



# SUGGESTED STATE LEGISLATION

2015 Volume 74

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





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STATE LEGISLATION  
2015  
Volume 74**

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Committee on Suggested State Legislation

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# Sharing Capitol Ideas

Founded in 1933, The Council of State Governments is our nation's only organization serving all three branches of state government. CSG is a region-based forum that fosters the exchange of insights and ideas to help state officials shape public policy. This offers unparalleled regional, national and international opportunities to network, develop leaders, collaborate and create problem-solving partnerships.

## **CSG's Mission**

CSG champions excellence in state governments to advance the common good.

## **CSG's Values**

To achieve this mission, CSG will:

- Pursue the priorities of its member states
- Be nonpartisan and inclusive
- Engage leaders from all three branches of state government
- Have a regional focus, a national presence and a global reach
- Be a respected and trusted source for best practices and policy expertise
- Convene leader to leader interactions and foster leadership development
- Facilitate multistate solutions
- Zealously advocate for the states in our federal system of government
- Adhere to the highest ethical standards
- Respect diversity and act with civility
- Partner and collaborate with others

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# Foreword

The Council of State Governments (CSG) is pleased to offer the **2015 *Suggested State Legislation*** volume, a valued series of compilations of draft legislation about topics of importance to the states. The draft legislation found in this book represents many hours of work by CSG's Committee on Suggested State Legislation and CSG staff. The entries in this book were selected from hundreds of submissions. Neither CSG nor the Committee seeks to influence the enactment of state legislation. Throughout the years, however, both have found the experiences of one state may prove beneficial to others. It is in this spirit that these drafts are presented.

The Council of State Governments  
Lexington, Kentucky

David Adkins  
Executive Director CEO

# 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 75 years, The Council of State Governments’ Suggested State Legislation (SSL) program has informed state policymakers 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 1940 to review state laws relating to U.S. security. The result was *A Legislative Program for Defense*. That group reconvened following the nation’s entry into World War II in order to develop a volume of *Suggested State War Legislation*. That publication was succeeded by *Suggested State Legislation*, an annual volume of draft legislation about topics of major governmental interest. Today, SSL Committee members are legislators and legislative staff representing all regions of the country.

Traditionally, SSL volumes were the culmination of a yearlong process in which members of the SSL Committee received and reviewed legislation in a series of meetings. Traditionally, the volumes were produced at the end of the SSL Cycle. The SSL Committee now produces SSL volumes electronically in parts, one part after every committee meeting. Each part is published on-line approximately three to four months after each meeting. The electronic parts are then combined into a book that CSG publishes at the end of the annual SSL Cycle.

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

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

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

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

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

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

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

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

Readers should keep in mind that neither the consideration by the SSL Committee nor the dissemination of legislation in the annual SSL volume constitutes an endorsement by CSG. CSG does not advocate for the enactment of any SSL legislation in any member jurisdictions. Rather, the entries are offered as a tool to state officials interested in drafting legislation in a specific area, and may be looked upon as a guide to areas of broad current interest in the states.

Interested readers may find out more about SSL by visiting the SSL pages at CSG’s web site at [www.csg.org/ssl](http://www.csg.org/ssl).



## 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 and legislative staff representing all regions of the country.

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/ssl](http://www.csg.org/ssl) after every meeting and then compiled into annual Suggested State Legislation volumes. The volumes are usually published in December.

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

It takes many bills or laws to fill the dockets of one yearlong 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. 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 the bills before consideration in an SSL Committee meeting.

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

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

## SSL Criteria

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

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

# Suggested State Legislation Style

Style is the custom or plan followed in typographic arrangement or display. *Suggested State Legislation* drafts generally follow the same style. Beginning with the 1997 volume, however, 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.

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## CONSERVATION AND THE ENVIRONMENT

# Graywater Promotion and Use

The act authorizes the utilization of “graywater”, which is wastewater from a building’s showers or hand washing sinks or washing machines, by cities and counties for nondrinking water purposes like irrigation or to flush toilets. The Colorado Water Control Commission is directed to create statewide standards for gray water systems that protect public health and water quality. The Commission will not allow the use of graywater systems unless a local city, county, or municipality has approved an ordinance or resolution.

Submitted as:

Colorado

HB 1044

Status: Signed into law on May 15, 2013.

### Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] Concerning the Authorization of the Use of Graywater.  
2
- 3 Section 2. [*Definitions.*]
- 4 (1) "Graywater" means that portion of wastewater that, before being treated or combined with  
5 other wastewater, is collected from fixtures within residential, commercial, or industrial  
6 buildings or institutional facilities for the purpose of being put to beneficial uses authorized  
7 by the commission in accordance with Section 3(1)(a). Sources of graywater may include  
8 discharges from bathroom and laundry room sinks, bathtubs, showers, laundry machines, and  
9 other sources authorized by rule. Graywater does not include the wastewater from toilets,  
10 urinals, kitchen sinks, dishwashers, or nonlaundry utility sinks. Graywater must be collected  
11 in a manner that minimizes household wastes, human excreta, animal or vegetable matter,  
12 and chemicals that are hazardous or toxic, as determined by the commission.
- 13 (2) "Graywater treatment works" means an arrangement of devices and structures used to:
- 14 (a) Collect graywater from within a building or a facility; and  
15 (b) Treat, neutralize, or stabilize graywater within the same building or facility to the level  
16 necessary for its authorized uses.  
17
- 18 Section 3. [*Control regulations.*]
- 19 (1) The commission may promulgate control regulations for the following purposes:
- 20 (a) To describe requirements, prohibitions, and standards for the use of graywater for  
21 nondrinking purposes, to encourage the use of graywater, and to protect public health and  
22 water quality.
- 23 (b) Graywater may be used only in areas where the local city, city and county, or county has  
24 adopted an ordinance or resolution approving the use of graywater pursuant to Section  
25 4(1) or Section 5(1)(a)(b). The city, city and county, or county that has adopted an  
26 ordinance or resolution approving the use of graywater pursuant to Section 4(1) or  
27 Section 5(1)(a)(b), has exclusive enforcement authority regarding compliance with the  
28 ordinance or resolution.

- 1 (c) Use of graywater shall be allowed only in accordance with the terms and conditions of  
2 the decrees, contracts, and well permits applicable to the use of the source water rights or  
3 source water and any return flows therefrom, and no use of graywater shall be allowed  
4 that would not be allowed under such decrees, contracts, or permits if the graywater  
5 ordinance or resolution did not exist.
- 6 (d) A local city, city and county, or county may only authorize the use of graywater in  
7 accordance with federal, state, and local requirements.

8  
9 Section 4. [*Power of the board.*]

- 10 (1) The board of county commissioners of each county has power at any meeting:
- 11 (a) To adopt a resolution to authorize, in consultation with the local board of health, local  
12 public health agencies, and any water and wastewater service providers serving the  
13 county, the use of graywater, as defined in Section 2(1) in compliance with any  
14 regulation adopted pursuant to Section 3(1) and to enforce compliance with the board's  
15 resolution.
- 16 (b) Before adopting a resolution to authorize the use of graywater pursuant to subparagraph  
17 (a) board of county commissioners is encouraged to enter into a memorandum of  
18 understanding with the local board of health, local public health agencies, and any water  
19 and wastewater service providers serving the county concerning graywater usage and the  
20 proper installation and operation of graywater treatment works, as defined in Section  
21 2(2).

22  
23 Section 5. [*Building and fire regulations – emission performance standards required.*]

- 24 (1) The governing bodies of municipalities have the following powers in relation to building and  
25 fire regulations:
- 26 (a) To adopt an ordinance to authorize, in consultation with the local board of health, local  
27 public health agencies, and any water and wastewater service providers serving the  
28 municipality, the use of graywater, as defined in Section 2(1) in compliance with any  
29 regulation adopted pursuant to Section 3(1), and to enforce compliance with the  
30 governing body's ordinance.
- 31 (b) Before adopting an ordinance to authorize the use of graywater pursuant to subparagraph  
32 (a), the municipal governing body is encouraged to enter into a memorandum of  
33 understanding with the local board of health, local public health agencies, and any water  
34 and wastewater service providers serving the municipality concerning graywater usage  
35 and the proper installation and operation of graywater treatment works, as defined in  
36 Section 2(2).

37  
38 Section 6. [*Small capacity wells.*]

- 39 (1)
- 40 (a) The board of a groundwater management district may adopt rules that further restrict the  
41 issuance of small capacity well permits and use of rooftop precipitation collection  
42 systems or graywater treatment works. In addition, the board of a groundwater  
43 management district may adopt rules that expand the acre-foot limitations for small  
44 capacity wells set forth in this section. However, the board of a groundwater management  
45 district shall not allow an annual volume of more than eighty acre-feet for any small  
46 capacity well.

1 (b) The board may institute its rules only after a public hearing. The board shall publish  
2 notice of the hearing, stating the time and place of the hearing and describing, in general  
3 terms, the rules proposed. Within sixty days after the hearing, the board shall announce  
4 the rules adopted and shall publish notice of the action. In addition, the board shall mail,  
5 within five days after the adoption of the rules, a copy of the rules to the state engineer.

6 (c) Any party adversely affected or aggrieved by a rule may, not later than thirty days after  
7 the last date of publication, initiate judicial review in accordance with [Insert citation];  
8 except that venue for judicial review of the rule must be in the district court for the  
9 county in which the office of the groundwater management district is located.

10 (2) A person withdrawing water from a well pursuant to paragraph (a) or (c) of subsection (1) of  
11 this section may use graywater through use of a graywater treatment works, as those terms  
12 are defined in Section 2(1) and Section 2(2), in compliance with the requirements of Section  
13 3(1). Any limitations on use set forth in the well permit apply to the use of graywater.

14  
15 Section 7. [*Application for use of groundwater - publication of notice - conditional permit -*  
16 *hearing on objections - well permits.*]

17 (1) A person withdrawing water from a well pursuant to [insert citation] of this section may use  
18 graywater through use of a graywater treatment works, as those terms are defined in Section  
19 2(1)(2) in compliance with the requirements of Section 3(1). Any limitations on use set forth  
20 in the well permit, or in the provisions of any approved replacement plan, apply to the use of  
21 graywater.

22  
23 Section 8. [*Permits to construct wells outside designated basins - fees - permit no groundwater*  
24 *right - evidence - time limitation – well permits - rules - repeal.*]

25 (1) A person withdrawing water from a well pursuant to [insert citation] may use graywater  
26 through the use of a graywater treatment works, as those terms are defined in Section 2(1)(2)  
27 in compliance with the requirements of Section 3(1). Any limitations on use set forth in the  
28 well permit, and the provisions of any decreed plan for augmentation, apply to the use of  
29 graywater.

30  
31 Section 9. [*Legislative declaration - basic tenets of Colorado water law.*]

32 (1) Water users served by a provider of municipal or industrial water supplies may use graywater  
33 and install graywater treatment works, as those terms are defined in Section 2(1)(2), if:

34 (a) The use of graywater is limited to the confines of the operation that generates the  
35 graywater;

36 (b) Graywater is used for purposes that are permissible under the municipality's or water  
37 district's water rights; and

38 (c) Graywater is used in compliance with the requirements of Section 3(1).



1 Section 10. [*Exemptions - presumptions - legislative declaration.*]  
2 (1) A person withdrawing water from a well pursuant to this section may use graywater through  
3 use of a graywater treatment works, as those terms are defined in Section 2(1)(2) in  
4 compliance with the requirements of Section 3(1). Any limitations on use set forth in the well  
5 permit apply to the use of graywater.  
6

7 Section 11. [*Legislative declaration.*]  
8 The General Assembly encourages the Examining Board of Plumbers to adopt and incorporate  
9 by reference Appendix C of the International Plumbing Code (I.P.C.), 2009 edition,  
10 promulgated by the International Code Council, first printing (January 2009), or the graywater  
11 provisions within a newer edition of the I.P.C., whether the provisions are contained in Appendix  
12 C or elsewhere.  
13

14 Section 12. [*Appropriation.*]  
15 No appropriation. The General Assembly has determined that this act can be implemented within  
16 existing appropriations, and therefore no separate appropriation of state moneys is necessary to  
17 carry out the purposes of this act.  
18

19 Section 13. [*Safety clause.*]  
20 The general assembly hereby finds, determines, and declares that this act is necessary for the  
21 immediate preservation of the public peace, health, and safety.  
22

23 Section 14. [*Severability.*] Insert severability clause.  
24

25 Section 15. [*Repealer.*] Insert repealer clause.  
26

27 Section 16. [*Effective Date.*] Insert effective date.

## Distributed Electricity

This act allows retail electric suppliers to create a new class of retail customer for those who install distributed power generation, on-site electricity generation that is connected to the grid. The act allows electric utilities to apply to the Oklahoma Corporation Commission to establish a higher base customer charge for users of rooftop solar or small wind turbines. The higher fixed charge would be used to recover infrastructure costs to send excess electricity back to the grid.

Submitted as:

Oklahoma

SB 1456

Status: Signed into law on April 21, 2014.

### Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title*] Electrical power distribution requirements.  
2
- 3 Section 2. [*Electrical power distribution requirements.*]  
4 (A)
- 5 (1) Distributed generation" means:  
6 (a) a device that provides electric energy that is owned, operated, leased or otherwise  
7 utilized by the customer,  
8 (b) is interconnected to and operates in parallel with the retail electric supplier's grid  
9 and is in compliance with the standards established by the retail electric supplier,  
10 (c) is intended to offset only the energy that would have otherwise been provided by  
11 the retail electric supplier to the customer during the monthly billing period,  
12 (d) does not include generators used exclusively for emergency purposes,  
13 (e) does not include generators operated and controlled by a retail electric supplier,  
14 and  
15 (f) does not include customers who receive electric service which includes a demand-  
16 based charge.
- 17 (2) Fixed charge" means any fixed monthly charge, basic service, or other charge not  
18 based on the volume of energy consumed by the customer, which reflects the actual  
19 fixed costs of the retail electric supplier.
- 20 (3) Retail electric supplier" means an entity engaged in the furnishing of retail electric  
21 service within the State of Oklahoma and is rate regulated by the Oklahoma  
22 Corporation Commission.
- 23 (B) No retail electric supplier shall increase rates charged or enforce a surcharge above that  
24 required to recover the full costs necessary to serve customers who install distributed  
25 generation on the customer side of the meter after the effective date of this act.
- 26 (C) No retail electric supplier shall allow customers with distributed generation installed after the  
27 effective date of this act to be subsidized by customers in the same class of service who do  
28 not have distributed generation.

1 (D) A higher fixed charge for customers within the same class of service that have distributed  
2 generation installed after the effective date of this act, as compared to the fixed charges of  
3 those customers who do not have distributed generation, is a means to avoid subsidization  
4 between customers within that class of service and shall be deemed in the public interest.

5  
6 Section 3. [*Severability.*] Insert severability clause.

7  
8 Section 4. [*Repealer.*] Insert repealer clause.

9  
10 Section 5. [*Effective Date.*] Insert effective date.

## Oil and Gas Production Flaring

This act creates tax incentives to encourage the collection and use of natural gas that would otherwise be flared. The act:

- Expands a sales tax exemption to include tangible personal property used to construct or expand gas collection systems.
- Creates a gross production tax exemption for certain gas collected and used at the well site.
- Creates an oil extraction tax exemption for the liquids produced in association with a collection system.

North Dakota Industrial Commission Department of Mineral Resources, Oil and Gas Division (NDIC) rules allow for the flaring of natural gas for a period of one year from the date of first production. After the one-year period, the NDIC requires flaring to cease and the producer must begin to pay royalties to royalty owners for the value of any flared gas. Producers are also required to pay gross production tax on the flared gas.

When the one-year period for flaring expires, the producer must cap the well or connect it to a gas gathering line, unless the NDIC approves an exemption. A temporary exemption from the gross production tax is available for a period of two years and 30 days from the time of first production. This applies to oil and gas wells employing a collection system to avoid flaring if the well is:

- Equipped with an electrical generator that consumes at least 75% of the gas from the well; or
- Equipped with a system that intakes at least 75% of the gas and gas liquids from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, or separating and collecting in excess of 50% of the propane and heavier hydrocarbons; or
- Equipped with other value-added processes as approved by the NDIC, which reduce the volume or intensity of the flare by more than 60%.

Liquids produced from a qualifying collection system utilizing absorption, adsorption, or refrigeration are exempt from oil extraction tax for a period of two years and thirty days from the time of first production. Upon application to, and approval by, the NDIC for qualification of a collection system, the Tax Commissioner's Office will issue a notice informing the producer that a well has qualified for the applicable exemption and provide the required reporting procedures. Sales and use tax exemptions are available for material used in the construction or expansion of a facility to compress, process, gather, collect, or refine gas.

Submitted as:

North Dakota

HB 1134

Status: Signed into law on June 18, 2013.

## Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title*] An Act relating to changes to gross production tax and oil extraction tax.  
2
- 3 Section 2. [*Flaring of gas restricted - Imposition of tax - Payment of royalties – Industrial*  
4 *commission authority.*]
- 5 (1) As permitted under rules of the industrial commission, gas produced with crude oil from an  
6 oil well may be flared during a one-year period from the date of first production from the  
7 well.
- 8 (2) After the time period in subsection 1, flaring of gas from the well must cease and the well  
9 must:
- 10 (a) Capped;  
11 (b) Connected to a gas gathering line;  
12 (c) Equipped with an electrical generator that consumes at least seventy - five percent of the  
13 gas from the well;  
14 (d) Equipped with a system that intakes at least seventy-five percent of the gas and natural  
15 gas liquids volume from the well for beneficial consumption by means of compression to  
16 liquid for use as fuel, transport to a processing facility, production of petrochemicals or  
17 fertilizer, conversion to liquid fuels, separating and collecting over fifty percent of the  
18 propane and heavier hydrocarbons; or  
19 (e) Equipped with other value-added processes as approved by the industrial commission  
20 which reduce the volume or intensity of the flare by more than sixty percent.
- 21 (3) An electrical generator and its attachment units to produce electricity from gas and a  
22 collection system described in subdivision (d) of subsection 2 must be considered to be  
23 personal property for all purposes.
- 24 (4) For a well operated in violation of this section, the producer shall pay royalties to royalty  
25 owners upon the value of the flared gas and shall also pay gross production tax on the flared  
26 gas at the rate imposed under [insert citation].
- 27 (5) The industrial commission may enforce this section and, for each well operator found to be in  
28 violation of this section, may determine the value of flared gas for purposes of payment of  
29 royalties under this section and its determination is final.
- 30 (6) A producer may obtain an exemption from this section from the industrial commission upon  
31 application that shows to the satisfaction of the industrial commission that connection of the  
32 well to a natural gas gathering line is economically infeasible at the time of the application or  
33 in the foreseeable future or that a market for the gas is not available and that equipping the  
34 well with an electrical generator to produce electricity from gas or employing a collection  
35 system described in subdivision (d) of subsection 2 is economically infeasible.
- 36 Section 3. [*Sales and use tax exemption for materials used in compressing, processing,*  
37 *gathering, collecting, or refining of gas.*]
- 38 (1) Gross receipts from sales of tangible personal property used to construct or expand a system  
39 used to compress, process, gather, collect, or refine gas recovered from an oil or gas well in  
40 this state or used to expand or build a gas processing facility in this state are exempt from  
41 taxes under this chapter. To be exempt, the tangible personal property must be incorporated

1 into a system used to compress, process, gather, collect, or refine gas. Tangible personal  
2 property used to replace an existing system to compress, process, gather, collect, or refine gas  
3 does not qualify for exemption under this section unless the replacement creates an  
4 expansion of the system.

5 (2) To receive the exemption under this section at the time of purchase, the owner of the gas  
6 compressing, processing, gathering, collecting, or refining system must receive from the tax  
7 commissioner a certificate that the tangible personal property used to construct or expand a  
8 system used to compress, process, gather, collect, or refine gas recovered from an oil or gas  
9 well in this state or used to expand or build a gas processing facility in this state which the  
10 owner intends to purchase qualifies for exemption. If a certificate is not received before the  
11 purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the tax  
12 commissioner for a refund.

13 (3) If the tangible personal property is purchased or installed by a contractor subject to the tax  
14 imposed by this chapter, the owner of the gas compressing, processing, gathering, collecting,  
15 or refining system may apply to the tax commissioner for a refund of the difference between  
16 the amount remitted by the contractor and the exemption imposed or allowed by this section.  
17 Application for a refund must be made at the times and in the manner directed by the tax  
18 commissioner and must include sufficient information to permit the tax commissioner to  
19 verify the sales and use taxes paid and the exempt status of the sale or use.

20 (4) For purposes of this section, a gas collecting system means a collection system described in  
21 subdivision (d) of subsection 2 of [Section 2].  
22

23 Section 4. [*Temporary exemption for oil and gas wells employing a system to avoid flaring.*]  
24 Gas is exempt from the tax under [insert citation] for a period of two years and thirty days from  
25 the time of first production if the gas is:

26 (1) Collected and used at the well site to power an electrical generator that consumes at least  
27 seventy - five percent of the gas from the well; or

28 (2) Collected at the well site by a system that intakes at least seventy - five percent of the gas and  
29 natural gas liquids volume from the well for beneficial consumption by means of  
30 compression to liquid for use as fuel, transport to a processing facility, production of  
31 petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting over fifty  
32 percent of the propane and heavier hydrocarbons, or other value-added processes as approved  
33 by the industrial commission.  
34

35 Section 5. [*Temporary exemption for oil and gas wells employing a system to avoid flaring.*]  
36 Liquids produced from a collection system described in subdivision (d) of subsection 2 of  
37 [Section 2] utilizing absorption, adsorption, or refrigeration are exempt from the tax under [insert  
38 citation] for a period of two years and thirty days from the time of first production.  
39

40 Section 6. [*Severability.*] Insert severability clause.  
41

42 Section 7. [*Repealer.*] Insert repealer clause.  
43

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

## Shared Renewables

This act enacts the Green Tariff Shared Renewables program. It requires a participating utility, defined as an electrical corporation with 100,000 or more customers in California, to file with the commission an application requesting approval of a green tariff shared renewables program to implement a program enabling ratepayers to participate directly in offsite electrical generation facilities that use eligible renewable energy resources, consistent with certain legislative findings and statements of intent. The act requires the commission to issue a decision concerning the participating utility's application, determining whether to approve or disapprove the application, with or without modifications. It also requires the commission, after notice and opportunity for public comment, to approve the application if the commission determines that the proposed program is reasonable and consistent with the legislative findings and statements of intent.

Submitted as:

California

SB 43

Status: Signed into law on September 23, 2013.

### Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title*] Green Tariff Shared Renewables Program.  
2
- 3 Section 2. [*Findings*.]  
4
- 5 Section 3. [*Definitions*.]  
6 (1) "Eligible renewable energy resource," "renewable energy credit," and "renewables portfolio  
7 standard" have the same meaning as those terms have for [insert citation].  
8 (2) "Participating utility" means an electrical corporation with 100,000 or more customer  
9 accounts in [state].  
10
- 11 Section 4. [*Green tariff shared renewables program*.]  
12 (a) On or before [insert date], a participating utility shall file with the commission an application  
13 requesting approval of a green tariff shared renewables program to implement a program that  
14 the utility determines is consistent with the legislative findings and statements of intent of  
15 [insert findings]. Nothing in this chapter limits an electrical corporation with less than  
16 100,000 customer accounts in California from filing an application with the commission to  
17 administer a green tariff shared renewables program that is consistent with the legislative  
18 findings and statements of intent of [insert findings].  
19 (b) On or before [Insert date], the commission shall issue a decision on the participating utility's  
20 application for a green tariff shared renewables program, determining whether to approve or  
21 disapprove it, with or without modifications.  
22 (c) After notice and an opportunity for public comment, the commission shall approve an  
23 application by a participating utility for a green tariff shared renewables program if the

1 commission determines that the program is reasonable and consistent with the legislative  
2 findings and statements of intent of [insert findings].

- 3 (d) The requirements of this chapter shall not apply to an electrical corporation that, prior to  
4 [insert date], filed an application with the commission to have a green tariff shared  
5 renewables program, or an equivalent program of whatever name, provided the commission  
6 approves the application with a determination that the program does not shift costs to  
7 nonparticipating customers and the application is consistent with this chapter. If the  
8 commission has approved a settlement agreement relative to parties contesting an application  
9 filed prior to [insert date], the requirements of this section shall not apply if the commission,  
10 within a reasonable period of time, requires revisions to the previously approved settlement  
11 agreement that requires the program to be consistent with this chapter.

12  
13 Section 5. [*Participating utilities.*]

- 14 (a) The commission shall require a green tariff shared renewables program to be administered by  
15 a participating utility in accordance with this section.
- 16 (b) Generating facilities participating in a participating utility's green tariff shared renewables  
17 program shall be eligible renewable energy resources with a nameplate rated generating  
18 capacity not exceeding 20 megawatts, except for those generating facilities reserved for  
19 location in areas identified by the [California Environmental Protection Agency] as the most  
20 impacted and disadvantaged communities pursuant to paragraph (1) of subdivision (d), which  
21 shall not exceed one megawatt nameplate rated generating capacity.
- 22 (c) A participating utility shall use commission-approved tools and mechanisms to procure  
23 additional eligible renewable energy resources for the green tariff shared renewables program  
24 from electrical generation facilities that are in addition to those required by the [California  
25 Renewables Portfolio Standard Program]. For purposes of this subdivision, "commission-  
26 approved tools and mechanisms" means those procurement methods approved by the  
27 commission for an electrical corporation to procure eligible renewable energy resources for  
28 purposes of meeting the procurement requirements of the [California Renewables Portfolio  
29 Standard Program].
- 30 (d) A participating utility shall permit customers within the service territory of the utility to  
31 purchase electricity pursuant to the tariff approved by the commission to implement the  
32 utility's green tariff shared renewables program, until the utility meets its proportionate share  
33 of a statewide limitation of 600 megawatts of customer participation, measured by nameplate  
34 rated generating capacity. The proportionate share shall be calculated based on the ratio of  
35 each participating utility's retail sales to total retail sales of electricity by all participating  
36 utilities. The commission may place other restrictions on purchases under a green tariff  
37 shared renewables program, including restricting participation to a certain level of capacity  
38 each year. The following restrictions shall apply to the statewide 600 megawatt limitation:
- 39 (1) (A) One hundred megawatts shall be reserved for facilities that are no larger than  
40 one megawatt nameplate rated generating capacity and that are located in areas  
41 previously identified by the [California Environmental Protection Agency] as the  
42 most impacted and disadvantaged communities. These communities shall be  
43 identified by census tract, and shall be determined to be the most impacted 20  
44 percent based on results from the best available cumulative impact screening  
45 methodology designed to identify each of the following:



- 1 (i) Areas disproportionately affected by environmental pollution and other  
2 hazards that can lead to negative public health effects, exposure, or  
3 environmental degradation.
- 4 (ii) Areas with socioeconomic vulnerability.
- 5 (B) (1) For purposes of this paragraph, “previously identified” means  
6 identified prior to commencing construction of the facility.  
7 (2) Not less than 100 megawatts shall be reserved for participation by  
8 residential class customers.
- 9 (e) To the extent possible, a participating utility shall seek to procure eligible renewable energy  
10 resources that are located in reasonable proximity to enrolled participants.
- 11 (f) A participating utility’s green tariff shared renewables program shall support diverse  
12 procurement and the goals of [insert citation].
- 13 (g) A participating utility’s green tariff shared renewables program shall not allow a customer to  
14 subscribe to more than 100 percent of the customer’s electricity demand.
- 15 (h) Except as authorized by this subdivision, a participating utility’s green tariff shared  
16 renewables program shall not allow a customer to subscribe to more than two megawatts of  
17 nameplate generating capacity. This limitation does not apply to a federal, state, or local  
18 government, school or school district, county office of education, community colleges, or  
19 state universities.
- 20 (i) A participating utility’s green tariff shared renewables program shall not allow any single  
21 entity or its affiliates or subsidiaries to subscribe to more than 20 percent of any single  
22 calendar year’s total cumulative rated generating capacity.
- 23 (j) To the extent possible, a participating utility shall actively market the utility’s green tariff  
24 shared renewables program to low-income and minority communities and customers.
- 25 (k) Participating customers shall receive bill credits for the generation of a participating eligible  
26 renewable energy resource using the class average retail generation cost as established in the  
27 participating utility’s approved tariff for the class to which the participating customer  
28 belongs, plus a renewables adjustment value representing the difference between the time-of-  
29 delivery profile of the eligible renewable energy resource used to serve the participating  
30 customer and the class average time-of-delivery profile and the resource adequacy value, if  
31 any, of the resource contained in the utility’s green tariff shared renewables program. The  
32 renewables adjustment value applicable to a time-of-delivery profile of an eligible renewable  
33 energy resource shall be determined according to rules adopted by the commission. For these  
34 purposes, “time-of-delivery profile” refers to the daily generating pattern of a participating  
35 eligible renewable energy resource over time, the value of which is determined by comparing  
36 the generating pattern of that participating eligible renewable energy resource to the demand  
37 for electricity over time and other generating resources available to serve that demand.
- 38 (l) Participating customers shall pay a renewable generation rate established by the commission,  
39 the administrative costs of the participating utility, and any other charges the commission  
40 determines are just and reasonable to fully cover the cost of procuring a green tariff shared  
41 renewables program’s resources to serve a participating customer’s needs.
- 42 (m) A participating customer’s rates shall be debited or credited with any other commission-  
43 approved costs or values applicable to the eligible renewable energy resources contained in a  
44 participating utility’s green tariff shared renewables program’s portfolio. These additional  
45 costs or values shall be applied to new customers when they initially subscribe after the cost  
46 or value has been approved by the commission.

- 1 (n) Participating customers shall pay all otherwise applicable charges without modification.
- 2 (o) A participating utility shall provide support for enhanced community renewables programs to  
3 facilitate development of eligible renewable energy resource projects located close to the  
4 source of demand.
- 5 (p) The commission shall ensure that charges and credits associated with a participating utility's  
6 green tariff shared renewables program are set in a manner that ensures nonparticipant  
7 ratepayer indifference for the remaining bundled service, direct access, and community  
8 choice aggregation customers and ensures that no costs are shifted from participating  
9 customers to nonparticipating ratepayers.
- 10 (q) A participating utility shall track and account for all revenues and costs to ensure that the  
11 utility recovers the actual costs of the utility's green tariff shared renewables program and  
12 that all costs and revenues are fully transparent and auditable.
- 13 (r) Any renewable energy credits associated with electricity procured by a participating utility  
14 for the utility's green tariff shared renewables program and utilized by a participating  
15 customer shall be retired by the participating utility on behalf of the participating customer.  
16 Those renewable energy credits shall not be further sold, transferred, or otherwise monetized  
17 for any purpose. Any renewable energy credits associated with electricity procured by a  
18 participating utility for the shared renewable energy self-generation program, but not utilized  
19 by a participating customer, shall be counted toward meeting that participating utility's  
20 renewables portfolio standard.
- 21 (s) A participating utility shall, in the event of participant customer attrition or other causes that  
22 reduce customer participation or electrical demand below generation levels, apply the excess  
23 generation from the eligible renewable energy resources procured through the utility's green  
24 tariff shared renewables program to the utility's renewable portfolio standard procurement  
25 obligations or bank the excess generation for future use to benefit all customers in  
26 accordance with the renewables portfolio standard banking and procurement rules approved  
27 by the commission.
- 28 (t) In calculating its procurement requirements to meet the requirements of the [California  
29 Renewables Portfolio Standard Program], a participating utility may exclude from total retail  
30 sales the kilowatt hours generated by an eligible renewable energy resource that is credited to  
31 a participating customer pursuant to the utility's green tariff shared renewables program,  
32 commencing with the point in time at which the generating facility achieves commercial  
33 operation.
- 34 (u) All renewable energy resources procured on behalf of participating customers in the  
35 participating utility's green tariff shared renewables program shall comply with the [State Air  
36 Resources Board's Voluntary Renewable Electricity Program]. [California-eligible]  
37 greenhouse gas allowances associated with these purchases shall be retired on behalf of  
38 participating customers as part of the board's [Voluntary Renewable Electricity Program].
- 39 (v) A participating utility shall provide a municipality with aggregated consumption data for  
40 participating customers within the municipality's jurisdiction to allow for reporting on  
41 progress toward climate action goals by the municipality. A participating utility shall also  
42 publicly disclose, on a geographic basis, consumption data and reductions in emissions of  
43 greenhouse gases achieved by participating customers in the utility's green tariff shared  
44 renewables program, on an aggregated basis consistent with privacy protections as specified  
45 in [insert citation.]

1 (w) Nothing in this section prohibits or restricts a community choice aggregator from offering its  
2 own voluntary renewable energy programs to participating customers of the community  
3 choice aggregation.

4  
5 Section 6. [*Severability.*] Insert severability clause.

6  
7 Section 7. [*Repealer.*] Insert repealer clause.

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

## Corrugated Stainless Steel Tubing (CSST) Flexible Gas Pipe

This joint resolution makes permanent the Oklahoma Construction Industries Board's rule that all home inspectors must make a written notation if they see yellow corrugated stainless steel tubing (CSST) during the course of their inspection. The home inspector is required to notify the homeowner in writing that only a licensed electrical contractor can determine if the yellow CSST is properly bonded and grounded per the current National Fuel Gas Code and as required by the manufacturer's installation instructions. Bonding is provided primarily to prevent a possible electric shock to people who come in contact with the gas piping and other metal objects connected to the grounding system.

Submitted as:

Oklahoma

House Joint Resolution 1051

Status: Signed into law on May 29, 2013.

### Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] Home Inspectors Act.
- 2
- 3 Section 2. [*Standards of workmanship and practice.*]
- 4 (a) General requirements.
- 5 (1) These standards of practice are the minimum levels of inspection practice required of
- 6 inspectors for the components and systems identified in these rules. Home inspections
- 7 performed in accordance with these standards of practice are intended to provide the
- 8 client with information regarding the condition of the systems and components at the
- 9 time of the inspection.
- 10 (2) The inspector shall be governed by the following general requirements:
- 11 (A) The inspector shall inspect all readily accessible installed systems and components
- 12 listed in these standards of practice.
- 13 (B) The inspector shall complete a written inspection report in accordance with these
- 14 standards and submit the report to the client within an agreed upon time frame.
- (C) The inspector shall identify in any written report the client, the inspector who performed the inspection by name and license number and the address of the inspected property.

- 1 (D) The inspector shall report:
- 2 (i) those systems and components inspected, which in the professional opinion of
- 3 the inspector, are in normal working order;
- 4 (ii) those systems and components inspected which, in the professional opinion of
- 5 the inspector, are not in normal working order and the reason, if not self-
- 6 evident;
- 7 (iii) those systems and components inspected which, in the professional opinion of
- 8 the inspector, could impair the safety of the occupants or client and the
- 9 reason, if not self-evident;
- 10 (iv) the inspector's recommendations to have corrected, further evaluated or
- 11 monitored any reported condition or defect; and,
- 12 (v) any systems and components designated for inspection in these standards,
- 13 which were present at the time of the Home Inspection but were not inspected
- 14 and the reason they were not inspected.
- 15 (3) These standards of practice are not intended to limit inspectors from:
- 16 (A) including other inspection services or inspecting other systems or components in
- 17 addition to those required by these Standards;
- 18 (B) providing a higher level of inspection performance than required by these Standards;
- 19 (C) reporting other observations or conditions in addition to those required by these
- 20 Standards; or,
- 21 (D) excluding systems and components from the inspection, if requested by the client in
- 22 writing.
- 23 (4) Beginning [Insert effective date] all home inspectors shall maintain a log or record of all
- 24 home inspections performed, for a minimum period of five years from the date of
- 25 inspection. The log or record shall include the name of the client, the address of the
- 26 property, and the date of the inspection. The home inspector shall maintain a copy of all
- 27 home inspections completed within the past 36 months. The log or record and inspection
- 28 reports may be a hard file or an electronic file and shall be maintained at the home
- 29 inspector's principal business address. The files shall be available for review upon request
- 30 of an authorized representative of the Construction Industries Board.
- 31 (5) A home inspector who visually examines any portion of a residential unit that is part of a
- 32 real property consisting of more than four (4) dwelling units, shall advise, in writing, the
- 33 person requesting the visual examination that the visual examination being conducted by
- 34 the home inspector is not governed by the Act and these rules.
- 35
- 36 (b) General limitations and exclusions.
- 37 (1) The inspector is not required to perform any action or make any determination not
- 38 specifically stated in these Standards of Practice.
- 39 (2) Inspections performed in accordance with these standards are not required to be
- 40 technically exhaustive, will not identify concealed conditions or latent defects and are
- 41 only applicable to buildings with four or fewer dwelling units and their garages, both
- 42 attached and detached, or carports.
- 43 (3) The inspector is not required to:
- 44 (A) perform any action or make any determination unless specifically stated in these
- 45 Standards, except as may be required by lawful authority;

- 1 (B) determine the condition of systems or components which are not readily
- 2 accessible;
- 3 (C) determine the remaining life of any system or component;
- 4 (D) determine the strength, adequacy, effectiveness, efficiency or insurability of any
- 5 system or component;
- 6 (E) determine the causes of any condition or defect;
- 7 (F) determine the methods or materials for repair or correction of any defect;
- 8 (G) determine future conditions including, but not limited to, failure of systems and
- 9 components;
- 10 (H) determine the suitability of the property for any specialized use or compliance
- 11 with any regulatory requirements other than this Chapter;
- 12 (I) determine the presence of potentially hazardous plants or animals including, but
- 13 not limited to, wood destroying organisms, mold, mildew, fungi, or diseases
- 14 harmful to humans;
- 15 (J) determine the presence of any environmental hazards including, but not limited
- 16 to, toxins, carcinogens, noise, and contaminants in soil, water, or air;
- 17 (K) determine the effectiveness of any system installed or methods utilized to control
- 18 or remove suspected hazardous substances;
- 19 (L) determine the operating costs of any system or component;
- 20 (M) determine the acoustical properties of any system or component;
- 21 (N) perform engineering or architectural services or perform work in any trade or
- 22 professional service other than home inspections;
- 23 (O) provide warranties or guarantees of any kind;
- 24 (P) operate any system or component which is shut down or otherwise inoperable or
- 25 turn on any utility services;
- 26 (Q) operate any system or component which does not respond to normal operating
- 27 controls, or shut-off valves;
- 28 (R) enter any area which will, in the opinion of the inspector, likely be dangerous to
- 29 the inspector or other persons or may damage the property or its systems or
- 30 components;
- 31 (S) enter the under-floor crawl spaces, attics or any area which, in the opinion of the
- 32 inspector, is not readily accessible;
- 33 (T) inspect or determine the integrity of underground systems or components,
- 34 including, but not limited to, main drain lines connecting to sewers, water lines,
- 35 gas lines, electrical lines and underground storage tanks or other underground
- 36 indications of their presence whether abandoned or active;
- 37 (U) inspect systems or components which are not installed, decorative items, systems
- 38 or components located in areas that are not entered in accordance with these
- 39 Standards, detached structures other than garages and carports, or common
- 40 elements and areas in multi-unit housing, such as condominium properties or
- 41 cooperative housing;
- 42 (V) move suspended ceiling tiles, personal property, furniture, equipment, plants, soil,
- 43 snow, ice, or debris;
- 44 (W) dismantle any system or component, except as explicitly required by these rules;
- 45 or,

- 1 (X) light any standing gas pilot light that does not have a spark-ignitor, including but
- 2 not limited to heating systems, water heaters and fireplaces; or,
- 3 (Y) determine the cost to correct any defect or provide cost estimates.

4  
5 (4) The inspector shall not:

- 6 (A) offer or perform any act or service contrary to law;
- 7 (B) determine or report on the market value of the property or its marketability;
- 8 (C) report on the advisability of the purchase of the property; or,
- 9 (D) advertise or solicit to perform repair services on the inspected home for a period of
- 10 one (1) year from the date of the inspection.

11  
12 (c) Structural system inspection requirements.

13 (1) The inspector shall inspect:

- 14 (A) the foundation structure including slabs, piers, columns, posts, stem walls;
- 15 (B) the floor structure including beams, girders, joists, trusses, sill plates, blocking,
- 16 bracing, drilling, notching and sub floors;
- 17 (C) the wall structure;
- 18 (D) the roof structure including rafters, trusses, sheathing, blocking, bracing, drilling,
- 19 notching and fire stops;
- 20 (E) the ceiling structure including joists, trusses, blocking, bracing, drilling, notching and
- 21 fire stops at ceiling penetrations; and,
- 22 (F) the crawlspace, basement and attic moisture conditions and indicators of harmful
- 23 water penetration or condensation on structural components.

24 (2) The inspector is required to:

- 25 (A) describe the foundation, floor structure, roof structure, ceiling structure and wall
- 26 structure;
- 27 (B) describe indicators of foundation or structural movement;
- 28 (C) enter the crawlspace and attic to determine the general condition of the components;
- 29 (D) report the method used to observe the crawlspace and attic if the inspector did not
- 30 enter; and,
- 31 (E) probe structural components where deterioration is suspected or where clear
- 32 indications of possible deterioration exist. Probing is not required where no
- 33 deterioration is visible.

34 (3) The inspector is not required to:

- 35 (A) enter a crawlspace or any foundation area where the headroom is less than 18 inches,
- 36 the access opening is less than 18 inches by 24 inches, where the area is excessively
- 37 wet, or where the inspector reasonably determines the conditions or materials are
- 38 hazardous to the safety of the inspector;
- 39 (B) enter an attic space where head room is less than 30 inches, the access opening is less
- 40 than 18 inches wide by 24 inches long, or where the inspector reasonably determines
- 41 conditions or materials are hazardous to the safety of the inspector; or
- 42 (C) perform any invasive or destructive inspection.

43  
44 (d) Exterior inspection requirements.

45 (1) The inspector shall inspect:

- 46 (A) the exterior wall covering, trim, flashings, caulking and protective coatings;

- 1 (B) all exterior doors and locking devices;  
2 (C) overhead garage doors and garage door openers including safety mechanisms;  
3 (D) storm windows and doors;  
4 (E) attached decks/patios, balconies, stoops, steps, porches, and their associated railings;  
5 (F) eaves, soffits and fascias;  
6 (G) driveways and walkways leading to dwelling entrances;  
7 (H) vegetation, grading, surface drainage, and retaining walls on the property when any of  
8 these are likely to have an adverse effect on the structure; and,  
9 (I) the primary garage or carport.
- 10 (2) The inspector shall describe:  
11 (A) the exterior wall covering;  
12 (B) attached decks/patios and balconies; driveways; and,  
13 (C) walkways.
- 14 (3) The inspector is not required to inspect:  
15 (A) screening, shutters, awnings, and similar seasonal accessories;  
16 (B) fences;  
17 (C) geotechnical or hydrological conditions;  
18 (D) recreational facilities;  
19 (E) detached structures except the primary garage or carport;  
20 (F) seawalls, break-walls, and docks; or,  
21 (G) erosion control and earth stabilization measures.
- 22
- 23 (e) Roof system inspection requirements.  
24 (1) The inspector shall inspect the:  
25 (A) roof covering;  
26 (B) roof drainage systems;  
27 (C) flashings;  
28 (D) skylights;  
29 (E) chimneys;  
30 (F) attic ventilation covers; and,  
31 (G) other roof penetrations.
- 32 (2) The inspector shall describe:  
33 (A) the roof covering;  
34 (B) The inspector shall report;  
35 (C) the number of layers of roof covering;  
36 (D) asphalt/composition shingles over wood shingles; and,  
37 (E) the methods used to inspect the roof.
- 38 (3) The inspector is not required to inspect:  
39 (A) the interiors of flues or chimneys;  
40 (B) antennae; or,  
41 (C) other installed accessories.
- 42
- 43 (f) Plumbing system inspection requirements.  
44 (1) The inspector shall inspect:  
45 (A) the interior water supply and distribution systems and components;



- 1 (B) the connections, flow and drainage of fixtures, and fittings at bathtubs, showers,
- 2 sinks, toilets and the exterior hose bibs immediately adjacent to the structure;
- 3 (C) the clothes washing machine faucets and drains, unless a washing machine is in
- 4 place;
- 5 (D) drain, waste and vent systems and components;
- 6 (E) the shower and bathtub enclosure surfaces;
- 7 (F) the water heating equipment, safety devices/valves, clearances, vent systems, flues
- 8 and chimneys, gas supply piping and gas shut off valves;
- 9 (G) the fuel storage and/or fuel distribution systems; and,
- 10 (H) the drainage sumps, sump pumps and related piping.

11 (2) The Inspector shall describe:

- 12 (A) water supply piping materials;
- 13 (B) drain, waste, and vent piping materials;
- 14 (C) the water heating equipment and the energy sources; and,
- 15 (D) the location of the main water shut-off, main fuel shut-off and the house sewer
- 16 cleanout.
- 17 (E) the presence of any shade of yellow corrugated stainless steel tubing (“CSST”)
- 18 flexible gas piping observed during the inspection in which the inspector is not
- 19 required to identify concealed conditions, components not readily accessible, or any
- 20 other item excepted from inspection pursuant to [this rule]. If any shade of yellow
- 21 CSST flexible gas piping is observed, the home inspector shall notify the client, in
- 22 writing, as follows: “Manufacturers believe the product is safer if properly bonded
- 23 and grounded as required by the manufacturer’s installation instructions. Proper
- 24 bonding and grounding of the product can only be determined by a licensed electrical
- 25 contractor.”

26 (3) The inspector is not required to:

- 27 (A) inspect the interiors of flues or chimneys, wells, well pumps, or water storage related
- 28 equipment, water conditioning systems, solar water heating systems, fire and lawn
- 29 sprinkler systems, or private waste disposal systems,
- 30 (B) determine the quantity or quality of the water supply;
- 31 (C) determine whether water supply and waste disposal are public or private;
- 32 (D) operate safety valves, shut-off valves or washing machine hose connections, if
- 33 installed appliances are present; or,
- 34 (E) use technically exhaustive techniques to determine the water tightness or integrity of
- 35 shower pans or enclosures.

36  
37 (g) Electrical system inspection requirements.

38 (1) Except as provided in subsection (b), the Inspector shall inspect:

- 39 (A) The service drop;
- 40 (B) the service entrance conductors, cables, and raceways;
- 41 (C) the service equipment and main disconnects;
- 42 (D) the service grounding;
- 43 (E) the interior components of service panels and sub panels by removing the panel dead
- 44 front covers;
- 45 (F) the branch circuit conductors, over current protection devices and the compatibility
- 46 of the conductors with the device;

- 1 (G) conduit, wiring and splicing including the basement, crawl space and attic;  
2 (H) interior and exterior installed lighting fixtures, switches and ceiling fans;  
3 (I) receptacles including polarity and grounding, ground fault circuit interrupters and arc  
4 fault circuit interrupters; and,  
5 (J) exterior electrical components that provide service to a qualifying garage or carport.
- 6 (2) The Inspector shall describe:  
7 (A) the amperage and voltage rating of the service;  
8 (B) the wiring methods;  
9 (C) the location of main disconnect(s), distribution panels and sub panels;  
10 (D) the presence of solid conductor aluminum branch circuit wiring; and,  
11 (E) the absence of smoke detectors.
- 12 (3) The inspector is not required to:  
13 (A) inspect remote control devices unless the device is the only control device, alarm  
14 systems and components, low voltage wiring systems and components or ancillary  
15 wiring systems and components not a part of the primary electrical power distribution  
16 system;  
17 (B) measure amperage, voltage/voltage drop, or impedance;  
18 (C) insert any tool, probe or testing device inside panels or dismantle any electrical device  
19 or control other than to remove the dead front covers of the main and sub panels; or,  
20 (D) test or operate any over current protection device except ground fault and arc fault  
21 circuit interrupters.
- 22
- 23 (h) Heating, Air conditioning and distribution system inspection requirements.
- 24 (1) Heating systems.  
25 (A) The inspector shall open readily openable access panels  
26 (B) The inspector shall inspect:  
27 (i) the installed heating equipment including backup heating devices;  
28 (ii) controls;  
29 (iii) heating operation;  
30 (iv) burners and burner chambers in fuel fired heating systems;  
31 (v) combustion air provisions;  
32 (vi) gas supply piping and shut off valve;  
33 (vii) electrical supply provisions and disconnects;  
34 (viii) clearances;  
35 (ix) vent systems, flues, and chimneys; and,  
36 (x) bathroom supplemental heating appliances.  
37 (C) The inspector shall describe the heating methods by their distinguishing  
38 characteristics and the energy sources.  
39 (D) The inspector is not required to:  
40 (i) inspect the interiors of flues or chimneys, humidifiers or dehumidifiers, solar  
41 space heating systems, and heat exchangers;  
42 (ii) measure amperage of electric heating elements.
- 43 (2) Air conditioning systems.  
44 (A) The inspector shall open readily openable access panels.  
45 (B) The inspector shall inspect:  
46 (i) installed cooling equipment;

- 1 (ii) cooling operation;  
2 (iii) condensate disposal provisions;  
3 (iv) the electrical supply provisions and disconnect; and,  
4 (v) the refrigerant lines.  
5 (C) The inspector shall describe the cooling methods by their distinguishing  
6 characteristics and the energy sources.  
7 (D) The inspector is not required to:  
8 (i) verify sizing or component matching  
9 (ii) operate equipment when outdoor temperatures may cause damage to the  
10 equipment.  
11 (3) Heat and air conditioning distribution systems.  
12 (A) The inspector shall inspect:  
13 (i) Plenums and ducts and ducts with associated supports, insulation, supply  
14 registers and return grills;  
15 (ii) radiators and piping;  
16 (iii) filters; and,  
17 (iv) main air handlers fans and blowers.  
18 (B) The inspector shall describe the type of conditioned air distribution system.  
19 (C) The inspector is not required to:  
20 (i) inspect electronic air filters, heat reclamation equipment or dampers;  
21 (ii) determine duct leakage or calculate duct sizing; or,  
22 (iii) determine the uniformity, adequacy, or distribution balance of the heat or  
23 cooling supply to habitable rooms.  
24  
25 (i) Interior inspection requirements.  
26 (1) The inspector shall inspect:  
27 (A) walls, ceilings and floors of the dwelling and garage;  
28 (B) steps, stairways, balconies and railings;  
29 (C) doors and windows including operation, glazing and thermal pane seals;  
30 (D) installed cabinets and countertops; and,  
31 (E) indicators of harmful water penetration or condensation on interior and structural  
32 components.  
33 (2) The inspector shall describe the walls, ceilings and floors.  
34 (3) The inspector is not required to inspect:  
35 (A) paint, wallpaper, and other finish treatments;  
36 (B) carpeting and other floor coverings;  
37 (C) window treatments;  
38 (D) the operation of interior door locks, latches and devices; or,  
39 (E) recreational facilities.  
40  
41 (j) Insulation and ventilation inspection requirements.  
42 (1) The inspector shall inspect:  
43 (A) insulation and vapor retarders/barriers in unfinished spaces,  
44 (B) ventilation of attics and foundation areas,  
45 (C) mechanical ventilation systems  
46 (D) the clothes dryer exhaust system.

- 1 (2) The inspector shall describe:  
2 (A) the insulation and vapor retarders or barriers in unfinished spaces; and,  
3 (B) the absence of insulation in unfinished spaces at conditioned surfaces.
- 4 (3) The inspector is not required to:  
5 (A) disturb insulation or vapor retarders or barriers;  
6 (B) operate powered attic vents; or,  
7 (C) determine indoor air quality.
- 8
- 9 (k) Appliance inspection requirements.
- 10 (1) The inspector shall inspect the:  
11 (A) food waste disposal;  
12 (B) range/stove, regardless of whether it is an installed or free standing appliance;  
13 (C) cook top;  
14 (D) oven(s);  
15 (E) dishwasher;  
16 (F) ventilation equipment or range hoods;  
17 (G) installed microwave;  
18 (H) trash compactor; and,  
19 (I) gas appliance connectors and shut off valves.
- 20 (2) The inspector shall describe the range/stove, cook top and oven(s) by the energy source.
- 21 (3) The inspector is not required to:  
22 (A) operate appliances in all modes or self-cleaning cycles; or,  
23 (B) inspect clocks, timers, thermostats or household appliances not listed in these  
24 standards.
- 25
- 26 (l) Fireplaces and solid fuel burning appliances inspection requirements.
- 27 (1) The inspector shall inspect the:  
28 (A) hearth and hearth extension;  
29 (B) damper;  
30 (C) gas supply; and,  
31 (D) the firebox, vent systems, flues and chimneys.
- 32 (2) The inspector shall describe:  
33 (A) the fireplaces;  
34 (B) solid fuel burning appliances; and,  
35 (C) chimneys.
- 36 (3) The inspector is not required to:  
37 (A) inspect the interiors of flues or chimneys, the fire screens and doors, the seals and  
38 gaskets, the automatic fuel feed devices, the mantels and fireplace surrounds, the  
39 combustion make-up air devices, the heat distribution assists whether gravity  
40 controlled or fan assisted or free standing solid fuel burning appliances;  
41 (B) ignite or extinguish fires;  
42 (C) determine draft characteristics; and,  
43 (D) move fireplace inserts, stoves or firebox contents.

## Economic Development Tax Credit Accountability

This act requires that economic development tax incentives undergo regular and rigorous evaluations including details on the scope, quality and frequency of those reviews and how evaluations should be linked to budget decisions.

Submitted as:

Rhode Island

SB 734

Status: Signed into law on July 11, 2013.

### Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] Economic Development Tax Incentives Evaluation Act.  
2
- 3 Section 2. [*Legislative findings and purpose.*]  
4
- 5 Section 3. [*Definitions.*]
- 6 (a) As used in this section, the term "economic development tax incentive" shall include:  
7 (1) Those tax credits, deductions, exemptions, exclusions, and other preferential tax benefits  
8 associated with [insert citation], and;  
9 (2) Any future incentives enacted after the effective date of this section for the purpose of  
10 recruitment or retention of businesses in the state.
- 11 (b) In determining whether a future tax incentive is enacted for "the purpose of recruitment or  
12 retention of businesses," the office of revenue analysis shall consider legislative intent,  
13 including legislative statements of purpose and goals, and may also consider whether the tax  
14 incentive is promoted as a business incentive by the state's economic development agency or  
15 other relevant state agency.  
16
- 17 Section 4. [*Economic development tax incentive evaluations, schedule.*]
- 18 (a) In accordance with the following schedule, the tax expenditure report produced by the [chief  
19 of the office of revenue analysis] pursuant to [insert citation], shall include an additional  
20 analysis component, consistent with section 5 and produced in consultation with the [director  
21 of the economic development corporation], the [director of the office of management and  
22 budget], and the [director of the department of labor and training]:
- 23 (1) Analyses of economic development tax incentives as listed in Section 3(a)(1) shall be  
24 completed at least once between [insert date], and no less than once every three (3) years  
25 thereafter;
- 26 (2) Analyses of any economic development tax incentives created after [effective date] shall  
27 be completed within five (5) years of taking effect, and no less than once every three (3)  
28 years thereafter;

1 (b) No later than the tenth (10th) of January each year, beginning in [insert date], the [office of  
2 revenue analysis] will submit to the chairs of the senate and house finance committees a three  
3 (3) year plan for evaluating economic development tax incentives.  
4

5 Section 5. [*Economic development tax incentive evaluations, analysis.*]

6 (a) The additional analysis as required by section 4 shall include, but not be limited to:

- 7 (1) A baseline assessment of the tax incentive, including, if applicable, the number of  
8 aggregate jobs associated with the taxpayers receiving such tax incentive and the  
9 aggregate annual revenue that such taxpayers generate for the state through the direct  
10 taxes applied to them and through taxes applied to their employees;
- 11 (2) The statutory and programmatic goals and intent of the tax incentive, if said goals and  
12 intentions are included in the incentive's enabling statute or legislation;
- 13 (3) The number of taxpayers granted the tax incentive during the previous twelve (12) month  
14 period;
- 15 (4) The value of the tax incentive granted, and ultimately claimed, listed by the North  
16 American Industrial Classification System (NAICS) Code associated with the taxpayers  
17 receiving such benefit, if such NAICS Code is available;
- 18 (5) An assessment and five (5) year projection of the potential impact on the state's revenue  
19 stream from carry forwards allowed under such tax incentive;
- 20 (6) An estimate of the economic impact of the tax incentive including, but not limited to:
  - 21 (i) A cost-benefit comparison of the revenue foregone by allowing the tax incentive  
22 compared to tax revenue generated by the taxpayer receiving the credit, including  
23 direct taxes applied to them and taxes applied to their employees;
  - 24 (ii) An estimate of the number of jobs that were the direct result of the incentive; and
  - 25 (iii) A statement by the director of the economic development corporation as to  
26 whether, in his or her judgment, the statutory and programmatic goals of the tax  
27 benefit are being met, with obstacles to such goals identified, if possible;
- 28 (7) The estimated cost to the state to administer the tax incentive, if such information is  
29 available;
- 30 (8) An estimate of the extent to which benefits of the tax incentive remained in state or  
31 flowed outside the state, if such information is available;
- 32 (9) In the case of economic development tax incentives where measuring the economic  
33 impact is significantly limited due to data constraints, whether any changes in statute  
34 would facilitate data collection in a way that would allow for better analysis;
- 35 (10) Whether the effectiveness of the tax incentive could be determined more  
36 definitively if the general assembly were to clarify or modify the tax incentive's goals  
37 and intended purpose;
- 38 (11) A recommendation as to whether the tax incentive should be continued, modified  
39 or terminated, the basis for such recommendation, and the expected impact of such  
40 recommendation on the state's economy;
- 41 (12) The methodology and assumptions used in carrying out the assessments,  
42 projections and analyses required pursuant to subdivisions (1) through (8) of this section.

43 (b) All departments, offices, boards, and agencies of the state shall cooperate with the chief of  
44 the office of revenue analysis and shall provide to the office of revenue analysis any records,  
45 information (documentary and otherwise), data, and data analysis as may be necessary to  
46 complete the report required pursuant to this section.

- 1 Section 6. [*Consideration by the governor.*]  
2 The governor's budget submission as required under [insert citation] shall identify each  
3 economic development tax incentive for which an evaluation was completed in accordance with  
4 this chapter in the period since the governor's previous budget submission. For each evaluated  
5 tax incentive, the governor's budget submission shall include a recommendation as to whether  
6 the tax incentive should be continued, modified, or terminated.  
7  
8 Section 7. [*Severability.*] Insert severability clause.  
9  
10 Section 8. [*Repealer.*] Insert repealer clause.  
11  
12 Section 9. [*Effective Date.*] Insert effective date.

## Bad Faith Assertions of Patent Infringement

With passage of this Act, Vermont enacted what observers believe is the first state anti-patent “troll” legislation in the country. Though the law still provides for legitimate claims of patent infringement in accordance with federal law, it will, however, require more detailed allegations in licensing demand letters and it increases the potential cost of making a baseless claim. Under the new law, demand letters must include detailed information about how the Vermont product, service or technology infringes on an existing patent. The demand letter must also allow for a reasonable amount of time for the licensing fee to be paid. The penalty for a bad faith claim is a bond equal to the cost of litigating the claim for the Vermont company. Violators risk being brought into court in violation of state law and the attorney general can also file suit against patent trolls who target Vermont companies without legitimate claims.

Submitted as:

Vermont

HB 299

Status: Signed into law on May 22, 2013.

### Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] Bad Faith Assertions of Patent Infringement.
- 2
- 3 Section 2. [*Findings and statement of purpose.*]
- 4
- 5 Section 3. [*Definitions.*]
- 6 In this chapter:
- 7 (1) “Demand letter” means a letter, e-mail, or other communication asserting or claiming that the
- 8 target has engaged in patent infringement.
- 9 (2) “Target” means a Vermont person:
- 10 (A) who has received a demand letter or against whom an assertion or allegation of patent
- 11 infringement has been made;
- 12 (B) who has been threatened with litigation or against whom a lawsuit has been filed alleging
- 13 patent infringement; or
- 14 (C) whose customers have received a demand letter asserting that the person’s product,
- 15 service, or technology has infringed a patent.



1 Section 4. [*Bad faith assertions of patent infringement.*]

2 (a) A person shall not make a bad faith assertion of patent infringement.

3 (b) A court may consider the following factors as evidence that a person has made a bad faith  
4 assertion of patent infringement:

5 (1) The demand letter does not contain the following information:

6 (A) the patent number;

7 (B) the name and address of the patent owner or owners and assignee or assignees, if any;  
8 and

9 (C) factual allegations concerning the specific areas in which the target's products,  
10 services, and technology infringe the patent or are covered by the claims in the  
11 patent.

12 (2) Prior to sending the demand letter, the person fails to conduct an analysis comparing the  
13 claims in the patent to the target's products, services, and technology, or such an analysis  
14 was done but does not identify specific areas in which the products, services, and  
15 technology are covered by the claims in the patent.

16 (3) The demand letter lacks the information described in subdivision (1) of this subsection,  
17 the target requests the information, and the person fails to provide the information within  
18 a reasonable period of time.

19 (4) The demand letter demands payment of a license fee or response within an unreasonably  
20 short period of time.

21 (5) The person offers to license the patent for an amount that is not based on a reasonable  
22 estimate of the value of the license.

23 (6) The claim or assertion of patent infringement is meritless, and the person knew, or should  
24 have known, that the claim or assertion is meritless.

25 (7) The claim or assertion of patent infringement is deceptive.

26 (8) The person or its subsidiaries or affiliates have previously filed or threatened to file one  
27 or more lawsuits based on the same or similar claim of patent infringement and:

28 (A) those threats or lawsuits lacked the information described in subdivision (1) of  
29 this subsection; or

30 (B) the person attempted to enforce the claim of patent infringement in litigation and  
31 a court found the claim to be meritless.

32 (9) Any other factor the court finds relevant.

33 (c) A court may consider the following factors as evidence that a person has not made a bad faith  
34 assertion of patent infringement:

35 (1) The demand letter contains the information described in subdivision (b)(1) of this section.

36 (2) Where the demand letter lacks the information described in subdivision (b)(1) of this  
37 section and the target requests the information, the person provides the information  
38 within a reasonable period of time.

39 (3) The person engages in a good faith effort to establish that the target has infringed the  
40 patent and to negotiate an appropriate remedy.

41 (4) The person makes a substantial investment in the use of the patent or in the production or  
42 sale of a product or item covered by the patent.

43 (5) The person is:

44 (A) the inventor or joint inventor of the patent or, in the case of a patent filed by and  
45 awarded to an assignee of the original inventor or joint inventor, is the original  
46 assignee; or

1 (B) an institution of higher education or a technology transfer organization owned or  
2 affiliated with an institution of higher education.

3 (6) The person has:

4 (A) demonstrated good faith business practices in previous efforts to enforce the patent,  
5 or a substantially similar patent; or

6 (B) successfully enforced the patent, or a substantially similar patent, through litigation.

7 (7) Any other factor the court finds relevant.  
8

9 Section 5. [*Bond.*]

10 Upon motion by a target and a finding by the court that a target has established a reasonable  
11 likelihood that a person has made a bad faith assertion of patent infringement in violation of this  
12 chapter, the court shall require the person to post a bond in an amount equal to a good faith  
13 estimate of the target's costs to litigate the claim and amounts reasonably likely to be recovered  
14 under Section 6(b) of this chapter, conditioned upon payment of any amounts finally determined  
15 to be due to the target. A hearing shall be held if either party so requests. A bond ordered  
16 pursuant to this section shall not exceed \$250,000.00. The court may waive the bond requirement  
17 if it finds the person has available assets equal to the amount of the proposed bond or for other  
18 good cause shown.  
19

20 Section 6. [*Enforcement; Remedies; Damages.*]

21 (a) The Attorney General shall have the same authority under this chapter to make rules, conduct  
22 civil investigations, bring civil actions, and enter into assurances of discontinuance as  
23 provided under [Insert citation.] In an action brought by the Attorney General under this  
24 chapter the court may award or impose any relief available under [Insert Citation].

25 (b) A target of conduct involving assertions of patent infringement, or a person aggrieved by a  
26 violation of this chapter or by a violation of rules adopted under this chapter, may bring an  
27 action in Superior Court. A court may award the following remedies to a plaintiff who  
28 prevails in an action brought pursuant to this subsection:

29 (1) equitable relief;

30 (2) damages;

31 (3) costs and fees, including reasonable attorney's fees; and

32 (4) exemplary damages in an amount equal to \$50,000.00 or three times the total of damages,  
33 costs, and fees, whichever is greater.

34 (c) This chapter shall not be construed to limit rights and remedies available to the State of  
35 Vermont or to any person under any other law and shall not alter or restrict the Attorney  
36 General's authority under [Insert citation] with regard to conduct involving assertions of  
37 patent infringement.  
38

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

40  
41 Section 8. [*Repealer.*] Insert repealer clause.

42  
43 Section 9. [*Effective Date.*] Insert effective date.

# LABOR / WORKFORCE RECRUITMENT, RELATIONS AND DEVELOPMENT

## Domestic Workers Bill of Rights

This act extends certain basic labor rights and protections to domestic workers. Specifically, this measure:

- Prohibits an employer from discharging or discriminating against an individual employed as a domestic in compensation or in terms, conditions, or privileges of employment because of that individual's race, sex including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, or marital status;
- Applies the wage and hour laws to domestic workers except for individuals employed in domestic services on a casual basis and individuals providing companionship services for the aged or infirm; and
- Adds definitions of “casual basis”, “companionship services for the aged or infirm”, and “domestic service” to the state’s wage and hour laws.

Submitted as:

Hawaii

SB 535

Status: Signed into law on July 9, 2013.

### Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] Domestic Workers Bill of Rights.

2

3 Section 2. [*Definitions.*]

4

5 "Employment" means any service performed by an individual for another person under any  
6 contract of hire, express or implied, oral or written, whether lawfully or unlawfully entered  
7 into. Employment does not include services by an individual employed as a domestic in the  
8 home of any person, except as provided in Section 3 2(9).

9

10 Section 3. [*Unlawful discriminatory practice.*]

11 (a) It shall be an unlawful discriminatory practice:

- 12 (1) Because of race, sex including gender identity or expression, sexual orientation, age,  
13 religion, color, ancestry, disability, marital status, arrest and court record, or domestic or  
14 sexual violence victim status if the domestic or sexual violence victim provides notice to  
15 the victim's employer of such status or the employer has actual knowledge of such status:  
16 (A) For any employer to refuse to hire or employ or to bar or discharge from employment,  
17 or otherwise to discriminate against any individual in compensation or in the terms,  
18 conditions, or privileges of employment;  
19 (B) For any employment agency to fail or refuse to refer for employment, or to classify or  
20 otherwise to discriminate against, any individual;

- 1 (C) For any employer or employment agency to print, circulate, or cause to be printed or  
2 circulated any statement, advertisement, or publication or to use any form of  
3 application for employment or to make any inquiry in connection with prospective  
4 employment, that expresses, directly or indirectly, any limitation, specification, or  
5 discrimination;
- 6 (D) For any labor organization to exclude or expel from its membership any individual or  
7 to discriminate in any way against any of its members, employer, or employees;
- 8 (E) For any employer or labor organization to refuse to enter into an apprenticeship  
9 agreement as defined in [insert citation]; provided that no apprentice shall be younger  
10 than sixteen years of age;
- 11 (2) For any employer, labor organization, or employment agency to discharge, expel, or  
12 otherwise discriminate against any individual because the individual has opposed any  
13 practice forbidden by this part or has filed a complaint, testified, or assisted in any  
14 proceeding respecting the discriminatory practices prohibited under this part;
- 15 (3) For any person, whether an employer, employee, or not, to aid, abet, incite, compel, or  
16 coerce the doing of any of the discriminatory practices forbidden by this part, or to  
17 attempt to do so;
- 18 (4) For any employer to violate the provisions of [insert citation] relating to nonforfeiture for  
19 absence by members of the national guard;
- 20 (5) For any employer to refuse to hire or employ or to bar or discharge from employment any  
21 individual because of assignment of income for the purpose of satisfying the individual's  
22 child support obligations as provided for under [insert citation];
- 23 (6) For any employer, labor organization, or employment agency to exclude or otherwise  
24 deny equal jobs or benefits to a qualified individual because of the known disability of an  
25 individual with whom the qualified individual is known to have a relationship or  
26 association;
- 27 (7) For any employer or labor organization to refuse to hire or employ, bar or discharge from  
28 employment, withhold pay from, demote, or penalize a lactating employee because the  
29 employee breastfeeds or expresses milk at the workplace. For purposes of this paragraph,  
30 the term "breastfeeds" means the feeding of a child directly from the breast;
- 31 (8) For any employer to refuse to hire or employ, bar or discharge from employment, or  
32 otherwise to discriminate against any individual in compensation or in the terms,  
33 conditions, or privileges of employment of any individual because of the individual's  
34 credit history or credit report, unless the information in the individual's credit history or  
35 credit report directly relates to a bona fide occupational qualification under [insert  
36 citation], or
- 37 (9) For any employer to discriminate against any individual employed as a domestic, in  
38 compensation or in terms, conditions, or privileges of employment because of the  
39 individual's race, sex including gender identity or expression, sexual orientation, age,  
40 religion, color, ancestry, disability, or marital status.

1 Section 4. [*Employment.*]

2 “Casual basis” means employment that is:

- 3 (1) Irregular or intermittent; and
- 4 (2) Performed for a family or household who directly employs the individual providing the  
5 services.

6 Employment is not on a casual basis, whether performed for one or more family or household  
7 employers, if the employment for all employers exceeds twenty hours per week in the aggregate.  
8 For babysitting or companionship services for the aged or infirm, employment is not on a casual  
9 basis if the service is performed by an individual whose vocation is the provision of babysitting  
10 or companionship services.

11  
12 “Companionship services for the aged or infirm” means those services that provide fellowship,  
13 care, and protection for an individual who, because of advanced age or physical or mental  
14 infirmity, cannot care for the individual's own needs. “Companionship services for the aged or  
15 infirm” does not include services relating to the care and protection of the aged or infirm that  
16 require and are performed by trained personnel, such as a registered or practical nurse.

17  
18 “Domestic service” means services of a household nature performed by an employee in or about  
19 a private home (permanent or temporary) of the person by whom he or she is employed. The  
20 term includes, but is not limited to, services performed by employees such as cooks, waiters,  
21 butlers, valets, maids, housekeepers, governesses, janitors, laundresses, caretakers, handymen,  
22 gardeners, and chauffeurs of automobiles for family use. The term also includes babysitters  
23 whose employment is not on a casual basis.”

24  
25 “Employee” includes any individual employed by an employer, but shall not include any  
26 individual employed:

- 27 (1) At a guaranteed compensation totaling \$2,000 or more a month, whether paid weekly,  
28 biweekly, or monthly;
- 29 (2) In agriculture for any workweek in which the employer of the individual employs less  
30 than twenty employees or in agriculture for any workweek in which the individual is  
31 engaged in coffee harvesting;
- 32 (3) In or about the home of the individual's employer:
  - 33 (A) In domestic service on a casual basis; or
  - 34 (B) Providing companionship services for the aged or infirm;
- 35 (4) As a house parent in or about any home or shelter maintained for child welfare purposes  
36 by a charitable organization exempt from income tax under section 501 of the federal  
37 Internal Revenue Code;
- 38 (5) By the individual's brother, sister, brother-in-law, sister-in-law, son, daughter, spouse,  
39 parent, or parent-in-law;
- 40 (6) In a bona fide executive, administrative, supervisory, or professional capacity or in the  
41 capacity of outside salesperson or as an outside collector;
- 42 (7) In the propagating, catching, taking, harvesting, cultivating, or farming of any kind of  
43 fish, shellfish, crustacean, sponge, seaweed, or other aquatic forms of animal or vegetable  
44 life, including the going to and returning from work and the loading and unloading of  
45 such products prior to first processing;

- 1 (8) On a ship or vessel and who has a Merchant Mariners Document issued by the United  
2 States Coast Guard;
- 3 (9) As a driver of a vehicle carrying passengers for hire operated solely on call from a fixed  
4 stand;
- 5 (10) As a golf caddy;
- 6 (11) By a nonprofit school during the time such individual is a student attending such  
7 school;
- 8 (12) In any capacity if by reason of the employee's employment in such capacity and  
9 during the term thereof the minimum wage which may be paid the employee or  
10 maximum hours which the employee may work during any workweek without the  
11 payment of overtime, are prescribed by the federal Fair Labor Standards Act of 1938, as  
12 amended, or as the same may be further amended from time to time; provided that if the  
13 minimum wage which may be paid the employee under the Fair Labor Standards Act for  
14 any workweek is less than the minimum wage prescribed by [insert citation], [insert  
15 citation] shall apply in respect to the employees for such workweek; provided further that  
16 if the maximum workweek established for the employee under the Fair Labor Standards  
17 Act for the purposes of overtime compensation is higher than the maximum workweek  
18 established under [insert citation], then [insert citation] shall apply in respect to such  
19 employee for such workweek; except that the employee's regular rate in such an event  
20 shall be the employee's regular rate as determined under the Fair Labor Standards Act;
- 21 (13) As a seasonal youth camp staff member in a resident situation in a youth camp  
22 sponsored by charitable, religious, or nonprofit organizations exempt from income tax  
23 under section 501 of the federal Internal Revenue Code or in a youth camp accredited by  
24 the American Camping Association; or
- 25 (14) As an automobile salesperson primarily engaged in the selling of automobiles or  
26 trucks if employed by an automobile or truck dealer licensed under [insert citation].

27  
28 Section 5. [*Severability.*] Insert severability clause.

29  
30 Section 6. [*Repealer.*] Insert repealer clause.

31  
32 Section 7. [*Effective Date.*] Insert effective date.

**LABOR / WORKFORCE RECRUITMENT,  
RELATIONS AND DEVELOPMENT**

## **Temporary Caregiver Insurance**

This act establishes a state temporary disability insurance program to provide benefits to workers who take time off for a seriously ill child, spouse, parent, parent-in-law, grandparent, domestic partner or to bond with a new child. Temporary caregiver benefits for an individual shall be limited to a maximum of four weeks in a benefit year and no individual shall be paid temporary caregiver benefits and temporary disability benefits which together exceed 30 times his or her weekly benefit rate in any benefit year.

Submitted as:

Rhode Island

SB 231

Status: Signed into law on July 11, 2013.

### **Suggested State Legislation**

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] Temporary Caregiver Insurance.  
2
- 3 Section 2. [*Temporary caregiver insurance.*]  
4 The purpose of this chapter is to establish, within the state temporary disability insurance  
5 program, a temporary caregiver insurance program to provide wage replacement benefits in  
6 accordance with the provisions of this chapter, to workers who take time off work to care for a  
7 seriously ill child, spouse, domestic partner, parent, parent-in-law, grandparent, or to bond with a  
8 new child.  
9
- 10 Definitions as used in this chapter:  
11 (1) "Child" means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a  
12 legal ward, a son or daughter of a domestic partner, or a son or daughter of an employee who  
13 stands in loco parentis to that child.  
14 (2) "Newborn child" means a child under one year of age.  
15 (3) "Adopted child" means a child adopted by, or placed for adoption with, the employee.  
16 (4) "Bonding or bond" means to develop a psychological and emotional attachment between a  
17 child and his or her parent(s) or persons who stand in loco parentis. This shall involve being  
18 in one another's physical presence.  
19 (5) "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other  
20 person who stands in loco parentis to the employee or the employee's spouse or domestic  
21 partner when he/she was a child.  
22 (6) "Domestic partner" means a party to a civil union as defined by chapter 15-3.1.  
23 (7) "Spouse" means a party in a common law marriage, a party in a marriage conducted and  
24 recognized by another state or country, or in a marriage as defined by chapter 15-3.  
25 (8) "Grandparent" means a parent of the employee's parent.  
26 (9) "Parent-in-law" means the parent of the employee's spouse or domestic partner.  
27 (10) "Employee" means any person who is or has been employed by an employer subject to  
28 [insert citation] of this title and in employment subject to those chapters.

- 1 (11) "Serious health condition" means any illness, injury, impairment, or physical or mental  
2 condition that involves inpatient care in a hospital, hospice, residential health care facility, or  
3 continued treatment or continuing supervision by a licensed health care provider.
- 4 (12) "Department" means the department of labor and training.
- 5 (13) "Persons who stand in loco parentis" means those with day-to-day responsibilities to care  
6 for and financially support a child or, in the case of an employee, who had such responsibility  
7 for the employee when the employee was a child. A biological or legal relationship shall not  
8 be required.

9  
10 Section 3. [*Benefits.*]

- 11 (a) Subject to the conditions set forth in this chapter, an employee shall be eligible for temporary  
12 caregiver benefits for any week in which he or she is unable to perform his or her regular and  
13 customary work because he or she is:
- 14 (1) Bonding with a newborn child or a child newly placed for adoption or foster care with the  
15 employee or domestic partner in accordance with the provisions of Section 4(c)(1); or  
16 (2) Caring for a child, a parent, parent-in-law, grandparent, spouse, or domestic partner, who  
17 has a serious health condition, subject to a waiting period in accordance with the  
18 provisions of [Insert citation]. Employees may use accrued sick time during eligibility  
19 waiting period in accordance with the policy of the individual's employer.
- 20 (b) Temporary caregiver benefits shall be available only to the employee exercising his or her  
21 right to leave while covered by the temporary caregiver insurance program. An employee  
22 shall file a written intent with their employer, in accordance with rules and regulations  
23 promulgated by the department, with a minimum of thirty (30) days notice prior to  
24 commencement of the family leave. Failure by the employee to provide the written intent  
25 may result in delay or reduction in the claimant's benefits, except in the event the time of the  
26 leave is unforeseeable or the time of the leave changes for unforeseeable circumstances.
- 27 (c) Employees cannot file for both temporary caregiver benefits and temporary disability  
28 benefits for the same purpose, concurrently, in accordance with all provisions of this act and  
29 [Insert citation].
- 30 (d) Temporary caregiver benefits may be available to any individual exercising his or her right to  
31 leave while covered by the temporary caregiver insurance program, commencing on or after  
32 [Insert effective date], which shall not exceed the individual's maximum benefits in  
33 accordance with [Insert citation]. The benefits for the temporary caregiver program shall be  
34 payable with respect to the first day of leave taken after the waiting period and each  
35 subsequent day of leave during that period of family temporary disability leave. Benefits  
36 shall be in accordance with the following:
- 37 (1) Beginning [Insert effective date], temporary caregiver benefits shall be limited to a  
38 maximum of four (4) weeks in a benefit year;
- 39 (e) In addition, no individual shall be paid temporary caregiver benefits and temporary disability  
40 benefits which together exceed thirty (30) times his or her weekly benefit rate in any benefit  
41 year.
- 42 (f) Any employee who exercises his or her right to leave covered by temporary caregiver  
43 insurance under this chapter shall, upon the expiration of that leave, be entitled to be restored  
44 by the employer to the position held by the employee when the leave commenced, or to a  
45 position with equivalent seniority, status, employment benefits, pay, and other terms and



1 conditions of employment including fringe benefits and service credits that the employee had  
2 been entitled to at the commencement of leave.

- 3 (g) During any caregiver leave taken pursuant to this chapter, the employer shall maintain any  
4 existing health benefits of the employee in force for the duration of the leave as if the  
5 employee had continued in employment continuously from the date he or she commenced the  
6 leave until the date the caregiver benefits terminate; provided, however, that the employee  
7 shall continue to pay any employee shares of the cost of health benefits as required prior to  
8 the commencement of the caregiver benefits.
- 9 (h) No individual shall be entitled to waiting period credit or temporary caregiver benefits under  
10 this section for any week beginning prior to [Insert effective date].
- 11 (i) Temporary caregiver benefits shall be in accordance with federal Family and Medical Leave  
12 Act (FMLA) P.L. 103-3 and [insert state citation] An employer may require an employee  
13 who is entitled to leave under the federal Family and Medical Leave Act, PL 103-3 and/or  
14 the [state] Parental and Family Medical Leave Act who exercises his or her right to benefits  
15 under the temporary caregiver insurance program under this chapter, to take any temporary  
16 caregiver benefits received, concurrently, with any leave taken pursuant to the federal Family  
17 and Medical Leave Act and/or the [state] Parental and Family Medical Leave Act.

18  
19 Section 4. [*Certification of eligibility for leave.*]

- 20 (a) An individual who exercises his or her right to leave covered by the temporary caregiver  
21 insurance program under this chapter shall file a certificate form with all information  
22 required by the department.
- 23 (b) For leave for reason of caring for a seriously ill family member, an employee shall file a  
24 certificate with the department that shall contain:
- 25 (1) A diagnosis and diagnostic code prescribed in the international classification of diseases,  
26 or where no diagnosis has yet been obtained, a detailed statement of symptoms;
  - 27 (2) The date if known, on which the condition commenced;
  - 28 (3) The probable duration of the condition;
  - 29 (4) An estimate of the amount of time that the licensed qualified health care provider  
30 believes the employee is needed to care for the family member;
  - 31 (5) A statement that the serious health condition warrants the participation of the employee  
32 to provide care for his or her family member. "Warrants the participation of the  
33 employee" includes, but is not limited to, providing psychological comfort, arranging  
34 third-party care for the family member as well as directly providing, or participating in  
35 the medical and physical care of the patient; and
  - 36 (6) A certificate filed to establish medical eligibility of the serious health condition of the  
37 employee's family member shall be made by the family member's treating licensed  
38 qualified health care provider.
  - 39 (7) In the case of a parent, or persons who are in loco parentis caring for the serious health  
40 condition of a foster care child, the employee shall submit all required information in  
41 accordance with this section, with a written request to the department of children, youth  
42 and families for the release of medical information by the child's treating licensed  
43 qualified health care provider. The department of children, youth and families shall  
44 transmit the requested medical information, pending all properly submitted forms, to the  
45 department of labor and training, within ten (10) business days of request. In the absence  
46 of the requested transmitted medical information by the department of children, youth

1 and families within ten (10) business days, the employee may request the licensed  
2 qualified healthcare provider to directly transmit the medical eligibility of the serious  
3 health condition to the department of labor and training. Payment shall not be delayed, in  
4 accordance with all provisions of [Insert citation], as a result of delays by the department  
5 of children, youth and families in transmitting medical information.

6 (c) The department shall develop a certificate of eligibility form for leave in the case of bonding  
7 as defined herein, for the birth of a newborn child of the employee or the employee's  
8 domestic partner, or the placement of a child with the employee in connection with the  
9 adoption or foster care of the child by the employee or domestic partner, or persons in loco  
10 parentis. Information shall include the following:

11 (1) A birth certificate, certificate of adoption, or other competent evidence showing the  
12 employee or the employee's domestic partner, or persons in loco parentis is the parent of  
13 the child within twelve (12) months of the child's adoption, birth or placement for  
14 adoption or foster care with the employee.  
15

16 Section 5. [*Determination of a claim.*]

17 (a) In accordance with [insert citation], upon the filing of a claim, the director shall promptly  
18 examine the claim and on the basis of facts found by the director and records maintained by  
19 the department, the claim shall be determined to be valid or invalid, if the claim is  
20 determined to be valid, the director shall promptly notify the claimant as to the week with  
21 respect to which benefits shall commence, the weekly benefit amount payable, and the  
22 maximum duration of those benefits. If the claim is determined to be invalid, the director  
23 shall likewise notify the claimant and any other interested parties of that determination and  
24 the reasons for it. if the processing of the claim is delayed for any reason, the director shall  
25 notify the claimant, in writing, within three (3) weeks of the date the application for benefits  
26 is filed of the reason for the delay. Unless the claimant or any other interested party, within  
27 fifteen (15) days, requests a hearing before the board of review, the determination with  
28 reference to the claim is final. However, for good cause shown the fifteen (15) day period  
29 may be extended after notification by the director has been mailed to his or her last known  
30 address, as provided in this section. At any time within one year from the date of a monetary  
31 determination, the director, upon request of the claimant or on his or her own motion, may  
32 reconsider his or her determination if he or she finds that an error in computation or identity  
33 has occurred in connection with it or that additional wages pertinent to the claimant's status  
34 have become available, or if that determination has been made as a result of a nondisclosure  
35 or misrepresentation of a material fact.

36 (b) If an appeal is duly filed, benefits with respect to the period prior to the final decision, if it is  
37 found that those benefits are payable, shall be paid only after the decision. If an appeal  
38 tribunal affirms a decision of the director, or the board of review affirms a decision of an  
39 appeal tribunal allowing benefits, those benefits shall be paid regardless of any appeal which  
40 may subsequently be taken.  
41

42 Section 6. [*Confidential health information.*]

43 Information pursuant to any individual's temporary disability claim or temporary caregiver  
44 insurance claim shall be held confidential in accordance with [Insert citation] and all applicable  
45 state and federal regulations.  
46

1 Section 7. [*Powers and duties.*]

2 (a) The [director of the department of labor and training] shall have the following powers and  
3 duties:

4 (1) To promulgate regulations relative to the operation of the temporary caregiver insurance  
5 program;

6 (2) To create all necessary applications and certificates to fulfill the purposes of this section;

7 (3) To disseminate information regarding the program to [State] employers and shall carry  
8 out a public education program to inform workers and employers about the availability of  
9 benefits under the temporary caregiver insurance program. The director may use a  
10 proportion of the funds collected for the temporary caregiver insurance program in a  
11 given year to pay for the public education program and/or funding received from other  
12 sources for the purpose of educating the public about their benefits. Outreach information  
13 shall be available in English and other languages; and

14 (4) To inform [State] employees of their disability insurance rights and benefits due to the  
15 employee's own sickness, injury, or pregnancy, or the employee's need to provide care for  
16 any sick or injured family member or new child. The notice shall be given by every  
17 eligible employer to each new employee hired on or after [Insert effective date], and to  
18 each employee taking leave from work on or after [Insert effective date], due to  
19 pregnancy or the need to provide care for any sick or injured family member or new  
20 child. The director shall require each employer to post and maintain information  
21 regarding the program in accordance with [Insert citation].  
22

23 Section 8. [*Fraud and misrepresentation of benefits.*]

24 (a) The temporary caregiver insurance program shall be part of the temporary disability  
25 insurance fund. If the director finds that any individual falsely certifies the medical condition  
26 of any person in order to obtain family temporary disability insurance benefits, with the  
27 intent to defraud, whether for the maker or for any other person, the director shall assess a  
28 penalty against the individual in the amount of twenty-five percent (25%) of the benefits paid  
29 as a result of the false certification. Unless otherwise specified to the contrary, all of the  
30 provisions of [Insert citation] of this title shall apply to the temporary caregiver insurance  
31 program.

32 (b) If a physician or other qualified health care provider licensed by a foreign country is under  
33 investigation by the department for assisting in the filing of false claims and the department  
34 does not have the legal remedies to conduct a criminal investigation or prosecution in that  
35 country, the department may suspend the processing of all further certifications until the  
36 licensed qualified health care provider fully cooperates and continues to cooperate with the  
37 investigation. A qualified health care provider licensed by and practicing in a foreign  
38 country who has been convicted of filing false claims with the department shall be barred  
39 indefinitely from filing a certificate in support of a temporary disability insurance or  
40 temporary caregiver insurance claim in the [State].  
41

42 Section 9. [*Criminal prosecution.*]

43 All criminal actions for any violation of [insert citation], or any rule or regulation of the  
44 department shall be prosecuted by the attorney general, or by any qualified member of the Rhode  
45 Island bar, that shall be designated by the director and approved by the attorney general to  
46 institute and prosecute that action.

- 1 Section 10. [*Receipt of federal funds.*]  
2 To the extent that funds are made available by the federal government, under title III of the  
3 Social Security Act, (42 U.S.C. 501 et seq.), or otherwise for such purpose, the expenses of  
4 administering [Insert citation] shall be paid from those funds, provided that this section shall not  
5 be considered to permit any expenditure of funds from the employment security administration  
6 account contrary to [insert citation]. In the event that the Social Security Act is amended to  
7 permit funds granted under Title III to be used to pay expenses of administering a sickness  
8 compensation law, such as [insert citation], then from and after the effective date of that  
9 amendment, the expenses of administering those chapters shall be paid out of the employment  
10 security administration account or any other account or fund in which funds granted under Title  
11 III are deposited.  
12  
13 Section 11. [*Severability.*] Insert severability clause.  
14  
15 Section 12. [*Repealer.*] Insert repealer clause.  
16  
17 Section 13. [*Effective Date.*] Insert effective date.

**STATE AND LOCAL GOVERNMENT / INTERSTATE  
COOPERATION AND LEGAL DEVELOPMENT**

## **Interactive Gaming Agreements (Statement)**

**Section 1** of this bill provides that the Nevada Gaming Commission may, upon the recommendation of the State Gaming Control Board, adopt regulations allowing promotional schemes to be conducted by licensed operators of interactive gaming in direct association with a licensed interactive gaming activity, contest or tournament that includes a raffle, drawing or other similar game of chance.

Under existing law, the Commission and the Board are required to administer state gaming licenses and manufacturer's, seller's and distributor's licenses, and to perform various acts relating to the regulation and control of gaming. **Sections 2-5** of this bill revise the definitions of the terms "cashless wagering system," "gaming employee," "gross revenue" and "wagering credit" for the purposes of the statutory provisions governing the licensing and control of gaming. Section 14.5 of this bill repeals a provision contained in section 3 of Senate Bill No. 9 of this session that also revised the definition of the term "gross revenue."

Existing law requires audits of the financial statements of all nonrestricted licensees whose annual gross revenue is \$5,000,000 or more, and requires the amount of annual gross revenue to be increased or decreased annually in an amount determined by the Commission and corresponding to the Consumer Price Index. **Section 6** of this bill requires the Board to make such a determination.

Existing law also requires a limited partner holding a 5 percent or less ownership interest in a limited partnership or a member holding a 5 percent or less ownership interest in a limited-liability company, who holds or applies for a state gaming license, to register with the Board and submit to the Board's jurisdiction within 30 days after the person acquires a 5 percent or less ownership interest. **Sections 7 and 8** of this bill remove the requirement to register with the Board after acquiring such an ownership interest, and instead require a person to register upon seeking to hold a 5 percent or less ownership interest.

Existing law requires the Commission to adopt regulations providing for the registration of independent testing laboratories, which may be utilized by the Board to inspect and certify gaming devices, equipment and systems, and any components thereof, and providing for the standards and procedures for the revocation of the registration of such independent testing laboratories. **Section 9** of this bill: (1) extends the requirement of registration to additional persons that own, operate or have significant involvement with an independent testing laboratory; (2) provides that a person who is registered pursuant to section 9 is subject to the same investigatory and disciplinary procedures as all other gaming licensees; and (3) authorizes the Commission to require a registered independent testing laboratory and certain persons associated with a registered independent testing laboratory to file an application for a finding of suitability.

Assembly Bill No. 114 (see page 42) of this session, which was enacted by the Legislature and approved by the Governor and which became effective on February 21, 2013: (1) required the Commission, by regulation, to authorize the Governor, on behalf of the State of Nevada, to enter into agreements with other states, or authorized agencies thereof, to enable patrons in the

signatory states to participate in interactive gaming; (2) required the regulations adopted by the Commission to be adopted in accordance with the Nevada Administrative Procedure Act; and (3) required the regulations to set forth provisions for any potential arrangements to share revenue.

**Sections 11 and 12** of this bill amend the provisions of Assembly Bill No. 114 to: (1) allow agreements for interactive agreements to be made with governmental units of other nations, states or local bodies exercising governmental functions; (2) provide that the regulations adopted by the Commission are not required to be adopted in accordance with the Nevada Administrative Procedure Act; and (3) authorize the Commission to include specific requirements for the agreements entered into by the State of Nevada and another government.

Senate Bill No. 416 of this session enacted certain requirements for the issuance of restricted licenses for certain businesses, which were to become effective on July 1, 2013. **Sections 13 and 14** of this bill change the effective date of those provisions to January 1, 2014.

**Section 15** of this bill requires the Legislative Commission to create a committee to conduct an interim study concerning the impact of technology upon the regulation of gaming and upon the distinction between restricted and nonrestricted gaming licensees.

Submitted as:

Nevada

AB 360

Status: Signed into law on June 11, 2013.

**STATE AND LOCAL GOVERNMENT / INTERSTATE  
COOPERATION AND LEGAL DEVELOPMENT**

## **Multi-State Internet Gaming Agreement (Statement)**

Existing law authorizes certain gaming establishments to obtain a license to operate interactive gaming. **Sections 2-5** of this bill define certain terms for the purposes of determining whether a person may be found suitable for a license to operate interactive gaming. **Section 6** of this bill requires the Nevada Gaming Commission to adopt regulations authorizing the Governor to enter into agreements with other states to allow patrons of those states to participate in interactive gaming.

Existing law requires the Commission to establish by regulation that a license to operate interstate interactive gaming does not become effective until: (1) the passage of federal legislation authorizing interactive gaming; or (2) the United States Department of Justice notifies the Commission or the State Gaming Control Board that interactive gaming is permissible under federal law.

**Section 10** of this bill removes the condition that a license to operate interactive gaming does not become effective until the passage of federal legislation or notice providing that interactive gaming is permissible under federal law. **Section 10** also prohibits the issuance of a license to operate interactive gaming for a period of 5 years after the effective date of this bill for certain entities that, after December 31, 2006, operated interactive gaming involving patrons located in the United States.

Finally, **section 10** authorizes the Commission to waive such prohibition if the Commission determines that those entities complied with all applicable provisions of federal law or the law of any state when, after December 31, 2006, those entities operated interactive gaming involving patrons located in the United States. **Section 11** of this bill authorizes the Commission to adopt regulations to increase or decrease the fees for the initial issuance and the renewal of a license for an establishment to operate interactive gaming under certain circumstances.

Submitted as:

Nevada

AB 114

Status: Signed into law on February 21, 2013.

## **Licensure, Safety and Inspection of Autocycles (Statement)**

This act amends existing laws in Virginia relating to vehicle licensure, fees, license plates, safety, inspection and other requirements to include a new class of vehicle known as an “autocycle.”

An “autocycle” is defined as “a three-wheeled motor vehicle that has a steering wheel and seating that does not require the operator to straddle or sit astride and is manufactured to comply with federal safety requirements for motorcycles.” Except as otherwise provided, an autocycle shall not be deemed to be a motorcycle.

### **License, Title & Registration Requirements and Fees**

The act states that an autocycle shall not be used by a driver’s license applicant for a behind-the-wheel examination.

The act specifies that a licensed motorcycle manufacturer shall not be required to obtain a certificate of title for a new motorcycle of a different line-make purchased by the manufacturer for the purpose of obtaining parts used in the production of another new motorcycle or an autocycle, provided such manufacturer obtains a salvage dealer license.

The act extends to autocycles the 30-day temporary exemption for new residents operating vehicles registered in another state or country from registering or paying fees on the vehicle.

The act establishes an annual registration fee of \$18 for an autocycle (compared to \$33 for most passenger cars and \$18 for motorcycles).

The act adds autocycles to the list of vehicles for which the Department of Motor Vehicles will furnish one license plate to be displayed as required. The license plate assigned to an autocycle is required to be attached to the rear of the vehicle.

The act adds autocycles to the list of vehicles a driver can present evidence of owning or having regular use of in order to obtain a special license plate for an antique motor vehicle or antique trailer.

### **Safety Equipment Requirements**

The act states that every person operating an autocycle (or motorcycle) shall wear an approved face shield, safety glasses or goggles, or have his autocycle (or motorcycle) equipped with safety glass or a windshield at all times while operating the vehicle, and operators and any passengers shall wear protective helmets. Operators and passengers riding on autocycles that have non-removable roofs, windshields, and enclosed bodies shall not be required to wear protective helmets.



### **Headlight Requirements**

The act exempts autocycles from the requirement on other types of motor vehicles to have at least two approved headlights at the front of and on opposite sides of the motor vehicle. It states that autocycles (or motorcycles) shall be equipped with at least one approved headlight and shall be capable of projecting sufficient light to the front of the vehicle to render discernible a person or object at a distance of 200 feet.

However, the lights shall not project a glaring or dazzling light to persons approaching such autocycles (or motorcycles). In addition, each autocycle (or motorcycle) may be equipped with not more than two auxiliary approved headlights. Autocycles (or motorcycles) may be equipped with means of modulating the high beam of their headlights between high and low beam at a rate of 200 to 280 flashes per minute. Such headlights shall not be so modulated during periods when headlights would ordinarily be required to be lighted.

### **Brake and Tail Light Requirements**

The act exempts autocycles from the requirements on other types of vehicles that they be equipped with at least two brake lights. Every autocycle (or motorcycle) shall be equipped with at least one brake light. Autocycles (or motorcycles) may be equipped with one or more auxiliary brake lights.

Every autocycle (or motorcycle) shall carry at the rear at least one or more red lights plainly visible in clear weather from a distance of 500 feet to the rear of such vehicle. Such tail lights shall be constructed and so mounted in their relation to the rear license plate as to illuminate the license plate with a white light so that the same may be read from a distance of 50 feet to the rear of such vehicle. Alternatively, a separate white light shall be so mounted as to illuminate the rear license plate from a distance of 50 feet to the rear of such vehicle.

Autocycles (or motorcycles) may be equipped with a means of varying the brightness of the vehicle's brake light for a duration of not more than five seconds upon application of the vehicle's brakes.

### **Other Safety Requirements**

The act exempts autocycles from the requirement on other vehicles that they be equipped with a windshield.

The act states that the brake system on an autocycle (or motorcycle) should be capable of stopping within a distance of 30 feet on a dry, hard, approximately level stretch of highway free from loose material at all times and under all conditions at a speed of 20 miles per hour.

The act exempts autocycles (or motorcycles) from the requirement on other vehicles that they be equipped with emergency or parking brakes.

The act requires that front seats on autocycles (and passenger cars) be equipped with adult safety lap belts or a combination of lap belts and shoulder harnesses for model years 1963 and later. It states that no autocycle shall be issued a safety inspection sticker if any lap belt, combination of

lap belt and shoulder harness, or passive belt systems required to be installed have been either removed from the autocycle or rendered inoperable.

### **Inspection Requirements**

The act states that for the purposes of inspection of the mechanism and equipment of a vehicle by an official inspection station, autocycles shall be inspected as motorcycles. Safety inspection stations may charge no more than \$12 for each inspection of any autocycle, \$10 of which shall be retained by the inspection station and \$2 of which shall be transmitted to the Department of State Police to be used to support the Department of Motor Vehicles' costs in administering the motor vehicle safety inspection program.

Submitted as:

Virginia

H 122

Status: Signed into law on March 3, 2014.

## Access to Cellphone Location in an Emergency

This act requires a provider of wireless telecommunications to provide call location information concerning the telecommunications device of a user to a law enforcement agency in certain circumstances; requires a provider of wireless telecommunications to submit its emergency contact information to the Department of Public Safety; requires the Department to maintain a database of such emergency contact information; authorizes the Department to adopt regulations; and provides other matters properly relating thereto.

Submitted as:

Nevada

SB 268

Status: Signed into law on May 23, 2013.

### Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title*] Access to Cellphone Location in Emergency.  
2
- 3 Section 2. [*Definitions.*]  
4 “Department” means the [Department of Public Safety].  
5
- 6 “Provider of wireless telecommunications” means a person that is licensed by the Federal  
7 Communications Commission to provide wireless telecommunications services over a  
8 designated radio frequency and is authorized to do business in or submits to the jurisdiction of  
9 this State. The term includes a reseller of wireless telecommunications services.  
10
- 11 Section 3. [*Call location information.*]  
12 (1) Upon the request of a law enforcement agency, a provider of wireless telecommunications  
13 shall provide call location information concerning the telecommunications device of a user to  
14 assist the law enforcement agency in responding to a call for emergency services or in an  
15 emergency situation that involves the immediate risk of death or serious physical harm. The  
16 provider of wireless telecommunications shall provide the most accurate call location  
17 information readily available, given any technical or other limitations that may affect the  
18 accuracy of the call location information in the relevant area.  
19 (2) Notwithstanding any other provision of law, nothing in this section prohibits a provider of  
20 wireless telecommunications from establishing any protocols which enable the provider to  
21 disclose call location information voluntarily in an emergency situation that involves the  
22 immediate risk of death or serious physical harm.  
23 (3) No cause of action may be brought against any provider of wireless telecommunications, its  
24 officers, employees or agents for providing call location information while acting in good  
25 faith and in accordance with the provisions of sections 2 to 5, inclusive, of this act.

1 Section 4. [*Emergency contact information.*]  
2 (1) Any provider of wireless telecommunications shall submit its emergency contact information  
3 to the [Department] to facilitate requests from law enforcement agencies for call location  
4 information in accordance with section 3 of this act. Such emergency contact information  
5 must be submitted:  
6 (a) Annually; and  
7 (b) As soon as practicable following any change in emergency contact information.  
8 (2) The [Department] shall maintain a database which contains all emergency contact  
9 information received pursuant to subsection 1 and shall make such information available to a  
10 law enforcement agency immediately upon request.  
11  
12 Section 5. [*Regulations.*]  
13 The [Department] may adopt such regulations as are necessary to carry out the provisions of  
14 sections 2 to 5, inclusive, of this act.  
15  
16 Section 6. [*Severability.*] Insert severability clause.  
17  
18 Section 7. [*Repealer.*] Insert repealer clause.  
19  
20 Section 8. [*Effective Date.*] Insert effective date.

## **Armed Personnel in Schools (Note)**

The December 2012 shootings at Sandy Hook Elementary School in Newton, Connecticut, sparked a reevaluation of school security and the safety of both students and staff. One issue that emerged was whether certain adults should be allowed to possess weapons within school buildings to deter and defend against armed intruders.

South Dakota 2013 S.D. Session Laws ch. 93 (S.D. HB 1087) authorizes any school board, upon approval of the law enforcement official who has jurisdiction over school premises, to create, establish, and supervise the arming of school employees, hired security personnel, or volunteers as school sentinels to deter physical threats and defend schools, students, staff, and members of the public on school premises against violent attack. School sentinels are required to successfully complete training with the Law Enforcement Officers Standards Commission. A school board may refer the decision of whether to implement a school sentinel program to a vote of the qualified voters of the school district.

Kansas 2013 Kan. Sess. Laws ch. 105 (Kan. HB 2052) authorizes public schools and colleges, beginning in July 2013, to allow employees and visitors who are otherwise permitted to carry a concealed handgun to carry the concealed handgun in any building of the institution if the school district or the governing body of the institution does not have a policy otherwise prohibiting it. No additional training is required to carry the weapon than is already required to obtain a concealed carry permit under Kansas law.

Tennessee 2013 Tenn. Pub. Acts ch. 358 (Tenn. HB 6) authorizes any person employed or assigned to a local education agency to possess and carry a firearm on school grounds if the person possesses a permit to carry, has the joint written permission of the director of schools and the principal of the school, and is a current or former law enforcement officer who has completed 40 hours of basic training in school policing.

Georgia 2014 Ga. Laws Act 604 (Ga. HB 60) authorizes local boards of education to adopt a policy to allow persons to possess or use weapons on school property when authorized in writing by an official of the school.

Missouri 2014 Mo. Laws (Mo. SB 656) authorizes any school district within the state, after a public hearing on the matter, to designate elementary or secondary school teachers or administrators as school protection officers. School protection officers are authorized to carry concealed firearms or self-defense spray in any school in the district. Volunteers who seek to be designated as school protection officers must submit a written request to the local superintendent of education and, to be allowed to carry a concealed weapon, must also submit proof of a valid concealed carry permit and a certificate of completion of a school protection officer training program. Identifying information about each person designated as a school protection officer shall be provided to the department of public safety and the department shall make a list of all school protection officers available to all law enforcement agencies.

Texas 2013 Tex. Gen. Laws ch. 655 (Tex. HB 1009) authorizes local boards of education to designate school employees as school marshals who may only act as necessary to prevent or abate the commission of an offense that threatens serious bodily injury or death of students, faculty, or visitors on school premises. Before appointment, school marshals shall successfully complete an 80 hour training program specific to school safety and shall obtain a license to carry a concealed handgun under state law. The applicant shall also be determined to be psychologically fit to carry on the duties of a school marshal by completing a psychological evaluation. A school marshal license is effective for two years and may be renewed only upon successfully completing a renewal training course and examination on the materials and demonstrating handgun proficiency and psychological fitness. Identifying information about each person licensed as a school marshal shall be provided to the department of public safety, the employing school district, the chief law enforcement officer of the municipality or sheriff of the county, and the chief administrator of any commissioned peace officer that is employed at the school.

## **Medical Marijuana (Limited Use of Low THC-High CBD Marijuana Products) (Note)**

In contrast to broad, comprehensive laws authorizing the general use of marijuana for medical purposes, several states have recently enacted laws authorizing the limited use of “Low THC-High CBD” marijuana products to treat specific illnesses or symptoms. The laws commonly (1) use a very specific and limited definition of the authorized marijuana products; (2) limit the types of illnesses and symptoms subject to treatment at the direction of a physician; (3) limit the approved distributors of the marijuana product; (4) create a specific legal defense to criminal prosecution for the use of the sanctioned marijuana products; and (5) require patients or physicians to register with a particular state entity or obtain an identification/registration card prior to obtaining the marijuana product. Some of the laws were created as pilot study programs or clinical trials, while others are general authorizations for the limited use of certain marijuana products to treat specific illnesses and symptoms.

Most of these laws contain a very specific definition of the authorized marijuana products, with the amount of THC limited to a very low content percentage. For example, Florida Chapter No. 2014-157 (Fla. SB 1030) authorizes the use of “low-THC cannabis,” defined as containing no more than 0.8 percent of THC and more than 10 percent of cannabidiol (CBD). Mississippi Chapter No. 2014-501 (Miss. HB 1231) authorizes the use of “CBD oil,” described as processed cannabis plant extract, oil, or resin that contains more than 15 percent cannabidiol, or a dilution of the resin that contains at least 50 milligrams of cannabidiol per milliliter, but not more than 0.5 percent of THC. The 2014 Missouri Laws 935 (Mo. HB 2238) authorizes the use of “hemp extract,” defined as an extract from a cannabis plant or a mixture or preparation containing cannabis plant material that is no more than 0.3 percent THC, at least 5 percent CBD by weight, and contains no other psychoactive substance.

Another common feature of these laws is that most specifically limit the use of the Low THC-High CBD marijuana products to treat only specific illnesses, with most limited to epileptic-related disorders. Alabama Act 2014-277 (Ala. SB 174) limits the use of CBD oil to treat only “debilitating epileptic conditions,” defined as epilepsy or another neurological disorder, or the treatment of epilepsy or other neurological disorder that, as diagnosed by a board-certified neurologist, produces serious, debilitating, or life-threatening seizures. The Missouri law limits use of the products to treat “intractable epilepsy,” as determined by a neurologist for a person who does not respond to three or more treatment options as overseen by the neurologist. South Carolina 2014 Act No. 221 (S.C. S. 1035) allows state board certified physicians practicing in an academic medical center in the state to treat clinical study cannabidiol patients with severe forms of epilepsy.

Most of these laws also limit who or what entity may distribute the marijuana product. For example, Kentucky 2014 Acts, Ch. 112 (Ky. SB 124) precludes the distribution of cannabidiol except by a physician or hospital or associated clinic affiliated with a public university, the Alabama Act prohibits the distribution of CBD oil except by the Department of Neurology at the University of Alabama at Birmingham, and the Mississippi law only authorizes the use of CBD oil that is obtained from or tested by the National Center for Natural Products Research at the

University of Mississippi and dispensed by the Department of Pharmacy Services at the University of Mississippi Medical Center. Unlike states that couple distribution with state universities, the Florida law provides for the creation of one to four regional distributors of low-THC cannabis for medical purposes. The Missouri law creates cannabidiol oil care centers and cultivation and production facilities to oversee distribution of the oil. The 2013 Wisconsin Act 267 (Wisc. AB 726) allows a pharmacy or physician to dispense cannabidiol in a form without a psychoactive effect as a treatment for a seizure disorder. Iowa 2014 Acts, Ch. 1125 (Ia. SF 2360) and North Carolina Session Law 2014-53 (N.C. HB 1220) are silent as to who or what entity is responsible for distribution of the marijuana product.

Most of these laws are also crafted to provide a legal defense to prosecution for possession of the marijuana product. The Iowa Act creates an affirmative defense for the possession of cannabidiol if a patient has been diagnosed with intractable epilepsy and has used or possessed cannabidiol pursuant to a recommendation by a neurologist. Similarly, the Mississippi law provides that it is an affirmative and complete defense to prosecution for unlawful possession of marijuana if the defendant suffered from a debilitating epileptic condition or related illness and the use or possession of CBD oil was pursuant to the order of a physician or if the defendant is a parent or guardian of an individual who suffered from a debilitating epileptic condition or related illness and the use or possession by the minor was pursuant to an order by a physician.

Requiring patients or prescribing physicians to register with a state entity or obtain a particular identification/registration card is also a recurrent feature in these laws. The 2014 Utah Session Law Ch. 025 (Ut. HB 105) requires users of the authorized hemp extract to apply for and obtain a “hemp extraction registration card” from the Utah Department of Agriculture prior to medical use of the extract. Under the law, the registration cards are subject to a fee, are valid for one year, and are renewable under certain conditions. The North Carolina law requires the North Carolina Department of Public Safety to issue a caregiver registration card to be issued to individuals who have provided a statement signed by a neurologist that he or she is providing care to a person who suffers from intractable epilepsy who may benefit from treatment with hemp extract. The Iowa act requires the issuance of cannabidiol registration cards to sanctioned users of cannabidiol and requires the Iowa Department of Transportation to maintain a confidential file of the names of each patient to or for whom the department issues a registration card. In contrast, the Florida law requires a physician ordering the use of low-THC cannabis to register with the “compassionate use registry” maintained by the Department of Health.



## Counterfeit Airbags

This act makes it a crime and Class D felony to manufacture, import, install, or reinstall a nonfunctional or counterfeit airbag. It also makes it a crime, punishable by the increased penalty, to knowingly sell, offer for sale, manufacture, import, install, or reinstall a counterfeit or nonfunctional air bag, as defined in the act. Further, selling or offering for sale a replacement device that the seller knows or reasonably should know does not meet federal airbag safety standards will be considered an unfair or deceptive trade practice under state law.

Submitted as:

Connecticut

SSB 1040

Status: Signed into law on July 27, 2009.

### Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] An Act Concerning Counterfeit and Nonfunctional Airbags  
2
- 3 Section 2. [*Counterfeit and nonfunctioning airbags.*]  
4 (a) As used in this section:  
5 (1) "Air bag" means a motor vehicle inflatable occupant restraint system, including all  
6 component parts, such as the cover, sensors, controllers, inflators and wiring, that (A) operates in  
7 the event of a crash, and (B) is designed in accordance with federal motor vehicle safety  
8 standards for the specific make, model and year of the motor vehicle in which it is or will be  
9 installed.  
10 (2) "Counterfeit air bag" means a motor vehicle inflatable occupant restraint system,  
11 including all component parts, such as the cover, sensors, controllers, inflators and wiring,  
12 displaying a mark identical or similar to the genuine mark of a motor vehicle manufacturer  
13 without authorization from such manufacturer.  
14 (3) "Nonfunctional airbag" means a replacement motor vehicle inflatable occupant restraint  
15 system, including all component parts, such as the cover, sensors, controllers, inflators and  
16 wiring, that (A) was previously deployed or damaged, (B) has an electric fault that is detected by  
17 the vehicle airbag diagnostic system after the installation procedure is completed, or (C) includes  
18 any part or object, including, but not limited to, a counterfeit or repaired airbag cover, installed in  
19 a motor vehicle to mislead the owner or operator of such motor vehicle into believing that a  
20 functional airbag has been installed.  
21 (b) No person shall manufacture, import, install, reinstall, sell or offer for sale any device with  
22 the intent that such device replace an air bag in any motor vehicle if such person knows or  
23 reasonably should know that such device is a counterfeit air bag, a nonfunctional air bag or  
24 does not meet federal safety requirements as provided in 49 CFR 571.208.  
25 (c) No person shall sell or install or reinstall in any vehicle any device that causes such vehicle's  
26 diagnostic system to inaccurately indicate that such vehicle is equipped with a functional air  
27 bag when a counterfeit air bag, a nonfunctional air bag or no air bag is installed.

- 1 (d) A violation of subsection (b) or (c) of this section shall be deemed an unfair or deceptive  
2 trade practice under subsection (a) of [Insert citation]. Each manufacture, importation,  
3 installation, reinstallation, sale or offer for sale shall constitute a separate and distinct  
4 violation.
- 5 (e) Any person who violates subsection (b) or (c) of this section shall be guilty of a class D  
6 felony.

7  
8 Section 3. [*Air bag fraud.*]

- 9 (1) Air bag fraud. A person is guilty of air bag fraud when such person, with intent to defraud  
10 another person, obtains property from such other person or a third person by knowingly  
11 selling, installing or reinstalling any object, including any counterfeit air bag or  
12 nonfunctional air bag, as such terms are defined in section 14-106d, as amended by this act,  
13 in lieu of an air bag that was designed in accordance with federal safety requirements as  
14 provided in 49 CFR 571.208, as amended, and which is proper for the make, model and year  
15 of the vehicle, as part of the vehicle inflatable restraint system.

16  
17 Section 4. [*Severability.*] Insert severability clause.

18  
19 Section 5. [*Repealer.*] Insert repealer clause.

20  
21 Section 6. [*Effective Date.*] Insert effective date.

## Police Custody Death Investigations

This act relates to investigations of deaths involving a law enforcement officer. It requires the use of outside investigators in the event of a police-related death of a citizen, and requires reports of custody death investigations to be publicly released if criminal charges are not filed against the officers involved. In addition, officers must also inform victims' families of their options to pursue additional reviews.

Submitted as:

Wisconsin

A 409

Status: Signed into law on April 23, 2014.

### Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title*] Relating to investigation of deaths involving a law enforcement officer.  
2
- 3 Section 2. [*Review of deaths involving officers.*]  
4 (1) In this section:  
5 (a) "Law enforcement agency" has the meaning given in [insert citation].  
6 (b) "Law enforcement officer" has the meaning given in [insert citation].  
7 (c) "Officer-involved death" means a death of an individual that results directly from an  
8 action or an omission of a law enforcement officer while the law enforcement officer is  
9 on duty or while the law enforcement officer is off duty but performing activities that are  
10 within the scope of his or her law enforcement duties.
- 11 (2) Each law enforcement agency shall have a written policy regarding the investigation of  
12 officer-involved deaths that involve a law enforcement officer employed by the law  
13 enforcement agency.
- 14 (3)  
15 (a) Each policy under sub. (2) must require an investigation conducted by at least two  
16 investigators, one of whom is the lead investigator and neither of whom is employed by a  
17 law enforcement agency that employs a law enforcement officer involved in the officer-  
18 involved death.  
19 (b) If the officer-involved death being investigated is traffic-related, the policy under sub. (2)  
20 must require the investigation to use a crash reconstruction unit from a law enforcement  
21 agency that does not employ a law enforcement officer involved in the officer-involved  
22 death being investigated, except that a policy for a state law enforcement agency may  
23 allow an investigation involving a law enforcement officer employed by that state law  
24 enforcement agency to use a crash reconstruction unit from the same state law  
25 enforcement agency.  
26 (c) Each policy under sub. (2) may allow an internal investigation into the officer-involved  
27 death if the internal investigation does not interfere with the investigation conducted  
28 under par. (a).

- 1 (4) Compensation for participation in an investigation under sub. (3) (a) may be determined in a  
2 manner consistent with mutual aid agreements.
- 3 (5) The investigators conducting the investigation under sub. (3)  
4 (a) shall, in an expeditious manner, provide a complete report to the district attorney of the  
5 county in which the officer-involved death occurred.  
6 (b) If the district attorney determines there is no basis to prosecute the law enforcement  
7 officer involved in the officer-involved death, the investigators conducting the investigation  
8 under sub. (3) (a) shall release the report.

9 Section 3. [*Basic bill of rights for victims and witnesses.*]

10 (1) Rights of Victims: Victims of crimes have the following rights:

- 11 (a) To be informed about the process by which he or she may file a complaint under [insert  
12 citation] and about the process of an inquest under [insert citation] if he or she is the  
13 victim of an officer-involved death, as defined in [insert citation].  
14

15 Section 4. [*Information and Mediation Services*]

16 (1) Information to be provided by law enforcement agencies: No later than 24 hours after a law  
17 enforcement agency has initial contact with a victim of a crime that the law enforcement  
18 agency is responsible for investigating, the law enforcement agency shall make a reasonable  
19 attempt to provide to the victim written information on all of the following:

- 20 (a) If the victim is a victim of an officer-involved death, as defined in [insert citation],  
21 information about the process by which he or she may file a complaint under [insert  
22 citation] and about the process of an inquest under [insert citation].  
23

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

25

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

27

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

## Search Warrants for Location Information of Electronic Devices

With passage of this act, Montana became the first state to require state and local government entities to obtain a probable-cause warrant before remotely engaging personal electronic devices. Agencies may obtain location information in the case of emergencies or if an electronic device is stolen or if an individual gives authorized permission to access their location information.

Submitted as:

Montana

HB 603

Status: Signed into law on July 16, 2013.

### Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] An Act providing that a government entity must obtain a search warrant  
2 prior to obtaining location information of an electronic device; and providing exceptions,  
3 definitions, and a civil penalty.  
4
- 5 Section 2. [*Location information privacy – civil penalty.*]
- 6 (1) Except as provided in subsection (2), a government entity may not obtain the location  
7 information of an electronic device without a search warrant issued by a duly authorized  
8 court.
- 9 (2) A government entity may obtain location information of an electronic device under any of  
10 the following circumstances:  
11 (a) the device is reported stolen by the owner;  
12 (b) in order to respond to the user's call for emergency services;  
13 (c) with the informed, affirmative consent of the owner or user of the electronic device; or  
14 (d) there exists a possible life-threatening situation.
- 15 (3) Any evidence obtained in violation of this section is not admissible in a civil, criminal, or  
16 administrative proceeding and may not be used in an affidavit of probable cause in an effort  
17 to obtain a search warrant.
- 18 (4) A violation of this section will result in a civil fine not to exceed \$50.  
19
- 20 Section 3. [*Definitions.*] As used in [section 2] and this section, the following definitions apply:
- 21 (1) "Electronic communication service" means a service that provides to users of the service the  
22 ability to send or receive wire or electronic communications.
- 23 (2) "Electronic device" means a device that enables access to or use of an electronic  
24 communication service, remote computing service, or location information service.
- 25 (3) "Government entity" means a state or local agency, including but not limited to a law  
26 enforcement entity or any other investigative entity, agency, department, division, bureau,  
27 board, or commission or an individual acting or purporting to act for or on behalf of a state or  
28 local agency.

- 1 (4) "Location information" means information concerning the location of an electronic device  
2 that, in whole or in part, is generated or derived from or obtained by the operation of an  
3 electronic device.
- 4 (5) "Location information service" means the provision of a global positioning service or other  
5 mapping, locational, or directional information service.
- 6 (6) "Remote computing service" means the provision of computer storage or processing services  
7 by means of an electronic communications system.

8

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

10

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

12

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

## Sentencing Alternatives for Servicemembers/Veterans

This act provides allows a judge to use discretion when sentencing a veteran or servicemember, who has been diagnosed with a mental illness such as post-traumatic stress disorder and who is charged with a non-violent offence to undergo a counseling/treatment program rather than be sent to jail. However, if an individual does not complete the program they can then be sentenced to jail time.

Submitted as:

Illinois

HB 2281

Status: Signed into law on July 27, 2009.

### Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] Sentencing Hearings.

2

3 Section 2. [*Sentencing alternatives for servicemembers/veterans.*]

4 Before the sentencing hearing and as part of the presentence investigation under [insert citation],  
5 the court shall inquire of the defendant whether the defendant is currently serving in or is a  
6 veteran of the Armed Forces of the United States. If the defendant is currently serving in the  
7 Armed Forces of the United States or is a veteran of the Armed Forces of the United States and  
8 has been diagnosed as having a mental illness by a qualified psychiatrist or clinical psychologist  
9 or physician, the court may:

10 (1) order that the officer preparing the presentence report consult with the United States

11 Department of Veterans Affairs, [Illinois] Department of Veterans' Affairs, or another agency  
12 or person with suitable knowledge or experience for the purpose of providing the court with  
13 information regarding treatment options available to the defendant, including federal, State,  
14 and local programming; and

15 (2) consider the treatment recommendations of any diagnosing or treating mental health  
16 professionals together with the treatment options available to the defendant in imposing  
17 sentence.

18

19 For the purposes of this subsection, “qualified psychiatrist” means a reputable physician licensed  
20 in [Illinois] to practice medicine in all its branches, who has specialized in the diagnosis and  
21 treatment of mental and nervous disorders for a period of not less than 5 years.

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.

## Uniform Correction or Clarification of Defamation Act

Under this act, a person may maintain an action for defamation when the person has made a timely and adequate request for correction or clarification from the defendant, or the defendant has made a correction or clarification. A person who, within 90 days after knowledge of the publication, fails to make a good-faith attempt to request a correction or clarification may recover only provable economic loss. According to the legislation, a request for correction or clarification is adequate when it:

- is made in writing and reasonably identifies the person making the request;
- specifies with particularity the statement alleged to be false and defamatory and, to the extent known, the time and place of publication; alleges the defamatory meaning of the statement;
- specifies the circumstances giving rise to any defamatory meaning of the statement which arises from other than express language of the publication; states that the alleged defamatory meaning of the statement is false.

Submitted as:

Washington

SB 5236

Status: Signed into law on May 20, 2013.

### Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*] Uniform correction or clarification of defamation act.

2

3 Section 2. [*Intent.*]

4 Since the United States Supreme Court recognized the First Amendment limitations on the  
5 common law tort of defamation and defamation-like torts, courts have struggled to achieve a  
6 balance between constitutionally protected guarantees of free expression and the need to protect  
7 citizens from reputational harm. Unlike personal injuries, harm to reputation can often be cured  
8 by means other than money damages. The correction or clarification of a published statement  
9 may restore a person's reputation more quickly and more thoroughly than a victorious lawsuit.

10 The salutary effect of a correction or clarification is enhanced if it is published reasonably soon  
11 after a statement is made.

12

13 [This act] seeks to provide strong incentives for individuals to promptly correct or clarify an  
14 alleged false statement as an alternative to costly litigation. The options created by [this act]  
15 provide an opportunity for a plaintiff who believes he or she has been harmed by a false  
16 statement to secure quick and complete vindication of his or her reputation. [This act] provides  
17 publishers with a quick and cost-effective means of correcting or clarifying alleged mistakes and  
18 avoiding costly litigation.



1 Section 3. [*Definition.*]

2 The definition in this section applies throughout this chapter unless the context clearly requires  
3 otherwise.

4 "Person" means an individual, corporation, business trust, estate, trust, partnership, association,  
5 joint venture, or other legal or commercial entity. The term does not include a government or  
6 governmental subdivision, agency, or instrumentality.

7  
8 Section 4. [*Scope.*]

9 (1) This chapter applies to any claim for relief, however characterized, for damages arising out  
10 of harm caused by the false content of a publication that is published on or after the effective  
11 date of this section.

12 (2) This chapter applies to all publications, including writings, broadcasts, oral communications,  
13 electronic transmissions, or other forms of transmitting information.

14  
15 Section 5. [*Request for correction or clarification.*]

16 (1) A person may maintain an action for defamation or another claim covered by this chapter  
17 only if:

18 (a) The person has made a timely and adequate request for correction or clarification from  
19 the defendant; or

20 (b) The defendant has made a correction or clarification.

21 (2) A request for correction or clarification is timely if made within the period of limitation for  
22 commencement of an action for defamation.

23 (3) A request for correction or clarification is adequate if it:

24 (a) Is made in writing and reasonably identifies the person making the request;

25 (b) Specifies with particularity the statement alleged to be false and defamatory or otherwise  
26 actionable and, to the extent known, the time and place of publication;

27 (c) Alleges the defamatory meaning of the statement;

28 (d) Specifies the circumstances giving rise to any defamatory meaning of the statement  
29 which arises from other than the express language of the publication; and

30 (e) States that the alleged defamatory meaning of the statement is false.

31 (4) In the absence of a previous adequate request, service of a summons and complaint stating a  
32 claim for defamation or another claim covered by this chapter and containing the information  
33 required in subsection (3) of this section constitutes an adequate request for correction or  
34 clarification.

35 (5) The period of limitation for commencement of a defamation action or another claim covered  
36 by this chapter is tolled during the period allowed in [section 8](1) for responding to a  
37 request for correction or clarification.

38  
39 Section 6. [*Disclosure of evidence of falsity.*]

40 (1) A person who has been requested to make a correction or clarification may ask the requester  
41 to disclose reasonably available information material to the falsity of the allegedly  
42 defamatory or otherwise actionable statement.

43 (2) If a correction or clarification is not made, a person who unreasonably fails to disclose the  
44 information after a request to do so may not recover damages for injury to reputation or  
45 presumed damages; however, the person may recover all other damages permitted by law.

46

1 Section 7. [*Effect of correction or clarification.*]

2 If a timely and sufficient correction or clarification is made, a person may not recover damages  
3 for injury to reputation or presumed damages; however, the person may recover all other  
4 damages permitted by law.

5  
6 Section 8. [*Timelines and sufficiency of correction or clarification.*]

7 (1) A correction or clarification is timely if it is published before, or within thirty days after,  
8 receipt of a request for correction or clarification or of the information in [section 6](1),  
9 whichever is later, unless the period is extended by written agreement of the parties.

10 (2) A correction or clarification is sufficient if it:

11 (a) Is published with a prominence and in a manner and medium reasonably likely to reach  
12 substantially the same audience as the publication complained of;

13 (b) Refers to the statement being corrected or clarified and:

14 (i) Corrects the statement;

15 (ii) In the case of defamatory or false meaning arising from other than the express  
16 language of the publication, disclaims an intent to communicate that meaning or  
17 to assert its truth; or

18 (iii) In the case of a statement attributed to another person, identifies the person and  
19 disclaims an intent to assert the truth of the statement;

20 (c) In advance of the publication, is provided to the person who has made a request for  
21 correction or clarification; and

22 (d) Accompanies and is an equally prominent part of any electronic publication of the  
23 allegedly defamatory or otherwise actionable statement by the publisher.

24 (3) A correction or clarification is published in a medium reasonably likely to reach substantially  
25 the same audience as the publication complained of if it is published in a later issue, edition,  
26 or broadcast of the original publication.

27 (4) If a later issue, edition, or broadcast of the original publication will not be published within  
28 the time limits established for a timely correction or clarification, a correction or clarification  
29 is published in a manner and medium reasonably likely to reach substantially the same  
30 audience as the publication complained of if:

31 (a) It is timely published in a reasonably prominent manner:

32 (i) In another medium likely to reach an audience reasonably equivalent to the  
33 original publication; or

34 (ii) If the parties cannot agree on another medium, in the newspaper with the largest  
35 general circulation in the region in which the original publication was distributed;

36 (b) Reasonable steps are taken to correct undistributed copies of the original publication, if  
37 any; and

38 (c) It is published in the next practicable issue, edition, or broadcast, if any, of the original  
39 publication.

40 (5) A correction or clarification is timely and sufficient if the parties agree in writing that it is  
41 timely and sufficient.

42  
43 Section 9. [*Challenges to correction or clarification or to request for correction or clarification.*]

44 (1) If a defendant in an action governed by this chapter intends to rely on a timely and sufficient  
45 correction or clarification, the defendant's intention to do so, and the correction or  
46 clarification relied upon, must be set forth in a notice served on the plaintiff within sixty days

1 after service of the summons and complaint or ten days after the correction or clarification is  
2 made, whichever is later.

- 3 (2) If a defendant in an action governed by this chapter intends to challenge the adequacy or  
4 timeliness of a request for correction or clarification, the defendant must set forth the  
5 challenge in a motion to declare the request inadequate or untimely served within sixty days  
6 after service of the summons and complaint. The court shall rule on the motion at the earliest  
7 appropriate time before trial.

8  
9 Section 10. [*Offer to Correct or Clarify.*]

10 (1) If a timely correction or clarification is no longer possible, the publisher of an alleged  
11 defamatory or otherwise actionable statement may offer, at any time before trial, to make a  
12 correction or clarification. The offer must be made in writing to the person allegedly harmed  
13 by the publication and:

14 (a) Contain the publisher's offer to:

- 15 (i) Publish, at the person's request, a sufficient correction or clarification; and  
16 (ii) Pay the person's reasonable expenses of litigation, including attorneys' fees,  
17 incurred before publication of the correction or clarification; and

18 (b) Be accompanied by a copy of the proposed correction or clarification and the plan for its  
19 publication.

20 (2) If the person accepts in writing an offer to correct or clarify made pursuant to subsection (1)  
21 of this section:

22 (a) The person is barred from commencing an action against the publisher based on the  
23 statement; or

24 (b) If an action has been commenced, the court shall dismiss the action against the defendant  
25 with prejudice after the defendant complies with the terms of the offer.

26 (3) A person who does not accept an offer made in conformance with subsection (1) of this  
27 section may not recover damages for injury to reputation or presumed damages in an action  
28 based on the statement; however, the person may recover all other damages permitted by law,  
29 together with reasonable expenses of litigation, including attorneys' fees, incurred before the  
30 offer, unless the person failed to make a good faith attempt to request a correction or  
31 clarification in accordance with [section 5] or failed to disclose information in accordance  
32 with [section 6].

33 (4) On request of either party, a court shall promptly determine the sufficiency of the offered  
34 correction or clarification.

35  
36 Section 11. [*Scope of Protection.*]

37 A timely and sufficient correction or clarification made by a person responsible for a publication  
38 constitutes a correction or clarification made by all persons responsible for that publication other  
39 than a republisher. However, a correction or clarification that is sufficient only because of the  
40 operation of [section 8](2)(b)(iii) does not constitute a correction or clarification made by the  
41 person to whom the statement is attributed.

42  
43 Section 12. [*Uniformity of Application and Construction.*]

44 This chapter shall be applied and construed to effectuate its general purpose to make uniform the  
45 law with respect to the subject of this chapter among states enacting it.

- 1 Section 13. [*Severability.*] Insert severability clause.
- 2
- 3 Section 14. [*Repealer.*] Insert repealer clause.
- 4
- 5 Section 15. [*Effective Date.*] Insert effective date.

## Uniform Premarital and Marital Agreements Act

This act describes the formation of premarital and marital agreements, when such agreements are effective, provisions that are unenforceable in premarital or marital agreements, and when an agreement is enforceable. Under the act, provisions relating to spousal maintenance are unenforceable if the provisions are unconscionable at the time of enforcement. The Uniform Premarital and Marital Agreements Act addresses the varying standards for these types of agreements that have led to conflicting laws, judgments, and uncertainty about enforcement as couples move from state to state.

Submitted as:

HB 1204

Colorado

Status: Signed into law on May 17, 2013.

### Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] Uniform Premarital and Marital Agreements Act.  
2
- 3 Section 2. [*Definitions.*] In this section:  
4 (1) “Amendment” means a modification or revocation of a premarital agreement or marital  
5 agreement.  
6 (2) “Marital agreement” means an agreement between spouses who intend to remain married  
7 which affirms, modifies, or waives a marital right or obligation during the marriage or at  
8 legal separation, marital dissolution, death of one of the spouses, or the occurrence or  
9 nonoccurrence of any other event. The term includes an amendment, signed after the spouses  
10 marry, of a premarital agreement or marital agreement.  
11 (3) “Marital dissolution” means the ending of a marriage by court decree. The term includes a  
12 divorce, dissolution, and annulment.  
13 (4) “Marital right or obligation” means any of the following rights or obligations arising between  
14 spouses because of their marital status:  
15 (A) spousal maintenance;  
16 (B) a right to property, including characterization, management, and ownership;  
17 (C) responsibility for a liability;  
18 (D) a right to property and responsibility for liabilities at legal separation, marital  
19 dissolution, or death of a spouse; or  
20 (E) an award and allocation of attorney’s fees and costs.  
21 (5) “Premarital agreement” means an agreement between individuals who intend to marry which  
22 affirms, modifies, or waives a marital right or obligation during the marriage or at legal  
23 separation, marital dissolution, death of one of the spouses, or the occurrence or  
24 nonoccurrence of any other event. The term includes an amendment, signed before the  
25 individuals marry, of a premarital agreement.

- 1 (6) “Property” means anything that may be the subject of ownership, whether real or personal,  
2 tangible or intangible, legal or equitable, or any interest therein, including income and  
3 earnings.
- 4 (7) “Record” means information that is inscribed on a tangible medium or that is stored in an  
5 electronic or other medium and is retrievable in perceivable form.
- 6 (8) “Sign” means with present intent to authenticate or adopt a record:  
7 (A) to execute or adopt a tangible symbol; or  
8 (B) to attach to or logically associate with the record an electronic symbol, sound, or process.
- 9 (9) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United  
10 States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the  
11 United States.

12  
13 Section 3. [*Scope.*]

- 14 (1) This [Act] applies to a premarital agreement or marital agreement signed on or after [the  
15 effective date of this [Act]].
- 16 (2) This [Act] does not affect any right, obligation, or liability arising under a premarital  
17 agreement or marital agreement signed before [the effective date of this [Act]].
- 18 (3) This [Act] does not apply to:  
19 (a) an agreement between spouses which affirms, modifies, or waives a marital right or  
20 obligation and requires court approval to become effective; or  
21 (b) an agreement between spouses who intend to obtain a marital dissolution or court-  
22 decreed legal separation which resolves their marital rights or obligations and is signed  
23 when a proceeding for marital dissolution or court-decreed legal separation is anticipated  
24 or pending.
- 25 (4) This [Act] does not affect adversely the rights of a bona fide purchaser for value to the extent  
26 that this [Act] applies to a waiver of a marital right or obligation in a transfer or conveyance  
27 of property by a spouse to a third party.

28  
29 Section 4. [*Governing law.*]

- 30 (1) The validity, enforceability, interpretation, and construction of a premarital agreement or  
31 marital agreement are determined:  
32 (a) by the law of the jurisdiction designated in the agreement if the jurisdiction has a  
33 significant relationship to the agreement or either party at the time the agreement was  
34 signed and the designated law is not contrary to Section 9 or to a fundamental public  
35 policy of this state; or  
36 (b) absent an effective designation described in paragraph (a) of this subsection (1), by the  
37 law of this state, including the choice-of-law rules of this state.

38  
39 Section 5. [*Principles of law and equity.*]

40 Unless displaced by a provision of this [Act], principles of law and equity supplement this [Act].

41  
42 Section 6. [*Formation requirements.*]

43 A premarital agreement or marital agreement must be in a record and signed by both parties. The  
44 agreement is enforceable without consideration.

1 Section 7. [*When agreement effective.*]

2 A premarital agreement is effective on marriage. A marital agreement is effective on signing by  
3 both parties.

4  
5 Section 8. [*Void marriage.*]

6 If a marriage is determined to be void, a premarital agreement or marital agreement is  
7 enforceable to the extent necessary to avoid an inequitable result.

8  
9 Section 9. [*Enforcement.*]

10 (1) A premarital agreement or marital agreement is unenforceable if a party against whom  
11 enforcement is sought proves:

- 12 (a) the party's consent to the agreement was involuntary or the result of duress;  
13 (b) the party did not have access to independent legal representation under subsection (2) of  
14 this section;  
15 (c) unless the party had independent legal representation at the time the agreement was  
16 signed, the agreement did not include a notice of waiver of rights under subsection (3) of  
17 this section or an explanation in plain language of the marital rights or obligations being  
18 modified or waived by the agreement; or  
19 (d) before signing the agreement, the party did not receive adequate financial disclosure  
20 under subsection (4) of this section.

21 (2) A party has access to independent legal representation if:

- 22 (a) before signing a premarital or marital agreement, the party has a reasonable time to:  
23 (I) decide whether to retain a lawyer to provide independent legal representation; and  
24 (II) locate a lawyer to provide independent legal representation, obtain the lawyer's  
25 advice, and consider the advice provided; and  
26 (b) the other party is represented by a lawyer and the party has the financial ability to retain a  
27 lawyer or the other party agrees to pay the reasonable fees and expenses of independent  
28 legal representation.

29 (3) A notice of waiver of rights under this section requires language, conspicuously displayed,  
30 substantially similar to the following, as applicable to the premarital agreement or marital  
31 agreement:

32  
33 If you sign this agreement, you may be:

34  
35 Giving up your right to be supported by the person you are marrying or to whom you are  
36 married.

37  
38 Giving up your right to ownership or control of money and property.

39  
40 Agreeing to pay bills and debts of the person you are marrying or to whom you are  
41 married.

42  
43 Giving up your right to money and property if your marriage ends or the person to whom  
44 you are married dies.

45  
46 Giving up your right to have your legal fees paid.

- 1 (4) A party has adequate financial disclosure under this section if the party:  
2 (a) receives a reasonably accurate description and good-faith estimate of value of the  
3 property, liabilities, and income of the other party; or  
4 (b) has adequate knowledge or a reasonable basis for having adequate knowledge of the  
5 information described in paragraph (a) of this subsection (4).  
6 (5) A marital agreement or amendment thereto or revocation thereof that is otherwise  
7 enforceable after applying the provisions of subsections (1) to (4) of this section is  
8 nevertheless unenforceable insofar, but only insofar, as the provisions of such agreement,  
9 amendment, or revocation relate to the determination, modification, limitation, or elimination  
10 of spousal maintenance or the waiver or allocation of attorney fees, and such provisions are  
11 unconscionable at the time of enforcement of such provisions. The issue of unconscionability  
12 shall be decided by the court as a matter of law.  
13 (6) A premarital or marital agreement, or an amendment of either, that is not in a record and  
14 signed by both parties is unenforceable.  
15

16 Section 10 [*Unenforceable terms.*]

- 17 (1) In this section, “custodial responsibility” means parental rights and responsibilities, parenting  
18 time, access, visitation, or other custodial right or duty with respect to a child.  
19 (2) A term in a premarital agreement or marital agreement is not enforceable to the extent that it:  
20 (a) Adversely affects a child’s right to support;  
21 (b) Limits or restricts a remedy available to a victim of domestic violence under law of this  
22 state other than this [act];  
23 (c) Purports to modify the grounds for a court-decreed legal separation or marital dissolution  
24 available under law of this state other than this [act];  
25 (d) Penalizes a party for initiating a legal proceeding leading to a court-decreed legal  
26 separation or marital dissolution; or  
27 (e) Violates public policy  
28 (3) A term in a premarital agreement or marital agreement which defines the rights or duties of  
29 the parties regarding custodial responsibility is not binding on the court.  
30

31 Section 11. [*Limitation of action.*]

32 A statute of limitations applicable to an action asserting a claim for relief under a premarital  
33 agreement or marital agreement is tolled during the marriage of the parties to the agreement, but  
34 equitable defenses limiting the time for enforcement, including laches and estoppel, are available  
35 to either party.  
36

37 Section 12. [*Uniformity of application and construction.*] In applying and construing this  
38 uniform act, consideration must be given to the need to promote uniformity of the law with  
39 respect to its subject matter among states that enact it.  
40

41 Section 13. [*Relation to electronic signatures in global and national commerce act.*]

42 This [Act] modifies, limits, or supersedes the Federal “Electronic Signatures in Global and  
43 National Commerce Act,” 15 U.S.C. Section 7001 et seq., but does not modify, limit, or  
44 supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery  
45 of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).



1 Section 14. [*Applicability of part and case law to agreements relating to civil unions.*]  
2 Prospective parties to a civil union and present parties to a civil union may contract to make an  
3 agreement relating to the civil union that includes any of the rights and obligations that may be  
4 included in a marital agreement pursuant to this [Act]. The provisions of this [Act] and any case  
5 law construing this article PART 3 apply to any agreement made by prospective parties to a civil  
6 union or between present parties to a civil union.

7  
8 Section 15. [*Waiver of right to elect and of other rights.*]  
9 Any affirmation, modification, or waiver of a marital right or obligation, as defined in section 2  
10 made on or after [Insert effective date] is unenforceable unless the affirmation, modification, or  
11 waiver is contained in a premarital or marital agreement, as defined in section 2, that is  
12 enforceable under [Insert citation.]

13  
14 Section 16. [*Severability.*] Insert severability clause.

15  
16 Section 17. [*Repealer.*] Insert repealer clause.

17  
18 Section 18. [*Effective Date.*] Insert effective date.

## Prohibiting the “Re-Homing” of Children (Statement)

This act revises prior law that limits advertising related to adoption of a child and a delegation of parental powers.

### **Advertising Related to Adoption:**

Under prior law, with certain exceptions, advertising to either find a child to adopt, or to find an adoptive home for a child, is prohibited. The act expands those restrictions as follows:

- The act specifies that “advertising” includes communications by any computerized communication system, including by electronic mail, Internet site, Internet profile, or any similar medium of communication provided via the Internet.
- The act specifies that restrictions on advertising related to “adoption” of a child also apply to any other permanent physical placement of a child.
- The act removes the allowance given under prior law for a parent to advertise for the placement of the parent’s own child for adoption.

### **Delegation of Parental Powers:**

Under prior law, a parent could delegate powers regarding the care and custody of a child to an agent, by a power of attorney, if the delegation was for one year or less. The act permits a delegation of powers regarding care and custody of a child to remain in effect for longer than one year if:

- The delegation is made to a relative (or to an “extended family member” as defined by the law or custom of an Indian child’s tribe); or
- The delegation is approved by a court under the procedure given in the act.

Among the given procedures, the act specifies that, if a court receives notice that a child who is the subject of a petition for court approval of a delegation of parental powers for over one year may be an American Indian child, the court is required to apply the provisions of the Wisconsin Indian Child Welfare Act in its consideration of the matter. Accordingly, a court is required to provide notice to an Indian child’s tribe, to allow the tribe to intervene in the action or take jurisdiction, and to consider a specific ordering of placement preferences as for an adoptive placement of an Indian child.

### **Other Provisions:**

Lastly, the Act creates a misdemeanor for an unauthorized interstate placement of a child.

Submitted as:

Wisconsin

AB 581

Status: Signed into law on April 16, 2014.

## Leasing Public School Land

This act establishes a three-year pilot program to generate revenue through the lease of public school lands at up to five sites that would be used for public purposes such as workforce housing, building and retrofitting schools and the creation of more “school-centered communities.” The selection of the potential sites would be determined by the State Board of Education and all revenue generated from the pilot program would be deposited into the state’s school facilities account. The Department of Education would be tasked with providing periodic status report updates on the redevelopment projects and leasing activities.

Submitted as:

Hawaii

SB 237

Status: Signed into law on June 25, 2013.

### Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] Related to Public School Lands.  
2
- 3 Section 2. [*Findings.*]  
4
- 5 Section 3. [*Pilot program for lease of public school land.*]  
6 (a) There shall be established within the department a pilot program for the lease of public  
7 school land, including facilities. The department, in consultation with the board of education  
8 and any other appropriate agency, shall serve as the facilitator of the pilot program.  
9 (b) Notwithstanding [Insert citation] or any other law to the contrary, the department may lease  
10 public school land on terms it deems appropriate; provided that:  
11 (1) The board may identify and select up to five public school land sites as candidates for  
12 participation in the pilot program; provided that:  
13 (A) During the identification and selection process, the board shall be subject to [Public  
14 Agency Meetings and Records law], shall hold at least one public meeting in each  
15 affected community, and shall foster school and community participation; and  
16 (B) If the site is on land owned by the county, the department shall consult with the  
17 county;  
18 (2) The department may lease public school land for no more than three public school land  
19 sites identified and selected by the board pursuant to paragraph (1) under leases for a  
20 term of not more than fifty-five years per lease, unless extended pursuant to [Insert  
21 citation], to lessees who shall be required to modify, construct, or utilize facilities to meet  
22 public purposes, including workforce rental housing units, in accordance with specific  
23 request for proposal or request for information guidelines; and  
24 (3) Each lease shall stipulate that the lessee may retain any revenue generated from the  
25 facilities; provided that:  
26 (4)

- 1 (A) The lessee shall be obligated to maintain and operate the facilities for a public
- 2 purpose for the length of the lease;
- 3 (B) The lessee shall be obligated to pay to the county all applicable property tax on the
- 4 value of any improvements;
- 5 (C) A leasehold premium may be charged to the lessee for the right to use the public
- 6 school land based on a competitive bid process;
- 7 (D) Upon the expiration of the lease, the facilities shall revert to the department; and
- 8 (E) All revenues and proceeds derived by the State under this section shall be deposited
- 9 in the school facilities subaccount pursuant to section 4.

- 10 (c) Any redevelopment involving nonschool purposes shall:
- 11 (1) Comply with county plans, ordinances, and zoning and development codes; and
- 12 (2) Acquire all required government approvals and permits.
- 13 (d) Nothing in this section shall preclude the department from working with and receiving
- 14 assistance from any other department or agency in carrying out the purposes of this section.
- 15 (e) Any lease entered into by the department pursuant to subsection (b) shall be fully executed
- 16 no later than five years from the effective date of this section.

17  
18 Section 4. [*School facilities subaccount.*]

- 19 (a) All proceeds from the leases, permits, interest income generated from public school lands,
- 20 and other revenue generated from the non-permanent disposition of public school lands,
- 21 including facilities, pursuant to section 3 shall be deposited into the school facilities
- 22 subaccount established pursuant to section 5 (b).
- 23 (b) Except as otherwise provided, all moneys in the school facilities subaccount shall be used
- 24 exclusively for the new construction and upgrade of twenty-first century school facilities, as
- 25 well as the repair and maintenance of existing school facilities."

26  
27 Section 5 [*Use of school facilities and grounds.*]

- 28 (a) All public school buildings, facilities, and grounds shall be available for general recreational
- 29 purposes, and for public and community use, whenever these activities do not interfere with
- 30 the normal and usual activities of the school and its pupils. Any other law to the contrary
- 31 notwithstanding, the department shall adopt rules under [Insert citation] as are deemed
- 32 necessary to carry out the purposes of this section and may issue licenses, revocable permits,
- 33 concessions, or rights of entry to school buildings and grounds for such periods of use as
- 34 deemed appropriate by the department. All such dispositions, including those in excess of
- 35 fourteen days, need not be approved by the board of land and natural resources; provided that
- 36 approval by the board of land and natural resources shall be required when the dispositions
- 37 are for periods in excess of a year. The department may assess and collect fees and charges
- 38 from the users of school buildings, facilities, grounds, and equipment, which include fees and
- 39 charges assessed and collected by the department for parking on roadways and in parking
- 40 areas under the jurisdiction of the department, pursuant to [Insert citation]. The fees and
- 41 charges shall be deposited into a separate fund and expended by the department under rules
- 42 as may be adopted by the board; provided that any parking fees assessed and collected by a
- 43 school shall be deposited to the credit of that school's nonappropriated local school fund
- 44 account.
- 45 (b) A separate subaccount of the fund established pursuant to subsection (a), to be known as the
- 46 school facilities subaccount, shall be established for all proceeds from the leases, permits,

1 interest income generated from public school lands, and other revenue generated from the  
2 non-permanent disposition of public school lands, including facilities, pursuant to section  
3 3. The subaccount shall be governed by section 4."  
4

5 Section 6. [*Reporting.*]

6 The [department of education] shall submit a report to the legislature no later than twenty days  
7 prior to the convening of the regular session of [Insert year] and each regular session thereafter  
8 until the completion of each project authorized pursuant to this Act. The report shall provide the  
9 following:

- 10 (1) A timeline for the pilot program pursuant to this Act, including but not limited to:  
11 (A) A timeline for the redevelopment of each selected site;  
12 (B) An estimate start and completion date for each selected site; and  
13 (C) Estimates for the time required to obtain any necessary county or state approvals  
14 required to complete the redevelopment of each site;  
15 (2) A summary of the department of education's activities, results, and recommendations to  
16 optimize the use of public school lands as a means to build or renovate twenty-first  
17 century schools and school-centered communities;  
18 (3) A summary of all school and community engagement efforts undertaken or that will be  
19 undertaken by the department of education in carrying out the pilot program pursuant to  
20 this Act;  
21 (4) A summary of the department of education's current and projected budgeted expenses,  
22 including the identification of any contracts with third parties and the creation of  
23 temporary positions within the department in carrying out the pilot program pursuant to  
24 this Act;  
25 (5) A summary of any capacity and funding issues or challenges the department of education  
26 has encountered in carrying out the pilot project pursuant to this Act; and  
27 (6) Any proposed legislation.  
28

29 Section 7. [*Appropriations.*]

30 Section 8. [*Severability.*] Insert severability clause.  
31

32 Section 9. [*Repealer.*] Insert repealer clause.  
33

34 Section 10. [*Effective Date.*] Insert effective date.  
35

## Pay Forward, Pay Back / College Tuition Act

This act directs the Higher Education Commission to consider the creation of a proposed pilot program – Pay Forward, Pay Back. The pilot program would replace the current system of charging students tuition and fees for enrollment at public institutions of higher education. Instead, anyone who attended an in-state college or university would be required to pay a small percentage of their post-college income as a tax for 24 years (3% per year for graduates of a 4-year college; 1.5% per year for community college graduates). If the commission determines that a pilot program is warranted, the commission shall submit a proposal to the 2015 regular session of the Legislative Assembly.

Submitted as:

Oregon

HB 3472

Status: Signed into law on July 29, 2013.

### Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] Pay Forward, Pay Back.  
2
- 3 Section 2. [*Findings.*]  
4
- 5 Section 3. [*Pilot program.*]  
6 (1) The Higher Education Coordinating Commission shall consider the creation of a proposed  
7 pilot program called Pay Forward, Pay Back. The pilot program would:  
8 (a) Replace the current system of charging students tuition and fees for enrollment at public  
9 institutions of higher education; and  
10 (b) Identify one or more public institutions of higher education to participate in the pilot  
11 program.  
12 (2) If the commission determines that a pilot program is warranted, the commission shall submit  
13 a proposed pilot program to the 2015 regular session of the Legislative Assembly for  
14 approval.  
15 (3) A proposed pilot program shall:  
16 (a) Allow students who are residents of this state, as defined by the institution, and who  
17 qualify for admission to the institution to enroll in the institution without paying tuition or  
18 fees;  
19 (b) Provide that, in lieu of paying tuition or fees, students must sign binding contracts to pay  
20 to the State of Oregon or the institution a certain percentage of the student's annual  
21 adjusted gross income upon graduation from the institution for a specified number of  
22 years;  
23 (c) Specify the number of years and the percentage of annual adjusted gross income for  
24 contracts at each participating institution and base the specifications on research to date;  
25 and

1 (d) Establish an immediate funding source for the first 15 to 20 years of the pilot program  
2 and include the establishment of a revolving fund to deposit payments made under the  
3 pilot program.

4 (4) A proposed pilot program may vary by institution depending on:

5 (a) The total cost of education at the institution.

6 (b) The portion of the cost that is paid by the State of Oregon.

7 (c) The number of years specified in the contract.

8 (d) The percentage of annual adjusted gross income specified in the contract.

9

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

11

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

13

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

## Social/Emotional Development Training in Teacher Preparation

This act requires any candidate entering a program of teacher preparation to complete training in social and emotional development and learning of children. The training must include instruction concerning a comprehensive, coordinated social and emotional assessment and early intervention for children displaying behaviors associated with social or emotional problems, the availability of treatment services for such children and referring such children for assessment, intervention or treatment services.

Submitted as:

Connecticut

HB 6292

Status: Signed into law on July 1, 2013.

### Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title*] An Act concerning teacher education programs.  
2
- 3 Section 2. [*Teacher education programs.*]
- 4 (a) The [State Board of Education] may, in accordance with [insert citation] and such regulations  
5 and qualifications as it prescribes, issue certificates of qualification to teach, to administer, to  
6 supervise or to serve in other positions requiring certification pursuant to regulations adopted  
7 by the [State Board of Education] in any public school in the state and may revoke the same.  
8 Any such regulations shall provide that the qualifications to maintain any administrator,  
9 supervisor or special service certificate shall incorporate the professional development  
10 provisions of [insert citation]. The certificates of qualification issued under this section shall  
11 be accepted by boards of education in lieu of any other certificate, provided additional  
12 qualifications may be required by a board of education, in which case the state certificate  
13 shall be accepted for such subjects as it includes.
- 14 (b) Any candidate in a program of teacher preparation leading to professional certification shall  
15 be encouraged to successfully complete an intergroup relations component of such a program  
16 which shall be developed with the participation of both sexes, and persons of various ethnic,  
17 cultural and economic backgrounds. Such intergroup relations program shall have the  
18 following objectives: (1) The imparting of an appreciation of the contributions to American  
19 civilization of the various ethnic, cultural and economic groups composing American society  
20 and an understanding of the life styles of such groups; (2) the counteracting of biases,  
21 discrimination and prejudices; and (3) the assurance of respect for human diversity and  
22 personal rights. The State Board of Education, the Board of Regents for Higher Education,  
23 the Commission on Human Rights and Opportunities and the Permanent Commission on the  
24 Status of Women shall establish a joint committee composed of members of the four  
25 agencies, which shall develop and implement such programs in intergroup relations.



- 1 (c) Any candidate in a program of teacher preparation leading to professional certification shall  
2 be encouraged to complete a (1) health component of such a program, which includes, but  
3 need not be limited to, human growth and development, nutrition, first aid, disease  
4 prevention and community and consumer health, and (2) mental health component of such a  
5 program, which includes, but need not be limited to, youth suicide, child abuse and alcohol  
6 and drug abuse.
- 7 (d) Any candidate in a program of teacher preparation leading to professional certification shall  
8 complete a school violence, bullying, as defined in [insert citation], and suicide prevention  
9 and conflict resolution component of such a program.
- 10 (e) On and after [July 1, 1998], any candidate in a program of teacher preparation leading to  
11 professional certification shall complete a computer and other information technology skills  
12 component of such program, as applied to student learning and classroom instruction,  
13 communications and data management.
- 14 (f) On and after [July 1, 2006], any program of teacher preparation leading to professional  
15 certification shall include, as part of the curriculum, instruction in literacy skills and  
16 processes that reflects current research and best practices in the field of literacy training.  
17 Such instruction shall be incorporated into requirements of student major and concentration.
- 18 (g) On and after [July 1, 2006], any program of teacher preparation leading to professional  
19 certification shall include, as part of the curriculum, instruction in the concepts of second  
20 language learning and second language acquisition and processes that reflects current  
21 research and best practices in the field of second language learning and second language  
22 acquisition. Such instruction shall be incorporated into requirements of student major and  
23 concentration.
- 24 (h) On and after [July 1, 2011], any program of teacher preparation leading to professional  
25 certification may permit teaching experience in a nonpublic school, approved by the State  
26 Board of Education, and offered through a public or private institution of higher education to  
27 count towards the preparation and eligibility requirements for an initial educator certificate,  
28 provided such teaching experience is completed as part of a cooperating teacher program, in  
29 accordance with the provisions of [insert citation].
- 30 (i) On and after [July 1, 2012], any candidate entering a program of teacher preparation leading  
31 to professional certification shall be required to complete training in competency areas  
32 contained in the professional teaching standards established by the [State Board of  
33 Education], including, but not limited to, development and characteristics of learners,  
34 evidence-based and standards-based instruction, evidence-based classroom and behavior  
35 management, [and] assessment and professional behaviors and responsibilities, and social  
36 and emotional development and learning of children. The training in social and emotional  
37 development and learning of children shall include instruction concerning a comprehensive,  
38 coordinated social and emotional assessment and early intervention for children displaying  
39 behaviors associated with social or emotional problems, the availability of treatment services  
40 for such children and referring such children for assessment, intervention or treatment  
41 services.
- 42 (j) On and after [July 1, 2015], any program of teacher preparation leading to professional  
43 certification shall require, as part of the curriculum, clinical experience, field experience or  
44 student teaching experience in a classroom during four semesters of such program of teacher  
45 preparation.

1 (k) On and after [July 1, 2012], any program of teacher preparation leading to professional  
2 certification shall include, as part of the curriculum, instruction in the implementation of  
3 student individualized education programs as it relates to the provision of special education  
4 and related services.

5  
6 Section 3. [*Severability.*] Insert severability clause.

7  
8 Section 4. [*Repealer.*] Insert repealer clause.

9  
10 Section 5. [*Effective Date.*] Insert effective date.

## **Defibrillators in Schools (Note)**

According to the United States Department of Labor, “approximately 450,000 people die each year from sudden cardiac arrest in the United States” and “early defibrillation is the only definitive treatment for sudden cardiac arrest” with the best “save” rates occurring when an electric shock is delivered within three minutes of a patient's collapse. Because of the urgency of the situation, the increasing incidence of cardiac arrest in children, and the frequent use of schools as a gathering place for public functions and events for all ages, states have enacted legislation providing for the placement of automated external defibrillators (AED) in schools. Many of the acts are named in memory of a student who died of sudden cardiac arrest following an athletic practice or event at a school.

Alabama. Act 2009-754 (SB 306) requires an AED to be placed in each public K-12 school in the state and the local superintendent of education to designate at least one employee of each school to be trained in the use of the AED.

Arkansas. 2009 Ark. Act 496 (SB 312) requires the state board of education to promulgate rules so that each school campus has an AED and appropriate school personnel be adequately trained on an ongoing basis. The rules are required to include provisions regarding the availability of the AED at school-related events, schools are authorized to apply for grants from the department of health for purchasing the AED and providing training, and the state commissioner of education is required to report annually to the general assembly regarding implementation.

Connecticut. 2009 Conn. Acts 09-94 (SB 981) requires, if federal, state, or private funding is available, each public school to have an AED on site and personnel trained in the operation of the AED and in the use of cardiopulmonary resuscitation. The act requires the AED and trained personnel to be accessible during normal school hours and school-sponsored athletic practices and athletic events on school grounds. Each school is required to develop an emergency action response plan.

Florida. 2006 Fla. Laws c. 2006-301 (SB 772) requires each public school that is a member of the Florida High School Athletic Association to have an operational AED on school grounds, to provide training for employees and volunteers who are reasonably expected to use the AED, and to register the location of each AED with a local emergency medical services medical director. The act encourages public and private partnerships to cover the costs of purchase and training.

Georgia. 2008 Ga. Act 789 §2 (HB 1031) requires each public high school which has an interscholastic athletics program to have at least one functional AED on site at all times when students or athletes are present. The act requires training of expected users, notification of the location of the AED to local emergency medical services, maintenance of the AED, and involvement of a local physician in the school program. The act also authorizes local school systems to use private sources of funding or donations to acquire AEDs and provide training.

Ohio. 2004 Ohio Laws H 434 authorizes local boards of education, the administrative authorities of chartered nonpublic schools, and the governing bodies of community schools to require the placement of AEDs in schools under their respective control and requires training of sufficient

personnel if an AED is so placed. The act also provides civil and criminal immunity for the good faith use of the AED by any person who attempts to perform automated external defibrillation.

Oregon. 2010 Or. Laws c. 62 §2 (SB 1033) requires each school campus in a school district, private school campus, and public charter school campus to have at least one AED on the premises.

Pennsylvania. 2014 Pa. Laws P.L. 427, No. 35, §1 (HB 974) requires the state department of education to establish an AED program to assist public and nonpublic schools in making AEDs available in school buildings. The act provides that the department biennially accept the bid of the lowest responsible bidder and permit the schools to purchase the AEDs at the contract price and also authorizes the department to purchase the devices from appropriated funds and distribute the devices to schools. To be able to purchase or receive an AED, a school must assure that at least two staff members are trained in its use, agree to properly place and maintain the AED, submit a valid prescription for the AED, and agree to provide additional training. The act provides civil immunity for school employees using the device and requires annual reporting regarding the number, condition, age, and placement of AEDs in each school building.

Virginia. 2013 Va. Acts Ch. 530 (HB 2028) authorizes each local school board to develop a plan to allow for the placement, care, and use, and funding of and AED in every school and requires each school board with 10 or more staff members to have at least three employees with current certification in AED use.

# Family Caregivers Support Act

This act requires the Executive Office of Health and Human Services to develop evidence-based caregiver assessments and referral tools for family caregivers. Further, a plan of care would be developed which would take into account the needs of the caregiver and the recipient.

Submitted as:

Rhode Island

HB 5155

Status: Signed into law on July 16, 2013.

## Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] Family Caregivers Support Act.  
2
- 3 Section 2. [*Assessment and Coordination Unit (ACU).*]
- 4 (a) The [department of human services], in collaboration with the [executive office of health and  
5 human services], shall implement a long-term care options counseling program to provide  
6 individuals or their representative, or both, with long-term care consultations that shall  
7 include, at a minimum, information about long-term care options, sources and methods of  
8 both public and private payment for long term care services, information on caregiver  
9 support services, including respite care, and an assessment of an individual's functional  
10 capabilities and opportunities for maximizing independence. Each individual admitted to or  
11 seeking admission to a long-term care facility, regardless of the payment source, shall be  
12 informed by the facility of the availability of the long-term care options counseling program  
13 and shall be provided with a long-term care options consultation, if he or she so requests.  
14 Each individual who applies for Medicaid long-term care services shall be provided with a  
15 long-term care consultation.
- 16 (b) Core and preventative home and community based services defined and delineated in [Insert  
17 citation] shall be provided only to those individuals who meet one of the levels of care  
18 provided for in this chapter. Other long term care services authorized by the federal  
19 government, such as medication management, may also be provided to Medicaid eligible  
20 recipients who have established the requisite need as determined by the Assessment and  
21 Coordination Unit (ACU). Access to institutional and community based supports and  
22 services shall be through the Assessment and Coordination Unit (ACU). The provision of  
23 Medicaid-funded long-term care services and supports shall be based upon a comprehensive  
24 assessment that shall include, but not be limited to, an evaluation of the medical, social and  
25 environmental needs of each applicant for these services or programs. The assessment shall  
26 serve as the basis for the development and provision of an appropriate plan of care for the  
27 applicant.
- 28 (c) The ACU shall assess the financial eligibility of beneficiaries to receive long-term care  
29 services and supports in accordance with the applicable provisions of [Insert citation.]

- 1 (d) The ACU shall be responsible for conducting assessments; determining a level of care for  
2 applicants for medical assistance; developing service plans; pricing a service budget and  
3 developing a voucher when appropriate; making referrals to appropriate settings; maintaining  
4 a component of the unit that will provide training to and will educate consumers, discharge  
5 planners and providers; tracking utilization; monitoring outcomes; and reviewing  
6 service/care plan changes. The ACU shall provide interdisciplinary high cost case reviews  
7 and choice counseling for eligible recipients.
- 8 (e) The assessments for individuals conducted in accordance with this section shall serve as the  
9 basis for individual budgets for those medical assistance recipients eligible to receive  
10 services utilizing a self-directed delivery system.
- 11 (f) Nothing in this section shall prohibit the secretary of the [executive office of health and  
12 human services], or the directors of that office's departments from utilizing community  
13 agencies or contractors when appropriate to perform assessment functions outlined in this  
14 chapter.

15  
16 Section 3. [*Findings.*]

17  
18 Section 4. [*Definitions.*]

- 19 (a) "Caregiver assessment" is defined and refers to a systematic process of gathering information  
20 about a caregiving situation to identify the specific problems, needs, strengths, and resources  
21 of the family caregiver, as well as the caregiver's ability to contribute to the needs of the care  
22 recipient.
- 23 (b) The term "family caregiver" is defined and refers to any relative, partner, friend, or neighbor  
24 who has a significant relationship with, and who provides a broad range of assistance for, an  
25 older adult or an adult or child with chronic or disabling conditions.

26  
27 Section 5. [*Caregiver assessment requirement.*]

28 The comprehensive assessment required in Section 2 as part of Medicaid long-term service  
29 reform shall also include a caregiver assessment whenever the plan of care depends on a family  
30 caregiver for providing assistance with activities of daily living needs. The assessment shall be  
31 used to develop a plan of care that recognizes both needs of the care recipient and the caregiver.  
32 The assessment shall also serve as the basis for development and provision of an appropriate  
33 plan for caregiver information, referral and support services. Information about available respite  
34 programs, caregiver training and education programs, support groups and community support  
35 services shall be included as part of the caregiver support plan. To implement the caregiver  
36 assessment, the executive office of health and human services shall adopt evidenced-based  
37 caregiver assessments and referral tools appropriate to the departments within the office that  
38 provide long-term care services and support.

39  
40 Section 6. [*Severability.*] Insert severability clause.

41  
42 Section 7. [*Repealer.*] Insert repealer clause.

43  
44 Section 8. [*Effective Date.*] Insert effective date.

## Medicaid Expansion / Health Insurance Exchange

This act expands Medicaid under the Affordable Care Act through the “private option” of policies offered on the state Health Insurance Exchange. The act allows low-income individuals to buy private insurance with Medicaid funding.

Submitted as:

Arkansas

HB 1219 (Section 21)

Status: Signed into law on April 23, 2013.

### Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] Health Care Independence Act of 2013.

2

3 Section 2. [*Legislative intent.*]

4 (a) Notwithstanding any general or specific laws to the contrary, the Department of Human  
5 Services is to explore design options that reform the Medicaid Program utilizing the Health  
6 Care Independence Act of 2013 so that it is a fiscally sustainable, cost-effective, personally  
7 responsible, and opportunity-driven program utilizing competitive and value-based  
8 purchasing to:

9 (1) Maximize the available service options;

10 (2) Promote accountability, personal responsibility, and transparency;

11 (3) Encourage and reward healthy outcomes and responsible choices; and

12 (4) Promote efficiencies that will deliver value to the taxpayers.

13 (b) (1) It is the intent of the General Assembly that the State of Arkansas through the  
14 [Department of Human Services] shall utilize a private insurance option for low-risk adults.

15 (2) The Health Care Independence Act of 2013 shall ensure that:

16 (A) Private health care options increase and government-operated programs such as  
17 Medicaid decrease; and

18 (B) Decisions about the design, operation and implementation of this option, including  
19 cost, remain within the purview of the State of Arkansas and not with Washington,  
20 D.C.

21

22 Section 3. [*Purpose.*]

23 (a) The purpose of this subchapter is to:

24 (1) Improve access to quality health care;

25 (2) Attract insurance carriers and enhance competition in the Arkansas insurance  
26 marketplace;

27 (3) Promote individually-owned health insurance;

28 (4) Strengthen personal responsibility through cost-sharing;

29 (5) Improve continuity of coverage;

- 1 (6) Reduce the size of the state-administered Medicaid program;
- 2 (7) Encourage appropriate care, including early intervention, prevention, and wellness;
- 3 (8) Increase quality and delivery system efficiencies;
- 4 (9) Facilitate Arkansas's continued payment innovation, delivery system reform, and market-
- 5 driven improvements;
- 6 (10) Discourage over-utilization; and
- 7 (11) Reduce waste, fraud, and abuse.
- 8 (b) The [State] shall take an integrated and market-based approach to covering low-income
- 9 Arkansans through offering new coverage opportunities, stimulating market competition, and
- 10 offering alternatives to the existing Medicaid program.

11  
12 Section 4. [Definitions.]

13 As used in this subchapter:

- 14 (1) "Carrier" means a private entity certified by the [State Insurance Department] and offering
- 15 plans through the Health Insurance Marketplace;
- 16 (2) "Cost sharing" means the portion of the cost of a covered medical service that must be paid
- 17 by or on behalf of eligible individuals, consisting of copayments or coinsurance but not
- 18 deductibles;
- 19 (3) "Eligible individuals" means individuals who:
  - 20 (A) Are adults between nineteen (19) years of age and sixty-five (65) years of age with an
  - 21 income that is equal to or less than one hundred thirty-eight percent (138%) of the federal
  - 22 poverty level, including without limitation individuals who would not be eligible for
  - 23 Medicaid under laws and rules in effect on January 1, 2013;
  - 24 (B) Have been authenticated to be a United States citizen or documented qualified alien
  - 25 according to the federal Personal Responsibility and Work Opportunity Reconciliation
  - 26 Act of 1996, Pub. L. No. 104-193, as existing on January 1, 2013; and
  - 27 (C) Are not determined to be more effectively covered through the standard Medicaid
  - 28 program, such as an individual who is medically frail or other individuals with
  - 29 exceptional medical needs for whom coverage through the Health Insurance Marketplace
  - 30 is determined to be impractical, overly complex, or would undermine continuity or
  - 31 effectiveness of care;
- 32 (4) "Healthcare coverage" means healthcare benefits as defined by certification or rules, or both,
- 33 promulgated by the [State Insurance Department for the Qualified Health Plans] or available
- 34 on the marketplace;
- 35 (5) "Health Insurance Marketplace" means the vehicle created to help individuals, families, and
- 36 small businesses in [State] shop for and select health insurance coverage in a way that
- 37 permits comparison of available Qualified Health Plan based upon price, benefits, services,
- 38 and quality, regardless of the governance structure of the marketplace;
- 39 (6) "Premium" means a charge that must be paid as a condition of enrolling in health care
- 40 coverage;
- 41 (7) "Program" means the Health Care Independence Program established by this subchapter; and
- 42 (8) "Qualified Health Plan" means a [State Insurance Department] certified individual health
- 43 insurance plan offered by a carrier through the Health Insurance Marketplace.



1 Section 5. *[Administration of the Health Care Independence Program.]*

2 (a) The [Department of Human Services] shall:

- 3 (1) Create and administer the Health Care Independence Program; and  
4 (2) Submit Medicaid State Plan Amendments and apply for any federal waivers necessary to  
5 implement the program in a manner consistent with this subchapter.

6 (b)

- 7 (1) Implementation of the program is conditioned upon the receipt of necessary federal  
8 approvals.  
9 (2) If the [Department of Human Services] does not receive the necessary federal approvals,  
10 the program shall not be implemented.

11 (c) The program shall include premium assistance for eligible individuals to enable their  
12 enrollment in a Qualified Health Plan through the Health Insurance Marketplace.

13 (d)

- 14 (1) The [Department of Human Services] is specifically authorized to pay premiums and  
15 supplemental cost-sharing subsidies directly to the Qualified Health Plans for enrolled  
16 eligible individuals.  
17 (2) The intent of the payments under subdivision (d)(1) of this section is to increase  
18 participation and competition in the health insurance market, intensify price pressures,  
19 and reduce costs for both publicly and privately funded health care.

20 (e) To the extent allowable by law:

- 21 (1) The [Department of Human Services] shall pursue strategies that promote insurance  
22 coverage of children in their parents' or caregivers' plan, including children eligible for  
23 the [ARKids First Program Act], commonly known as the ["ARKids B program"]; and  
24 (2) Upon the receipt of necessary federal approval, during calendar year [2015] the  
25 [Department of Human Services] shall include and transition to the Health Insurance  
26 Marketplace:  
27 (A) Children eligible for the [ ARKids First Program Act]; and  
28 (B) Populations under Medicaid from zero percent (0%) of the federal poverty level to  
29 seventeen percent (17%) of the federal poverty level.  
30 (3) The [Department of Human Services] shall develop and implement a strategy to inform  
31 Medicaid recipient populations whose needs would be reduced or better served through  
32 participation in the Health Insurance Marketplace.

33 (f) The program shall include allowable cost sharing for eligible individuals that is comparable  
34 to that for individuals in the same income range in the private insurance market and is  
35 structured to enhance eligible individuals' investment in their health care purchasing  
36 decisions.

37 (g)

- 38 (1) The [State Insurance Department and Department of Human Services] shall administer  
39 and promulgate rules to administer the program authorized under this subchapter.  
40 (2) No less than thirty (30) days before the [State Insurance Department and Department of  
41 Human Services] begin promulgating a rule under this subchapter, the proposed rule shall  
42 be presented to the [Legislative Council.]

43 (h) The program authorized under this subchapter shall terminate within one hundred twenty  
44 (120) days after a reduction in any of the following federal medical assistance percentages:

- 45 (1) One hundred percent (100%) in 2014, 2015, or 2016;  
46 (2) Ninety-five percent (95%) in 2017;

- 1 (3) Ninety-four percent (94%) in 2018;
- 2 (4) Ninety-three percent (93%) in 2019; and
- 3 (5) Ninety percent (90%) in 2020 or any year after 2020.

4 (i) An eligible individual enrolled in the program shall affirmatively acknowledge that:

- 5 (1) The program is not a perpetual federal or state right or a guaranteed entitlement;
- 6 (2) The program is subject to cancellation upon appropriate notice; and
- 7 (3) The program is not an entitlement program.

8 (j)

- 9 (1) The [Department of Human Services] shall develop a model and seek approval from the
- 10 Center for Medicare and Medicaid Services to allow a limited number of enrollees to
- 11 participate in a pilot program testing the viability of a Health Savings Account or a
- 12 Medical Savings Account.
- 13 (2) The pilot program shall be implemented during calendar year 2015.
- 14 (3) As soon as practicable, the [Department of Human Services] shall seek conditional
- 15 federal approval to place Health Saving Accounts and Medical Savings Accounts on the
- 16 Health Insurance Marketplace.

17 (k)

- 18 (1) State obligations for uncompensated care shall be projected, tracked, and reported to
- 19 identify potential incremental future decreases.
- 20 (2) The [Department of Human Services] shall recommend appropriate adjustments to the
- 21 General Assembly.
- 22 (3) Adjustments shall be made by the General Assembly as appropriate.

23 (l) The [Department of Human Services] shall track the Hospital Assessment Fee as [Insert

24 citation] and report to the General Assembly subsequent decreases based upon reduced

25 uncompensated care.

26 (m) On a quarterly basis, the [Department of Human Services and the State Insurance

27 Department] shall report to the [Legislative Council] or to the [Joint Budget Committee] if

28 the General Assembly is in session, available information regarding:

- 29 (1) Program enrollment;
- 30 (2) Patient experience;
- 31 (3) Economic impact including enrollment distribution;
- 32 (4) Carrier competition; and
- 33 (5) Avoided uncompensated care.

34

35 Section 6. [*Standards of healthcare coverage through the Health Insurance Marketplace.*]

36 (a) Healthcare coverage shall be achieved through a qualified health plan at the silver level as

37 provided in 42 U.S.C. §§ 18022 and 18071, as existing on January 1, 2013, that restricts cost

38 sharing to amounts that do not exceed Medicaid cost-sharing limitations.

39 (b) All participating carriers in the Health Insurance Marketplace shall offer healthcare coverage

40 conforming to the requirements of this subchapter.

41 (c) To assure price competitive choice among healthcare coverage options, the [State Insurance

42 Department] shall assure that at least two (2) qualified health plans are offered in each county

43 in the state.

44 (d) Health insurance carriers offering health care coverage for program eligible individuals shall

45 participate in Arkansas Payment Improvement Initiatives including:

- 46 (1) Assignment of primary care clinician;

- 1 (2) Support for patient-centered medical home; and  
2 (3) Access of clinical performance data for providers.  
3 (e) On or before July 1, 2013, the [State Insurance Department] shall implement through  
4 certification requirements, rule, or both the applicable provisions of this subchapter.  
5

6 Section 7. [*Enrollment.*]

- 7 (a) The General Assembly shall assure that a mechanism within the Health Insurance  
8 Marketplace is established and operated to facilitate enrollment of eligible individuals.  
9 (b) The enrollment mechanism shall include an automatic verification system to guard against  
10 waste, fraud, and abuse in the program.  
11

12 Section 8. [*Severability.*] Insert severability clause.  
13

14 Section 9. [*Repealer.*] Insert repealer clause.  
15

16 Section 10. [*Effective Date.*] Insert effective date.  
17

# Mental Health First Aid Training Act

This act directs the state Department of Human Services to establish and administer the Mental Health First Aid training program so that certified trainers can provide residents, professionals, and members of the public with training on how to identify and assist someone who is believed to be developing or has developed a mental health disorder or an alcohol or substance abuse disorder; or who is believed to be experiencing a mental health or substance abuse crisis. It also creates a grant program to provide training that is subject to an appropriations process as well as provide hardship subsidies for Mental Health First Aid training fees. The program shall be designed to train individuals to: (i) build mental health, alcohol abuse, and substance abuse literacy designed to help the public identify, understand, and respond to the signs of mental illness, alcohol abuse, and substance abuse and (ii) know how to prevent a mental health disorder or an alcohol or substance abuse disorder from deteriorating into a more serious condition which may lead to more costly interventions and treatments.

Submitted as:

Illinois

House Enrolled Bill 1538

Status: Enacted into law on August 7, 2013.

## Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the Mental Health First Aid Training Act.

2

3 Section 2. [*Purpose.*]

4 Through the use of innovative strategies, Mental Health First Aid training shall be implemented  
5 throughout the State. Mental Health First Aid training is designed to train individuals to assist  
6 someone who is developing a mental health disorder or an alcohol or substance abuse disorder,  
7 or who is experiencing a mental health or substance abuse crisis and it can be reasonably  
8 assumed that a mental health disorder or an alcohol or substance abuse disorder is a contributing  
9 or precipitating factor.

10

11 Section 3. [*Definitions.*]

12 "Illinois Mental Health First Aid training program" means the Mental Health First Aid training  
13 program administered by the [Department of Human Services].

14

15 "Certified trainers" means individuals who obtain certification in Mental Health First Aid  
16 training by successfully completing (i) the Instructor Training Program offered by the [Illinois]  
17 Mental Health First Aid training program or (ii) the Instructor Training Program offered by the  
18 National Authorities of Mental Health First Aid.

19

20 Section 4. [*Mental Health First Aid training program.*]

21 The [Department of Human Services] shall administer the [Illinois] Mental Health First Aid  
22 training program so that certified trainers can provide [Illinois] residents, professionals, and

1 members of the public with training on how to identify and assist someone who is believed to be  
2 developing or has developed a mental health disorder or an alcohol or substance abuse disorder  
3 or who is believed to be experiencing a mental health or substance abuse crisis.  
4

5 Section 5. [*Mental health first aid training grants.*]

6 Subject to appropriations made to the [Department of Human Services] and other State agencies,  
7 the [Department of Human Services] and other State agencies shall support training grants for  
8 [Illinois] Mental Health First Aid training. These training grants may support hardship subsidies  
9 for [Illinois] Mental Health First Aid training fees.  
10

11 Section 6. [*Objectives of the training program.*]

12 The [Illinois] Mental Health First Aid training program shall be designed to train individuals to  
13 accomplish the following objectives as deemed appropriate for the individuals to be trained,  
14 taking into consideration the individual's age:

15 (1) Build mental health, alcohol abuse, and substance abuse literacy designed to help the  
16 public identify, understand, and respond to the signs of mental illness, alcohol abuse, and  
17 substance abuse.

18 (2) Assist someone who is believed to be developing or has developed a mental health  
19 disorder or an alcohol or substance abuse disorder or who is believed to be experiencing a  
20 mental health disorder or an alcohol or substance abuse crisis. Such assistance shall  
21 include the following:

22 (A) Knowing how to recognize the symptoms of a mental health disorder or an  
23 alcohol or substance abuse disorder.

24 (B) Knowing how to provide initial help.

25 (C) Knowing how to guide individuals requiring assistance toward appropriate  
26 professional help, including help for individuals who may be in crisis.

27 (D) Knowing how to provide comfort to the person experiencing a mental health  
28 disorder or an alcohol or substance abuse disorder.

29 (E) Knowing how to prevent a mental health disorder or an alcohol or substance  
30 abuse disorder from deteriorating into a more serious condition which may lead to  
31 more costly interventions and treatments.

32 (F) Knowing how to promote healing, recovery, and good mental health.  
33

34 Section 7. [*Distribution of training grants.*]

35 When awarding training grants under this Act, the [Department] or other appropriate State  
36 agency shall distribute training grants equitably among the geographical regions of the State  
37 paying particular attention to the training needs of rural areas and areas with underserved  
38 populations or professional shortages.  
39

40 Section 8. [*Evaluation.*]

41 The [Department of Human Services], as the [Illinois] Mental Health First Aid training authority,  
42 shall ensure that evaluative criteria are established which measure the distribution of the training  
43 grants and the fidelity of the training processes to the objective of building mental health, alcohol  
44 abuse, and substance abuse literacy designed to help the public identify, understand, and respond  
45 to the signs of mental illness, alcohol abuse, and substance abuse.  
46

- 1 Section 9. [*Severability.*] Insert severability clause.
- 2
- 3 Section 10. [*Repealer.*] Insert repealer clause.
- 4
- 5 Section 11. [*Effective Date.*] Insert effective date.

## Prosecution for Illegal Use of a Narcotic While Pregnant (Note)

This act amends Tennessee's fetal homicide law to allow the prosecution of a pregnant woman for the illegal use of a narcotic drug, if her child is born addicted or harmed by the drugs she took during her pregnancy. The charge of assault is a misdemeanor offense, but if the child is harmed, aggravated assault, with a 15-year maximum prison term, could be charged. That a woman is enrolled in long term drug addiction treatment before the child is born, remains in the program after delivery and successfully completes the program is an affirmative defense under the law. The law is set to expire on July 1, 2016.

Submitted as:

Tennessee

SB 1391

Status: Signed into law on April 29, 2014.

Tennessee is the only state to adopt a law to criminalize drug use during pregnancy. The 2014 bill followed on the heels of the Safe Harbor Act passed in 2013, (see page 91) which encouraged pregnant women to seek substance abuse treatment by removing the threat of losing custody of their baby.

Other states, according to a December 2014 Guttmacher Institute report, have laws on the books intended to address pregnant women who harm their babies because of substance abuse during their pregnancies, but they all stop short of criminalization.

- 18 states consider substance abuse during pregnancy to be child abuse under civil child welfare laws;
- 3 states consider substance abuse during pregnancy to be grounds for commitment of the pregnant woman;
- 15 states require health care professionals to report suspected prenatal drug abuse; and
- 4 states require testing of pregnant women for prenatal drug exposure if a health care professional suspects child abuse.

Only 19 states have drug treatment programs dedicated to the treatment of pregnant women. In 11 states, pregnant women have priority access to state-funded drug treatment programs.

State and national media reported the first arrest under the new law in July 2014 after an East Tennessee mother and her newborn tested positive for drugs. Her sentencing was ultimately postponed after she entered drug treatment.

Proponents of the bill say that in the first case, the law worked as intended, encouraging drug abuse treatment. Opponents of the law fear that pregnant women who may be abusing drugs will avoid health care altogether.

In an unusual move that secured bipartisan passage of the bill and the signature of Gov. Bill Haslam, the Tennessee law has a sunset clause setting its expiration on July 1, 2016.

## Substance Abuse Treatment for Pregnant Women

This act specifies that any pregnant woman referred for drug abuse or drug dependence treatment at any treatment resource that receives public funding would be a priority user of available treatment. The department of mental health and substance abuse services must ensure that family-oriented drug abuse or drug dependence treatment is available, as appropriations allow. A treatment resource that receives public funds may not refuse to treat a person solely because the person is pregnant as long as appropriate services are offered by the treatment resource.

If during prenatal care, the attending obstetrical provider determines by the 20th week of pregnancy that the patient has used prescription drugs which may place the fetus in jeopardy, and drug abuse or drug dependence treatment is indicated, then the provider must encourage counseling, drug abuse or drug dependence treatment and other assistance to the patient. If the patient initiates drug abuse treatment or drug dependence treatment based upon a clinical assessment prior to her next regularly-scheduled prenatal visit and maintains compliance with such treatment based on a clinical assessment as well as prenatal care throughout the remaining term of the pregnancy, then the department of children's services may not file any petition to terminate the mother's parental rights or otherwise seek protection of the newborn solely because of the patient's use of prescription drugs for non-medical purposes during the term of her pregnancy.

Any physician or other health care provider who does not recognize that the pregnant woman has used prescription drugs that place the fetus in jeopardy, or who complies with the provisions of this act, or any physician or facility that initiates substance abuse treatment consistent with community standards of care pursuant to this bill, would be presumed to be acting in good faith and would have immunity from any civil liability that might otherwise result by reason of such actions, if a reasonable inquiry has been made to determine whether the fetus was in jeopardy.

Submitted as:

Tennessee

SB 459

Status: Signed into law on May 14, 2013.

### Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] Safe Harbor Act.

2

3 Section 2. [*Safe Harbor*]

4 (1) A pregnant woman referred for drug abuse or drug dependence treatment at any treatment

5 resource that receives public funding shall be a priority user of available treatment. All

6 records and reports regarding such pregnant woman shall be kept confidential. The

7 [department of mental health and substance abuse services] shall ensure that family-oriented



1 drug abuse or drug dependence treatment is available, as appropriations allow. A treatment  
2 resource that receives public funds shall not refuse to treat a person solely because the person  
3 is pregnant as long as appropriate services are offered by the treatment resource.

4 (2) If during prenatal care, the attending obstetrical provider determines no later than the end of  
5 the twentieth week of pregnancy that the patient has used prescription drugs which may place  
6 the fetus in jeopardy, and drug abuse or drug dependence treatment is indicated, the provider  
7 shall encourage counseling, drug abuse or drug dependence treatment and other assistance to  
8 the patient.

9 (A) If the patient initiates drug abuse or drug dependence treatment based upon a clinical  
10 assessment prior to her next regularly scheduled prenatal visit and maintains  
11 compliance with both drug abuse or drug dependence treatment based on a clinical  
12 assessment as well as prenatal care throughout the remaining term of the pregnancy,  
13 then the department of children's services shall not file any petition to terminate the  
14 mother's parental rights or otherwise seek protection of the newborn solely because  
15 of the patient's use of prescription drugs for non-medical purposes during the term of  
16 her pregnancy.

17 (B) Notwithstanding subdivision (2)(A), nothing shall prevent the [department of  
18 children's services] from filing any petition to terminate the mother's parental rights  
19 or seek protection of the newborn should the department determine that the  
20 newborn's mother, or any other adult caring for the newborn, is unfit to properly care  
21 for such child.

22 (3) Any physician or other health care provider who does not recognize that the pregnant woman  
23 has used prescription drugs that place the fetus in jeopardy after a reasonable inquiry, or who  
24 complies with the provisions of this subsection, or any physician or facility that initiates  
25 substance abuse treatment consistent with community standards of care pursuant to this  
26 subsection, shall be presumed to be acting in good faith and shall have immunity from any  
27 civil liability that might otherwise result by reason of such actions.

28 (4) The [commissioner of mental health and substance abuse services] is authorized to  
29 promulgate emergency rules and regulations to effectuate the purposes of this act.  
30

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

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

34  
35 Section 5. [*Effective Date.*] Insert effective date.

# Sudden Unexpected Infant Death

This act revises the education and orientation requirements for birth centers and their families to incorporate safe sleep practices and causes of Sudden Unexpected Infant Death. It also makes legislative findings with respect to the sudden unexpected death of an infant under a specified age, as well as defines the term “Sudden Unexpected Infant Death”, and includes other provisions relating to training requirements for first responders and health professionals.

Submitted as:

Florida

SB 56

Status: Signed into law on May 30, 2013.

## Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title*] Sudden Unexpected Infant Death.  
2
- 3 Section 2. [*Education and Orientation for birth center clients and their families.*]  
4 (1) The clients shall be prepared for childbirth and childbearing by education in:  
5 (a) The care of the newborn to include safe sleep practices and the possible causes of Sudden  
6 Unexpected Infant Death.  
7
- 8 Section 3. [*Postpartum care for birth center clients and infants.*]  
9 (1) Postpartum evaluation and followup care shall be provided, which shall include:  
10 (a) Instruction in child care, including immunization, and breastfeeding, safe sleep practices,  
11 and possible causes of Sudden Unexpected Infant Death.  
12
- 13 Section 4. [*Sudden Unexpected Infant Death Syndrome.*]  
14 (1) Findings and Intent.  
15 (2) Definition. As used in this section, the term “Sudden Unexpected Infant Death,” or “SUID,”  
16 means the sudden unexpected death of an infant under 1 year of age while in apparent good  
17 health whose death may have been a result of natural or unnatural causes.  
18 (3) Training.  
19 (a) The Legislature finds that an emergency medical technician, a paramedic, a firefighter, or  
20 a law enforcement officer is likely to be the first responder to a request for assistance  
21 which is made immediately after the sudden unexpected death of an infant. The  
22 Legislature further finds that these first responders should be trained in appropriate  
23 responses to sudden infant death.  
24 (b) The basic training programs required for certification as an emergency medical  
25 technician, a paramedic, a firefighter, or a law enforcement officer as defined in [Insert  
26 citation] other than a correctional officer or a correctional probation officer, must include  
27 curriculum that contains instruction on SUID.  
28 (c) The [Department of Health], in consultation with the [Emergency Medical Services  
29 Advisory Council], the [Firefighters Employment, Standards, and Training Council], the

1 child protection teams established in the [Division of Children’s Medical Services], and  
2 the [Criminal Justice Standards and Training Commission], shall adopt and modify when  
3 necessary, by rule, curriculum that is as part of the Centers for Disease Control SUID  
4 Initiative which must be followed by law enforcement agencies in investigating cases  
5 involving sudden deaths of infants, and training in responding appropriately to the  
6 parents or caretakers who have requested assistance.

7 (4) Autopsies.

8 (a) The death of any infant younger than 1 year of age who dies suddenly and unexpectedly  
9 while in apparent good health falls under the jurisdiction of the medical examiner as  
10 provided in [Insert citation.] The autopsy must be performed within 24 hours after the  
11 death, or as soon thereafter as is feasible.

12 (b) The [Medical Examiners Commission] shall provide for the development and  
13 implementation of a protocol for the forensic investigation of SUID. The protocol may  
14 include requirements and standards for scene investigations, requirements for specific  
15 data, criteria for any specific tissue sampling, and any other requirements that are deemed  
16 necessary.

17 (c) A medical examiner is not liable for damages in a civil action for any act or omission  
18 done in compliance with this subsection.

19  
20 (5) Department Duties Relating to Sudden Unexpected Infant Death (SUID).—The [Department  
21 of Health], in consultation with the child protection teams established in the [Division of  
22 Children’s Medical Services], shall:

23 (a) Collaborate with other agencies in the development and presentation of the SUID training  
24 programs for first responders, including those for emergency medical technicians and  
25 paramedics, firefighters, and law enforcement officers.

26 (b) Maintain a database of statistics on reported SUID deaths, and analyze the data as funds  
27 allow.

28 (c) Serve as liaison and closely coordinate activities with the [Florida SIDS Alliance].

29 (d) Maintain a library reference list and materials about SUID for public dissemination.

30 (e) Provide professional support to field staff.

31 (f) Coordinate the activities of and promote a link between the fetal and infant mortality  
32 review committees of the local healthy start coalitions, the [Florida SIDS Alliance], and  
33 other related support groups.

34  
35 Section 5. [*Postpartum education.*]

36 A hospital that provides birthing services shall incorporate information on safe sleep practices  
37 and the possible causes of Sudden Unexpected Infant Death into the hospital’s postpartum  
38 instruction on the care of newborns.

39  
40 Section 6. [*Severability.*] Insert severability clause.

41  
42 Section 7. [*Repealer.*] Insert repealer clause.

43  
44 Section 8. [*Effective Date.*] Insert effective date.

## Suicide Prevention Training

This act adds physicians, nurses, physical therapists, and physician assistants to a list of mental health professionals required to complete training in suicide assessment, treatment and management every six years. It requires the model list of training programs to be updated periodically, and when practicable, to contain content specific to veterans. It also requires the state to complete a suicide prevention plan.

Submitted as:

Washington

Engrossed Substitute House Bill 2315

Status: Enacted into law on March 27, 2014.

### Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title*] An Act relating to suicide prevention.  
2
- 3 Section 2. [*Training in suicide assessment and treatment.*]  
4 (1)
- 5 (a) Each of the following professionals certified or licensed under [insert citation] shall, at  
6 least once every six years, complete training in suicide assessment, treatment, and  
7 management that is approved, in rule, by the relevant disciplining authority:  
8 (i) An adviser or counselor certified under [insert citation];  
9 (ii) A chemical dependency professional licensed under [insert citation];  
10 (iii) A marriage and family therapist licensed under [insert citation];  
11 (iv) A mental health counselor licensed under [insert citation];  
12 (v) An occupational therapy practitioner licensed under [insert citation];  
13 (vi) A psychologist licensed under [insert citation];  
14 (vii) An advanced social worker or independent clinical social worker licensed under  
15 chapter [insert citation]; and  
16 (viii) A social worker associate--advanced or social worker associate -- independent  
17 clinical licensed under [insert citation].
- 18 (b) The requirements in (a) of this subsection apply to a person holding a retired active  
19 license for one of the professions in (a) of this subsection.
- 20 (c) The training required by this subsection must be at least six hours in length, unless a  
21 disciplining authority has determined, under subsection (9)(b) of this section, that training  
22 that includes only screening and referral elements is appropriate for the profession in  
23 question, in which case the training must be at least three hours in length.
- 24 (2)
- 25 (a) Except as provided in (b) of this subsection, a professional listed in subsection (1)(a) of  
26 this section must complete the first training required by this section during the first full

1 continuing education reporting period after [January 1, 2014], or the first full continuing  
2 education reporting period after initial licensure or certification, whichever occurs later.

3 (b) A professional listed in subsection (1)(a) of this section applying for initial licensure may  
4 delay completion of the first training required by this section for six years after initial  
5 licensure if he or she can demonstrate successful completion of the training required in  
6 subsection (1) of this section no more than six years prior to the application for initial  
7 licensure.

8 (3) The hours spent completing training in suicide assessment, treatment, and management under  
9 this section count toward meeting any applicable continuing education or continuing  
10 competency requirements for each profession.

11 (4)

12 (a) A disciplining authority may, by rule, specify minimum training and experience that is  
13 sufficient to exempt a professional from the training requirements in subsections (1) and  
14 (5) of this section.

15 (b) A disciplining authority may exempt a professional from the training requirements of  
16 subsections (1) and (5) of this section if the professional has only brief or limited patient  
17 contact.

18 (5)

19 (a) Each of the following professionals credentialed under [insert citation] shall complete a  
20 one-time training in suicide assessment, treatment, and management that is approved by  
21 the relevant disciplining authority:

22 (i) A chiropractor licensed under [insert citation];

23 (ii) A naturopath licensed under [insert citation];

24 (iii) A licensed practical nurse, registered nurse, or advanced registered nurse practitioner  
25 licensed under [insert citation];

26 (iv) An osteopathic physician and surgeon licensed under [insert citation];

27 (v) An osteopathic physician assistant licensed under [insert citation];

28 (vi) A physical therapist or physical therapist assistant licensed under [insert citation];

29 (vii) A physician licensed under [insert citation];

30 (viii) A physician assistant licensed under [insert citation]; and

31 (ix) A person holding a retired active license for one of the professions listed in (a)(i)  
32 through (viii) of this subsection.

33 (b) A professional listed in (a) of this subsection must complete the one-time training during  
34 the first full continuing education reporting period after [June 12, 2014], or the first full  
35 continuing education reporting period after initial licensure, whichever is later.

36 (c) The training required by this subsection must be at least six hours in length, unless a  
37 disciplining authority has determined, under subsection (9)(b) of this section, that training  
38 that includes only screening and referral elements is appropriate for the profession in  
39 question, in which case the training must be at least three hours in length.

40  
41 (6)

42 (a) The [secretary] and the disciplining authorities shall work collaboratively to develop a  
43 model list of training programs in suicide assessment, treatment, and management.

44 (b) When developing the model list, the [secretary] and the disciplining authorities shall:

- 1 (i) Consider suicide assessment, treatment, and management training programs of at  
2 least six hours in length listed on the best practices registry of the American  
3 foundation for suicide prevention and the suicide prevention resource center; and  
4 (ii) Consult with public and private institutions of higher education, experts in suicide  
5 assessment, treatment, and management, and affected professional associations.  
6 (c) The [secretary] and the disciplining authorities shall report the model list of training  
7 programs to the appropriate committees of the legislature no later than [December 15,  
8 2013].  
9 (d) The [secretary] and the disciplining authorities shall update the list at least once every  
10 two years. When updating the list, the [secretary] and the disciplining authorities shall, to  
11 the extent practicable, endeavor to include training on the model list that includes content  
12 specific to veterans. When identifying veteran-specific content under this subsection, the  
13 [secretary] and the disciplining authorities shall consult with the [Washington department  
14 of veterans affairs].  
15 (7) Nothing in this section may be interpreted to expand or limit the scope of practice of any  
16 profession regulated under [insert citation].  
17 (8) The [secretary] and the disciplining authorities affected by this section shall adopt any rules  
18 necessary to implement this section.  
19 (9) For purposes of this section:  
20 (a) "Disciplining authority" has the same meaning as in [insert citation].  
21 (b) "Training in suicide assessment, treatment, and management" means empirically  
22 supported training approved by the appropriate disciplining authority that contains the  
23 following elements: Suicide assessment, including screening and referral, suicide  
24 treatment, and suicide management. However, the disciplining authority may approve  
25 training that includes only screening and referral elements if appropriate for the  
26 profession in question based on the profession's scope of practice. The [board of  
27 occupational therapy] may also approve training that includes only screening and referral  
28 elements if appropriate for occupational therapy practitioners based on practice setting.  
29 (10) A state or local government employee is exempt from the requirements of this section if  
30 he or she receives a total of at least six hours of training in suicide assessment, treatment, and  
31 management from his or her employer every six years. For purposes of this subsection, the  
32 training may be provided in one six-hour block or may be spread among shorter training  
33 sessions at the employer's discretion.  
34 (11) An employee of a community mental health agency licensed under [insert citation] or a  
35 chemical dependency program certified under [insert citation] is exempt from the  
36 requirements of this section if he or she receives a total of at least six hours of training in  
37 suicide assessment, treatment, and management from his or her employer every six years. For  
38 purposes of this subsection, the training may be provided in one six-hour block or may be  
39 spread among shorter training sessions at the employer's discretion.  
40

41 Section 3. *[Pilot program.]*

- 42 (1) The [department of social and health services] and the [health care authority] shall jointly  
43 develop a plan for a pilot program to support primary care providers in the assessment and  
44 provision of appropriate diagnosis and treatment of individuals with mental or other  
45 behavioral health disorders and track outcomes of the program.  
46 (2) The program must, at a minimum, include the following:

- 1 (a) Two pilot sites, one in an urban setting and one in a rural setting; and
- 2 (b) Timely case consultation between primary care providers and psychiatric specialists.
- 3 (3) The plan must address timely access to care coordination and appropriate treatment services,
- 4 including next day appointments for urgent cases.
- 5 (4) The plan must include:
  - 6 (a) A description of the recommended program design, staffing model, and projected
  - 7 utilization rates for the two pilot sites and for statewide implementation; and
  - 8 (b) Detailed fiscal estimates for the pilot sites and for statewide implementation, including:
    - 9 (i) A detailed cost breakdown of the elements in subsections (2) and (3) of this
    - 10 section, including the proportion of anticipated federal and state funding for each
    - 11 element; and
    - 12 (ii) An identification of which elements and costs would need to be funded through
    - 13 new resources and which can be financed through existing funded programs.
- 14 (5) When developing the plan, the department and the authority shall consult with experts and
- 15 stakeholders, including, but not limited to, primary care providers, experts on psychiatric
- 16 interventions, institutions of higher education, tribal governments, the state department of
- 17 veterans affairs, and the partnership access.
- 18 (6) The [department] and the [authority] shall provide the plan to the appropriate committees of
- 19 the legislature no later than [November 15, 2014].

20  
21 Section 4. [*State plan for suicide prevention.*]

- 22 (1) The [secretary], in consultation with the steering committee convened in subsection (3) of
- 23 this section, shall develop a [Washington] plan for suicide prevention. The plan must, at a
- 24 minimum:
  - 25 (a) Examine data relating to suicide in order to identify patterns and key demographic
  - 26 factors;
  - 27 (b) Identify key risk and protective factors relating to suicide; and
  - 28 (c) Identify goals, action areas, and implementation strategies relating to suicide prevention.
- 29 (2) When developing the plan, the [secretary] shall consider national research and practices
- 30 employed by the federal government, tribal governments, and other states, including the
- 31 national strategy for suicide prevention. The plan must be written in a manner that is
- 32 accessible, and useful to, a broad audience. The [secretary] shall periodically update the plan
- 33 as needed.
- 34 (3) The [secretary] shall convene a steering committee to advise him or her in the development
- 35 of the [Washington] plan for suicide prevention. The committee must consist of
- 36 representatives from the following:
  - 37 (a) Experts on suicide assessment, treatment, and management;
  - 38 (b) Institutions of higher education;
  - 39 (c) Tribal governments;
  - 40 (d) The [department of social and health services];
  - 41 (e) The [state department of veterans affairs;]
  - 42 (f) Suicide prevention advocates, at least one of whom must be a suicide survivor and at
  - 43 least one of whom must be a survivor of a suicide attempt;
  - 44 (g) Primary care providers;
  - 45 (h) Local health departments or districts; and
  - 46 (i) Any other organizations or groups the [secretary] deems appropriate.

1 (4) The [secretary] shall complete the plan no later than [November 15, 2015], publish the report  
2 on the [department's] web site, and submit copies to the governor and the relevant standing  
3 committees of the legislature.  
4

5 Section 5. [*Severability.*] Insert severability clause.  
6

7 Section 6. [*Repealer.*] Insert repealer clause.  
8

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



## Social Media Privacy (Note)

### Overview:

The growing use of social media in the U.S. has had implications in both the employment and educational contexts. In recent years, some employers and educational institutions have asked current and/or prospective employees or students to grant the employer or school access to social media accounts. From 2012-2014 (as of September 2014), nineteen states enacted varying legislation addressing access of this type (Arkansas, California, Colorado, Delaware, Illinois, Louisiana, Maryland, Michigan, Nevada, New Hampshire, New Jersey, New Mexico, Oklahoma, Oregon, Rhode Island, Tennessee, Utah, Washington, and Wisconsin), and numerous additional bills on the topic were introduced.

In the summer of 2013, the Executive Committee of the Uniform Law Commission (ULC) authorized the appointment of a Study Committee on Social Media Privacy to study the need for and feasibility of drafting an act on social media privacy. The committee studied the topic for close to a year, including soliciting and considering stakeholder feedback. The committee's work culminated in a recommendation to the ULC Committee on Scope and Program that the ULC establish a drafting committee to draft an act on social media privacy that addresses the specific issues considered by the Study Committee. At its 2014 Annual Meeting in Seattle, Washington, the ULC Executive Committee authorized the appointment of a Drafting Committee on Social Media Privacy. This newly appointed committee will draft legislation concerning employers' access to employees' or prospective employees' social media accounts and educational institutions' access to students' or prospective students' social media accounts; the committee's charge is limited to these issues.

### Common Issues:

The current state social media privacy statutes vary with regard to many issues, but have commonly addressed the following (non-exhaustive) categories: types of entities covered; types of access prohibited; non-retaliation requirements; remedies available for non-compliance; and exceptions. Below is a general overview of how states have dealt with common categories of issues.

### Categories of Entities Covered by the Statute:

Currently, states have (and continue to introduce) laws governing: (1) employers' access to employees' and/or prospective employees' social media accounts; *and/or* (2) educational institutions' access to students' and/or prospective students' social media accounts. Of the nineteen current (as of September 2014) state social media privacy laws, eleven are applicable to both categories (Arkansas, California, Illinois, Louisiana, Michigan, New Jersey, New Mexico, Oregon, Rhode Island, Utah, and Wisconsin), seven states cover employers only (Colorado, Maryland, Nevada, New Hampshire, Oklahoma, Tennessee, and Washington), and one – Delaware – addresses only schools. One state, Wisconsin, also addresses a landlord's access to a tenant or prospective tenant's personal internet accounts.

States also vary within the broad categories of entities covered as to what types of sub-categories are included. Most of the existing laws that address schools, for instance, are limited to postsecondary institutions/institutions of higher education. But several address broader

categories. Michigan’s social media privacy statute, for example, covers educational institutions including kindergarten, nursery, elementary schools, and more.

While most of the states with legislation on this topic address both prospective and current employees/students (where applicable), New Mexico addresses both in the school realm, but only applicants in the employment context, and Illinois addresses both in the employment context, but only current students in the school realm.

**Types of Access Prohibited:**

State statutes currently vary in the scope and types of access that are restricted. Access limitations range from prohibiting the entity from requesting the person’s username and password only, to barring the entity from requesting/requiring the person add someone affiliated with the entity as a contact in their social media network, to disallowing the entity from requesting/requiring the person to alter their privacy settings, to preventing the entity from accessing the person’s social media account through a third party (e.g., someone who is already connected to the person), to prohibiting the entity from requesting/requiring to observe the person access their own social media account (sometimes known as “shoulder surfing”), to restricting the entity from inquiring whether a person has a social media account (in the case of New Jersey’s school-specific statute).

**Non-Retaliation Provisions:**

The vast majority of the states’ social media privacy laws include non-retaliation provisions, prohibiting the entity from penalizing a person for failing to grant access to the information protected under the act.

**Remedy:**

To the extent the state statutes make relief available for a violation of the law, the remedial options vary. More than half of the states that have laws on the topic contain a civil or administrative remedy, several of which include a private cause of action. (States with civil and/or administrative remedies include: Colorado, Michigan, New Jersey, New Hampshire, Oklahoma, Oregon, Rhode Island, Utah, Washington, and Wisconsin.) In addition to making a civil action available to a person aggrieved by a violation of the statute, Michigan provides that a person in violation is guilty of a misdemeanor, punishable by a fine of \$1,000 or less.

**Exceptions:**

The state statutes also differ with regards to the type of exceptions available to entities, or instructive provisions regarding what the act does *not* restrict an entity from doing. In very general terms, common exceptions/non-limitations include:

- (a) allowing an entity to request/require access to an electronic communications device that is paid for by the entity, or likewise a social media account that is provided by the employer or used for work-related purposes, or non-personal accounts that provide access to an employer’s computer or information systems;
- (b) allowing access to or use of information that is publicly available about the person;
- (c) allowing an entity to request access to an individual’s social media account if relevant to an investigation;
- (d) allowing an employer to monitor electronic mail and equipment;

- (e) allowing an employer to prohibit the transfer of propriety or confidential information or financial data to an employee's personal social media account without permission;
- (f) making clear that the act's limitations do not prohibit an entity from complying with laws or regulations, including complying with a duty to screen or monitor applicants or employees established by federal law or a self-regulatory organization;
- (g) providing that inadvertently receiving an individual's social media account login information is permissible (i.e., the employer is not liable for having that information), but once the inadvertent information is received the employer may not use it to access the individual's social media account; and
- (h) providing that the act does not create a duty for an entity to search or monitor a personal social media account.

## Active Duty Military Personnel Service Cancellations

This act allows active duty service members to cancel and reinstate services like cable, internet, and health club memberships. In order to cancel or reinstate services, a member of the armed services must provide orders proving they have been called into active duty. Qualifying active duty members may be able to reinstate services under the same terms and conditions before cancellation due to active duty call-up.

Submitted as:

Oregon

Enrolled House Bill 2083

Status: Signed into law on June 18, 2013.

### Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title*] An Act relating to the provision of services to active duty service  
2 members.  
3
- 4 Section 2. [*Relating to the provision of services to active duty service members*]  
5 (1) As used in this section, “service member” means:  
6 (a) A member of the organized militia who is called into active service of the state by the  
7 Governor under [insert citation] for 30 or more consecutive days.  
8 (b) A member of the Armed Forces of the United States, as that term is defined in [insert  
9 citation], who is called into active federal service under Title 10 of the United States  
10 Code.  
11 (2)  
12 (a) Except as provided in subsection (6) of this section, a service member who has obtained  
13 the following services from a telecommunications service provider, an Internet service  
14 provider, a health club as defined in [insert citation], a health spa as defined in [insert  
15 citation] or a provider of television services may terminate or suspend the provision of  
16 services upon written notice and as provided in paragraph (b) of this subsection:  
17 (A) Telecommunications services.  
18 (B) Internet services.  
19 (C) Health spa services as defined in [insert citation].  
20 (D) Exercise or athletic activities offered by a health club.  
21 (E) Television services, including but not limited to cable television, direct satellite and  
22 other television-like services.  
23 (b) The service member must provide proof to the service provider of the official orders  
24 showing that the service member has been called into active service:  
25 (A) At the time written notice is given; or  
26

1 (B) If precluded by military necessity or circumstances that make the provision of proof  
2 at the time of giving written notice unreasonable or impossible, within 90 days after  
3 written notice has been given.

4 (3) A termination or suspension of services under this section is effective on the day written  
5 notice is given under subsection (2) of this section.

6 (4)

7 (a) A service member who terminates or suspends the provision of services under this  
8 section and who is no longer in active service may reinstate the provision of services on  
9 the same terms and conditions as originally agreed to with the service provider before the  
10 termination or suspension upon written notice to the provider that the service member is  
11 no longer in active service. Written notice under this subsection must be given within 90  
12 days after termination of the service member's active service.

13 (b) Upon receipt of the written notice of reinstatement, the service provider shall resume the  
14 provision of services or, if the services are no longer available, provide substantially  
15 similar services within a reasonable time not to exceed 30 days from the date of receipt of  
16 the written notice of reinstatement.

17 (5) A service member who terminates, suspends or reinstates the provision of services under this  
18 section:

19 (a) May not be charged a penalty, fee, loss of deposit or any other additional cost because of  
20 the termination, suspension or reinstatement; and

21 (b) Is not liable for payment for any services after the effective date of the termination or  
22 suspension, or until the effective date of a reinstatement of services as described in  
23 subsection (4) of this section.

24 (6) A service member may terminate a contract for any service provided by a commercial mobile  
25 radio services provider in accordance with 50 U.S.C. 535a.

26  
27 Section 3. [*Severability.*] Insert severability clause.

28  
29 Section 4. [*Repealer.*] Insert repealer clause.

30  
31 Section 5. [*Effective Date.*] Insert effective date.

## INDEX

Please note that a cumulative index covering topics from the 1995 *Suggested State Legislation* volume through the 2015 edition will be available in early 2015 at [www.csg.org/ssl](http://www.csg.org/ssl).