manufacturer on a case-by-case basis.

11           (b) “Consumer” means:

12                   (1) the purchaser, other than for purposes of resale, of a new motor vehicle;

13                   (2) a lessee of a motor vehicle;

14                   (3) a person to whom a new motor vehicle is transferred during the duration of the  
15 warranty applicable to the motor vehicle; or

16                   (4) a person who is entitled under the terms of the warranty to enforce its  
17 obligations.

18           (c) “Dealer” means a person who sells or leases motor vehicles under a retail agreement  
19 with a manufacturer or distributor, or an agent of a manufacturer or distributor.

20           (d) “Lessee” means a consumer who leases a motor vehicle under a written lease that  
21 provides that the lessee is responsible for repairs to the motor vehicle.

22           (e) “Manufacturer” means a person who manufactures or assembles new motor vehicles for  
23 sale or distribution or is engaged in the business of importing new motor vehicles for sale or  
24 distribution to dealers or through distributors or factory branches.

25           (f) “Motor vehicle” means a vehicle that is used for the private transportation of people and  
26 their personal belongings and has a maximum capacity of [10] people, including the driver.

27  
28           Section 3. [*Responsibility to Disclose to Consumers Seeking to Repair Motor Vehicles*  
29 *Information About Adjustment Programs.*]

30           (a) A manufacturer shall provide to its dealers information about each adjustment program  
31 of the manufacturer in a format that facilitates the disclosure of the terms and conditions of the  
32 adjustment program to a consumer seeking repairs at the dealer’s repair facility.

33           (b) If a dealer has received notification of a manufacturer’s adjustment program covering a  
34 particular condition, or otherwise has knowledge of the adjustment program, the dealer shall



35 disclose the terms and conditions of the adjustment program to a consumer seeking repairs for the  
36 condition at the dealer’s repair facility.

37  
38 Section 4. [*Notice to Motor Vehicle Administration about Warranty Adjustments.*]

39 (a) Within [30 days] after establishing an adjustment program, the manufacturer shall send  
40 a copy of the adjustment program to the state [motor vehicle administration].

41 (b) Within [10 days] after receiving a copy of an adjustment program from a manufacturer,  
42 the state [motor vehicle administration] shall post the copy on its website.

43  
44 Section 5. [*Notifying Buyers about Adjustment Programs at the Time of Purchase.*]

45 (a) A manufacturer of motor vehicles sold in the state shall ensure that the purchaser of a  
46 new motor vehicle receives, at the time of purchase, a written notice describing the rights and  
47 remedies provided under this Act.

48 (b) The written notice shall be considered sufficient if stated in substantially the following  
49 form:

50  
51 “Sometimes (insert manufacturer’s name) offers a special adjustment program to  
52 pay all or part of the cost of certain repairs beyond the terms of the warranty.  
53 Check with your dealer to determine whether any adjustment program is  
54 applicable to your motor vehicle.”

55  
56 Section 6. [*Notifying Consumers Who Own or Lease Motor Vehicles about Warranty  
57 Adjustment Programs.*] A manufacturer of motor vehicles sold in the state shall establish  
58 procedures under which each consumer in the state who owns or leases a motor vehicle to which  
59 an adjustment program of the manufacturer applies:

60 (1) is notified about the adjustment program;

61 (2) on request, is provided with a copy of any service bulletin or any other  
62 document issued by the manufacturer pertaining to an adjustment program or to a condition that  
63 may substantially affect motor vehicle durability, reliability, or performance; and

64 (3) within [90] days after the establishment of a new adjustment program, is sent  
65 written notice by first-class mail of the terms and conditions of the adjustment program.

66  
67 Section 7. [*Adjustment Program Reimbursement.*]

68 (a) A manufacturer that establishes an adjustment program shall implement procedures to  
69 ensure reimbursement of each consumer who is eligible under the adjustment program and incurs  
70 expenses for the repair of a condition subject to the adjustment program before the consumer  
71 knows about the adjustment program.

72 (b) Reimbursement under this section shall be consistent with the terms and conditions of  
73 the particular adjustment program.

74 (c) A consumer shall make a claim for reimbursement under this section in writing to the  
75 manufacturer within the later of [1.2 years] after the date of the consumer’s payment for the repair  
76 of the condition or [2.1 years] after the date the manufacturer sends the notice required under this  
77 Act.

78 (d) The manufacturer shall notify the consumer within [21 business days] after receiving a  
79 claim for reimbursement whether the claim will be approved or denied.

80 (e) If the claim is denied, the manufacturer shall state in writing the specific reasons for the  
81 denial.

83           Section 8. [*Penalties.*] A violation of this Act is an unfair or deceptive trade practice within  
84 the meaning of [insert citation] and subject to the enforcement and penalty provisions contained in  
85 [insert citation].

86

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

88

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

90

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

# Wholesale Drug Distribution

This legislation limits the opportunity to introduce counterfeit drugs into the U.S. market via the wholesale transfer process. The legislation accomplishes this by tightening the rules around the licensing of prescription drug wholesalers and establishes pedigree requirements to ensure the authenticity of prescription drugs within the distribution system. The legislation also establishes penalties for violators.

Submitted as:

Idaho

[Session Law Chapter 319 of 2007](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “The Wholesale Drug Distribution Act.”

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

4                   (1) “authentication” means to affirmatively verify before any wholesale distribution  
5 of a prescription drug occurs that each transaction listed on the pedigree has occurred;

6                   (2) “authorized distributor of record” means a wholesale distributor with whom a  
7 manufacturer has established an ongoing relationship to distribute the manufacturer’s prescription  
8 drug. An ongoing relationship is deemed to exist between such wholesale distributor and a  
9 manufacturer when the wholesale distributor, including any affiliated group of the wholesale  
10 distributor, as defined in Section 1504 of the Internal Revenue Code, complies with the following:

11                           (a) the wholesale distributor has a written agreement currently in effect with  
12 the manufacturer evidencing such ongoing relationship; and

13                           (b) the wholesale distributor is listed on the manufacturer’s current list of  
14 authorized distributors of record, which is updated by the manufacturer on no less than a monthly  
15 basis.

16                   (3) “board” means the board as defined under [insert citation];

17                   (4) “chain pharmacy warehouse” means a physical location for prescription drugs  
18 that acts as a central warehouse and performs intra-company sales or transfers of such drugs to a  
19 group of chain pharmacies that have the same common ownership and control;

20                   (5) “co-licensed partner or product” means an instance where [two (2)] or more  
21 parties have the right to engage in the manufacturing and/or marketing of a prescription drug,  
22 consistent with the federal Food and Drug Administration’s implementation of the Prescription  
23 Drug Marketing Act;

24                   (6) “drop shipment” means the sale of a prescription drug to a wholesale distributor  
25 or chain pharmacy warehouse by the manufacturer of the prescription drug, or that manufacturer’s  
26 co-licensed product partner, that manufacturer’s third party logistics provider or that  
27 manufacturer’s exclusive distributor, whereby the wholesale distributor or chain pharmacy  
28 warehouse takes title but not physical possession of such prescription drug and the wholesale  
29 distributor invoices the pharmacy or chain pharmacy warehouse, or other person authorized by law  
30 to dispense or administer such drug to a patient, and the pharmacy or chain pharmacy warehouse  
31 or other authorized person receives delivery of the prescription drug directly from the

32 manufacturer, or that manufacturer's third-party logistics provider, or that manufacturer's  
33 exclusive distributor;

34 (7) "facility" means a facility of a wholesale distributor where prescription drugs  
35 are stored, handled, repackaged or offered for sale;

36 (8) "manufacturer" means a person licensed or approved by the federal Food and  
37 Drug Administration to engage in the manufacture of drugs or devices, consistent with the federal  
38 Food and Drug Administration definition of "manufacturer" under its regulations and guidance  
39 implementing the Prescription Drug Marketing Act;

40 (9) "manufacturer's exclusive distributor" means anyone who contracts with a  
41 manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a  
42 manufacturer and who takes title to that manufacturer's prescription drug, but who does not have  
43 general responsibility to direct the sale or disposition of the manufacturer's prescription drug.

44 (a) such manufacturer's exclusive distributor must be licensed as a  
45 wholesale distributor under [insert citation], and to be considered part of the normal distribution  
46 channel, must also be an authorized distributor of record;

47 (10) "normal distribution channel" means a chain of custody for a prescription drug  
48 that goes from a manufacturer of the prescription drug, from that manufacturer to that  
49 manufacturer's co-licensed partner, from that manufacturer to that manufacturer's third-party  
50 logistics provider or from that manufacturer to that manufacturer's exclusive distributor, either  
51 directly or by drop shipment, to:

52 (a) a pharmacy to a patient;

53 (b) other designated people authorized by law to dispense or administer  
54 such drug to a patient;

55 (c) a wholesale distributor to a pharmacy to a patient or other designated  
56 people authorized by law to dispense or administer such drug to a patient;

57 (d) a wholesale distributor to a chain pharmacy warehouse to that chain  
58 pharmacy warehouse's intra-company pharmacy to a patient or other designated people authorized  
59 by law to dispense or administer such drug to a patient; or

60 (e) a chain pharmacy warehouse to the chain pharmacy warehouse's intra-  
61 company pharmacy to a patient or other designated people authorized by law to dispense or  
62 administer such drug to a patient.

63 (11) "pedigree" means a document or electronic file containing information that  
64 records each wholesale distribution of any given prescription drug.

65 (12) "prescription drug" means any drug, including any biological product, except  
66 for blood and blood components intended for transfusion or biological products that are also  
67 medical devices, required by federal law or federal regulation to be dispensed only by a  
68 prescription, including finished dosage forms and bulk drug substances, subject to section 503(b)  
69 of the federal Food, Drug and Cosmetic Act.

70 (13) "repackage" means repackaging or otherwise changing the container, wrapper  
71 or labeling to further the distribution of a prescription drug, excluding that completed by the  
72 pharmacist responsible for dispensing product to the patient.

73 (14) "repackager" means a person who repackages.

74 (15) "third-party logistics provider" means anyone who contracts with a  
75 prescription drug manufacturer to provide or coordinate warehousing, distribution or other  
76 services on behalf of a manufacturer, but does not take title to the prescription drug or have  
77 general responsibility to direct the prescription drug's sale or disposition. Such third-party  
78 logistics provider must be licensed as a wholesale distributor under [insert citation], and to be  
79 considered part of the normal distribution channel, must also be an authorized distributor of  
80 record.

81 (16) “wholesale distributor” means anyone engaged in the wholesale distribution of  
82 prescription drugs including, but not limited to:

- 83 (a) manufacturers;
- 84 (b) repackagers;
- 85 (c) own-label distributors;
- 86 (d) private-label distributors;
- 87 (e) jobbers;
- 88 (f) brokers;
- 89 (g) warehouses, including manufacturers’ and distributors’ warehouses;
- 90 (h) manufacturer’s exclusive distributors;
- 91 (i) authorized distributors of record;
- 92 (j) drug wholesalers or distributors;
- 93 (k) independent wholesale drug traders;
- 94 (l) specialty wholesale distributors;
- 95 (m) third-party logistics providers;
- 96 (n) retail pharmacies that conduct wholesale distribution;
- 97 (o) chain pharmacy warehouses that conduct wholesale distribution, and
- 98 (p) to be considered part of the normal distribution channel, such wholesale  
99 distributor, except for a chain pharmacy warehouse not engaged in wholesale distribution, must  
100 also be an authorized distributor of record.

101 (17) “wholesale distribution” means distribution of prescription drugs to people  
102 other than a consumer or patient, but does not include:

- 103 (a) intra-company sales of prescription drugs, meaning any transaction or  
104 transfer between any division, subsidiary, parent or affiliated or related company under common  
105 ownership and control of a corporate entity, or any transaction or transfer between co-licensees of  
106 a co-licensed product.
- 107 (b) the sale, purchase, distribution, trade or transfer of a prescription drug or  
108 offer to sell, purchase, distribute, trade or transfer a prescription drug for emergency medical  
109 reasons.
- 110 (c) the distribution of prescription drug samples by manufacturers’  
111 representatives.
- 112 (d) drug returns, when conducted by a hospital, health care entity or  
113 charitable institution in accordance with 21 CFR 203.23.
- 114 (e) the sale of minimal quantities of prescription drugs by retail pharmacies  
115 to licensed practitioners for office use.
- 116 (f) the sale, purchase or trade of a drug, an offer to sell, purchase or trade a  
117 drug, or the dispensing of a drug pursuant to a prescription.
- 118 (g) the sale, transfer, merger or consolidation of all or part of the business of  
119 a pharmacy or pharmacies from or with another pharmacy or pharmacies, whether accomplished  
120 as a purchase and sale of stock or business assets.
- 121 (h) the sale, purchase, distribution, trade or transfer of a prescription drug  
122 from [one (1) authorized distributor of record to one (1) additional authorized distributor of  
123 record] when the manufacturer has stated in writing to the receiving authorized distributor of  
124 record that the manufacturer is unable to supply such prescription drug and the supplying  
125 authorized distributor of record states in writing that the prescription drug being supplied had,  
126 until that time, been exclusively in the normal distribution channel.
- 127 (i) the delivery of, or offer to deliver, a prescription drug by a common  
128 carrier solely in the common carrier’s usual course of business of transporting prescription drugs,

129 and such common carrier does not store, warehouse or take legal ownership of the prescription  
130 drug.

131 (j) the sale or transfer from a retail pharmacy or chain pharmacy warehouse  
132 of expired, damaged, returned or recalled prescription drugs to the original manufacturer or third-  
133 party returns processor, including a reverse distributor.

134  
135 Section 3. [*Wholesale Drug Distributor Licensing Requirement – Minimum Requirements*  
136 *for Licensure.*]

137 (A) Every wholesale distributor who engages in the wholesale distribution of prescription  
138 drugs must be licensed by the [board], and every nonresident wholesale distributor must be  
139 licensed by the [board] if it ships prescription drugs into this state in accordance with this Act  
140 before engaging in wholesale distributions of wholesale prescription drugs. The [board] shall  
141 exempt manufacturers distributing their own federal Food and Drug Administration approved  
142 drugs and devices from any licensing and other requirements to the extent not required by federal  
143 law or regulation, unless particular requirements are deemed necessary and appropriate following  
144 rulemaking.

145 (B) The [board] shall require the following minimum information from each wholesale  
146 distributor applying for a license under subsection (A) of this section:

- 147 (1) the name, full business address and telephone number of the licensee;
- 148 (2) all trade or business names used by the licensee;
- 149 (3) addresses, telephone numbers, and the names of contact people for all facilities  
150 used by the licensee for the storage, handling, and distribution of prescription drugs;
- 151 (4) the type of ownership or operation, i.e., partnership, corporation, or sole  
152 proprietorship;
- 153 (5) the name of each person who is an owner or an operator of the licensee;
- 154 (6) a list of all licenses and permits issued to the applicant by any other state that  
155 authorizes the applicant to purchase or possess prescription drugs;
- 156 (7) the name of the applicant's designated representative for the facility, together  
157 with the personal information statement and fingerprints, required pursuant to paragraph (8) of this  
158 section (3) for such individual;
- 159 (8) each individual required by paragraph (7) of this section (3) to provide a  
160 personal information statement and fingerprints shall provide the following information to the  
161 [board]:
  - 162 (a) the individual's places of residence for the past [seven (7)] years;
  - 163 (b) the individual's date and place of birth;
  - 164 (c) the individual's occupations, positions of employment and offices held  
165 during the past [seven (7)] years;
  - 166 (d) the principal business and address of any business, corporation or other  
167 organization in which each such office of the individual was held or in which each such  
168 occupation or position of employment was carried on;
  - 169 (e) whether the individual has been, during the past [seven (7)] years, the  
170 subject of any proceeding for the revocation of any license or any criminal violation and, if so, the  
171 nature of the proceeding and the disposition of the proceeding;
  - 172 (f) whether, during the past [seven (7)] years, the individual has been  
173 enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating  
174 any federal or state law regulating the possession, control or distribution of prescription drugs or  
175 criminal violations, together with details concerning any such event;
  - 176 (g) a description of any involvement by the individual with any business,  
177 including any investments, other than the ownership of stock in a publicly traded company or

178 mutual fund, during the past [seven (7) years], which manufactured, administered, prescribed,  
179 distributed or stored pharmaceutical products, and any lawsuits in which such businesses were  
180 named as a party;

181 (h) a description of any felony criminal offense of which the individual, as  
182 an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the  
183 individual pled guilty or nolo contendere;

184 (I) if the individual indicates that a criminal conviction is under  
185 appeal and submits a copy of the notice of appeal of that criminal offense, the applicant must,  
186 within [fifteen (15)] days after the disposition of the appeal, submit to the [board] a copy of the  
187 final written order of disposition;

188 (i) a photograph of the individual taken in the previous year.

189 (C) The information required pursuant to subsection (B) of this section shall be provided  
190 under oath.

191 (D) The [board] shall not issue a wholesale distributor license to an applicant, unless the  
192 [board]:

193 (1) conducts a physical inspection of the facility at the address provided by the  
194 applicant as required in subsection (B)(1) of this section; and

195 (2) determines that the designated representative meets the following qualifications:

196 (a) is at least [twenty-one (21)] years of age;

197 (b) has been employed full time for at least [three (3)] years in a pharmacy  
198 or with a wholesale distributor in a capacity related to the dispensing and distribution of, and  
199 recordkeeping relating to, prescription drugs;

200 (c) is employed by the applicant full time in a managerial level position;

201 (d) is actively involved in and aware of the actual daily operation of the  
202 wholesale distributor;

203 (e) is physically present at the facility of the applicant during regular  
204 business hours, except when the absence of the designated representative is authorized including,  
205 but not limited to, sick leave and vacation leave;

206 (f) is serving in the capacity of a designated representative for only [one (1)]  
207 applicant at a time, except where more than [one (1)] licensed wholesale distributor is co-located  
208 in the same facility and such wholesale distributors are members of an affiliated group, as defined  
209 in Section 1504 of the Internal Revenue Code;

210 (g) does not have any convictions under any federal, state or local law  
211 relating to wholesale or retail prescription drug distribution or distribution of controlled  
212 substances; and

213 (h) does not have any felony convictions under federal, state or local law.

214 (E) The [board] shall submit the fingerprints provided by a person with a license  
215 application for a statewide criminal records check and for forwarding to the Federal Bureau of  
216 Investigation for a national criminal records check of the individual.

217 (F) The [board] shall require every wholesale distributor applying for a license to submit a  
218 bond of at least [one hundred thousand dollars (\$100,000)], or other equivalent means of security  
219 acceptable to the [board], such as an irrevocable letter of credit or a deposit in a trust account or  
220 financial institution, payable to a fund established by the [board] pursuant to subsection (G) of this  
221 section. Chain pharmacy warehouses that are not engaged in wholesale distribution are exempt  
222 from the bond requirement. The purpose of the bond is to secure payment of any fines or penalties  
223 imposed by the board and any fees and costs incurred by the board regarding that license, which  
224 are authorized under the law of this state and which the licensee fails to pay [thirty (30)] days after  
225 the fines, penalties or costs become final. The [board] may make a claim against such bond or

226 security until [one (1)] year after the licensee's license ceases to be valid. A single bond may  
227 suffice to cover all facilities operated by the applicant in this state.

228 (G) The [board] shall establish a fund, separate from its other accounts, in which to deposit  
229 the wholesale distributor bonds.

230 (H) If a wholesale distributor distributes prescription drugs from more than [one (1)]  
231 facility, the wholesale distributor shall obtain a license for each facility.

232 (I) In accordance with each licensure renewal, the [board] shall send to each wholesale  
233 distributor licensed under this section a form setting forth the information that the wholesale  
234 distributor provided pursuant to subsection (B) of this section. Within [thirty (30)] days of  
235 receiving such form, the wholesale distributor must identify and state under oath to the board all  
236 changes or corrections to the information that was provided pursuant to subsection (B) of this  
237 section. Changes in, or corrections to, any information in subsection (B) of this section shall be  
238 submitted to the [board] as required by the [board]. The [board] may suspend or revoke the license  
239 of a wholesale distributor if such authority determines that the wholesale distributor no longer  
240 qualifies for the license issued under this section.

241 (J) The designated representative identified pursuant to subsection (B)(7) of this section  
242 must receive and complete continuing training in applicable federal law and the law of this state  
243 governing wholesale distribution of prescription drugs.

244 (K) The [board] may adopt rules to approve an accreditation body to evaluate a  
245 wholesaler's operations to determine compliance with professional standards and any other  
246 applicable laws, and to perform inspections of each facility and location where wholesale  
247 distribution operations are conducted by the wholesaler.

248 (L) Information provided under this section shall not be disclosed to any person other than  
249 a state licensing authority, government board or government agency, provided such licensing  
250 authority, government board or agency needs such information for licensing or monitoring  
251 purposes.

252  
253 Section 4. *[Restrictions on Transactions.]*

254 (A) A wholesale distributor shall receive prescription drug returns or exchanges from a  
255 pharmacy or chain pharmacy warehouse pursuant to the terms and conditions of the agreement  
256 between the wholesale distributor and the pharmacy or chain pharmacy warehouse. Returns of  
257 expired, damaged, recalled or otherwise non-saleable pharmaceutical product shall be distributed  
258 by the receiving wholesale distributor only to either the original manufacturer or third party  
259 returns processor, including a reverse distributor. The returns or exchanges of prescription drugs,  
260 saleable or otherwise, including any redistribution by a receiving wholesaler, shall not be subject  
261 to the pedigree requirement of [insert citation], so long as they are exempt from pedigree under the  
262 federal Food and Drug Administration's currently applicable Prescription Drug Marketing Act  
263 Guidance. Wholesale distributors and pharmacies shall be held accountable for administering their  
264 returns process and ensuring that the aspects of this operation are secure and do not permit the  
265 entry of adulterated and counterfeit product.

266 (B) A manufacturer or wholesale distributor shall furnish prescription drugs only to a  
267 person licensed by the [board] or other appropriate state licensing authorities. Before furnishing  
268 prescription drugs to a person not known to the manufacturer or wholesale distributor, the  
269 manufacturer or wholesale distributor shall affirmatively verify that the person is legally  
270 authorized to receive the prescription drugs by contacting the appropriate state licensing  
271 authorities.

272 (C) Prescription drugs furnished by a manufacturer or wholesale distributor shall be  
273 delivered only to the premises listed on the license; provided that the manufacturer or wholesale



274 distributor may furnish prescription drugs to an authorized person or agent of that person at the  
275 premises of the manufacturer or wholesale distributor if:

276 (1) the identity and authorization of the recipient is properly established; and

277 (2) this method of receipt is employed only to meet the immediate needs of a  
278 particular patient of the authorized person.

279 (D) Prescription drugs may be furnished to a hospital pharmacy receiving area provided  
280 that a pharmacist or authorized receiving personnel signs, at the time of delivery, a receipt  
281 showing the type and quantity of the prescription drug so received. Any discrepancy between  
282 receipt and the type and quantity of the prescription drug actually received shall be reported to the  
283 delivering manufacturer or wholesale distributor by the next business day after the delivery to the  
284 pharmacy receiving area.

285 (E) A manufacturer or wholesale distributor shall not accept payment for, or allow the use  
286 of, a person's credit to establish an account for the purchase of prescription drugs from any person  
287 other than the owner(s) of record, the chief executive officer or the chief financial officer listed on  
288 the license of a person legally authorized to receive prescription drugs. Any account established  
289 for the purchase of prescription drugs must bear the name of the licensee.

290  
291 Section 5. [*Pedigree.*]

292 (A) Each person who is engaged in wholesale distribution of prescription drugs, including  
293 re-packagers, but excluding the original manufacturer of the finished form of the prescription  
294 drug, that leaves, or has ever left, the normal distribution channel shall, before each wholesale  
295 distribution of such drug, provide a pedigree to the person who receives such drug.

296 (B) A retail pharmacy or chain pharmacy warehouse shall comply with the requirements of  
297 this section only if the pharmacy or chain pharmacy warehouse engages in wholesale distribution  
298 of prescription drugs.

299 (C) The [board] shall determine by [July 1, 2009], a targeted implementation date for  
300 electronic track and trace pedigree technology. Such a determination shall be based on  
301 consultation with manufacturers, distributors and pharmacies responsible for the sale and  
302 distribution of prescription drug products in this state. After consultation with interested  
303 stakeholders and prior to implementation of the electronic pedigree, the board shall deem that the  
304 technology is universally available across the entire prescription pharmaceutical supply chain. The  
305 implementation date for the mandated electronic track and trace pedigree technology will be no  
306 sooner than [July 1, 2010], and may be extended by the [board] in [one (1)] year increments if it  
307 appears the technology is not universally available across the entire prescription pharmaceutical  
308 supply chain.

309 (D) Each person who is engaged in the wholesale distribution of a prescription drug,  
310 including re-packagers, but excluding the original manufacturer of the finished form of the  
311 prescription drug, who is provided a pedigree for a prescription drug and attempts to further  
312 distribute that prescription drug, shall affirmatively verify before any wholesale distribution of a  
313 prescription drug occurs that each transaction listed on the pedigree has occurred.

314 (E) The pedigree shall include:

315 (1) all necessary identifying information concerning each sale in the chain of  
316 distribution of the product from the manufacturer, or the manufacturer's third-party logistics  
317 provider, co-licensed product partner, or manufacturer's exclusive distributor, through acquisition  
318 and sale by any wholesale distributor or re-packager, until final sale to a pharmacy or other person  
319 dispensing or administering the drug;

320 (2) the name, address, telephone number and, if available, the e-mail address, of  
321 each owner of the prescription drug, and each wholesale distributor of the prescription drug;

- 322 (3) the name and address of each location from which the product was shipped, if  
323 different from the owner's;  
324 (4) transaction dates;  
325 (5) certification that each recipient has authenticated the pedigree.  
326 (6) name of the prescription drug;  
327 (7) dosage form and strength of the prescription drug;  
328 (8) size of the container;  
329 (9) number of containers;  
330 (10) lot number and national drug code number of the prescription drug; and  
331 (11) name of the manufacturer of the finished dosage form.

332 (F) Each pedigree or electronic file shall be:

333 (1) Notwithstanding the provisions in [insert citation], maintained by the purchaser  
334 and the wholesale distributor for not less than [three (3)] years from the date of sale or transfer;  
335 and

336 (2) Available for inspection or use within [five (5)] business days upon a request of  
337 an authorized officer of the law.

338 (G) The [board] shall adopt rules and a form relating to the requirements of this section no  
339 later than [ninety (90)] days after the effective date of this Act.

340  
341 Section 6. [*Enforcement - Order to Cease Distribution of a Drug.*]

342 (A) If the [board] finds that there is a reasonable probability that:

343 (1) a wholesale distributor, other than a manufacturer, has violated a provision in  
344 this Act or falsified a pedigree, or sold, distributed, transferred, manufactured, repackaged,  
345 handled or held a counterfeit prescription drug intended for human use; and

346 (2) the prescription drug at issue as a result of a violation in paragraph (1) of this  
347 subsection could cause serious, adverse health consequences or death; and

348 (3) other procedures would result in unreasonable delay;  
349 the [board] shall issue an order requiring the appropriate person, including the distributors or  
350 retailers of the drug, to immediately cease distribution of the drug within the state.

351 (B) An order under subsection (A) of this section shall provide the person subject to the  
352 order with an opportunity for an informal hearing, to be held not later than [ten (10)] days after the  
353 date of the issuance of the order, on the actions required by the order. If, after providing an  
354 opportunity for such a hearing, the [board] determines that inadequate grounds exist to support the  
355 actions required by the order, the [board] shall vacate the order.

356  
357 Section 7. [*Discipline -- Grounds -- Penalties.*]

358 (A) Upon a finding that a wholesale distributor is in violation of any provision of this Act,  
359 or such rules or standards of conduct and practice as may be adopted by the [board], and in  
360 accordance with the provisions of [insert citation], the [board] may impose any [one (1)] or more  
361 of the penalties provided for in [insert citation].

362 (B) Imposition of a penalty by the [board] or other action against a wholesale distributor by  
363 the [board] as set forth in this Act shall not be construed as barring other civil, administrative or  
364 criminal proceedings or prosecutions or entry of any available penalty or sanction as authorized by  
365 law.

366  
367 Section 8. [*Prohibited Acts.*]

368 (A) It shall be unlawful for a person to knowingly perform, or cause the performance of, or  
369 aid and abet any of the following acts in this state:

- 370 (1) failure to obtain a license when a license is required by this Act;

- 371 (2) operate as a wholesale distributor without a valid license when a license is  
372 required by this act;
- 373 (3) purchase from or otherwise receive, return or exchange a prescription drug from  
374 a pharmacy or chain pharmacy warehouse, other than in compliance with section 4(A) of this Act;
- 375 (4) when a state license is required pursuant to section 4(B) of this Act, to sell,  
376 distribute, transfer or otherwise furnish a prescription drug to a person who is not authorized under  
377 the law of the jurisdiction in which the person received the prescription drug to receive the  
378 prescription drug;
- 379 (5) failure to deliver prescription drugs to specified premises, as required by section  
380 4(C) of this Act;
- 381 (6) acceptance of payment or credit for the purchase of prescription drugs, other  
382 than in compliance with section 4(E) of this Act;
- 383 (7) failure to maintain or provide pedigrees as required by this Act;
- 384 (8) failure to obtain, pass or authenticate a pedigree, as required by this Act;
- 385 (9) provide the [board] or any of its representatives or any federal official with false  
386 or fraudulent records or make false or fraudulent statements regarding any matter within the  
387 provisions of this Act;
- 388 (10) obtain, or attempt to obtain, a prescription drug by fraud, deceit or  
389 misrepresentation or engage in misrepresentation or fraud in the distribution of a prescription  
390 drug;
- 391 (11) manufacture, repackage, sell, transfer, deliver, hold or offer for sale any  
392 prescription drug that is adulterated, misbranded, counterfeit, suspected of being counterfeit or  
393 otherwise has been rendered unfit for distribution;
- 394 (12) adulterate, misbrand or counterfeit any prescription drug;
- 395 (13) receive any prescription drug that is adulterated, misbranded, stolen, obtained  
396 by fraud or deceit, counterfeit or suspected of being counterfeit;
- 397 (14) deliver or proffer delivery of, for pay or otherwise, any prescription drug that  
398 is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit or suspected of being  
399 counterfeit;
- 400 (15) alter, mutilate, destroy, obliterate or remove the whole or any part of the  
401 labeling of a prescription drug or commit any other act with respect to a prescription drug that  
402 results in the prescription drug being misbranded; or
- 403 (16) sell, deliver, transfer or offer to sell to a person not authorized under law to  
404 receive the return or exchange of a prescription drug, a prescription drug that has expired, been  
405 damaged or recalled by either the original manufacturer, a third party returns processor or a  
406 reverse distributor.

407 (B) The Acts prohibited in subsection (A) of this section do not include a prescription drug  
408 manufacturer, or agent of a prescription drug manufacturer, who obtains or attempts to obtain a  
409 prescription drug for the sole purpose of testing the prescription drug for authenticity.

410

411 Section 9. [*Penalties.*]

412 (A) Any person who commits any act prohibited by section 8(A)(1) through 8(A)(8) of this  
413 Act, is guilty of a [misdemeanor], which is punishable by not more than [one (1) year of  
414 imprisonment, or by a fine not exceeding five thousand dollars (\$5,000)], or both.

415 (B) Any person who commits any act prohibited by section 8(A)(9) through 8(A)(16) of  
416 this Act, is guilty of a [felony], which is punishable by imprisonment for a term of [not less than  
417 five (5) years and not more than twenty (20) years, or by a fine not exceeding five hundred  
418 thousand dollars (\$500,000)], or both.

419 (C) Any person who, with the intent to commit any of the acts prohibited by section  
420 8(A)(9) through 8(A)(16) of this Act, commits any act prohibited by section 8(A)(1) through  
421 8(A)(9) of this Act, is guilty of a [felony], which is punishable by imprisonment for a term of [not  
422 less than five (5) years and not more than twenty (20) years, or by a fine not exceeding five  
423 hundred thousand dollars (\$500,000)], or both.

424 (D) Any criminal penalty imposed on a person who commits any act prohibited by section  
425 8 of this Act, is in addition to, and not in lieu of, any other civil or administrative penalty or  
426 sanction authorized by law.

427

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

429

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

431

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

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