SUGGESTED
STATE LEGISLATION
2016
Volume 75

Developed by the
Committee on Suggested State Legislation

The Council of State Governments
Lexington, Kentucky

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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 2016 Suggested State Legislation volume, a valued series of compilations of draft legislation about topics of importance to the states. The draft legislation found in this book represents many hours of work by the CSG 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

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2016 Suggested State Legislation
Introduction

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

That statement is a simple one, but it remains as true today as it did when it first appeared in the introduction to the 28th volume of *Suggested State Legislation*. For more than 75 years, The Council of State Governments’ Suggested State Legislation, or 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.

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.

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 on which the drafts are based.

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 SSL Program, The Council
of State Governments, 1776 Avenue of the States, Lexington, KY 40511, (859) 244-8000, fax
(859) 244-8001, or 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 the CSG website at
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.

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

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

It takes many bills or laws to fill the dockets of one year-long SSL cycle. Items should be submitted to CSG at least eight weeks in advance to be considered for placement on the docket of a scheduled SSL meeting. 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.

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

(1) Does this bill:
   a) Address a current state issue of national or regional significance;
   b) Provide a benefit to bill drafters;
   c) Provide a clear, innovative and practical structure and approach; and

(2) Did this legislation become law?

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 typically are 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 docket 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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The U.S. Environmental Protection Agency’s, or EPA’s, final Clean Power Plan regulates carbon dioxide emissions from existing fossil fuel-fired power plants under Section 111 of the Clean Air Act. The final version of this regulation, published in October 2015, includes a number of key changes from the proposed rule, including an adjusted state plan and implementation schedule, alterations to the “building blocks” on which individual state targets are based and the promotion of interstate trading options. While the overall Clean Power Plan seeks to reduce carbon dioxide emissions from this sector by 32 percent by 2030, each state faces a different target. This controversial rulemaking (as of Oct. 30, 2015, 26 states had filed legal challenges to the final rule) has prompted states to consider legislation directing how state environmental agencies and other officials respond or comply.

Under the final rule, states must provide the EPA with an initial plan in September 2016, but may receive a two-year extension for the final plan, which will obligate the state to make federally enforceable emissions reductions between 2022 and 2030. If a state does not submit a satisfactory plan approved by the EPA, a federal plan will be imposed by the agency. As a result of the structure of the Clean Power Plan and its efforts to seek emissions reduction throughout the electricity system, governors, environmental agencies, public utility commissions, energy offices and legislatures have all been actively involved in determining their path forward.

Many state legislatures have considered bills to provide direction to executive branch agencies or to establish legislative review procedures for state plans submitted pursuant to the Clean Power Plan. In 2015, more than 30 states introduced bills dealing with compliance under the plan. In April 2014, Kentucky enacted House Bill 388, which authorizes the state’s Energy and Environment Cabinet to set separate standards for coal- and natural gas-fired power plants, but directs the state to consider economic effects, set reasonable standards and avoid measures that regulate “outside the fenceline,” including requirements to switch from coal. West Virginia’s House Bill 4346, also enacted in 2014, establishes similar factors and considerations to be reflected in a state plan. In 2015, West Virginia House Bill 2004 required an examination of whether compliance was feasible and created a process for legislative approval of a state plan.

In 2014, Louisiana enacted Senate Bill 650, the Louisiana Carbon Dioxide Emission Fossil Fuel-Fired Electrical Generating Units Control Act, to limit compliance to options available at each power plant and require less stringent alternatives based on consumer impacts, unreasonable costs, physical implementation difficulties and other factors. Missouri enacted House Bill 1631 to determine standards regarding carbon emissions regulations on a case-by-case basis. Later in 2015, Senate Bill 142 was enacted to require an implementation impact report be submitted to the legislature and others 45 days before the state sent compliances to the EPA for the Clean Power Plan or other major environmental regulations. Pennsylvania established House Bill 2354, which requires approval of the state implementation plan by the General Assembly before submission to the EPA.

In light of the new timelines under the final Clean Power Plan, many additional state legislatures are expected to be actively involved in state plan considerations in 2016 and 2017.
Microbeads

The Act requires a phase out, and ultimately, a ban on the manufacture and sale of personal care products that contain plastic synthetic microbeads. The Act bans the manufacture of personal care products containing plastic synthetic microbeads by the end of 2017, the sale of such personal care products and the manufacture of over-the-counter drugs containing the beads by the end of 2018, and the sale of over-the-counter drugs with microbeads by the end of 2019.

Synthetic plastic microbeads are used in personal care products because of their exfoliating properties and excellent safety profile, but there are concerns about the potential environmental impact as microbeads may not be captured by wastewater treatment facilities. This Act was passed unanimously in the Legislature, and received the support of industry.

Submitted as:
Illinois
SB 2727
Status: Signed into law on June 9, 2014.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Definitions.]
(a) As used in this Section:
“Over the counter drug” means a drug that is a personal care product that contains a label that identifies the product as a drug as required by 21 CFR 201.66. An “over the counter drug” label includes: (1) A drug facts panel; or (2) A statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation.

“Personal care product” means any article intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and any article intended for use as a component of any such article. “Personal care product” does not include any prescription drugs.

“Plastic” means a synthetic material made from linking monomers through a chemical reaction to create an organic polymer chain that can be molded or extruded at high heat into various solid forms retaining their defined shapes during life cycle and after disposal.

“Synthetic plastic microbead” means any intentionally added non-biodegradable solid plastic particle measured less than 5 millimeters in size and is used to exfoliate or cleanse in a rinse-off product.
The General Assembly hereby finds that microbeads, a synthetic alternative ingredient to such natural materials as ground almonds, oatmeal, and pumice, found in over 100 personal care products, including facial cleansers, shampoos, and toothpastes, pose a serious threat to the State's environment.

Microbeads have been documented to collect harmful pollutants already present in the environment and harm fish and other aquatic organisms that form the base of the aquatic food chain. Recently, microbeads have been recorded in Illinois water bodies, and in particular, the waters of Lake Michigan.

Although synthetic plastic microbeads are a safe and effective mild abrasive ingredient effectively used for gently removing dead skin, there are recent concerns about the potential environmental impact of these materials. More research is needed on any adverse consequences, but a number of cosmetic manufacturers have already begun a voluntary process for identifying alternatives that allay those concerns. Those alternatives will be carefully evaluated to assure safety and implemented in a timely manner.

Without significant and costly improvements to the majority of the State's sewage treatment facilities, microbeads contained in products will continue to pollute Illinois' waters and hinder the recent substantial economic investments in redeveloping Illinois waterways and the ongoing efforts to restore the State's lakes and rivers and recreational and commercial fisheries.

(c) Effective [insert effective date], no person shall manufacture for sale a personal care product, except for an over the counter drug, that contains synthetic plastic microbeads as defined in this Section.

(d) Effective [insert effective date], no person shall accept for sale a personal care product, except for an over the counter drug, that contains synthetic plastic microbeads as defined in this Section.

(e) Effective [insert effective date], no person shall manufacture for sale an over the counter drug that contains synthetic plastic microbeads as defined in this Section.

(f) Effective [insert effective date], no person shall accept for sale an over the counter drug that contains synthetic plastic microbeads as defined in this Section.

Section 2. [Penalties.]
Any person who violates this Section of this Act shall be liable for a civil penalty of up to $1,000 for the first violation of that Section and a civil penalty of up to $2,500 for a second or subsequent violation of that Section.
Distributed Energy Generation Systems: Disclosure

This Act provides disclosure requirements to be included in agreements for the sale or lease of a distributed energy generating system.

Submitted as:
Arizona
SB 1465
Status: Signed into law on March 30, 2015.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [Definitions.]
2 In this article, unless the context otherwise requires:
3 1. “Collector” means a component of a solar energy device that is used to absorb solar
4 radiation, convert it to heat or electricity and transfer the heat to a heat transfer fluid or to
5 storage.
6 2. “Distributed Energy Generation System”: 7 (a) Means a device or system that is used to generate or store electricity, that has a capacity,
8 singly or in connection with other similar devices or systems, greater than one kilowatt
9 that is primarily for on-site consumption.
10 (b) Does not include an electric generator that is intended for occasional use.
11 3. “Heat exchanger” means a component of a solar energy device that is used to transfer heat
12 from one fluid to another.
13 4. “Seller or marketer” means an individual or a company acting through its officers, employees
14 or agents that markets, sells or solicits the sale, financing or lease of distributed energy
15 generation systems or negotiates or enters into agreements for the sale, financing or lease of
16 distributed energy generation systems.
17 5. “Solar daylighting” means a device that is specifically designed to capture and redirect the
18 visible portion of the solar beam spectrum, while controlling the infrared portion, for use in
19 illuminating interior building spaces in lieu of artificial lighting.
20 6. “Solar energy device” means a system or series of mechanisms that is designed primarily to
21 provide heating, to provide cooling, to produce electrical power, to produce mechanical
22 power, to provide solar daylighting or to provide any combination of the foregoing by means
23 of collecting and transferring solar generated energy into such uses either by active or passive
24 means. Such systems may also have the capability of storing such energy for future
25 utilization. Passive systems shall clearly be designed as a solar energy device such as a
26 trombe wall and not merely a part of a normal structure such as a window.
27 7. “Storage unit” means a component of a solar energy device that is used to store solar
28 generated electricity or heat for later use.
Section 2. [Distributed energy generation system agreements; disclosures; exception.]

(A) An agreement governing the financing, sale or lease of a distributed energy generation system to any person or a political subdivision of this state must:

1. Be signed by the person buying, financing or leasing the distributed energy generation system and must be dated. Any agreement that contains blank spaces affecting the timing, value or obligations of the agreement in a material manner when signed by the buyer or lessee is voidable at the option of the buyer or lessee until the distributed energy generation system is installed.

2. Be in at least ten-point type.

3. Include a provision granting the buyer or lessee the right to rescind the financing, sale or lease agreement for a period of not less than three business days after the agreement is signed by the buyer or lessee and before the distributed energy generation system is installed.

4. Provide a description, including the make and model of the distributed energy generation system's major components or a guarantee concerning energy production output that the distributed energy generation system being sold or leased will provide over the life of the agreement.

5. Separately set forth the following items, if applicable:
   (a) The total purchase price or total cost to the buyer or lessee under the agreement for the distributed energy generation system over the life of the agreement.
   (b) Any interest, installation fees, document preparation fees, service fees or other costs to be paid by the buyer or lessee of the distributed energy generation system.
   (c) If the distributed energy generation system is being financed or leased, the total number of payments, the payment frequency, the amount of the payment expressed in dollars and the payment due date.

6. Provide a disclosure in the sale and financing agreements, to the extent they are used by the seller or marketer in determining the purchase price of the agreement, identify all current tax incentives and rebates or other state or federal incentives for which the buyer may be eligible and any conditions or requirements pursuant to the agreement to obtain these tax incentives, rebates or other incentives.

7. Identify the tax obligations that the buyer or lessee may be required to pay as a result of buying, financing or leasing the distributed energy generation system, including:
   (a) The assessed value and the property tax assessments associated with the distributed energy generation system calculated in the year the agreement is signed.
   (b) Transaction privilege taxes that may be assessed against the person buying or leasing the distributed energy generation system.
   (c) Any obligation of the buyer or lessee to transfer tax credits or tax incentives of the distributed energy generation system to any other person.

8. Disclose whether the warranty or maintenance obligations related to the distributed energy generation system may be sold or transferred to a third party.

9. Include a disclosure, the receipt of which shall be separately acknowledged by the buyer or lessee, if a transfer of the sale, lease or financing agreement contains any restrictions pursuant to the agreement on the lessee's or buyer's ability to modify or transfer ownership of a distributed energy generation system, including whether any modification or transfer is subject to review or approval by a third party. If the modification or transfer of the distributed energy generation system is subject to review or approval by a third
party, the agreement must identify the name, address and telephone number of, and
provide for updating any change in, the entity responsible for approving the modification
or transfer.

10. Include a disclosure, the receipt of which shall be separately acknowledged by the buyer
or lessee, if a modification or transfer of ownership of the real property to which the
distributed energy generation system is or will be affixed contains any restrictions
pursuant to the agreement on the lessee's or buyer's ability to modify or transfer
ownership of the real property to which the distributed energy generation system is
installed or affixed, including whether any modification or transfer is subject to review or
approval by a third party. If the modification or transfer of the real property to which the
distributed energy generation system is affixed or installed is subject to review or
approval by a third party, the agreement must identify the name, address and telephone
number, and provide for updating any change in, the entity responsible for approving the
modification or transfer.

11. Provide a full and accurate summary of the total costs under the agreement for
maintaining and operating the distributed energy generation system over the life of the
distributed energy generation system, including financing, maintenance and construction
costs related to the distributed energy generation system.

12. If the agreement contains an estimate of the buyer's or lessee's future utility charges based
on projected utility rates after the installation of a distributed energy generation system,
provide an estimate of the buyer's or lessee's estimated utility charges during the same
period as impacted by potential utility rate changes ranging from at least a five percent
annual decrease to at least a five percent annual increase from current utility costs. The
comparative estimates must be calculated based on the same utility rates.

13. Include a disclosure, the receipt of which shall be separately acknowledged by the buyer
or lessee, that states:

Utility rates and utility rate structures are subject to change. These changes cannot
be accurately predicted. Projected savings from your distributed energy
generation system are therefore subject to change. Tax incentives are subject to
change or termination by executive, legislative or regulatory action.

(B) Before the maintenance or warranty obligations of a distributed energy generation system
under an existing lease, financing or purchase agreement is transferred, the person who is
currently obligated to maintain or warrant the distributed energy generation system must
disclose the name, address and telephone number of the person who will be assuming the
maintenance or warranty of the distributed energy generation system.

(C) If the seller's or marketer's marketing materials contain an estimate of the buyer's or lessee's
future utility charges based on projected utility rates after the installation of a distributed
energy generation system, the marketing materials must contain an estimate of the buyer's or
lessee's estimated utility charges during the same period as impacted by potential utility rate
changes ranging from at least a five percent annual decrease to at least a five percent annual
increase from current utility costs.

(D) This section does not apply to an individual or company, acting through its officers,
employees or agents, that markets, sells, solicits, negotiates or enters into an agreement for
the sale, financing or lease of a distributed energy generation system as part of a transaction
involving the sale or transfer of the real property to which the distributed energy generation
system is or will be affixed.
BUSINESS REGULATION AND COMMERCIAL LAW

Crowdfunding for Entrepreneurs (Note)

By Austin Coleman, CSG Graduate Fellow

The U.S. Securities and Exchange Commission has not yet finalized rules governing “general solicitation” for the purpose of equity crowdfunding. As such, several states have implemented their own regulatory guidelines governing intrastate crowdfunding.

The 2011 Invest Kansas Exemption (K.A.R. 81-5-21), or IKE, allows firms to solicit up to $1 million through crowdfunding and limits non-accredited investors to $5,000 in equity or debt securities. The issuer of securities must be a business entity organized in Kansas, 80 percent of its assets and operations must be within the state, and all funds raised must be kept in a bank or depository institution authorized to do business in Kansas. IKE also requires that issuers have a plan of business and persons with a criminal or disciplinary history are disqualified from using the exemption.

The 2012 Invest Georgia Exemption (Ga. Comp. R. & Regs. r. 590-4-2-.08) limits intrastate crowdfunding to for-profit companies and caps total funding at $1 million. The act also requires firms engaged in crowdfunding to disclose their intention to the state commissioner of securities. Firms claiming the exemption may not accept more than $10,000 from a non-accredited investor.

Wisconsin’s 2013 AB 350 alters the definition of “institutional investors” to include organizations with assets of $2.5 million or greater. It also creates a new class of “certified investors” who have an individual net worth of at least $750,000 or an income of at least $100,000. The act allows these individuals to purchase equity or securities in intrastate transactions. AB 350 also allows firms to sell securities to a maximum of 100 Wisconsin residents who are not institutional, accredited or certified investors. The act allows firms to solicit up to $2 million through crowdfunding if the issuer makes an audit available, and $1 million otherwise. Any website used to solicit crowdfunding must also be registered in-state. It also includes a “bad actor” provision similar to the one contained in the Invest Kansas Exemption.

Michigan HB 4996 (2013) allows non-accredited investors to engage in intrastate crowdfunding, but their investments are limited to $10,000 (adjusted for inflation). In order to claim the exemption, a firm must be established under Michigan law and authorized to do business in the state. Firms may solicit at most $1 million, increased to $2 million if the firm makes financial statements available to investors and regulators. The law also requires firms to notify state financial regulators at least ten days before making an offer of securities covered by the exemption. Investment companies are forbidden from invoking the exemption, and they also cannot pay personnel for offering or selling securities unless they are a registered broker-dealer. The law also lowers the threshold required to be considered an “institutional investor” to include organizations with $2.5 million in assets. Finally, the law incorporates a “bad actor” provision similar to the Kansas and Wisconsin statutes.

Washington HB 2023 (2014) allows entrepreneurs to solicit up to $1 million with no single investor contributing more than $2,000, or 5 percent of net worth. Firms must return all funds solicited if they fail to reach their fundraising goal. The statute also requires contributors to
acknowledge that by investing they are freely taking a risk. Additionally, the law allows port
districts and development organizations to facilitate offerings for economic development
purposes.

Maine LD 1512 (2014) allows corporations or other entities authorized by the secretary of state
to solicit up to $1 million within a twelve month period. Individuals may only contribute a total
of $5,000 during this period. The issuer is required to disclose the name, address and website of
the firm, along with a business plan and the names of all directors, officers and major
shareholders. Firms are also required to submit independently reviewed financial statements if
the crowdfunding campaign has raised between $100,000 and $500,000. Those who have
received more than $500,000 must submit audited financial statements. The issuer must also set
aside funds received from intrastate investors until the fundraising goal is met. If this goal is not
met, all funds are to be returned to investors.
Public Disclosure of Arrest Bookings

The Public Disclosure Act bans the release of police mug shots unless the person requesting them signs a sworn statement the photos will not be published on a website that charges for their removal. The Act does not cover those who have been convicted of crimes, but only those who have been acquitted.

Submitted as:
Georgia
HB 845
Status: Signed into law on April 24, 2014.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [General provisions for law enforcement officers and agencies.]

(a) As used in this Code section, the term ‘booking photograph’ means a photograph or image of an individual taken by an arresting law enforcement agency for the purpose of identification or taken when such individual was processed into a jail.

(b) Except as provided in [Open Records Act, Inapplicable to public records] and booking photographs required for publication as set forth in [Insert citation], for the State Sexual Offender Registry, and for use by law enforcement agencies for administrative purposes, an arresting law enforcement agency or agent thereof shall not post booking photographs to or on a website.

(c) An arresting law enforcement agency shall not provide or make available a copy of a booking photograph in any format to a person requesting such photograph if:

(1) Such booking photograph may be placed in a publication or posted to a website or transferred to a person to be placed in a publication or posted to a website; and

(2) Removal or deletion of such booking photograph from such publication or website requires the payment of a fee or other consideration.

(d) When a person requests a booking photograph, he or she shall submit a statement affirming that the use of such photograph is in compliance with subsection (c) of this Code section. Any person who knowingly makes a false statement in requesting a booking photograph shall be guilty of a violation of [Insert citation.]

Section 2. [Open Records Act: When public disclosure not required.]

Records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports and initial incident reports; provided, however, that an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving such investigation and prosecution has become final or otherwise terminated; and provided, further, that this paragraph shall not apply to records in the possession of an agency that is the subject of the pending investigation or prosecution; and provided, further, that the release of booking photographs shall only be permissible in accordance with [Section 1.]
Removal of Arrest Booking Photographs

The Act allows anyone arrested in Georgia limited ability to request removal of their mugshot from commercial websites without a fee. The Act states that in certain cases, such photos must be removed within 30 days, free of charge when a written request is made and sent by certified mail, return receipt requested or by statutory overnight mail to the registered agent or principal place of business of the web site.

Submitted as:
Georgia
HB 150
Status: Signed into law on May 6, 2014.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Fair Business Practices Act, related to prohibited telemarketing, Internet activities, or home repair.]

(1) As used in this subsection, the term:

(A) “Photograph” means a photograph of a subject individual that was taken in this state by an arresting law enforcement agency.

(B) “Subject individual” means an individual who was arrested and had his or her photograph taken and:

(i) Access to his or her case or charges was restricted pursuant to [Review of individual’s criminal history record information; definitions; privacy considerations; written application requesting review; inspection];

(ii) Prior to indictment, accusation, or other charging instrument, his or her case was never referred for further prosecution to the proper prosecuting attorney by the arresting law enforcement agency and the offense against such individual was closed by the arresting law enforcement agency;

(iii) Prior to indictment, accusation, or other charging instrument, the statute of limitations expired;

(iv) Prior to indictment, accusation, or other charging instrument, his or her case was referred to the prosecuting attorney but was later dismissed;

(v) Prior to indictment, accusation, or other charging instrument, the grand jury returned two no bills;

(vi) After indictment or accusation, all charges were dismissed or nolle prossed;

(vii) After indictment or accusation, the individual pleaded guilty to or was found guilty of possession of a narcotic drug, marijuana, or stimulant, depressant, or hallucinogenic drug and was sentenced in accordance with the provisions of [Conditional discharge for possession of controlled substances as first offense and certain nonviolent property crimes; dismissal of charges; restitution to victims], and the individual successfully completed the terms and conditions of his or her probation; or

(viii) The individual was acquitted of all of the charges by a judge or jury.
(2) Any person who is engaged in any activity involving or using a computer or computer network who publishes on such person's publicly available website a subject individual's arrest booking photograph for purposes of commerce shall be deemed to be transacting business in this state. Within 30 days of the sending of a written request by a subject individual, including his or her name, date of birth, date of arrest, and the name of the arresting law enforcement agency, such person shall, without fee or compensation, remove from such person's website the subject individual's arrest booking photograph. Such written request shall be transmitted via certified mail, return receipt requested, or statutory overnight delivery, to the registered agent, principal place of business, or primary residence of the person who published the website. Without otherwise limiting the definition of unfair and deceptive acts or practices under this part, a failure to comply with this paragraph shall be unlawful."

Section 2. [Act exempt from part.]

(1) Acts done by the publisher, owner, agent, or employee of a newspaper, periodical, or radio station or network, or television station or network in the publication or dissemination in print or electronically of:

(A) News or commentary; or

(B) An advertisement of or for another person, when the publisher, owner, agent, or employee did not have actual knowledge of the false, misleading, or deceptive character of the advertisement, did not prepare the advertisement, or did not have a direct financial interest in the sale or distribution of the advertised product or service.
Transportation Network Companies

The Act creates a limited regulatory structure for transportation network companies (TNCs) that use digital networks to connect riders to drivers who provide transportation in their personal vehicles. TNCs are exempt from the regulation for common carriers, contract carriers, and motor carriers but are subject to regulation by the Public Utilities Commission (PUC) in the Department of Regulatory Agencies.

Submitted as:
Colorado SB 125
Status: Signed into law on June 6, 2014.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Definitions.]

As used in this [Act] unless the context otherwise requires:

1 (1) “Personal vehicle” means a vehicle that is used by a transportation network company driver in connection with providing services for a transportation network company that meets the vehicle criteria set forth in this [Act].

2 (2) “Prearranged ride” means a period of time that begins when a driver accepts a requested ride through a digital network, continues while the driver transports the rider in a personal vehicle, and ends when the rider departs from the personal vehicle.

3 (3) “Transportation network company” means a corporation, partnership, sole proprietorship, or other entity, operating in [Colorado], that uses a digital network to connect riders to drivers for the purpose of providing transportation. A transportation network company does not provide taxi service, transportation service arranged through a transportation broker, ridesharing arrangements, as defined in [Insert citation.], or any transportation service over fixed routes at regular intervals. A transportation network company is not deemed to own, control, operate, or manage the personal vehicles used by transportation network company drivers. A transportation network company does not include a political subdivision or other entity exempted from federal income tax under section 115 of the federal “Internal Revenue Code of 1986”, as amended.

4 (4) “Transportation network company driver” or “driver” means an individual who uses his or her personal vehicle to provide services for riders matched through a transportation network company's digital network. A driver need not be an employee of a transportation network company.

5 (5) “Transportation network company rider” or “rider” means a passenger in a personal vehicle for whom transport is provided, including:

6 (a) An individual who uses a transportation network company's online application or digital network to connect with a driver to obtain services in the driver's vehicle for the individual and anyone in the individual's party; or
(b) Anyone for whom another individual uses a transportation network company's online application or digital network to connect with a driver to obtain services in the driver's vehicle.

(6) “Transportation network company services” or “services” means the provision of transportation by a driver to a rider with whom the driver is matched through a transportation network company. The term does not include services provided either directly by or under contract with a political subdivision or other entity exempt from federal income tax under section 115 of the federal “Internal Revenue Code of 1986”, as amended.

Section 2. [Limited regulation.]
Notwithstanding any other provision of law, transportation network companies are governed exclusively by this [Act]. A transportation network company is not subject to the commission's rate, entry, operational, or common carrier requirements, other than those requirements expressly set forth in this [Act].

Section 3. [Registration - financial responsibility of transportation network companies - insurance.]
(1) A transportation network company shall comply with the filing requirements of [Insert citation] and the registered agent requirement of [Insert citation.]

(2) A transportation network company shall file with the commission documentation evidencing that the transportation network company or the driver has secured primary liability insurance coverage for the driver for incidents involving the driver during a prearranged ride. Coverage for incidents involving a driver during a prearranged ride must be in the amount of at least one million dollars per occurrence. The insurance policy must provide coverage at all times the driver is engaged in a prearranged ride. This subsection (2) becomes effective ninety days after the effective date of this [Act].

(3) For the period of time when a driver is logged into a transportation network company's digital network but is not engaged in a prearranged ride, the following insurance requirements apply:

(a) A transportation network company or a driver shall maintain contingent liability insurance with a liability limit equal to at least the minimum amount required by [Insert citation.] At a minimum, the contingent liability insurance must provide liability coverage if the driver's insurer for personal automobile insurance validly denies coverage under the terms of the driver's personal automobile insurance policy or the driver otherwise does not have personal automobile insurance coverage. Nothing in this paragraph (a) precludes an insurer's right to equitable subrogation. The requirements of this paragraph (a) expire on [January 15, 2015], and this paragraph (a) is repealed, [effective July 1, 2015].

(b) On or before [January 15, 2015], and thereafter, a driver or a transportation network company on the driver's behalf shall maintain a primary automobile insurance policy that:

(I) Recognizes that the driver is a transportation network company driver and covers the driver's provision of transportation network company services while the driver is logged into the transportation network company's digital network;

(II) Meets at least the minimum coverage of at least fifty thousand dollars to any one person in any one accident, one hundred thousand dollars to all persons in any one accident, and for property damage arising out of the use of the motor vehicle to a
limit, exclusive of interest and costs, of thirty thousand dollars in any one
accident; and

(III) Is one of the following:
(A) Full-time coverage similar to the coverage required by commission rules
promulgated under [Insert citation.];
(B) An insurance rider to, or endorsement of, the driver's personal automobile
insurance policy required by the ["Motor Vehicle Financial Responsibility
Act,"] in [Insert citation.]; or
(C) A corporate liability insurance policy purchased by the transportation network
company that provides primary coverage for the period of time in which a
driver is logged into the digital network.

c) The division of insurance shall conduct a study of whether the levels of coverage
provided for in this subsection (3) are appropriate for the risk involved with
transportation network company services. In conducting the study, the division of
insurance shall convene one or more stakeholder meetings to evaluate the choices of
coverage set forth in subparagraph (ii) of paragraph (b) of this subsection (3). On or
before [January 15, 2015], the division of insurance shall present its findings and any
recommendations to the [Business, Labor, Economic and Workforce Development
committee in the House of Representatives, the Business, Labor, and Technology
Committee in the Senate, the Transportation and Energy Committee in the House of
Representatives, and the Transportation Committee in the Senate.]

d) If a transportation network company purchases an insurance policy under this subsection
(3), it shall provide documentation to the commission evidencing that the transportation
network company has secured the policy. If the responsibility is placed on a driver to
purchase insurance under this subsection (3), the transportation network company shall
verify that the driver has purchased an insurance policy under this subsection (3).

(4) A driver's personal automobile insurance policy that complies with [Insert citation.] is
sufficient to satisfy the compulsory insurance requirements thereof. An insurance policy
required by subsection (2) or subsection (3) of this section:
(a) May be placed with an insurer licensed under [Insert citation.], or with a surplus lines
insurer authorized under [Insert citation.]; and
(b) Need not separately satisfy the requirements of [Insert citation.]

(5) Nothing in this section requires a personal automobile insurance policy to provide coverage
for the period of time in which a driver is logged into a transportation network company’s
digital network.

(6) If more than one insurance policy provides valid and collectible coverage for a loss arising
out of an occurrence involving a motor vehicle operated by a driver, the responsibility for the
claim must be divided on a pro rata basis among all of the applicable policies. This equal
division of responsibility may only be modified by the written agreement of all of the
insurers of the applicable policies and the owners of those policies.

(7) In a claims coverage investigation, a transportation network company shall cooperate with a
liability insurer that also insures the driver's transportation network company vehicle,
including the provision of relevant dates and times during which an incident occurred that
involved the driver while the driver was logged into a transportation network company's
digital network.
(8) Nothing in this section modifies or abrogates any otherwise applicable insurance requirements set forth in [Insert citation.]

(9) If a transportation network company's insurer makes a payment for a claim covered under comprehensive coverage or collision coverage, the transportation network company shall cause its insurer to issue the payment directly to the business repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the covered vehicle. The commission shall not assess any fines as a result of a violation of this subsection (9).

Section 4. [Operational requirements.]

(1) The following requirements apply to the provision of services:
   (a) A driver shall not provide services unless a transportation network company has matched the driver to a rider through a digital network. A driver shall not solicit or accept the on-demand summoning of a ride, otherwise known as a “street hail”.
   (b) A transportation network company shall make available to prospective riders and drivers the method by which the transportation network company calculates fares or the applicable rates being charged and an option to receive an estimated fare.
   (c) Upon completion of a prearranged ride, a transportation network company shall transmit to the rider an electronic receipt, either by electronic mail or via text message, documenting:
      (I) The point of origin and destination of the prearranged ride;
      (II) The total duration and distance of the prearranged ride;
      (III) The total fare paid, including the base fare and any additional charges incurred for distance traveled or duration of the prearranged ride; and
      (IV) The driver's first name and telephone number.
   (d) Before permitting a person to act as a driver on its digital network, a transportation network company shall confirm that the person is at least twenty-one years of age and possesses:
      (I) A valid driver's license;
      (II) Proof of automobile insurance;
      (III) Proof of a [Colorado] vehicle registration; and
      (IV) Within ninety days of the effective date of this [Act] and pursuant to commission rules, proof that the person is medically fit to drive.
   (e) A driver shall not offer or provide transportation network company services for more than twelve consecutive hours.
   (f) A transportation network company shall implement an intoxicating substance policy for drivers that disallows any amount of intoxication of the driver while providing services. The transportation network company shall include on its web site and mobile device application software a notice concerning the transportation network company's intoxicating substance policy.
   (g) (I) A transportation network company shall conduct or have a certified mechanic conduct a safety inspection of a prospective driver's vehicle before it is approved for use as a personal vehicle and shall have periodic inspections of personal vehicles conducted thereafter, at intervals of at least one inspection per year. A safety inspection shall include an inspection of:
(A) Foot brakes;
(B) Emergency brakes;
(C) Steering mechanism;
(D) Windshield;
(E) Rear window and other glass;
(F) Windshield wipers;
(G) Headlights;
(H) Tail lights;
(I) Turn indicator lights;
(J) Stop lights;
(K) Front seat adjustment mechanism;
(L) The opening, closing, and locking capability of the doors;
(M) Horn;
(N) Speedometer;
(O) Bumpers;
(P) Muffler and exhaust system;
(Q) Tire conditions, including tread depth;
(R) Interior and exterior rear-view mirrors; and
(S) Safety belts.

(II) Effective ninety days after the effective date of this Act, the commission may also conduct inspections of personal vehicles.

(h) A personal vehicle must:
   (I) Have at least four doors; and
   (II) Be designed to carry no more than eight passengers, including the driver.

(i) A transportation network company shall make the following disclosure to a prospective driver in the prospective driver's terms of service:

   While operating on the transportation network company's digital network, your personal automobile insurance policy might not afford liability coverage, depending on the policy's terms.

(j) A transportation network company shall make the following disclosure to a prospective driver in the prospective driver's terms of service:

   If the vehicle that you plan to use to provide transportation network company services for our transportation network company has a lien against it, you must notify the lienholder that you will be using the vehicle for transportation services that may violate the terms of your contract with the lienholder.

   (II) The disclosure set forth in subparagraph (i) of this paragraph (j) must be placed prominently in the prospective driver's written terms of service, and the prospective driver must acknowledge the terms of service electronically or by signature.

(k) A transportation network company shall make available to a rider a customer support telephone number on its digital network or web site for rider inquiries.

(l) The disclosure requirements set forth in this subsection (1) take effect on [effective date.]
A transportation network company shall not disclose to a third party any personally identifiable information concerning a user of the transportation network company's digital network unless:

(A) The transportation network company obtains the user's consent to disclose personally identifiable information;

(B) Disclosure is necessary to comply with a legal obligation; or

(C) Disclosure is necessary to protect or defend the terms and conditions for use of the service or to investigate violations of the terms and conditions.

The limitation on disclosure does not apply to the disclosure of aggregated user data and other information about the user that is not personally identifiable.

Any taxicab company or shuttle company authorized by the commission under this Act may convert to a transportation network company model or may set up a subsidiary or affiliate transportation network company. In converting to a transportation network company model or setting up a transportation network company subsidiary or affiliate, a taxicab company or shuttle company authorized by the commission under this article may completely or partially suspend its certificate of public convenience and necessity issued under [Insert citation.] During the period of suspension of its certificate of public convenience and necessity, a taxicab company, shuttle company, or a subsidiary or affiliate of a taxicab company or shuttle company is exempt from taxi or shuttle standards under this article, the standards concerning the regulation of rates and charges under [Insert citation.], and any commission rules regarding common carriers promulgated under [Insert citation.].

Each transportation network company shall require that each personal vehicle providing transportation network company services display an exterior marking that identifies the personal vehicle as a vehicle for hire.

A transportation network company or a third party shall retain true and accurate inspection records for at least fourteen months after an inspection was conducted for each personal vehicle used by a driver.

Before a person is permitted to act as a driver through use of a transportation network company's digital network, the person shall:

(I) Obtain a criminal history record check pursuant to the procedures set forth in [Insert citation.] or through a privately administered national criminal history record check, including the national sex offender database; and

(II) If a privately administered national criminal history record check is used, provide a copy of the criminal history record check to the transportation network company.

A driver shall obtain a criminal history record check in accordance with subparagraph (i) of paragraph (a) of this subsection (3) every five years while serving as a driver.

(I) A person who has been convicted of or pled guilty or nolo contendere to driving under the influence of drugs or alcohol in the previous seven years before applying to become a driver shall not serve as a driver. If the criminal history record check reveals that the person has ever been convicted of or pled guilty or nolo contendere to any of the following felony offenses, the person shall not serve as a driver:
An offense involving fraud, as described in [Insert citation.];
(B) An offense involving unlawful sexual behavior, as defined in [Insert citation.];
(C) An offense against property, as described in [Insert citation.]; or
(D) A crime of violence, as described in [Insert citation.].

(II) A person who has been convicted of a comparable offense to the offenses listed in subparagraph (i) of this paragraph (b) in another state or in the United States shall not serve as a driver.

(III) A transportation network company or a third party shall retain true and accurate results of the criminal history record check for each driver that provides services for the transportation network company for at least five years after the criminal history record check was conducted.

(IV) A person who has, within the immediately preceding five years, been convicted of or pled guilty or nolo contendere to a felony shall not serve as a driver.

(a) Before permitting an individual to act as a driver on its digital network, a transportation network company shall obtain and review a driving history research report for the individual.

(b) An individual with the following moving violations shall not serve as a driver:
(I) More than three moving violations in the three-year period preceding the individual's application to serve as a driver; or
(II) A major moving violation in the three-year period preceding the individual's application to serve as a driver, whether committed in this state, another state, or the United States, including vehicular eluding, as described in section [Insert citation.], reckless driving, as described in [Insert citation.], and driving under restraint, as described in [Insert citation.]

(c) A transportation network company or a third party shall retain true and accurate results of the driving history research report for each driver that provides services for the transportation network company for at least three years.

(5) If any person files a complaint with the commission against a transportation network company or driver, the commission may inspect the transportation network company's records as reasonably necessary to investigate and resolve the complaint.

(6) A transportation network company shall provide services to the public in a nondiscriminatory manner, regardless of geographic location of the departure point or destination, once the driver and rider have been matched through the digital network; race; ethnicity; gender; sexual orientation, as defined in [Insert citation.]; gender identity; or disability that could prevent customers from accessing transportation. A driver shall not refuse to transport a passenger unless:
(I) The passenger is acting in an unlawful, disorderly, or endangering manner;
(II) The passenger is unable to care for himself or herself and is not in the charge of a responsible companion; or
(III) The driver has already committed to providing a ride for another rider.

(b) A transportation network company shall not impose additional charges for providing services to persons with physical or mental disabilities because of those disabilities.

(c) A driver shall permit a service animal to accompany a rider on a prearranged ride.
(d) If a rider with physical or mental disabilities requires the use of the rider's mobility equipment, a driver shall store the mobility equipment in the vehicle during a prearranged ride if the vehicle is reasonably capable of storing the mobility equipment. If the driver is unable to store a rider's mobility equipment in the driver's vehicle, the driver shall refer the rider to another driver or transportation service provider with a vehicle that is equipped to accommodate the rider's mobility equipment.

(7) 
(a) A transportation network company is not liable for a driver's violation of subsection (6) of this section unless the driver's violation has been previously reported to the transportation network company in writing, and the transportation network company has failed to reasonably address the alleged violation. The commission shall afford a transportation network company the same due process rights afforded transportation providers in defending against civil penalties assessed by the commission.

(b) The commission may assess a civil penalty up to five hundred fifty dollars under this subsection (7).

(8) Within ten days of receiving a complaint about a driver's alleged violation of subsection (6) of this section, the commission shall report the complaint to the transportation network company for which the driver provides services.

(9) A driver shall immediately report to the transportation network company any refusal to transport a passenger pursuant to paragraph (a) of subsection (6) of this section, and the transportation network company shall annually report all such refusals to the commission in a form and manner determined by the commission.

Section 5. [Permit required for transportation network companies - penalty for violation - rules.]

(1) A person shall not operate a transportation network company in [Colorado] without first having obtained a permit from the commission.

(2) The commission shall issue a permit to each transportation network company that meets the requirements of this [Act] and pays an annual permit fee of one hundred eleven thousand two hundred fifty dollars to the commission. The commission may adjust the annual permit fee by rule to cover the commission's direct and indirect costs associated with implementing this [Act.]

(3) The commission shall determine the form and manner of application for a transportation network company permit.

(4) The commission may take action against a transportation network company as set forth in [Insert citation.], including issuing an order to cease and desist and suspending, revoking, altering, or amending a permit issued to the transportation network company.

(5) 
(a) For a violation of this [Act] or a failure to comply with a commission order, decision, or rule issued under this [Act], a transportation network company is subject to the commission's authority under [Insert citation.]

(b) The commission shall not assess a penalty against a driver.

(6) The commission may deny an application under this [Act] or refuse to renew the permit of a transportation network company based on a determination that the transportation network company has not satisfied a civil penalty arising out of an administrative or enforcement action brought by the commission.
Section 6. [Fees - transportation network company fund - creation.]
The commission shall transmit all fees collected pursuant to this [Act] to the state treasurer, who shall credit the fees to the transportation network company fund, which is hereby created in the state treasury. The moneys in the fund are continuously appropriated to the commission for the purposes set forth in this [Act]. All interest earned from the investment of moneys in the fund is credited to the fund. Any moneys not expended at the end of the fiscal year remain in the fund and do not revert to the general fund or any other fund.

Section 7. [Rules.]
(1) The commission may promulgate rules consistent with this [Act], including rules concerning administration, fees, and safety requirements.
(2) The commission may promulgate rules requiring a transportation network company to maintain and file with the commission evidence of financial responsibility and proof of the continued validity of the insurance policy, surety bond, or self-insurance, but shall not require a transportation network company to file a copy of the insurance policy.

Section 8. [Transportation network company drivers – rules.]
Upon the effective date of this [Act] the director, upon consideration of existing [Colorado] statutory and case law, may by rule determine whether or not transportation network companies have an obligation under existing [Colorado] law to provide or offer for purchase workers' compensation insurance coverage to transportation network company drivers.
Uniform Powers of Appointment Act

Powers of Appointment are routinely included in trusts drafted throughout the United States, but there is little statutory law governing their use. Instead, estate-planning attorneys rely on a patchwork of common-law decisions. The Uniform Powers of Appointment Act codifies the law on powers of appointment, relying heavily on the Restatement (Third) of Property: Wills and Other Donative Transfers, published in 2011 by the American Law Institute. Therefore, estate planners will already be familiar with the provisions of this uniform act.

Submitted as:
Colorado
HB 1353
Status: Signed into law on May 15, 2014.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Definitions.]
In this article:
(1) “Appointee” means a person to whom a powerholder makes an appointment of appointive property.
(2) “Appointive property” means property or property interest subject to a power of appointment.
(3) “Blanket-exercise clause” means a clause in an instrument, which clause exercises a power of appointment and is not a specific-exercise clause. The term includes a clause that:
   (a) Expressly uses the words “any power” in exercising any power of appointment the powerholder has;
   (b) Expressly uses the words "any property" in appointing any property over which the powerholder has a power of appointment; or
   (c) Disposes of all property subject to disposition by the powerholder.
(4) “Donor” means a person who creates a power of appointment.
(5) “Exclusionary power of appointment” means a power of appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.
(6) “General power of appointment” means a power of appointment exercisable in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.
(7) “Gift-in-default clause” means a clause identifying a taker in default of appointment.
(8) “Impermissible appointee” means a person who is not a permissible appointee.
(9) “Instrument” means a record.
(10) “Nongeneral power of appointment” means a power of appointment that is not a general power of appointment.
(11) “Permissible appointee” means a person in whose favor a powerholder may exercise a power of appointment.
“Person” means an individual; estate; trust; business or nonprofit entity; public corporation; government or governmental subdivision, agency, or instrumentality; or other legal entity.

“Powerholder” means a person in whom a donor creates a power of appointment.

“Power of appointment” means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

“Presently exercisable power of appointment” means a power of appointment exercisable by the powerholder at the relevant time. The term:

(a) Includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

(I) The occurrence of the specified event;

(II) The satisfaction of the ascertainable standard; or

(III) The passage of the specified time; and

(b) Does not include a power exercisable only at the powerholder's death.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Specific-exercise clause” means a clause in an instrument, which clause specifically refers to and exercises a particular power of appointment.

“Taker in default of appointment” means a person who takes all or part of the appointive property to the extent the powerholder does not effectively exercise the power of appointment.

“Terms of the instrument” means the manifestation of the intent of the maker of the instrument regarding the instrument's provisions as expressed in the instrument or as may be established by other evidence that would be admissible in a legal proceeding.

Section 2. [Governing Law.]

(1) Unless the terms of the instrument creating a power of appointment manifest a contrary intent:

(a) The creation, revocation, or amendment of the power is governed by the law of the donor's domicile at the relevant time; and

(b) The exercise, release, or disclaimer of the power, or the revocation or amendment of the exercise, release, or disclaimer of the power, is governed by the law of the powerholder's domicile at the relevant time.

Section 3. [Supplementation by common law and principles of equity.]

Unless displaced by the particular provisions of this article, the principles of law and equity supplement its provisions.

Part 2: Creation, Revocation, and Amendment of Power of Appointment

Section 4. [Creation of power of appointment.]

(1) A power of appointment is created only if

(a) The instrument creating the power:

(I) Is valid under applicable law; and

(II) Except as otherwise provided in subsection (b) of this section, transfers the appointive property; and
(b) The terms of the instrument creating the power manifest the donor's intent to create in a
powerholder a power of appointment over the appointive property exercisable in favor of
a permissible appointee.

(2) Subparagraph (II) of paragraph (a) of subsection (1) of this section does not apply to the
creation of a power of appointment by the exercise of a power of appointment.

(3) A power of appointment may not be created in a deceased individual.

(4) Subject to an applicable rule against perpetuities, a power of appointment may be created in
an unborn or unascertained powerholder.

Section 5. [Nontransferability.]
A powerholder may not transfer a power of appointment. If a powerholder dies without
exercising or releasing a power, the power lapses.

Section 6. [Presumption of unlimited authority.]
(1) Subject to Section 8, and unless the terms of the instrument creating a power of appointment
manifest a contrary intent, the power is:
   (a) Presently exercisable;
   (b) Exclusionary; and
   (c) Except as otherwise provided in Section 7.

Section 7. [Exception to presumption of unlimited authority.]
(1) Unless the terms of the instrument creating a power of appointment manifest a contrary
intent, the power is nongeneral if:
   (a) The power is exercisable only at the powerholder's death; and
   (b) The permissible appointees of the power are a defined and limited class that does not
       include the powerholder's estate, the powerholder's creditors, or the creditors of the
       powerholder's estate.

Section 8. [Rules of classification - definitions.]
(1) In this section, “adverse party” means a person with a substantial beneficial interest in
property, which interest would be affected adversely by a powerholder's exercise or
nonexercise of a power of appointment in favor of the powerholder, the powerholder's estate,
a creditor of the powerholder, or a creditor of the powerholder's estate.

(2) If a powerholder may exercise a power of appointment only with the consent or joinder of an
adverse party, the power is nongeneral.

(3) If the permissible appointees of a power of appointment are not defined and limited, the
power is exclusionary.

Section 9. [Power of the donor to revoke or amend.]
(1) A donor may revoke or amend a power of appointment only to the extent that:
   (a) The instrument creating the power is revocable by the donor; or
   (b) The donor reserves a power of revocation or amendment in the instrument creating the
       power of appointment.
Part 3: Exercise of Power of Appointment

Section 10. [Requisites for exercise of power of appointment.]

(1) A power of appointment may be exercised only:
   (a) If the instrument exercising the power is valid under applicable law;
   (b) If the terms of the instrument exercising the power:
      (I) Manifest the powerholder's intent to exercise the power; and
      (II) Subject to Section 13, satisfy the requirements of exercise, if any, imposed by the donor; and
   (c) To the extent the appointment is a permissible exercise of the power.

Section 11. [Intent to exercise - determining intent from residuary clause.]

(1) In this section:
   (a) “Residuary clause” does not include a residuary clause containing a blanket-exercise clause or a specific-exercise clause.
   (b) ‘Will’ includes a codicil and a testamentary instrument that revises another will.

(2) A residuary clause in a powerholder's will, or a comparable clause in the powerholder's revocable trust, manifests the powerholder's intent to exercise a power of appointment only if:
   (a) The terms of the instrument containing the residuary clause do not manifest a contrary intent;
   (b) The power is a general power exercisable in favor of the powerholder's estate;
   (c) There is no gift-in-default clause or the clause is ineffective; and
   (d) The powerholder did not release the power.

Section 12. [Intent to exercise - after-acquired power.]

(1) Unless the terms of the instrument exercising a power of appointment manifest a contrary intent:
   (a) Except as otherwise provided in paragraph (b) of this subsection (1), a blanket-exercise clause extends to a power acquired by the powerholder after executing the instrument containing the clause; and
   (b) If the powerholder is also the donor of the power, the clause does not extend to the power unless there is no gift-in-default clause or the gift-in-default clause is ineffective.

Section 13. [Substantial compliance with donor-imposed formal requirement.]

(1) A powerholder's substantial compliance with a formal requirement of appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if:
   (a) The powerholder knows of and intends to exercise the power; and
   (b) The powerholder's manner of attempted exercise of the power does not impair a material purpose of the donor in imposing the requirement.

Section 14. [Permissible appointment.]

(1) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder's own property.
(2) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder's estate may appoint only to those creditors.

(3) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:
(a) Make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;
(b) Create a general or nongeneral power in a permissible appointee; or
(c) Create a nongeneral power in an impermissible appointee to appoint to one or more of the permissible appointees of the original nongeneral power.

Section 15. [Appointment to deceased appointee or permissible appointee's descendant.]
(1) An appointment to a deceased appointee is ineffective.

(2) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, a powerholder of a nongeneral power may exercise the power in favor of, or create a new power of appointment in, a descendant of a deceased permissible appointee, which deceased appointee is a descendant of one or more of the grandparents of the donor, regardless of whether the descendant is described by the donor as a permissible appointee.

Section 16. [Impermissible appointment.]
(1) Except as otherwise provided in section 15, an exercise of a power of appointment in favor of an impermissible appointee is ineffective.

(2) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent the appointment is a fraud on the power.

Section 17. [Selective allocation doctrine.]
If a powerholder exercises a power of appointment in a disposition that also disposes of property the powerholder owns, the owned property and the appointive property must be allocated in the permissible manner that best carries out the powerholder's intent.

Section 18. [Capture doctrine - disposition of ineffectively appointed property under general power.] (1) To the extent a powerholder of a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust, makes an ineffective appointment:
(a) The gift-in-default clause controls the disposition of the ineffectively appointed property; or
(b) If there is no gift-in-default clause, or to the extent the clause is ineffective, the ineffectively appointed property:
(I) Passes to:
(A) The powerholder if the powerholder is a permissible appointee and living; or
(B) If the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or
(II) If there is no taker under subparagraph (I) of this paragraph (b), passes under a reversionary interest to the donor or to the donor's transferee or successor in interest.
Section 19. [Disposition of unappointed property under released or unexercised general power.]
(1) To the extent a powerholder releases or fails to exercise a general power of appointment other than a power to withdraw property from, revoke, or amend a trust:
   (a) The gift-in-default clause controls the disposition of the unappointed property; or
   (b) If there is no gift-in-default clause or to the extent the clause is ineffective:
      (I) Except as otherwise provided in subparagraph (II) of this paragraph (b), the unappointed property passes to:
         (A) The powerholder if the powerholder is a permissible appointee and living; or
         (B) If the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or
      (II) To the extent the powerholder released the power, or if there is no taker under subparagraph (I) of this paragraph (b), the unappointed property passes under a reversionary interest to the donor or to the donor's transferee or successor in interest.

Section 20. [Disposition of unappointed property under released or unexercised nongeneral power.]
(1) To the extent a powerholder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment:
   (a) The gift-in-default clause controls the disposition of the unappointed property; or
   (b) If there is no gift-in-default clause, or to the extent the clause is ineffective, the unappointed property:
      (I) Passes to the permissible appointees if:
         (A) The permissible appointees are defined and limited; and
         (B) The terms of the instrument creating the power do not manifest a contrary intent; or
      (II) If there is no taker under subparagraph (I) of this paragraph (b), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Section 21. [Disposition of unappointed property if partial appointment to taker in default.]
Unless the terms of the instrument creating or exercising a power of appointment manifest a contrary intent, if the powerholder makes a valid partial appointment to a taker in default of appointment, the taker in default of appointment may share fully in unappointed property.

Section 22. [Appointment to taker in default.]
If a powerholder makes an appointment to a taker in default of appointment and the appointee would have taken the property under a gift-in-default clause had the property not been appointed, the power of appointment is deemed not to have been exercised and the appointee takes the property under the clause.

Section 23. [Powerholder's authority to revoke or amend exercise.]
(1) A powerholder may revoke or amend an exercise of a power of appointment only to the extent that:
   (a) The powerholder reserves a power of revocation or amendment in the instrument exercising the power of appointment and, if the power is nongeneral, the terms of the instrument creating the power of appointment do not prohibit the reservation; or
(b) The terms of the instrument creating the power of appointment provide that the exercise is revocable or amendable.

Part 4: Disclaimer or Release; Contract to Appoint or Not to Appoint

Section 24. [Disclaimer.]

(1) Subject to the “Uniform Disclaimer of Property Interests Act”, [Insert citation.]:

(a) A powerholder may disclaim all or part of a power of appointment; and

(b) A permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an interest in appointive property.

Section 25. [Authority to release.]

A powerholder may release a power of appointment, in whole or in part, except to the extent the terms of the instrument creating the power prevent the release.

Section 26. [Method of release.]

(1) A powerholder of a releasable power of appointment may release the power in whole or in part:

(a) By substantial compliance with a method provided in the terms of the instrument creating the power; or

(b) If the terms of the instrument creating the power do not provide a method, or the method provided in the terms of the instrument is not expressly made exclusive, by:

(I) Delivering a writing declaring the extent to which the power is released to a person who could be adversely affected by an exercise of the power;

(II) Joining with some or all of the takers in default in making an otherwise-effective transfer of an interest in the property that is subject to the power, in which case the power is released to the extent that a subsequent exercise of the power would defeat the interest transferred;

(III) Contracting with a person who could be adversely affected by an exercise of the power not to exercise the power, in which case the power is released to the extent that a subsequent exercise of the power would violate the terms of the contract; or

(IV) Communicating in any other appropriate manner an intent to release the power, in which case the power is released to the extent that a subsequent exercise of the power would be contrary to manifested intent.

Section 27. [Revocation or amendment of release.]

(1) A powerholder may revoke or amend a release of a power of appointment only to the extent that:

(a) The instrument of release is revocable by the powerholder; or

(b) The powerholder reserves a power of revocation or amendment in the instrument of release.

Section 28. [Power to contract - presently exercisable power of appointment.]

(1) A powerholder of a presently exercisable power of appointment may contract:

(a) Not to exercise the power if the contract, when made, does not confer a benefit on a person other than a taker in default or a permissible appointee; or
(b) To exercise the power if the contract, when made, does not confer a benefit on an 
   impermissible appointee.

Section 29. [Power to contract - power of appointment not presently exercisable.]
(1) A powerholder of a power of appointment that is not presently exercisable may contract to 
exercise or not to exercise the power only if the powerholder:
  (a) Is also the donor of the power; and
  (b) Has reserved the power in the instrument creating the power.

Part 5: Miscellaneous Provisions.
Section 30. [Uniformity of application and construction.]
In applying and construing this article, consideration must be given to the need to promote 
uniformity of the law with respect to its subject matter among states that enact it.

Section 31. [Relation to electronic signatures in global and national commerce act.]
This article modifies, limits, or supersedes the federal “Electronic Signatures in Global and 
National Commerce Act”, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or 
supersede section 101 (c) of that act, 15 U.S.C. Section 7001 (c), or authorize electronic delivery 
of any of the notices described in section 103 (b) of that act, 15 U.S.C. Section 7003 (b).

Section 32. [Application to existing relationships.]
(1) Except as otherwise provided in this article, on the effective date of this article or of any 
   amendment to this article:
   (a) This article or any amendment to this article applies to a power of appointment created 
      before, on, or after the effective date of this article or any amendment to this article;
   (b) This article or any amendment to this article applies to any proceedings in court then 
      pending or thereafter commenced concerning a power of appointment, except to the 
      extent that in the opinion of the court the former procedure should be made applicable in 
      a particular case in the interest of justice or because of infeasibility of application of the 
      procedure of this article or any amendment to this article, in which case the particular 
      provision of this article does not apply and the superseded law applies;
   (c) A rule of construction or presumption provided in this article or any amendment to this 
      article applies to an instrument executed before the effective date of this article unless 
      there is a clear indication of a contrary intent in the terms of the instrument;
   (d) Except as otherwise provided in paragraphs (a) to (c) of this subsection (1), an action 
      done before the effective date of this article is not affected by this article or any 
      amendment to this article; and
   (e) No provision of this article or of any amendment to this article shall apply retroactively if 
      the court determines that such application would cause the provisions to be retrospective 
in its operation in violation of section 11 of article ii of the state constitution. (2) if a right 
is acquired, extinguished, or barred on the expiration of a prescribed period that 
commenced under law of this state other than this article or any amendment to this article 
before the effective date of this article, the law continues to apply to the right.

Section 33. [Repeals, Conforming Amendments.]
Uniform Voidable Transactions Act

The Uniform Voidable Transactions Act (UVTA), formerly named the Uniform Fraudulent Transfer Act (UFTA), strengthens creditor protections by providing remedies for certain transactions by a debtor that are unfair to the debtor’s creditors. The 2014 amendments to the UVTA address a small number of narrowly-defined issues, and are not a comprehensive revision of the act.

The Uniform Fraudulent Transfer Act was promulgated in 1984 and has been enacted by 43 states, the District of Columbia, and the U.S. Virgin Islands as of 2014. The act replaced the very similar Uniform Fraudulent Conveyance Act, which was promulgated in 1918 and remains in force in two states as of 2014.

Submitted as:
Kentucky
SB 204
Status: Signed into law on March 20, 2015.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Definitions.]

As used in this chapter:

1. “Affiliate” means:

   (a) A person that directly or indirectly owns, controls, or holds with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

      1. As a fiduciary or agent without sole discretionary power to vote the securities; or
      2. Solely to secure a debt, if the person has not in fact exercised the power to vote;

   (b) A corporation twenty percent (20%) or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person that directly or indirectly owns, controls, or holds, with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

      1. As a fiduciary or agent without sole discretionary power to vote the securities; or
      2. Solely to secure a debt, if the person has not in fact exercised the power to vote;

   (c) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

   (d) A person that operates the debtor’s business under a lease or other agreement or controls substantially all of the debtor’s assets;

2. “Asset” means property of a debtor, but the term does not include:

   (a) Property to the extent it is encumbered by a valid lien;
   (b) Property to the extent it is generally exempt under nonbankruptcy law; or
   (c) An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one (1) tenant.
“Claim,” except as used in “claim for relief,” means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, undisputed, legal, equitable, secure, or unsecured;

(4) “Creditor” means a person that has a claim;

(5) “Debt” means liability on a claim;

(6) “Debtor” means a person that is liable on a claim;

(7) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(8) “Insider” includes:

(a) If the debtor is an individual:
   1. A relative of the debtor or of a general partner of the debtor;
   2. A partnership in which the debtor is a general partner;
   3. A general partner in a partnership described in subparagraph 2. of this paragraph; or
   4. A corporation of which the debtor is a director, officer, or person in control;

(b) If the debtor is a corporation:
   1. A director of the debtor;
   2. An officer of the debtor;
   3. A person in control of the debtor;
   4. A partnership in which the debtor is a general partner;
   5. A general partner in a partnership described in subparagraph 4. of this paragraph; or
   6. A relative of a general partner, director, officer, or person in control of the debtor;

(c) If the debtor is a partnership:
   1. A general partner in the debtor;
   2. A relative of a general partner in, a general partner of, or a person in control of the debtor;
   3. Another partnership in which the debtor is a general partner;
   4. A general partner in a partnership described in subparagraph 3. of this paragraph; or
   5. A person in control of the debtor;

(d) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(e) A managing agent of the debtor;

(9) “Lien” means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien;

(10) “Organization” means a person other than an individual;

(11) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity;

(12) “Property” means anything that may be the subject of ownership;

(13) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(14) “Relative” means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree;

(15) “Sign” means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or
(b) To attach to or logically associate with the record an electronic symbol, sound, or process;

(16) “Transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance; and

(17) “Valid lien” means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Section 2. [Insolvency.]

(1) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets.

(2) A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(3) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.

(4) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

Section 3. [Value.]

(1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(2) For the purposes of subsection (1)(b) of Section 4 of this Act and Section 5 of this Act, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(3) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

Section 4. [Transfer or obligation voidable as to present future creditor.]

(1) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

1. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

2. Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.
(2) In determining actual intent under subsection (1)(a) of this section, consideration may be
given, among other factors, to whether:
(a) The transfer or obligation was to an insider;
(b) The debtor retained possession or control of the property transferred after the transfer;
(c) The transfer or obligation was disclosed or concealed;
(d) Before the transfer was made or obligation was incurred, the debtor had been sued or
threatened with suit;
(e) The transfer was of substantially all the debtor's assets;
(f) The debtor absconded;
(g) The debtor removed or concealed assets;
(h) The value of the consideration received by the debtor was reasonably equivalent to the
value of the asset transferred or the amount of the obligation incurred;
(i) The debtor was insolvent or became insolvent shortly after the transfer was made or the
obligation was incurred;
(j) The transfer occurred shortly before or shortly after a substantial debt was incurred; and
(k) The debtor transferred the essential assets of the business to a lienor that transferred the
assets to an insider of the debtor.

(3) A creditor making a claim for relief under subsection (1) of this section has the burden of
proving the elements of the claim for relief by a preponderance of the evidence.

Section 5. [Transfer or obligation voidable as to present creditor.]
(1) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim
arose before the transfer was made or the obligation was incurred if the debtor made the
transfer or incurred the obligation without receiving a reasonably equivalent value in
exchange for the transfer or obligation and the debtor was insolvent at the time or the debtor
became insolvent as a result of the transfer or obligation.
(2) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer
was made, if the transfer was made to an insider for an antecedent debt, the debtor was
insolvent at that time, and the insider had reasonable cause to believe that the debtor was
insolvent.
(3) Subjection to subsection (2) of Section 2 of this Act, a creditor making a claim for relief
under subsection (1) or (2) of this section has the burden of proving the elements of the claim
for relief by a preponderance of the evidence.

Section 6. [When transfer is made or obligation is incurred.]
For the purposes of this chapter:
(1) A transfer is made:
(a) With respect to an asset that is real property other than a fixture, but including the interest
of a seller or purchaser under a contract for the sale of the asset, when the transfer is so
far perfected that a good-faith purchaser of the asset from the debtor against which
applicable laws permit the transfer to be perfected cannot acquire an interest in the asset
that is superior to the interest of the transferee; and
(b) With respect to an asset that is not real property or that is a fixture, when the transfer is so
far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise
than under this chapter that is superior to the interest of the transferee.
(2) If applicable law permits the transfer to be perfected as provided in subsection (1) of this section, and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in subsection (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:
   (a) If oral, when it becomes effective between the parties; or
   (b) If evidenced by a record, when the record, signed by the obligor, is delivered to or for the benefit of the obligee.

Section 7. [Remedies of creditor.]

(1) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in Section 8 of this Act, may obtain:
   (a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;
   (b) An attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law; and
   (c) Subject to applicable principles of equity and in accordance with applicable Rules of Civil Procedure:
      1. An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
      2. Appointment of a receiver to take charge of the asset transferred or of the other property of the transferee; or
      3. Any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Section 8. [Defenses, liability, and protection of transferee or obligee.]

(1) A transfer or obligation is not voidable under subsection (1)(a) of Section 4 of this Act against a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

(2) To the extent a transfer is avoidable in an action by a creditor under subsection (1)(a) of Section 7 of this Act, the following rules apply:
   (a) Except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (3) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:
      1. The first transferee of the asset or the person for whose benefit the transfer was made;
      2. An immediate or mediate transferee of the first transferee, other than:
         a. A good-faith transferee that took for value; or
         b. An immediate or mediate good-faith transferee of a person described in subdivision a. of this subparagraph; and
(b) Recovery pursuant to subsection (1)(a) or (b) of Section 7 of this Act of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in subsection (2)(a)1. or 2. of this section.

(3) If the judgment under subsection (2) of this section is based upon the value of the asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:
   (a) A lien on or a right to retain an interest in the asset transferred;
   (b) Enforcement of an obligation incurred; or
   (c) A reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under subsection (1)(b) of Section 4 of this Act or Section 5 of this Act if the transfer results from:
   (a) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or
   (b) Enforcement of a security interest in compliance with Subtitle 9 of KRS Chapter 355, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(6) A transfer is not voidable under subsection (2) of Section 5 of this Act:
   (a) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent the new value was secured by a valid lien;
   (b) If made in the ordinary course of business or financial affairs of the debtor and the insider; or
   (c) If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(7) The following rules determine the burden of proving matters referred to in this section:
   (a) A party that seeks to invoke subsection (1), (4), (5) or (6) of this section has the burden of proving the applicability of the subsection invoked;
   (b) Except as otherwise provided in paragraphs (c) and (d) of this subsection, the creditor has the burden of proving each applicable element of subsections (2) or (3) of this section;
   (c) The transferee has the burden of proving the applicability to the transferee of subsection (2)(a)2.a. or b. of this section; and
   (d) A party that seeks adjustment under subsection (3) of this section has the burden of proving the adjustment.

(8) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

Section 9. [Extinguishment of claim for relief.]

A claim for relief with respect to a transfer or obligation under this chapter is extinguished unless action is brought:
(1) Under subsection (1)(a) of Section 4 of this Act, not later than four (4) years after the transfer was made or the obligation was incurred or, if later, not later than one (1) year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) Under subsection (1)(b) of Section 4 of this Act or subsection (1) of Section 5 of this Act, not later than four (4) years after the transfer was made or the obligation was incurred; or
(3) Under subsection (2) of Section 5 of this Act, no later than one (1) year after the transfer was made.

Section 10. [Governing Law.]

(1) In this section, the following rules determine a debtor’s location:

(a) A debtor who is an individual is located at the individual's principal residence;
(b) A debtor that is an organization and has only one (1) place of business is located at its place of business; and
(c) A debtor that is an organization and has more than one (1) place of business is located at its chief executive office.

(2) A claim for relief in the nature of a claim for relief under this chapter is governed by the local laws of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

Section 11. [Application to series organization.]

(1) In this section:

(a) “Protected series” means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in paragraph (b) of this subsection; and
(b) “Series organization” means an organization that, pursuant to the law under which it is organized, has the following characteristics:
1. The organic record of the organization provides for creation by the organization of one (1) or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of, or associated with, the protected series;
2. Debt incurred or existing with respect to the activities of, or property of, or associated with, a particular protected series is enforceable against the property of, or associated with, the protected series only, and not against the property of, or associated with, the organization or other protected series of the organization; and
3. Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of, or associated with, a protected series of the organization.

(2) A series organization and each protected series of the organization is a separate person for purposes of this chapter, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization.

Section 12. [Supplementary provisions.]

Unless displaced by the provisions of this chapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

Section 13. [Uniformity of application and construction.]
This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supersed Section 101(c) of that act, 15 U.S.C. sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(B) of that act, 15 U.S.C. sec. 7003(b).

Section 15. *Short Title.*

This chapter may be cited as the [Kentucky] Uniform Voidable Transactions Act.

Section 16. *Repeals; conforming agreements.*

Section 17. *Effective Date.*
Automated Business Record Falsification Devices

The Act bans the possession of automated business record falsification devices. These devices, commonly known as zappers or phantom-ware, use software installed on point-of-sale terminals to evade retail sales tax. The software manipulates electronic records to hide and/or under report sales.

Submitted as:
Kentucky
HB 69
Status: Signed into law on May 25, 2014.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [Automated business record falsification devices.]
2 (1) A person is guilty of possession of an automated business record falsification device when he or she knowingly possesses any device or software program that falsifies the business records created by a point-of-sale system, such as any electronic device or computer system that keeps a register or supporting documents designed to record retail sales transaction information, by eliminating or manipulating true retail sales transaction information in order to represent a false record of transactions. These devices may also be referred to as "zappers" or "phantom-ware."
3 (2) Possession of an automated business record falsification device is a Class D felony.
4 (3) In addition to any other penalty provided by law:
5 (a) Any person guilty of possession of an automated business record falsification device shall forfeit all proceeds associated with its creation, sale, or usage; and
6 (b) An automated business record falsification device, and any device containing an automated business record falsification device, is contraband and shall be seized and forfeited to the state to be disposed of as provided in [Insert citation.]

Section 1. [Penalties.]
(1) Whenever any person fails to comply with any provisions of this chapter or any administrative regulation of the department relating to the provisions of this chapter, the department may revoke or suspend any one (1) or more of the permits held by the person.
(2) Whenever any person uses an automated business record falsification device, as described in Section 1 of this Act, to violate any provision of this chapter or any administrative regulation of the department relating to the provisions of this chapter, the department shall revoke each permit held by the person for a period of ten (10) years.
(3) The department shall not issue a new permit after the revocation of a permit unless it is satisfied that the former holder of the permit will comply with the provisions of this chapter and the regulations relating thereto.
(4) No suit shall be maintained in any court to restrain or delay the collection or payment of any tax levied by this chapter.
Civil Liability Protections to Licensed Professional Engineers and Architects

The Act provides civil liability protections to licensed professional engineers and licensed architects who voluntarily provide professional services at the request of officials during or after a declared emergency, disaster, or catastrophe; establishes limitations to liability protection; requires the Division of Emergency Management to promulgate administrative regulations.

Submitted as:
Kentucky
SB 74
Status: Signed into law on April 25, 2014.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Disaster and emergency response.]

(1) Disaster and emergency response functions provided by a state or local emergency management agency, or any emergency management agency-supervised operating units or personnel officially affiliated with a local disaster and emergency services organization pursuant to [Insert citation], shall not, in itself, be deemed to be the making of a promise, or the undertaking of a special duty, towards any person for the services, or any particular level of, or manner of providing, the services; nor shall the provision of or failure to provide these services be deemed to create a special relationship or duty towards any person upon which an action in negligence or other tort might be founded. Specifically:

(a) The failure to respond to a disaster or other emergency, or to undertake particular inspections or types of inspections, or to maintain any particular level of personnel, equipment, or facilities, shall not be a breach of any duty to persons affected by any disaster or other emergency.

(b) When a state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, does undertake to respond to a disaster or other emergency, the failure to provide the same level or manner of service, or equivalent availability or allocation of resources as may or could be provided, shall not be a breach of any duty to persons affected by that disaster or other emergency.

(c) A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization shall not have or assume any duty towards any person to adopt, use, or avoid any particular strategy or tactic in responding to a disaster or other emergency.

(d) A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, in undertaking disaster and emergency preparedness or prevention activities including inspections, or in undertaking to respond to a disaster or other emergency, shall not have voluntarily assumed any special duty with respect to any risks.
which were not created or caused by it, nor with respect to any risks which might have
existed even in the absence of that activity or response, nor shall any person have a right
to rely on such an assumption of duty.

(2) Neither the state nor any political subdivision of the state, nor the agents or representatives of
the state or any of its political subdivisions, shall be liable for personal injury or property
damage sustained by any person appointed or acting as a volunteer emergency management
agency member, or disaster and emergency services member, or disaster and emergency
response worker, or member of any agency engaged in any emergency management or
disaster and emergency services or disaster and emergency response activity. The immunity
provided by this subsection shall not apply to the extent that the state, a political subdivision
of the state, or a person or organization maintains liability insurance or self-insurance for an
act or omission covered by this subsection. To the extent that the state, a political subdivision
of the state, or a person or an organization maintains liability insurance or self-insurance,
sovereign immunity shall not be claimed with regard to an act or omission covered by this
subsection. This immunity shall not affect the right of any person to receive benefits or
compensation to which the person might otherwise be entitled under the Workers' Compensation Law, or this chapter, or any pension law, or any Act of Congress.

(3) Subject to subsection (6) of this section, neither the state nor any political subdivision of the
state nor, except in cases of willful misconduct, gross negligence, or bad faith, the
employees, agents, or representatives of the state or any of its political divisions, nor any
volunteer or auxiliary emergency management agency or disaster and emergency services
organization member or disaster and emergency response worker or member of any agency
engaged in any emergency management or disaster and emergency services or disaster and
emergency response activity, complying with or reasonably attempting to comply with this
chapter or any order or administrative regulation promulgated pursuant to the provisions of
this chapter, or other precautionary measures enacted by any city of the state, shall be liable
for the death of or injury to persons, or for damage to property, as a result of that activity.
The immunity provided by this subsection shall not apply to the extent that the state, a
political subdivision of the state, or a person or organization maintains liability insurance or
self-insurance for an act or omission covered by this subsection. To the extent that the state, a
political subdivision of the state, or a person or an organization maintains liability insurance
or self-insurance, sovereign immunity shall not be claimed with regard to an act or omission covered by this subsection.

(4) Decisions of the director, his subordinates or employees, a local emergency management
director, or the local director's subordinates or employees, a rescue chief or the chief's
subordinates, concerning the allocation and assignment of personnel and equipment, and the
strategies and tactics used, shall be the exercise of a discretionary, policy function for which
neither the officer nor the state, county, urban-county, charter county, or city, or local
disaster and emergency management agency-supervised operating unit formally affiliated with a local
disaster and emergency services organization, shall be held liable in the absence of malice or
bad faith, even when those decisions are made rapidly in response to the exigencies of an
emergency.

(5) Any person owning or controlling real estate or other premises who voluntarily and without
compensation grants a license or privilege, or otherwise permits the designation or use of the
whole or any part of the real estate or premises for the purpose of sheltering persons during
an actual, impending, mock, or practice disaster or emergency, together with his or her
successors in interest, shall not be civilly liable for negligently causing the death of, or injury to, any person on or about the real estate or premises for loss of, or damage to, the property of that person. The immunity provided by this subsection shall not apply to the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self-insurance for an act or omission covered by this subsection. To the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self-insurance, sovereign immunity shall not be claimed with regard to an act or omission covered by this subsection.

(6) Subsection (3) of this section shall apply to a volunteer or auxiliary disaster and emergency response worker only if the volunteer or worker is enrolled or registered with a local disaster and emergency services organization or with the division in accordance with the division's administrative regulations.

(7) While engaged in disaster and emergency response activity, volunteers and auxiliary disaster and emergency response workers enrolled or registered with a local disaster and emergency service organization or with the division in accordance with subsection (6) of this section shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the state and its political subdivisions performing similar work, allowing the Attorney General to provide defense of any civil action brought against a volunteer enrolled or registered with a local disaster or emergency service organization or with the division due to an act or omission made in the scope and course of a disaster and emergency response activity.

(8) (a) Notwithstanding subsections (3) and (6) of this section, a licensed professional engineer as defined in [Insert citation] or an architect licensed under [Insert citation], who voluntarily and without compensation provides architectural, structural, electrical, mechanical, or other professional services at the scene of a declared emergency, disaster, or catastrophe, shall not be liable for any personal injury, wrongful death, property damage, or other loss of any nature related to the licensed professional engineer's or licensed architect's acts, errors, or omissions in the performance of the services carried out:

1. At the request of or with the approval of a federal, state, or local:
   a. Emergency management agency official with executive responsibility in the jurisdiction to coordinate disaster and emergency response activity;
   b. Fire chief or his or her designee; or
   c. Building inspection official; who the licensed professional engineer or licensed architect believes to be acting in an official capacity;

2. Within ninety (90) days following the end of the period for the declared emergency, disaster, or catastrophe, unless extended by the Governor under [Insert citation.]; and

3. If the professional services arose out of the declared emergency, disaster, or catastrophe and if the licensed professional engineer or licensed architect acted as an ordinary reasonably prudent member of the profession would have acted under the same or similar circumstances.

(b) Nothing in this subsection shall provide immunity for wanton, willful, or intentional misconduct.
Pregnant Workers’ Fairness Act

Under the Act, covered employers will be required to provide reasonable accommodation to employees or applicants for employment for limitations related to pregnancy, childbirth or related medical conditions. The Act allows employees to request modified duties and other accommodations as long as they do not place undue hardship on employers. It allows such accommodations as bathroom breaks and assistance with manual labor. The Act also requires employers to provide nursing women time to express breast milk. It bars employers from turning away a qualified job applicant out of concern she might be asked to provide some accommodations for her pregnancy.

Submitted as:
West Virginia
HB 4284
Status: Signed into law on March 21, 2014.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.]
2 This article may be cited as the Pregnant Workers Fairness Act.

3 Section 2. [Nondiscrimination with regard to reasonable accommodations related to pregnancy.]
4 It shall be an unlawful employment practice for a covered entity to:
5 (1) Not make reasonable accommodations to the known limitations related to the pregnancy,
6 childbirth, or related medical conditions of a job applicant or employee, following delivery
7 by the applicant or employee of written documentation from the applicant’s or employee’s
8 health care provider that specifies the applicant’s or employee’s limitations and suggesting
9 what accommodations would address those limitations, unless such covered entity can
10 demonstrate that the accommodation would impose an undue hardship on the operation of
11 the business of such covered entity;
12 (2) Deny employment opportunities to a job applicant or employee, if such denial is based on the
13 refusal of the covered entity to make reasonable accommodations to the known limitations
14 related to the pregnancy, childbirth, or related medical conditions of an employee or
15 applicant;
16 (3) Require a job applicant or employee affected by pregnancy, childbirth, or related medical
17 conditions to accept an accommodation that such applicant or employee chooses not to
18 accept; or
19 (4) Require an employee to take leave under any leave law or policy of the covered entity if
20 another reasonable accommodation can be provided to the known limitations related to the
21 pregnancy, childbirth, or related medical conditions of an employee.

24 Section 3. [Remedies and enforcement.]
25 (a) The powers, procedures, and remedies provided in [Insert citation.] to the [Commission],
26 the Attorney General, or any person, alleging a violation of the [West Virginia Human
Rights Act shall be the powers, procedures, and remedies this article provides to the Commission, the Attorney General, or any person, respectively, alleging an unlawful employment practice in violation of this article against an employee or job applicant.

(b) No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this article or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this article. The remedies and procedures otherwise provided for under this section shall be available to aggrieved individuals with respect to violations of this subsection.

Section 4. [Rule-making.]
Not later than two years after the date of enactment of this article, the Commission shall propose legislative rules to carry out this article. Such rules shall identify some reasonable accommodations addressing known limitations related to pregnancy, childbirth, or related medical conditions that shall be provided to a job applicant or employee affected by such known limitations unless the covered entity can demonstrate that doing so would impose an undue hardship.

Section 5. [Definitions.]
As used in this article:
(1) “Attorney General” means the West Virginia Attorney General;
(2) “Commission” means the West Virginia Human Rights Commission;
(3) “Covered entity” has the meaning given the word employer in [Insert citation.];
(4) “Person” has the meaning given the word in [Insert citation.]; and
(5) “Reasonable accommodation” and “undue hardship” have the meanings given those terms in section 101 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111) and shall be construed as such terms have been construed under such Act and as set forth in the rules required by this article.

Section 6. [Relationship to other laws.]
Nothing in this article shall be construed to invalidate or limit the remedies, rights, and procedures that provides greater or equal protection for workers affected by pregnancy, childbirth, or related medical conditions.

Section 7. [Reports.]
The Commission shall annually on October 1 of each year report to the Joint Committee on Government and Finance on the number of complaints filed under this article during the previous year and their resolution.
Workforce Investment Boards

The Act encourages local workforce investment boards to implement pay-for-performance contract strategy incentives for training services as an alternative model to traditional programs. The Act also authorizes local workforce investment boards to allocate funds to the extent permissible under §§ 128(b) and 133(b) of the Workforce Innovation and Opportunity Act of 2014 (P.L. 113-128) for pay-for-performance partnerships.

Submitted as:
Virginia SB 1002

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Definitions.]
As used in this article:

“Local workforce investment board” means a local workforce investment board established under § 117 of the WIA.

“One stop” means a conceptual approach to service delivery intended to provide a single point of access for receiving a wide range of workforce development and employment services, either on-site or electronically, through a single system.

“One-stop center” means a physical site where core services are provided, either on-site or electronically, and access to intensive services, training services, and other partner program services are available for employers, employees, and job seekers.

“One-stop operator” means a single entity or consortium of entities that operate a one-stop center or centers. Operators may be public or private entities competitively selected or designated through an agreement with a local workforce board.

“[Virginia] Workforce Network” includes the programs and activities enumerated in subsection G of [Section 2.]

“WIA” means the federal Workforce Investment Act of 1998 (P.L. 105-220), as amended.

“WIOA” means the federal Workforce Innovation and Opportunity Act of 2014 (P.L. 113-128).

Section 2. [Powers and duties of the Board; [Virginia] Workforce Network created.]
A. The Board shall undertake the following actions to implement and foster workforce training and better align education and workforce programs to meet current and projected skills requirements of an increasingly technological, global workforce:

1. Provide policy advice to the Governor on workforce and workforce development issues;
2. Provide policy direction to local workforce investment boards;
3. Provide recommendations on the policy, plans, and procedures for secondary and postsecondary career and technical education activities authorized under the federal Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. § 2301 et seq.)
to ensure alignment with the state’s plan for coordinating programs authorized under Title I of the WIA and under the federal Wagner-Peyser Act (29 U.S.C. § 49 et seq.);

4. Provide recommendations on the policy, plans, and procedures for other education and workforce development programs that provide resources and funding for training and employment services as identified by the Governor or Board;

5. Identify current and emerging statewide workforce needs of the business community;

6. Forecast and identify training requirements for the new workforce;

7. Recommend strategies that will match trained workers with available jobs to include strategies for increasing business engagement in education and workforce development;

8. Develop WIA incentive grant applications and approve criteria for awarding incentive grants;

9. Develop and approve criteria for the reallocation of unexpended WIA funds from local workforce investment boards;

10. Conduct a review of budgets, which shall be submitted annually to the Board by each agency conducting federal and state funded career and technical and adult education and workforce development programs, that identify the agency’s sources and expenditures of administrative, workforce training, and leadership funds for workforce development programs;

11. Administer the [Virginia] Career Readiness Certificate Program and review and recommend industry credentials that align with high demand occupations;

12. Define the Board’s role in certifying WIA training providers, including those not subject to the authority expressed in Chapter 21.1 (§ 23-276.1 et seq.) of Title 23;

13. Provide an annual report to the Governor concerning its actions and determinations under subdivisions 1 through 13;

14. Create procedures, guidelines, and directives applicable to local workforce investment boards and the operation of one-stops, as necessary and appropriate to carry out the purposes of this article; and

15. Perform any act or function in accordance with the purposes of this article.

B. The Board may establish such committees as it deems necessary including the following:

1. A committee to accomplish the federally mandated requirements of the WIA;

2. An advanced technology committee to focus on high-technology workforce training needs and skills attainment solutions through sector strategies, career readiness, and career pathways;

3. A performance and accountability committee to coordinate with the [Virginia Employment Commission], [State Council of Higher Education for Virginia], and the [Council on Virginia’s Future] to develop the metrics and measurements for publishing comprehensive workforce score cards and other longitudinal data that will enable the [Virginia] Workforce Network to measure comprehensive accountability and performance; and

4. A military transition assistance committee to focus on military transition assistance, including reforms to (i) improve the integration of the federal Local Veterans Employment Representative Program and the Disabled Veterans Outreach Program into all [Virginia] Workforce Centers and (ii) reduce process and qualification barriers to training and employment services.

C. The Board and the Governor’s cabinet secretaries shall assist the Governor in complying with the provisions of the WIA and ensuring the coordination and effectiveness of all federal and
state funded career and technical and adult education and workforce development programs
and providers comprising elements of [Virginia's] Career Pathways System and Workforce
Network.

D. The Board shall assist the Governor in the following areas with respect to workforce
development: development of the WIA Wagner-Peyser State Plan; development and
continuous improvement of a statewide workforce development and career pathways system
that ensures career readiness and coordinates and aligns career and technical education, adult
education, and federal and state workforce programs; development of linkages to ensure
coordination and nonduplication among programs and activities; review of local plans;
designation of local areas; development of local discretionary allocation formulas;
development and continuous improvement of comprehensive state performance measures
including, without limitation, performance measures reflecting the degree to which one-stop
centers provide comprehensive services with all mandatory partners and the degree to which
local workforce investment boards have obtained funding from sources other than the WIA;
preparation of the annual report to the U.S. Secretary of Labor; development of a statewide
employment statistics system; and development of a statewide system of one-stop centers
that provide comprehensive workforce services to employers, employees, and job seekers.

The Board shall share information regarding its meetings and activities with the public.

E. Each local workforce investment board shall develop and submit to the Governor and the
[Virginia] Board of Workforce Development an annual workforce demand plan for its
workforce investment board area based on a survey of local and regional businesses that
reflects the local employers' needs and requirements and the availability of trained workers to
meet those needs and requirements; designate or certify one-stop operators; identify eligible
providers of youth activities; identify eligible providers of intensive services if unavailable at
one-stop; develop a budget; conduct local oversight of one-stop operators and training
providers in partnership with its local chief elected official; negotiate local performance
measures, including incentives for good performance and penalties for inadequate
performance; assist in developing statewide employment statistics; coordinate workforce
investment activities with economic development strategies and the annual demand plan, and
develop linkages among them; develop and enter into memoranda of understanding with one-
stop partners and implement the terms of such memoranda; promote participation by the
private sector; actively seek sources of financing in addition to WIA funds; report
performance statistics to the [Virginia] Board of Workforce Development; and certify local
training providers in accordance with criteria provided by the [Virginia] Board of Workforce
Development. Further, a local training provider certified by any workforce investment board
has reciprocal certification for all workforce investment boards.

Each local workforce investment board shall share information regarding its meetings and
activities with the public.

F. Each chief local elected official shall consult with the Governor regarding designation of
local workforce investment areas; appoint members to the local board in accordance with
state criteria; serve as the local grant recipient unless another entity is designated in the local
plan; negotiate local performance measures with the Governor; ensure that all mandated
partners are active participants in the local workforce investment board and one-stop center; and collaborate with the local workforce investment board on local plans and program oversight.

G. Local workforce investment boards are encouraged to implement pay-for-performance contract strategy incentives for rapid reemployment services consistent within the WIOA as an alternative model to traditional programs. Such incentives shall focus on (i) partnerships that lead to placements of eligible job seekers in unsubsidized employment and (ii) placement in unsubsidized employment for hard-to-serve job seekers. At the discretion of the local workforce investment board, funds to the extent permissible under §§ 128(b) and 133(b) of the WIOA may be allocated for pay-for-performance partnerships.

H. Each local workforce investment board shall develop and enter into a memorandum of understanding concerning the operation of the one-stop delivery system in the local area with each entity that carries out any of the following programs or activities:

1. Programs authorized under Title I of the WIA;
2. Programs authorized under the Wagner-Peyser Act (29 U.S.C. § 49 et seq.);
3. Adult education and literacy activities authorized under Title II of the WIA;
5. Postsecondary career and technical education activities authorized under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. § 2301 et seq.);
7. Activities pertaining to employment and training programs for veterans authorized under 38 U.S.C. § 4100 et seq.;
8. Programs authorized under [Insert citation], in accordance with applicable federal law;
9. Workforce development activities or work requirements of the Temporary Assistance to Needy Families (TANF) program known in [Virginia] as the [Virginia Initiative for Employment, Not Welfare (VIEW)] program established pursuant to [Insert citation.];
10. Workforce development activities or work programs authorized under the Food Stamp Act of 1977 (7 U.S.C. § 2011 et seq.); and
11. Other programs or activities as required by the WIA.

I. The Chief Workforce Development Advisor shall be responsible for the coordination of the [Virginia] Workforce Network and the implementation of the WIA.
Advanced Practice Registered Nurse Compact

In 2002, the NCSBN Delegate Assembly approved the adoption of model language for a licensure compact for APRNs that would facilitate interstate practice for all four APRN roles: nurse practitioners, nurse midwives, clinical nurse specialists, and nurse anesthetists. Under the APRN Compact, only states that adopted the RN and LPN/VN NLC would be eligible to implement the compact for APRNs.

Utah was the first state to pass APRN Compact legislation in 2004 (Senate Bill 107) with Iowa following shortly thereafter that same year (House File 784). Texas passed the law in June 2007 (House Bill 2426).

Implementation of the APRN Compact was halted due to issues surrounding lack of uniformity of APRN titles and practice from state to state. In response, NCSBN, along with other nursing organizations, developed and began implementing the APRN Consensus Model, which addressed these problems.

Suggested State Legislation

(Title, enacting clause, etc.)

Article I. [Findings and Declaration of Purpose.]
1 a. The party states find that:
2 1. The health and safety of the public are affected by the degree of compliance with APRN
3 licensure requirements and the effectiveness of enforcement activities related to state
4 APRN licensure laws;
5 2. Violations of APRN licensure and other laws regulating the practice of nursing may result
6 in injury or harm to the public;
7 3. The expanded mobility of APRNs and the use of advanced communication technologies
8 as part of our nation’s health care delivery system require greater coordination and
9 cooperation among states in the areas of APRN licensure and regulation;
10 4. New practice modalities and technology make compliance with individual state APRN
11 licensure laws difficult and complex;
12 5. The current system of duplicative APRN licensure for APRNs practicing in multiple states
13 is cumbersome and redundant for both APRNs and states;
14 6. Uniformity of APRN licensure requirements throughout the states promotes public safety
15 and public health benefits.
16 b. The general purposes of this Compact are to:
17 1. Facilitate the states’ responsibility to protect the public’s health and safety;
18 2. Ensure and encourage the cooperation of party states in the areas of APRN licensure and
19 regulation, including promotion of uniform licensure requirements;
20 3. Facilitate the exchange of information between party states in the areas of APRN
21 regulation, investigation and adverse actions;
22 4. Promote compliance with the laws governing APRN practice in each jurisdiction;
23 5. Invest all party states with the authority to hold an APRN accountable for meeting all
24 state practice laws in the state in which the patient is located at the time care is rendered
through the mutual recognition of party state licenses;
6. Decrease redundancies in the consideration and issuance of APRN licenses; and
7. Provide opportunities for interstate practice by APRNs who meet uniform licensure requirements.

Article II. [Definitions.]
As used in this Compact:

a. “Advanced practice registered nurse” or “APRN” means a registered nurse who has gained additional specialized knowledge, skills and experience through a program of study recognized or defined by the Interstate Commission of APRN Compact Administrators (“Commission”), and who is licensed to perform advanced nursing practice. An advanced practice registered nurse is licensed in an APRN role that is congruent with an APRN educational program, certification, and Commission rules.
b. “Adverse action” means any administrative, civil, equitable or criminal action permitted by a state’s laws which is imposed by a licensing board or other authority against an APRN, including actions against an individual’s license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee’s practice, or any other encumbrance on licensure affecting an APRN’s authorization to practice, including the issuance of a cease and desist action.
c. “Alternative program” means a, non-disciplinary monitoring program approved by a licensing board.
d. “APRN licensure” means the regulatory mechanism used by a party state to grant legal authority to practice as an APRN.
e. “APRN uniform licensure requirements” means minimum uniform licensure, education and examination requirements as adopted by the Commission.
f. “Coordinated licensure information system” means an integrated process for collecting, storing and sharing information on APRN licensure and enforcement activities related to APRN licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards.
g. “Current significant investigatory information” means:

1. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the APRN to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or
2. Investigative information that indicates that the APRN represents an immediate threat to public health and safety regardless of whether the APRN has been notified and had an opportunity to respond.
h. “Encumbrance” means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.
i. “Home state” means the party state that is the APRN’s primary state of residence.
j. “Licensing board” means a party state’s regulatory body responsible for regulating the practice of advanced practice registered nursing.
k. “Multistate license” means an APRN license to practice as an APRN issued by a home state licensing board that authorizes the APRN to practice as an APRN in all party states under a multistate licensure privilege, in the same role and population focus as the APRN is licensed in the home state.
l. “Multistate licensure privilege” means a legal authorization associated with an APRN multistate license that permits an APRN to practice as an APRN in a remote state, in the same role and population focus as the APRN is licensed in the home state.

m. “Non-controlled prescription drug” means a device or drug that is not a controlled substance and is prohibited under state or federal law from being dispensed without a prescription. The term includes a device or drug that bears or is required to bear the legend “Caution: federal law prohibits dispensing without prescription” or “prescription only” or other legend that complies with federal law.

n. “Party state” means any state that has adopted this Compact.

o. “Population focus” means a specific patient population that is congruent with the APRN educational program, certification, and Commission rules.

p. “Prescriptive authority” means the legal authority to prescribe medications and devices as defined by party state laws.

q. “Remote state” means a party state that is not the home state.

r. “Single-state license” means an APRN license issued by a party state that authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.

s. “State” means a state, territory or possession of the United States and the District of Columbia.

t. “State practice laws” means a party state’s laws, rules, and regulations that govern APRN practice, define the scope of advanced nursing practice, including prescriptive authority, and create the methods and grounds for imposing discipline. State practice laws do not include the requirements necessary to obtain and retain an APRN license, except for qualifications or requirements of the home state.

Article III. [General Provisions and Jurisdiction.]
a. A state must implement procedures for considering the criminal history records of applicants for initial APRN licensure or APRN licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by APRN applicants for the purpose of obtaining an applicant’s criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state’s criminal records.

b. By rule, the Commission shall adopt the APRN Uniform Licensure Requirements (“ULRs”). The ULRs shall provide the minimum requirements for APRN multistate licensure in party states, provided that the Commission may adopt rules whereby an APRN, with an unencumbered license on the effective date of this Compact, may obtain, by endorsement or otherwise, and retain a multistate license in a party state.

c. In order to obtain or retain a multistate license, an APRN must meet, in addition to the ULRs, the home state’s qualifications for licensure or renewal of licensure, as well as, all other applicable home state laws.

d. By rule, the Commission shall identify the approved APRN roles and population foci for licensure as an APRN. An APRN issued a multistate license shall be licensed in an approved APRN role and at least one approved population focus.

e. An APRN multistate license issued by a home state to a resident in that state will be recognized by each party state as authorizing the APRN to practice as an APRN in each party state, under a multistate licensure privilege, in the same role and population focus as the APRN is licensed in the home state. If an applicant does not qualify for a multistate license, a single-state license may be issued by a home state.
f. Issuance of an APRN multistate license shall include prescriptive authority for noncontrolled
prescription drugs, unless the APRN was licensed by the home state prior to the home state’s
adoption of this Compact and has not previously held prescriptive authority.
1. An APRN granted prescriptive authority for noncontrolled prescription drugs in the home
state may exercise prescriptive authority for noncontrolled prescription drugs in any
remote state while exercising a multistate licensure privilege under an APRN multistate
license; the APRN shall not be required to meet any additional eligibility requirements
imposed by the remote state in exercising prescriptive authority for noncontrolled
prescription drugs.
2. Prescriptive authority in the home state for an APRN who was not granted prescriptive
authority at the time of initial licensure by the home state, prior to the adoption of this
Compact, shall be determined under home state law.
3. Prescriptive authority eligibility for an APRN holding a single-state license shall be
determined under the law of the licensing state.
g. For each state in which an APRN seeks authority to prescribe controlled substances, the APRN
shall satisfy all requirements imposed by such state in granting and/or renewing such authority.
h. An APRN issued a multistate license is authorized to assume responsibility and
accountability for patient care independent of a supervisory or collaborative relationship with
a physician. This authority may be exercised in the home state and in any remote state in
which the APRN exercises a multistate licensure privilege. For an APRN issued a single-
state license in a party state, the requirement for a supervisory or collaborative relationship
with a physician shall be determined under applicable party state law.
i. All party states shall be authorized, in accordance with state due process laws, to take adverse
action against an APRN’s multistate licensure privilege such as revocation, suspension,
probation or any other action that affects an APRN’s authorization to practice under a
multistate licensure privilege, including cease and desist actions. If a party state takes such
action, it shall promptly notify the administrator of the coordinated licensure information
system. The administrator of the coordinated licensure information system shall promptly
notify the home state of any such actions by remote states.
j. An APRN practicing in a party state must comply with the state practice laws of the state in
which the client is located at the time service is provided. APRN practice is not limited to
patient care, but shall include all advanced nursing practice as defined by the state practice
laws of the party state in which the client is located. APRN practice in a party state under a
multistate licensure privilege will subject the APRN to the jurisdiction of the licensing board,
the courts, and the laws of the party state in which the client is located at the time service is
provided.
k. This Compact does not affect additional requirements imposed by states for advanced
practice registered nursing. However, a multistate licensure privilege to practice registered
nursing granted by a party state shall be recognized by other party states as satisfying any
state law requirement for registered nurse licensure as a precondition for authorization to
practice as an APRN in that state.
l. Individuals not residing in a party state shall continue to be able to apply for a party state’s
single-state APRN license as provided under the laws of each party state. However, the
single-state license granted to these individuals will not be recognized as granting the privilege
to practice as an APRN in any other party state.
Article IV. [Applications for APRN Licensure in a Party State.]

a. Upon application for an APRN multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held or is the holder of a licensed practical/vocational nursing license, a registered nursing license or an advanced practice registered nurse license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant and whether the applicant is currently participating in an alternative program.

b. An APRN may hold a multistate APRN license, issued by the home state, in only one party state at a time.

c. If an APRN changes primary state of residence by moving between two party states, the APRN must apply for APRN licensure in the new home state, and the multistate license issued by the prior home state shall be deactivated in accordance with applicable Commission rules.

(1) The APRN may apply for licensure in advance of a change in primary state of residence.

(2) A multistate APRN license shall not be issued by the new home state until the APRN provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate APRN license from the new home state.

d. If an APRN changes primary state of residence by moving from a party state to a non-party state, the APRN multistate license issued by the prior home state will convert to a single-state license, valid only in the former home state.

Article V. [Additional Authorities Invested in Party State Licensing Boards.]

a. In addition to the other powers conferred by state law, a licensing board shall have the authority to:

(1) Take adverse action against an APRN’s multistate licensure privilege to practice within that party state.

(i) Only the home state shall have power to take adverse action against an APRN’s license issued by the home state.

(ii) For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct that occurred outside of the home state as it would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

(2) Issue cease and desist orders or impose an encumbrance on an APRN’s authority to practice within that party state.

(3) Complete any pending investigations of an APRN who changes primary state of residence during the course of such investigations. The licensing board shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

(4) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, as well as, the production of evidence. Subpoenas issued by a party state licensing board for the attendance and testimony of witnesses and/or the production
of evidence from another party state shall be enforced in the latter state by any court of
competent jurisdiction, according to that court’s practice and procedure in considering
subpoenas issued in its own proceedings. The issuing licensing board shall pay any
witness fees, travel expenses, mileage and other fees required by the service statutes of
the state in which the witnesses and/or evidence are located.
5. Obtain and submit, for an APRN licensure applicant, fingerprints or other biometric-
based information to the Federal Bureau of Investigation for criminal background checks,
receive the results of the Federal Bureau of Investigation record search on criminal
background checks and use the results in making licensure decisions.
6. If otherwise permitted by state law, recover from the affected APRN the costs of
investigations and disposition of cases resulting from any adverse action taken against that
APRN.
7. Take adverse action based on the factual findings of another party state, provided that the
licensing board follows its own procedures for taking such adverse action.
   a. If adverse action is taken by a home state against an APRN’s multistate licensure, the
      privilege to practice in all other party states under a multistate licensure privilege shall be
deactivated until all encumbrances have been removed from the APRN’s multistate license.
      All home state disciplinary orders that impose adverse action against an APRN’s multistate
      license shall include a statement that the APRN’s multistate licensure privilege is deactivated
      in all party states during the pendency of the order.
   b. Nothing in this Compact shall override a party state’s decision that participation in an
      alternative program may be used in lieu of adverse action. The home state licensing board
      shall deactivate the multistate licensure privilege under the multistate license of any APRN for
      the duration of the APRN’s participation in an alternative program.

Article VI. [Coordinated Licensure Information System and Exchange of Information.]
   a. All party states shall participate in a coordinated licensure information system of all APRNs,
      licensed registered nurses and licensed practical/vocational nurses. This system will include
      information on the licensure and disciplinary history of each APRN, as submitted by party
      states, to assist in the coordinated administration of APRN licensure and enforcement efforts.
   b. The Commission, in consultation with the administrator of the coordinated licensure
      information system, shall formulate necessary and proper procedures for the identification,
collection and exchange of information under this Compact.
   c. All licensing boards shall promptly report to the coordinated licensure information system
      any adverse action, any current significant investigative information, denials of applications
      (with the reasons for such denials) and APRN participation in alternative programs known to
      the licensing board regardless of whether such participation is deemed nonpublic and/or
      confidential under state law.
   d. Current significant investigative information and participation in nonpublic or confidential
      alternative programs shall be transmitted through the coordinated licensure information
      system only to party state licensing boards.
   e. Notwithstanding any other provision of law, all party state licensing boards contributing
      information to the coordinated licensure information system may designate information that
      may not be shared with non-party states or disclosed to other entities or individuals without
      the express permission of the contributing state.
f. Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board shall not be shared with non-party states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

g. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing the information shall be removed from the coordinated licensure information system.

h. The Compact administrator of each party state shall furnish a uniform data set to the Compact administrator of each other party state, which shall include, at a minimum:

1. Identifying information;
2. Licensure data;
3. Information related to alternative program participation information; and
4. Other information that may facilitate the administration of this Compact, as determined by Commission rules.

i. The Compact administrator of a party state shall provide all investigative documents and information requested by another party state.

Article VII. [Establishment of the Interstate Commission of APRN Compact Administrators.]

a. The party states hereby create and establish a joint public agency known as the Interstate Commission of APRN Compact Administrators.

1. The Commission is an instrumentality of the party states.
2. Venue is proper, and judicial proceedings by or against the Commission shall be brought solely and exclusively, in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.
3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

b. Membership, Voting and Meetings

1. Each party state shall have and be limited to one administrator. The head of the state licensing board or designee shall be the administrator of this Compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the Administrator is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the party state in which the vacancy exists.
2. Each administrator shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator’s participation in meetings by telephone or other means of communication.
3. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws or rules of the commission.
4. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article VIII.
5. The Commission may convene in a closed, nonpublic meeting if the Commission must discuss:
   i. Noncompliance of a party state with its obligations under this Compact;
   ii. The employment, compensation, discipline or other personnel matters, practices
or procedures related to specific employees or other matters related to the
Commission’s internal personnel practices and procedures;
iii. Current, threatened, or reasonably anticipated litigation;
iv. Negotiation of contracts for the purchase or sale of goods, services or real estate;
v. Accusing any person of a crime or formally censuring any person;
vi. Disclosure of trade secrets or commercial or financial information that is privileged
or confidential;
vii. Disclosure of information of a personal nature where disclosure would constitute a
clearly unwarranted invasion of personal privacy;
viii. Disclosure of investigatory records compiled for law enforcement purposes;
ix. Disclosure of information related to any reports prepared by or on behalf of the
Commission for the purpose of investigation of compliance with this Compact; or
x. Matters specifically exempted from disclosure by federal or state statute.
6. If a meeting, or portion of a meeting, is closed pursuant to this provision, the
Commission’s legal counsel or designee shall certify that the meeting may be closed and
shall reference each relevant exempting provision. The Commission shall keep minutes
that fully and clearly describe all matters discussed in a meeting and shall provide a full
and accurate summary of actions taken, and the reasons therefor, including a description of
the views expressed. All documents considered in connection with an action shall be
identified in such minutes. All minutes and documents of a closed meeting shall remain
under seal, subject to release by a majority vote of the Commission or order of a court of
competent jurisdiction.
c. The Commission shall, by a majority vote of the administrators, prescribe bylaws or rules to
govern its conduct as may be necessary or appropriate to carry out the purposes and exercise
the powers of this Compact, including but not limited to:
1. Establishing the fiscal year of the Commission;
2. Providing reasonable standards and procedures:
   i. For the establishment and meetings of other committees; and
   ii. Governing any general or specific delegation of any authority or function of the
      Commission.
3. Providing reasonable procedures for calling and conducting meetings of the Commission,
   ensuring reasonable advance notice of all meetings and providing an opportunity for
   attendance of such meetings by interested parties, with enumerated exceptions designed
to protect the public’s interest, the privacy of individuals, and proprietary information,
   including trade secrets. The Commission may meet in closed session only after a majority
   of the administrators vote to close a meeting in whole or in part. As soon as practicable,
   the Commission must make public a copy of the vote to close the meeting revealing the
   vote of each administrator, with no proxy votes allowed;
4. Establishing the titles, duties and authority and reasonable procedures for the election of
   the officers of the Commission;
5. Providing reasonable standards and procedures for the establishment of the personnel
   policies and programs of the Commission. Notwithstanding any civil service or other
   similar laws of any party state, the bylaws shall exclusively govern the personnel policies
   and programs of the Commission;
6. Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of this Compact after the payment and/or reserving of all of its debts and obligations;

d. The Commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the website of the Commission;

e. The Commission shall maintain its financial records in accordance with the bylaws; and

f. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the bylaws.

g. The Commission shall have the following powers:

1. To promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all party states;

2. To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any licensing board to sue or be sued under applicable law shall not be affected;

3. To purchase and maintain insurance and bonds;

4. To borrow, accept or contract for services of personnel, including but not limited to employees of a party state or nonprofit organizations;

5. To cooperate with other organizations that administer state compacts related to the regulation of nursing, including but not limited to sharing administrative or staff expenses, office space or other resources;

6. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this Compact, and to establish the Commission’s personnel policies and programs relating to conflicts of interest, qualifications of personnel and other related personnel matters;

7. To accept any and all appropriate donations, grants and gifts of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall strive to avoid any appearance of impropriety and/or conflict of interest;

8. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, whether real, personal or mixed; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

9. To sell convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, whether real, personal or mixed;

10. To establish a budget and make expenditures;

11. To borrow money;

12. To appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, and consumer representatives, and other such interested persons;

13. To provide and receive information from, and to cooperate with, law enforcement agencies;

14. To adopt and use an official seal; and

15. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of APRN licensure and practice.
h. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.

2. The Commission may levy on and collect an annual assessment from each party state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover its annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule that is binding upon all party states.

3. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the party states, except by, and with the authority of, such party state.

4. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall by audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

i. Qualified Immunity, Defense, and Indemnification

1. The administrators, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional, willful or wanton misconduct of that person.

2. The Commission shall defend any administrator, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further that the actual or alleged act, error or omission did not result from that person’s intentional, willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any administrator, officer, executive director, employee or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from the intentional, willful or wanton misconduct of that person.
Article VIII. [Rulemaking.]

a. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment and shall have the same force and effect as provisions of this Compact.

b. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

c. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least sixty (60) days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a notice of proposed rulemaking:
   1. On the website of the Commission; and
   2. On the website of each licensing board or the publication in which each state would otherwise publish proposed rules.

d. The notice of proposed rulemaking shall include:
   1. The proposed time, date and location of the meeting in which the rule will be considered and voted upon;
   2. The text of the proposed rule or amendment, and the reason for the proposed rule;
   3. A request for comments on the proposed rule from any interested person; and
   4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

e. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

f. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.

g. The Commission shall publish the place, time, and date of the scheduled public hearing.
   1. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings will be recorded, and a copy will be made available upon request.
   2. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

h. If no one appears at the public hearing, the Commission may proceed with promulgation of the proposed rule.

i. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

j. The Commission shall, by majority vote of all administrators, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

k. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in this Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:
1. Meet an imminent threat to public health, safety or welfare;
2. Prevent a loss of Commission or party state funds; or
3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule.

1. The Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the Commission, prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

Article IX. [Oversight, Dispute Resolution and Enforcement.]

a. Oversight
   1. Each party state shall enforce this Compact and take all actions necessary and appropriate to effectuate this Compact’s purposes and intent.
   2. The Commission shall be entitled to receive service of process in any proceeding that may affect the powers, responsibilities or actions of the Commission, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact or promulgated rules.

b. Default, Technical Assistance and Termination
   1. If the Commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:
      i. Provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and
      ii. Provide remedial training and specific technical assistance regarding the default.
   2. If a state in default fails to cure the default, the defaulting state’s membership in this Compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.
   3. Termination of membership in this Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor of the defaulting state and to the executive officer of the defaulting state’s licensing board, the defaulting state’s licensing board, and each of the party states.
   4. A state whose membership in this Compact has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.
   5. The Commission shall not bear any costs related to a state that is found to be in default or whose membership in this Compact has been terminated, unless agreed upon in writing.
between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district in which the Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorneys’ fees.

c. Dispute Resolution

1. Upon request by a party state, the Commission shall attempt to resolve disputes related to the Compact that arise among party states and between party and non-party states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

3. In the event the Commission cannot resolve disputes among party states arising under this Compact:

   i. The party states may submit the issues in dispute to an arbitration panel, which will be comprised of individuals appointed by the Compact administrator in each of the affected party states and an individual mutually agreed upon by the Compact administrators of all the party states involved in the dispute.

   ii. The decision of a majority of the arbitrators shall be final and binding.

d. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district in which the Commission has its principal offices against a party state that is in default to enforce compliance with the provisions of this Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys’ fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

Article X. [Effective Date, Withdrawal and Amendment.]

a. This Compact shall come into limited effect at such time as this Compact has been enacted into law in ten (10) party states for the sole purpose of establishing and convening the Commission to adopt rules relating to its operation and the APRN ULRs.

b. On the date of the Commission’s adoption of the APRN ULRs, all remaining provisions of this Compact, and rules adopted by the Commission, shall come into full force and effect in all party states.

c. Any state that joins this Compact subsequent to the Commission’s initial adoption of the APRN uniform licensure requirements shall be subject to all rules that have been previously adopted by the Commission.

d. Any party state may withdraw from this Compact by enacting a statute repealing the same. A party state’s withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

e. A party state’s withdrawal or termination shall not affect the continuing requirement of the withdrawing or terminated state’s licensing board to report adverse actions and significant investigations occurring prior to the effective date of such withdrawal or termination.
f. Nothing contained in this Compact shall be construed to invalidate or prevent any APRN licensure agreement or other cooperative arrangement between a party state and a non-party state that does not conflict with the provisions of this Compact.

g. This Compact may be amended by the party states. No amendment to this Compact shall become effective and binding upon any party state until it is enacted into the laws of all party states.

h. Representatives of non-party states to this Compact shall be invited to participate in the activities of the Commission, on a nonvoting basis, prior to the adoption of this Compact by all states.

Article XI. [Construction and Severability.]

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable, and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held to be contrary to the constitution of any party state, this Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.
Interstate Medical Licensure Compact

This Act enacts the Interstate Medical Licensure Compact. The compact:
• Becomes effective when adopted by seven states;
• Creates an interstate commission comprised of two representatives from each member state to oversee operation of the compact;
• Provides for physicians licensed in one compact state to obtain an expedited license in another compact state;
• Directs the commission to maintain a database of licensed physicians, and disciplinary records involving licensed physicians, from compact states;
• Provides for joint investigations and disciplinary actions;
• Authorizes the commission to levy and collect an assessment on member states to cover the cost of commission operations, and provides civil immunity for commission representatives and employees;
• Reserves member states’ rights to determine eligibility for physician licensure, license fees, grounds for discipline and continuing education requirements.

Submitted as:
Wyoming HB 107
Status: Signed into law on February 27, 2015.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Compact provisions generally.]
The Interstate Medical Licensure Compact is enacted into law and entered into on behalf of this state with all other states legally joining in the compact in a form substantially as follows.

Article I. [Purpose.]
In order to strengthen access to health care and in recognition of the advances in the delivery of health care, the member states of the Interstate Medical Licensure Compact have allied in common purpose to develop a comprehensive process that complements the existing licensing and regulatory authority of state medical boards, provides a streamlined process that allows physicians to become licensed in multiple states, thereby enhancing the portability of a medical license and ensuring the safety of patients. The compact creates another pathway for licensure and does not otherwise change a state’s existing medical practice act. The compact also adopts the prevailing standard for licensure and affirms that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter and therefore requires the physician to be under the jurisdiction of the state medical board where the patient is located. State medical boards that participate in the compact retain the jurisdiction to impose an adverse action against a license to practice medicine in that state issued to a physician through the procedures in the compact.
Article II. [Definitions.]

(a) In this compact:

i. “Bylaws” means those bylaws established by the interstate commission pursuant to
   article XI for its governance or for directing and controlling its actions and conduct;

ii. “Commissioner” means the voting representative appointed by each member board
    pursuant to article XI;

iii. “Conviction” means a finding by a court that an individual is guilty of a criminal offense
     through adjudication or entry of a plea of guilt or no contest to the charge by the offender.
     Evidence of an entry of a conviction of a criminal offense by the court shall be
     considered final for purposes of disciplinary action by a member board;

iv. “Expedited license” means a full and unrestricted medical license granted by a member
    state to an eligible physician through the process set forth in the compact;

v. “Interstate commission” means the interstate commission created pursuant to article XI;

vi. “License” means authorization by a state for a physician to engage in the practice of
    medicine, which would be unlawful without the authorization;

vii. “Medical practice act” means laws and regulations governing the practice of allopathic
     and osteopathic medicine within a member state;

viii. “Member board” means a state agency in a member state that acts in the sovereign
      interests of the state by protecting the public through licensure, regulation and education
      of physicians as directed by the state government;

ix. “Member state” means a state that has enacted the compact;

x. “Practice of medicine” means the clinical prevention, diagnosis or treatment of human
    disease, injury or condition requiring a physician to obtain and maintain a license in
    compliance with the medical practice act of a member state;

xi. “Physician” means any person who:
   (A) Is a graduate of a medical school accredited by the liaison committee on medical
       education, the commission on osteopathic college accreditation or a medical school
       listed in the international medical education directory or its equivalent;
   (B) Passed each component of the United States medical licensing examination (USMLE)
       or the comprehensive osteopathic medical licensing examination (COMLEX-USA)
       within three (3) attempts or any of its predecessor examinations accepted by a state
       medical board as an equivalent examination for licensure purposes;
   (C) Successfully completed graduate medical education approved by the accreditation
       council for graduate medical education or the American osteopathic association;
   (D) Holds specialty certification or a time unlimited specialty certificate recognized by
       the American board of medical specialties or the American osteopathic association's
       bureau of osteopathic specialists;
   (E) Possesses a full and unrestricted license to engage in the practice of medicine issued
       by a member board;
   (F) Has never been convicted, received adjudication, deferred adjudication, community
       supervision or deferred disposition for any offense by a court of appropriate
       jurisdiction;
   (G) Has never held a license authorizing the practice of medicine subjected to discipline
       by a licensing agency in any state, federal or foreign jurisdiction, excluding any
       action related to nonpayment of fees related to a license;
(H) Has never had a controlled substance license or permit suspended or revoked by a state or the United States drug enforcement administration; and
(I) Is not under active investigation by a licensing agency or law enforcement authority in any state, federal or foreign jurisdiction.

(xii) “Offense” means a felony, gross misdemeanor or crime of moral turpitude;
(xiii) “Rule” means a written statement by the interstate commission promulgated pursuant to article XII of the compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact or an organizational, procedural or practice requirement of the interstate commission, and has the force and effect of statutory law in a member state and includes the amendment, repeal or suspension of an existing rule;
(xiv) “State” means any state, commonwealth, district or territory of the United States;
(xv) “State of principal license” means a member state where a physician holds a license to practice medicine and which has been designated as such by the physician for purposes of registration and participation in the compact.

Article III. [Eligibility.]
(a) A physician must meet the eligibility requirements as defined in article II(a)(xi) to receive an expedited license under the terms and provisions of the compact.
(b) A physician who does not meet the requirements of article II(a)(xi) may obtain a license to practice medicine in a member state if the individual complies with all laws and requirements, other than the compact, relating to the issuance of a license to practice medicine in that state.

Article IV. [Designation of State of Principal License.]
(a) A physician shall designate a member state as the state of principal license for purposes of registration for expedited licensure through the compact if the physician possesses a full and unrestricted license to practice medicine in that state and the state is:
(i) The state of primary residence for the physician;
(ii) The state where at least twenty-five percent (25%) of the practice of medicine occurs;
(iii) The location of the physician's employer; or
(iv) If no state qualifies under paragraph (a)(i), (ii) or (iii) of this article, the state designated as state of residence for purpose of federal income tax.
(b) A physician may redesignate a member state as state of principal license at any time, as long as the state meets the requirements in subsection (a) of this article.
(c) The interstate commission is authorized to develop rules to facilitate redesignation of another member state as the state of principal license.

Article V. [Application and issuance of expedited licensure.]
i. A physician seeking licensure through the compact shall file an application for an expedited license with the member board of the state selected by the physician as the state of principal license.
ii. Upon receipt of an application for an expedited license, the member board within the state selected as the state of principal license shall evaluate whether the physician is eligible for expedited licensure and issue a letter of qualification, verifying or denying the physician's eligibility, to the interstate commission, subject to the following:
(i) Static qualifications, which include verification of medical education, graduate medical education, results of any medical or licensing examination and other qualifications as determined by the interstate commission through rule, shall not be subject to additional primary source verification where primary sources have already been verified by the state of principal license;

(ii) The member board within the state selected as the state of principal license shall, in the course of verifying eligibility, perform a criminal background check of an applicant, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the federal bureau of investigation, with the exception of federal employees who have suitability determination in accordance with 5 C.F.R. § 731.202;

(iii) Appeal on the determination of eligibility shall be made to the member state where the application was filed and shall be subject to the law of that state.

(iii) Upon verification under subsection (b) of this article, physicians eligible for an expedited license shall complete the registration process established by the interstate commission to receive a license in a member state selected pursuant to subsection (a) of this article, including the payment of any applicable fees.

(iv) After receiving verification of eligibility under subsection (b) of this article and any fees under subsection (c) of this article, a member board shall issue an expedited license to the physician. This license shall authorize the physician to practice medicine in the issuing state consistent with the medical practice act and all applicable laws and regulations of the issuing member board and member state.

(v) An expedited license shall be valid for a period consistent with the licensure period in the member state and in the same manner as required for other physicians holding a full and unrestricted license within the member state.

(vi) An expedited license obtained through the compact shall be terminated if a physician fails to maintain a license in the state of principal licensure for a nondisciplinary reason, without redesignation of a new state of principal licensure.

(vii) The interstate commission is authorized to develop rules regarding the application process, including payment of any applicable fees and the issuance of an expedited license.

Article VI. [Fees for Expedited Licensure.]
(a) A member state issuing an expedited license authorizing the practice of medicine in that state may impose a fee for a license issued or renewed through the compact.

(b) The interstate commission is authorized to develop rules regarding fees for expedited licenses.

Article VII. [Renewal and Continued Participation.]
(a) A physician seeking to renew an expedited license granted in a member state shall complete a renewal process with the interstate commission if the physician:

(i) Maintains a full and unrestricted license in a state of principal license;

(ii) Has not been convicted, received adjudication, deferred adjudication, community supervision or deferred disposition for any offense by a court of appropriate jurisdiction;
(iii) Has not had a license authorizing the practice of medicine subject to discipline by a
licensing agency in any state, federal or foreign jurisdiction, excluding any action
related to nonpayment of fees related to a license; and
(iv) Has not had a controlled substance license or permit suspended or revoked by a state
or the United States drug enforcement administration.
(b) Physicians shall comply with all continuing professional development or continuing medical
education requirements for renewal of a license issued by a member state.
(c) The interstate commission shall collect any renewal fees charged for the renewal of a license
and distribute the fees to the applicable member board.
(d) Upon receipt of any renewal fees collected under subsection (c) of this article, a member
board shall renew the physician's license.
(e) Physician information collected by the interstate commission during the renewal process will
be distributed to all member boards.
(f) The interstate commission is authorized to develop rules to address renewal of licenses
obtained through the compact.

Article VIII. [Coordinated Information System.]
(xii) The interstate commission shall establish a database of all physicians licensed, or who
have applied for licensure, under article V.
(xiii) Notwithstanding any other provision of law, member boards shall report to the interstate
commission any public action or complaints against a licensed physician who has applied or
received an expedited license through the compact.
(xiv) Member boards shall report disciplinary or investigatory information determined as
necessary and proper by rule of the interstate commission.
(xv) Member boards may report any nonpublic complaint, disciplinary or investigatory
information not required by subsection (c) of this article, to the interstate commission.
(xvi) Member boards shall share complaint or disciplinary information about a physician upon
request of another member board.
(xvii) All information provided to the interstate commission or distributed by member boards
shall be confidential, filed under seal and used only for investigatory or disciplinary matters.
(xviii) The interstate commission is authorized to develop rules for mandated or discretionary
sharing of information by member boards.

Article IX. [Joint Investigations.]
(a) Licensure and disciplinary records of physicians are deemed investigative.
(b) In addition to the authority granted to a member board by its respective medical practice act
or other applicable state law, a member board may participate with other member boards in
joint investigations of physicians licensed by the member boards.
(c) A subpoena issued by a member state shall be enforceable in other member states.
(d) Member boards may share any investigative, litigation or compliance materials in furtherance
of any joint or individual investigation initiated under the compact.
(e) Any member state may investigate actual or alleged violations of the statutes authorizing the
practice of medicine in any other member state in which a physician holds a license to
practice medicine.
Article X. [Disciplinary Actions.]

(a) Any disciplinary action taken by any member board against a physician licensed through the compact shall be deemed unprofessional conduct which may be subject to discipline by other member boards, in addition to any violation of the medical practice act or regulations in that state.

(b) If a license granted to a physician by the member board in the state of principal license is revoked, surrendered or relinquished in lieu of discipline, or suspended, then all licenses issued to the physician by member boards shall automatically be placed, without further action necessary by any member board, on the same status. If the member board in the state of principal license subsequently reinstates the physician's license, a license issued to the physician by any other member board shall remain encumbered until that respective member board takes action to reinstate the license in a manner consistent with the medical practice act of that state.

(c) If disciplinary action is taken against a physician by a member board not in the state of principal license, any other member board may deem the action conclusive as to matter of law and fact decided and:

(i) Impose the same or lesser sanction against the physician so long as such sanctions are consistent with the medical practice act of that state; or

(ii) Pursue separate disciplinary action against the physician under its respective medical practice act, regardless of the action taken in other member states.

(d) If a license granted to a physician by a member board is revoked, surrendered or relinquished in lieu of discipline or suspended, then any license issued to the physician by any other member board shall be suspended, automatically and immediately without further action necessary by the other member board, for ninety (90) days upon entry of the order by the disciplining board, to permit the member board to investigate the basis for the action under the medical practice act of that state. A member board may terminate the automatic suspension of the license it issued prior to the completion of the ninety (90) day suspension period in a manner consistent with the medical practice act of that state.

Article XI. [Interstate Medical Licensure Compact Commission.]

(a) The member states hereby create the “Interstate Medical Licensure Compact Commission.”

(b) The purpose of the interstate commission is the administration of the Interstate Medical Licensure Compact, which is a discretionary state function.

(c) The interstate commission shall be a body corporate and shall have all the responsibilities, powers and duties set forth in the compact and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of the compact.

(d) The interstate commission shall consist of two (2) voting representatives appointed by each member state who shall serve as commissioners. In states where allopathic and osteopathic physicians are regulated by separate member boards, or if the licensing and disciplinary authority is split between multiple member boards within a member state, the member state shall appoint one (1) representative from each member board. A commissioner shall be:

(i) An allopathic or osteopathic physician appointed to a member board;

(ii) An executive director, executive secretary or similar executive of a member board; or

(iii) A member of the public appointed to a member board.
(e) The interstate commission shall meet at least once each calendar year. A portion of this
meeting shall be a business meeting to address such matters as may properly come before the
commission, including the election of officers. The chairperson may call additional meetings
and shall call for a meeting upon the request of a majority of the member states.

(f) The bylaws may provide for meetings of the interstate commission to be conducted by
telecommunication or electronic communication.

(g) Each commissioner participating at a meeting of the interstate commission is entitled to one
(1) vote. A majority of commissioners shall constitute a quorum for the transaction of
business, unless a larger quorum is required by the bylaws of the interstate commission. A
commissioner shall not delegate a vote to another commissioner. In the absence of its
commissioner, a member state may delegate voting authority for a specified meeting to
another person from that state who shall meet the requirements of subsection (d) of this
article.

(h) The interstate commission shall provide public notice of all meetings and all meetings shall
be open to the public. The interstate commission may close a meeting, in full or in portion,
where it determines by a two-thirds (2/3) vote of the commissioners present that an open
meeting would be likely to:

i. Relate solely to the internal personnel practices and procedures of the interstate
commission;

ii. Discuss matters specifically exempted from disclosure by federal statute;

iii. Discuss trade secrets, commercial or financial information that is privileged or
confidential;

iv. Involve accusing a person of a crime or formally censuring a person;

v. Discuss information of a personal nature where disclosure would constitute a clearly
unwarranted invasion of personal privacy;

vi. Discuss investigative records compiled for law enforcement purposes; or

vii. Specifically relate to the participation in a civil action or other legal proceeding.

(j) The interstate commission shall keep minutes which shall fully describe all matters
discussed in a meeting and shall provide a full and accurate summary of actions taken,
including record of any roll call votes.

(k) The interstate commission shall make its information and official records, to the extent not
otherwise designated in the compact or by its rules, available to the public for inspection.

(m) The interstate commission shall establish an executive committee, which shall include
officers, members and others as determined by the bylaws. The executive committee shall
have the power to act on behalf of the interstate commission, with the exception of
rulemaking, during periods when the interstate commission is not in session. When acting on
behalf of the interstate commission, the executive committee shall oversee the administration
of the compact including enforcement and compliance with the provisions of the compact, its
bylaws and rules and other such duties as necessary.

(n) The interstate commission may establish other committees for governance and administration
of the compact.
Article XII. [Powers and Duties of the Interstate Commission.]

(a) The interstate commission shall have the duty and power to:

(i) Oversee and maintain the administration of the compact;

(ii) Promulgate rules which shall be binding to the extent and in the manner provided for in the compact;

(iii) Issue, upon the request of a member state or member board, advisory opinions concerning the meaning or interpretation of the compact, its bylaws, rules and actions;

(iv) Enforce compliance with compact provisions, the rules promulgated by the interstate commission and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;

(v) Establish and appoint committees including, but not limited to, an executive committee as required by article XI, which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties;

(vi) Pay or provide for the payment of the expenses related to the establishment, organization and ongoing activities of the interstate commission;

(vii) Establish and maintain one (1) or more offices;

(viii) Borrow, accept, hire or contract for services of personnel;

(ix) Purchase and maintain insurance and bonds;

(x) Employ an executive director who shall have such powers to employ, select or appoint employees, agents or consultants and to determine their qualifications, define their duties and fix their compensation;

(xi) Establish personnel policies and programs relating to conflicts of interest, rates of compensation and qualifications of personnel;

(xii) Accept donations and grants of money, equipment, supplies, materials and services and to receive, utilize and dispose of it in a manner consistent with the conflict of interest policies established by the interstate commission;

(xiii) Lease, purchase, accept contributions or donations of or otherwise to own, hold, improve or use, any property, real, personal or mixed;

(xiv) Sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

(xv) Establish a budget and make expenditures;

(xvi) Adopt a seal and bylaws governing the management and operation of the interstate commission;

(xvii) Report annually to the legislatures and governors of the member states concerning the activities of the interstate commission during the preceding year. Such reports shall also include reports of financial audits and any recommendations that may have been adopted by the interstate commission;

(xviii) Coordinate education, training and public awareness regarding the compact, its implementation and its operation;

(xix) Maintain records in accordance with the bylaws; (xx) Seek and obtain trademarks, copyrights and patents; and

(xx) Perform such functions as may be necessary or appropriate to achieve the purposes of the compact.
Article XIII. [Finance Powers.]

(a) The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff. The total assessment must be sufficient to cover the annual budget approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.

(b) The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same.

(c) The interstate commission shall not pledge the credit of any of the member states, except by, and with the authority of, the member state.

(d) The interstate commission shall be subject to a yearly financial audit conducted by a certified or licensed public accountant and the report of the audit shall be included in the annual report of the interstate commission.

Article XIV. [Organization and operation of the Interstate Commission.]

(a) The interstate commission shall, by a majority of commissioners present and voting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact within twelve (12) months of the first interstate commission meeting.

(b) The interstate commission shall elect or appoint annually from among its commissioners a chairperson, a vice-chairperson and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson, or in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission.

(c) Officers selected in subsection (b) of this article shall serve without remuneration from the interstate commission.

(d) The officers and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of, or relating to, an actual or alleged act, error or omission that occurred, or that the officer or employee had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties or responsibilities provided that an officer or employee shall not be protected from suit or liability for damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of the officer or employee. The immunity provided by this article shall be subject to the following:

(i) The liability of the executive director and employees of the interstate commission or representatives of the interstate commission, acting within the scope of the officer's or employee's employment or duties for acts, errors or omissions occurring within the officer's or employee's state, may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect the officer or employee from suit or liability for damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of the officer or employee;

(ii) The interstate commission shall defend the executive director, its employees and, subject to the approval of the attorney general or other appropriate legal counsel of
the member state represented by an interstate commission representative, shall defend
an interstate commission representative in any civil action seeking to impose liability
arising out of an actual or alleged act, error or omission that occurred within the scope
of interstate commission employment, duties or responsibilities, or that the defendant
had a reasonable basis for believing occurred within the scope of interstate
commission employment, duties or responsibilities, provided that the actual or alleged
act, error or omission did not result from intentional or willful and wanton
misconduct on the part of the officer or employee;

(iii) To the extent not covered by the state involved, member state or the interstate
commission, the representatives or employees of the interstate commission shall be
held harmless in the amount of a settlement or judgment, including attorney's fees and
costs, obtained against the officers and employees arising out of an actual or alleged
act, error or omission that occurred within the scope of interstate commission
employment, duties or responsibilities or that the officers and employees had a
reasonable basis for believing occurred within the scope of interstate commission
employment, duties or responsibilities, provided that the actual or alleged act, error or
omission did not result from intentional or willful and wanton misconduct on the part
of the officers or employees.

Article XV. [Rulemaking functions of the Interstate Commission.]

(a) The interstate commission shall promulgate reasonable rules in order to effectively and
efficiently achieve the purposes of the compact. Notwithstanding the foregoing, in the event
the interstate commission exercises its rulemaking authority in a manner that is beyond the
scope of the purposes of the compact, or the powers granted hereunder, then such an action
by the interstate commission shall be invalid and have no force or effect.

(b) Rules deemed appropriate for the operations of the interstate commission shall be made
pursuant to a rulemaking process that substantially conforms to the "Model State
Administrative Procedure Act" of 2010 and subsequent amendments thereto.

(c) Not later than thirty (30) days after a rule is promulgated, any person may file a petition for
judicial review of the rule in the United States District Court for the District of Columbia or
the federal district where the interstate commission has its principal offices, provided that the
filing of such a petition shall not stay or otherwise prevent the rule from becoming effective
unless the court finds that the petitioner has a substantial likelihood of success. The court
shall give deference to the actions of the interstate commission consistent with applicable law
and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the
authority granted to the interstate commission.

Article XVI. [Oversight of Interstate Compact.]

(a) The executive, legislative and judicial branches of state government in each member state
shall enforce the compact and shall take all actions necessary and appropriate to effectuate
the compact's purposes and intent. The provisions of the compact and the rules promulgated
hereunder shall have standing as statutory law but shall not override existing state authority
to regulate the practice of medicine.

(b) All courts shall take judicial notice of the compact and the rules in any judicial or
administrative proceeding in a member state pertaining to the subject matter of the compact
which may affect the powers, responsibilities or actions of the interstate commission.
(c) The interstate commission shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission shall render a judgment or order void as to the interstate commission, the compact or promulgated rules.

Article XVII. [Enforcement of Interstate Compact.]

(a) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the compact.
(b) The interstate commission may, by majority vote of the commissioners, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of the compact and its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.
(c) The remedies herein shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

Article XVIII. [Default Procedures.]

(a) The grounds for default include, but are not limited to, failure of a member state to perform such obligations or responsibilities imposed upon it by the compact or the rules and bylaws of the interstate commission promulgated under the compact.
(b) If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the compact or the bylaws or promulgated rules, the interstate commission shall: (i) Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default; and (ii) Provide remedial training and specific technical assistance regarding the default.
(c) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the commissioners and all rights, privileges and benefits conferred by the compact shall terminate on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.
(d) Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature and each of the member states.
(e) The interstate commission shall establish rules and procedures to address licenses and physicians that are materially impacted by the termination of a member state or the withdrawal of a member state.
(f) The member state which has been terminated is responsible for all dues, obligations and liabilities incurred through the effective date of termination including obligations, the performance of which extends beyond the effective date of termination.
(g) The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(h) The defaulting state may appeal the action of the interstate commission by petitioning the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

Article XIX. [Dispute Resolution.]

(a) The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states or member boards.

(b) The interstate commission shall promulgate rules providing for both mediation and binding dispute resolution as appropriate.

Article XX. [Member States, Effective Date and Amendments.]

(a) Any state is eligible to become a member state of the compact.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than seven (7) states. Thereafter, it shall become effective and binding on a state upon enactment of the compact into law by that state.

(c) The governors of nonmember states or their designees, shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states.

(d) The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

Article XXI. [Withdrawal.]

(a) Once effective, the compact shall continue in force and remain binding upon each and every member state, provided that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(b) Withdrawal from the compact shall be by the enactment of a statute repealing the same, but shall not take effect until one (1) year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state.

(c) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing the compact in the withdrawing state.

(d) The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt of notice provided under subsection (c) of this article.

(e) The withdrawing state is responsible for all dues, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.
(f) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(g) The interstate commission is authorized to develop rules to address the impact of the withdrawal of a member state on licenses granted in other member states to physicians who designated the withdrawing member state as the state of principal license.

Article XXII. [Dissolution.]
(a) The compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one (1) member state.
(b) Upon the dissolution of the compact, the compact becomes null and void and shall be of no further force or effect and the business and affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

Article XXIII. [Severability and Construction.]
(a) The provisions of the compact shall be severable and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.
(b) The provisions of the compact shall be liberally construed to effectuate its purposes.
(c) Nothing in the compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

Article XXIV. [Binding Effect of Compact and Other Laws.]
(a) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the compact.
(b) All laws in a member state in conflict with the compact are superseded to the extent of the conflict.
(c) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the commission, are binding upon the member states.
(d) All agreements between the interstate commission and the member states are binding in accordance with their terms.
(e) In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

Section 2. [Interstate commission members.]
Pursuant to article XI(d) of the Interstate Medical Licensure Compact, the governor shall appoint two (2) voting representatives to the interstate medical licensure compact commission. The representatives shall serve staggered two (2) year terms as commissioners.
Nurse Licensure Compact

Telehealth is one of the fastest growing sectors within the health care industry. Nurses are increasingly being asked to deliver care through electronic means, offering opportunities for better patient care regardless of geographic boundaries. The NLC is a state-based licensure model that facilitates innovative care models by allowing nurses to legally deliver that care to patients through a multistate license. The NLC also has economic benefits, as it facilitates and expedites the hiring process for employers in their state, by enabling them to verify licenses online and to recruit from other states without having to go through the entire endorsement process. The NLC reduces licensure fees for nurses who practice in more than one state, eliminates unnecessary duplicative license procedures, reduces a nurse’s ability to move to another state to avoid a disciplinary action, and provides more expedient access to nurses in times of national crises. In the face of calls for the federal government to address health care licensing nationally, the NLC also offers a state-based solution to the claims that licensure is a barrier to interstate practice.

Two models of nurse licensure currently exist in the U.S.: the historical single-state licensure model and the NLC. In 1997, boards of nursing recognized the importance of facilitating interstate practice by endorsing the mutual recognition model of nurse licensure. This led to the development of model legislation for the NLC, which was first implemented in 2000. The NLC is an interstate compact agreement among participating states that allows for the mutual recognition of licensure between and among states. It facilitates mobility of RNs and LPN/VNs across state lines. Under the NLC, a license is issued in the jurisdiction of the nurse’s state of residence, granting the nurse a privilege to practice, otherwise known as a multistate license, in all other states participating in the NLC.

To date, a total of 25 states have adopted the NLC, with 24 having already implemented it. Most recently, the NLC was adopted by Montana. Implementation there is expected in October 2015.

Revising the NLC and APRN Compacts

Beginning in 2013, NCSBN’s member boards began revising the NLC in an effort to address concerns raised by states that have not yet joined. The drafting process was led by the NCSBN Executive Officer Forum, which engaged in a dialogue to identify barriers to the adoption of the NLC by member boards. The goal was to reach consensus among the executive officers who participated and to propose revisions to the NLC that are intended to accomplish its expeditious adoption by member boards. Throughout the process, revisions were made to the APRN compact in order to align it with the NLC where possible.

Notably, the mutual recognition model of licensure was maintained in both Compacts. The revision process for both Compacts concluded in March 2015.

On May 4, 2015, the NCSBN Delegate Assembly voted to approve final versions of both Compacts. Each state seeking to join either of the new Compacts, regardless of whether they are currently an NLC member, needs to adopt new legislation in order to join either Compact. NCSBN is preparing for states to be able to adopt the new NLC and APRN Compact legislation beginning in 2016 legislative sessions.
(Policy changes from the 1997 NLC are in *italics*.)

Article I Findings and Declaration of Purpose
- Facilitate the states’ responsibility to protect the public’s health and safety;
- Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;
- Facilitate the exchange of information between party states in the areas of nurse regulation, investigation and adverse actions;
- Promote compliance with the laws governing the practice of nursing in each jurisdiction;
- Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;
- Decrease redundancies in the consideration and issuance of nurse licenses; and
- Provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

Article II Definitions (self-explanatory)

Article III General Provisions and Jurisdiction
- *Eligibility and uniform licensure requirements for a multistate license*
- Authority to take adverse action against a multistate licensure privilege with application of state due process laws
- Nurse compliance with state practice laws
- Exclusion of advanced practice nurses
- *Grandfathering provision*

Article IV Applications for Licensure in a Party State
- Required verification of licensure information via the coordinated licensure information system
- Limitation to one home state license
- Outlines process for change of primary residence/home state

Article V Additional Authorities Invested in Party State Licensing Boards
- Provides authority to
  - Take adverse action against a multistate licensure privilege
  - Allow cease and desist orders to limit privileges
  - Issue subpoenas
  - Obtain and submit criminal background checks
- Requires deactivation of multistate licensure privileges when license encumbered
- Allows for alternative to discipline program participation

Article VI Coordinated Licensure Information System and Exchange of Information
- Requires participation in Coordinated Licensure Information System
- Requires prompt reporting of adverse action, current significant investigative information and participation in alternative to discipline programs when known to the board of nursing.
• Provides for exchange of information with other party states

Article VII Establishment of the Interstate Commission of Nurse Licensure Compact Administrators
Establishes the governing body as a public agency known as an “Interstate Commission.” This term is commonly used by other interstate compact governing bodies.

Article VIII Rulemaking
Allows for rules to be adopted directly by the Commission. Such rulemaking is legally binding in all party states. There is no requirement that rules be ratified or adopted by individual states. Such rulemaking authority has been permitted and exercised by other interstate compacts. The procedural requirements are based on the national Model Administrative Procedures Act, which is similar to most state APAs and includes:
• Provision for notice to the public of proposed and adopted rules
• Opportunity for comment
• Opportunity for public hearing
• Consideration and voting upon proposed rules
• Responding to comments received

Article IX Oversight, Dispute Resolution and Enforcement
Ensures compliance with the compact by member states. The procedures to be followed in the event of a failure by a party state to comply with the Compact include:
• A period of technical assistance in curing the default
• Improved dispute resolution processes; and
• Termination from the Compact in the event no other means of compliance has been successful.

Article X Effective Date, Withdrawal and Amendment
Addresses the method for states to enter, withdraw from or amend the compact.

Article XI Construction and Severability
Provides for the compact to remain valid in a state when any provision is declared to be contrary to a party state’s constitution.
Suggested State Legislation

(Title, enacting clause, etc.)

Article I. [Findings and Declaration of Purpose.]

a. The party states find that:

   1. The health and safety of the public are affected by the degree of compliance with and the
effectiveness of enforcement activities related to state nurse licensure laws;
   2. Violations of nurse licensure and other laws regulating the practice of nursing may result
in injury or harm to the public;
   3. The expanded mobility of nurses and the use of advanced communication technologies as
part of our nation’s health care delivery system require greater coordination and
cooperation among states in the areas of nurse licensure and regulation;
   4. New practice modalities and technology make compliance with individual state nurse
licensure laws difficult and complex;
   5. The current system of duplicative licensure for nurses practicing in multiple states is
cumbersome and redundant for both nurses and states; and
   6. Uniformity of nurse licensure requirements throughout the states promotes public safety
and public health benefits.

b. The general purposes of this Compact are to:

   1. Facilitate the states’ responsibility to protect the public’s health and safety;
   2. Ensure and encourage the cooperation of party states in the areas of nurse licensure and
regulation;
   3. Facilitate the exchange of information between party states in the areas of nurse regulation,
investigation and adverse actions;
   4. Promote compliance with the laws governing the practice of nursing in each jurisdiction;
   5. Invest all party states with the authority to hold a nurse accountable for meeting all state
practice laws in the state in which the patient is located at the time care is rendered
through the mutual recognition of party state licenses;
   6. Decrease redundancies in the consideration and issuance of nurse licenses; and
   7. Provide opportunities for interstate practice by nurses who meet uniform licensure
requirements.

Article II. [Definitions.]

As used in this Compact:

a. “Adverse action” means any administrative, civil, equitable or criminal action permitted by a
state’s laws which is imposed by a licensing board or other authority against a nurse,
including actions against an individual’s license or multistate licensure privilege such as
revocation, suspension, probation, monitoring of the licensee, limitation on the licensee’s
practice, or any other encumbrance on licensure affecting a nurse’s authorization to practice,
including issuance of a cease and desist action.

b. “Alternative program” means a non-disciplinary monitoring program approved by a licensing
board.
c. “Coordinated licensure information system” means an integrated process for collecting, storing and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards.

d. “Current significant investigative information” means:

1. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

2. Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

e. “Encumbrance” means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.

f. “Home state” means the party state which is the nurse’s primary state of residence.

g. “Licensing board” means a party state’s regulatory body responsible for issuing nurse licenses.

h. “Multistate license” means a license to practice as a registered or a licensed practical/vocational nurse (LPN/VN) issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

i. “Multistate licensure privilege” means a legal authorization associated with a multistate license permitting the practice of nursing as either a registered nurse (RN) or LPN/VN in a remote state.

j. “Nurse” means RN or LPN/VN, as those terms are defined by each party state’s practice laws.

k. “Party state” means any state that has adopted this Compact.

l. “Remote state” means a party state, other than the home state.

m. “Single-state license” means a nurse license issued by a party state that authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.

n. “State” means a state, territory or possession of the United States and the District of Columbia.

o. “State practice laws” means a party state’s laws, rules and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. “State practice laws” do not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

Article III. [General Provisions and Jurisdiction.]

a. A multistate license to practice registered or licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a nurse to practice as a registered nurse (RN) or as a licensed practical/vocational nurse (LPN/VN), under a multistate licensure privilege, in each party state.

b. A state must implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant’s criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state’s criminal records.

c. Each party state shall require the following for an applicant to obtain or retain a multistate license in the home state:
1. Meets the home state’s qualifications for licensure or renewal of licensure, as well as, all
other applicable state laws;
2. Has graduated or is eligible to graduate from a licensing board-approved RN or
   LPN/VN prelicensure education program; or
i. Has graduated from a foreign RN or LPN/VN prelicensure education program that (a)
   has been approved by the authorized accrediting body in the applicable country and
   (b) has been verified by an independent credentials review agency to be comparable
   to a licensing board-approved prelicensure education program;
3. Has, if a graduate of a foreign prelicensure education program not taught in English or if
   English is not the individual’s native language, successfully passed an English
   proficiency examination that includes the components of reading, speaking, writing and
   listening;
4. Has successfully passed an NCLEX-RN® or NCLEX-PN® Examination or recognized
   predecessor, as applicable;
5. Is eligible for or holds an active, unencumbered license;
6. Has submitted, in connection with an application for initial licensure or licensure by
   endorsement, fingerprints or other biometric data for the purpose of obtaining criminal
   history record information from the Federal Bureau of Investigation and the agency
   responsible for retaining that state’s criminal records;
7. Has not been convicted or found guilty, or has entered into an agreed disposition, of a
   felony offense under applicable state or federal criminal law;
8. Has not been convicted or found guilty, or has entered into an agreed disposition, of a
   misdemeanor offense related to the practice of nursing as determined on a case-by-case
   basis;
9. Is not currently enrolled in an alternative program;
10. Is subject to self-disclosure requirements regarding current participation in an alternative
    program; and
11. Has a valid United States Social Security number.
d. All party states shall be authorized, in accordance with existing state due process law, to take
    adverse action against a nurse’s multistate licensure privilege such as revocation, suspension,
    probation or any other action that affects a nurse’s authorization to practice under a multistate
    licensure privilege, including cease and desist actions. If a party state takes such action, it
    shall promptly notify the administrator of the coordinated licensure information system. The
    administrator of the coordinated licensure information system shall promptly notify the home
    state of any such actions by remote states.
e. A nurse practicing in a party state must comply with the state practice laws of the state in
   which the client is located at the time service is provided. The practice of nursing is not
   limited to patient care, but shall include all nursing practice as defined by the state practice
   laws of the party state in which the client is located. The practice of nursing in a party state
   under a multistate licensure privilege will subject a nurse to the jurisdiction of the licensing
   board, the courts and the laws of the party state in which the client is located at the time
   service is provided.
f. Individuals not residing in a party state shall continue to be able to apply for a party state’s
   single-state license as provided under the laws of each party state. However, the single-state
   license granted to these individuals will not be recognized as granting the privilege to practice
nursing in any other party state. Nothing in this Compact shall affect the requirements established by a party state for the issuance of a single-state license.
g. Any nurse holding a home state multistate license, on the effective date of this Compact, may retain and renew the multistate license issued by the nurse’s then-current home state, provided that:
1. A nurse, who changes primary state of residence after this Compact’s effective date, must meet all applicable Article III.c. requirements to obtain a multistate license from a new home state.
2. A nurse who fails to satisfy the multistate licensure requirements in Article III.c. due to a disqualifying event occurring after this Compact’s effective date shall be ineligible to retain or renew a multistate license, and the nurse’s multistate license shall be revoked or deactivated in accordance with applicable rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators (“Commission”).

Article IV. [Applications for Licensure in a Party State.]
a. Upon application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant and whether the applicant is currently participating in an alternative program.
b. A nurse may hold a multistate license, issued by the home state, in only one party state at a time.
c. If a nurse changes primary state of residence by moving between two party states, the nurse must apply for licensure in the new home state, and the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the Commission.
1. The nurse may apply for licensure in advance of a change in primary state of residence.
2. A multistate license shall not be issued by the new home state until the nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.
d. If a nurse changes primary state of residence by moving from a party state to a non-party state, the multistate license issued by the prior home state will convert to a single-state license, valid only in the former home state.

Article V. [Additional Authorities Invested in Party State Licensing Boards.]
a. In addition to the other powers conferred by state law, a licensing board shall have the authority to:
1. Take adverse action against a nurse’s multistate licensure privilege to practice within that party state.
   i. Only the home state shall have the power to take adverse action against a nurse’s license issued by the home state.
   ii. For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct received from a remote state as it
would if such conduct had occurred within the home state. In so doing, the home
state shall apply its own state laws to determine appropriate action.

2. Issue cease and desist orders or impose an encumbrance on a nurse’s authority to practice
within that party state.

3. Complete any pending investigations of a nurse who changes primary state of residence
during the course of such investigations. The licensing board shall also have the authority
to take appropriate action(s) and shall promptly report the conclusions of such
investigations to the administrator of the coordinated licensure information system. The
administrator of the coordinated licensure information system shall promptly notify the
new home state of any such actions.

4. Issue subpoenas for both hearings and investigations that require the attendance and
testimony of witnesses, as well as, the production of evidence. Subpoenas issued by a
licensing board in a party state for the attendance and testimony of witnesses or the
production of evidence from another party state shall be enforced in the latter state by any
court of competent jurisdiction, according to the practice and procedure of that court
applicable to subpoenas issued in proceedings pending before it. The issuing authority
shall pay any witness fees, travel expenses, mileage and other fees required by the service
statutes of the state in which the witnesses or evidence are located.

5. Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-
based information to the Federal Bureau of Investigation for criminal background checks,
receive the results of the Federal Bureau of Investigation record search on criminal
background checks and use the results in making licensure decisions.

6. If otherwise permitted by state law, recover from the affected nurse the costs of
investigations and disposition of cases resulting from any adverse action taken against
that nurse.

7. Take adverse action based on the factual findings of the remote state, provided that the
licensing board follows its own procedures for taking such adverse action.
b. If adverse action is taken by the home state against a nurse’s multistate license, the nurse’s
multistate licensure privilege to practice in all other party states shall be deactivated until all
encumbrances have been removed from the multistate license. All home state disciplinary
orders that impose adverse action against a nurse’s multistate license shall include a
statement that the nurse’s multistate licensure privilege is deactivated in all party states
during the pendency of the order.
c. Nothing in this Compact shall override a party state’s decision that participation in an
alternative program may be used in lieu of adverse action. The home state licensing board
shall deactivate the multistate licensure privilege under the multistate license of any nurse for
the duration of the nurse’s participation in an alternative program.

Article VI. [Coordinated Licensure Information System and Exchange of Information.]
a. All party states shall participate in a coordinated licensure information system of all licensed
registered nurses (RNs) and licensed practical/vocational nurses (LPNs/VNs). This system
will include information on the licensure and disciplinary history of each nurse, as submitted
by party states, to assist in the coordination of nurse licensure and enforcement efforts.
b. The Commission, in consultation with the administrator of the coordinated licensure
information system, shall formulate necessary and proper procedures for the identification,
collection and exchange of information under this Compact.
c. All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials) and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.

d. Current significant investigative information and participation in nonpublic or confidential alternative programs shall be transmitted through the coordinated licensure information system only to party state licensing boards.

e. Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with non-party states or disclosed to other entities or individuals without the express permission of the contributing state.

f. Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board shall not be shared with non-party states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

g. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

h. The Compact administrator of each party state shall furnish a uniform data set to the Compact administrator of each other party state, which shall include, at a minimum:

1. Identifying information;
2. Licensure data;
3. Information related to alternative program participation; and
4. Other information that may facilitate the administration of this Compact, as determined by Commission rules.

i. The Compact administrator of a party state shall provide all investigative documents and information requested by another party state.

Article VII. [Establishment of the Interstate Commission of Nurse Licensure Compact Administrators.]

a. The party states hereby create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators.

1. The Commission is an instrumentality of the party states.

2. Venue is proper, and judicial proceedings by or against the Commission shall be brought solely and exclusively, in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

b. Membership, Voting and Meetings

1. Each party state shall have and be limited to one administrator. The head of the state licensing board or designee shall be the administrator of this Compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the Administrator is appointed. Any vacancy occurring in the
Commission shall be filled in accordance with the laws of the party state in which the vacancy exists.

2. Each administrator shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator’s participation in meetings by telephone or other means of communication.

3. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws or rules of the commission.

4. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article VIII.

5. The Commission may convene in a closed, nonpublic meeting if the Commission must discuss:
   i. Noncompliance of a party state with its obligations under this Compact;
   ii. The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the Commission’s internal personnel practices and procedures;
   iii. Current, threatened or reasonably anticipated litigation;
   iv. Negotiation of contracts for the purchase or sale of goods, services or real estate;
   v. Accusing any person of a crime or formally censuring any person;
   vi. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
   vii. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
   viii. Disclosure of investigatory records compiled for law enforcement purposes;
   ix. Disclosure of information related to any reports prepared by or on behalf of the Commission for the purpose of investigation of compliance with this Compact; or
   x. Matters specifically exempted from disclosure by federal or state statute.

6. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission’s legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

c. The Commission shall, by a majority vote of the administrators, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this Compact, including but not limited to:
   1. Establishing the fiscal year of the Commission;
   2. Providing reasonable standards and procedures:
      i. For the establishment and meetings of other committees; and
      ii. Governing any general or specific delegation of any authority or function of the Commission;
   3. Providing reasonable procedures for calling and conducting meetings of the Commission,
ensuring reasonable advance notice of all meetings and providing an opportunity for
attendance of such meetings by interested parties, with enumerated exceptions designed
to protect the public’s interest, the privacy of individuals, and proprietary information,
including trade secrets. The Commission may meet in closed session only after a majority
of the administrators vote to close a meeting in whole or in part. As soon as practicable,
the Commission must make public a copy of the vote to close the meeting revealing the
vote of each administrator, with no proxy votes allowed;

4. Establishing the titles, duties and authority and reasonable procedures for the election of
the officers of the Commission;

5. Providing reasonable standards and procedures for the establishment of the personnel
policies and programs of the Commission. Notwithstanding any civil service or other
similar laws of any party state, the bylaws shall exclusively govern the personnel policies
and programs of the Commission; and

6. Providing a mechanism for winding up the operations of the Commission and the
equitable disposition of any surplus funds that may exist after the termination of this
Compact after the payment or reserving of all of its debts and obligations;

d. The Commission shall publish its bylaws and rules, and any amendments thereto, in a
convenient form on the website of the Commission.
f. The Commission shall maintain its financial records in accordance with the bylaws.
g. The Commission shall have the following powers:

1. To promulgate uniform rules to facilitate and coordinate implementation and
administration of this Compact. The rules shall have the force and effect of law and shall
be binding in all party states;

2. To bring and prosecute legal proceedings or actions in the name of the Commission,
provided that the standing of any licensing board to sue or be sued under applicable law
shall not be affected;

3. To purchase and maintain insurance and bonds;

4. To borrow, accept or contract for services of personnel, including, but not limited to,
employees of a party state or nonprofit organizations;

5. To cooperate with other organizations that administer state compacts related to the
regulation of nursing, including but not limited to sharing administrative or staff
expenses, office space or other resources;

6. To hire employees, elect or appoint officers, fix compensation, define duties, grant such
individuals appropriate authority to carry out the purposes of this Compact, and to
establish the Commission’s personnel policies and programs relating to conflicts of
interest, qualifications of personnel and other related personnel matters;

7. To accept any and all appropriate donations, grants and gifts of money, equipment,
supplies, materials and services, and to receive, utilize and dispose of the same; provided
that at all times the Commission shall avoid any appearance of impropriety or conflict of
interest;

8. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold,
 improve or use, any property, whether real, personal or mixed; provided that at all times
the Commission shall avoid any appearance of impropriety;
9. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, whether real, personal or mixed;
10. To establish a budget and make expenditures;
11. To borrow money;
12. To appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, and consumer representatives, and other such interested persons;
13. To provide and receive information from, and to cooperate with, law enforcement agencies;
14. To adopt and use an official seal; and
15. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of nurse licensure and practice.

h. Financing of the Commission
1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.
2. The Commission may also levy on and collect an annual assessment from each party state to cover the cost of its operations, activities and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule that is binding upon all party states.
3. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the party states, except by, and with the authority of, such party state.
4. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

i. Qualified Immunity, Defense and Indemnification
1. The administrators, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional, willful or wanton misconduct of that person.
2. The Commission shall defend any administrator, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing herein shall be
Article VIII. [Rulemaking.]
a. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment and shall have the same force and effect as provisions of this Compact;
b. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.
c. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least sixty (60) days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a notice of proposed rulemaking:
   1. On the website of the Commission; and
   2. On the website of each licensing board or the publication in which each state would otherwise publish proposed rules.
d. The notice of proposed rulemaking shall include:
   1. The proposed time, date and location of the meeting in which the rule will be considered and voted upon;
   2. The text of the proposed rule or amendment, and the reason for the proposed rule;
   3. A request for comments on the proposed rule from any interested person; and
   4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.
e. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.
f. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.
g. The Commission shall publish the place, time and date of the scheduled public hearing.
   1. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings will be recorded, and a copy will be made available upon request.
   2. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.
h. If no one appears at the public hearing, the Commission may proceed with promulgation of the proposed rule.
i. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

j. The Commission shall, by majority vote of all administrators, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

k. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment or hearing, provided that the usual rulemaking procedures provided in this Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety or welfare;

2. Prevent a loss of Commission or party state funds; or

3. Meet a deadline for the promulgation of an administrative rule that is required by federal law or rule.

l. The Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the Commission, prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

Article IX. [Oversight, Dispute Resolution and Enforcement.]

a. Oversight

1. Each party state shall enforce this Compact and take all actions necessary and appropriate to effectuate this Compact’s purposes and intent.

2. The Commission shall be entitled to receive service of process in any proceeding that may affect the powers, responsibilities or actions of the Commission, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such proceeding to the Commission shall render a judgment or order void as to the Commission, this Compact or promulgated rules.

b. Default, Technical Assistance and Termination

1. If the Commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

   i. Provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default or any other action to be taken by the Commission; and

   ii. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state’s membership in this Compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges and benefits conferred by this Compact may be terminated on

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the effective date of termination. A cure of the default does not relieve the offending
state of obligations or liabilities incurred during the period of default.
3. Termination of membership in this Compact shall be imposed only after all other means
of securing compliance have been exhausted. Notice of intent to suspend or terminate
shall be given by the Commission to the governor of the defaulting state and to the
executive officer of the defaulting state’s licensing board and each of the party states.
4. A state whose membership in this Compact has been terminated is responsible for all
assessments, obligations and liabilities incurred through the effective date of termination,
including obligations that extend beyond the effective date of termination.
5. The Commission shall not bear any costs related to a state that is found to be in default or
whose membership in this Compact has been terminated unless agreed upon in writing
between the Commission and the defaulting state.
6. The defaulting state may appeal the action of the Commission by petitioning the U.S.
District Court for the District of Columbia or the federal district in which the Commission
has its principal offices. The prevailing party shall be awarded all costs of such litigation,
including reasonable attorneys’ fees.
c. Dispute Resolution
1. Upon request by a party state, the Commission shall attempt to resolve disputes related to
the Compact that arise among party states and between party and non-party states.
2. The Commission shall promulgate a rule providing for both mediation and binding dispute
resolution for disputes, as appropriate.
3. In the event the Commission cannot resolve disputes among party states arising under this
Compact:
   i. The party states may submit the issues in dispute to an arbitration panel, which will be
      comprised of individuals appointed by the Compact administrator in each of the
      affected party states and an individual mutually agreed upon by the Compact
      administrators of all the party states involved in the dispute.
   ii. The decision of a majority of the arbitrators shall be final and binding.
d. Enforcement
1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions
and rules of this Compact.
2. By majority vote, the Commission may initiate legal action in the U.S. District Court for
the District of Columbia or the federal district in which the Commission has its principal
offices against a party state that is in default to enforce compliance with the provisions of
this Compact and its promulgated rules and bylaws. The relief sought may include both
injunctive relief and damages. In the event judicial enforcement is necessary, the
prevailing party shall be awarded all costs of such litigation, including reasonable
attorneys’ fees.
3. The remedies herein shall not be the exclusive remedies of the Commission. The
Commission may pursue any other remedies available under federal or state law.

Article X. [Effective Date, Withdrawal and Amendment.]
a. This Compact shall become effective and binding on the earlier of the date of legislative
enactment of this Compact into law by no less than twenty-six (26) states or December 31,
2018. All party states to this Compact, that also were parties to the prior Nurse Licensure
Compact, superseded by this Compact, (“Prior Compact”), shall be deemed to have
withdrawn from said Prior Compact within six (6) months after the effective date of this Compact.

b. Each party state to this Compact shall continue to recognize a nurse’s multistate licensure privilege to practice in that party state issued under the Prior Compact until such party state has withdrawn from the Prior Compact.

c. Any party state may withdraw from this Compact by enacting a statute repealing the same. A party state’s withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

d. A party state’s withdrawal or termination shall not affect the continuing requirement of the withdrawing or terminated state’s licensing board to report adverse actions and significant investigations occurring prior to the effective date of such withdrawal or termination.

e. Nothing contained in this Compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a non-party state that is made in accordance with the other provisions of this Compact.

f. This Compact may be amended by the party states. No amendment to this Compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

g. Representatives of non-party states to this Compact shall be invited to participate in the activities of the Commission, on a nonvoting basis, prior to the adoption of this Compact by all states.

Article XI. [Construction and Severability.]

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable, and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held to be contrary to the constitution of any party state, this Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.
Civil Asset Forfeiture Reform

The Act ends the practice of civil forfeiture but preserves criminal forfeiture, in which property is subject to forfeit if the owner is convicted of a crime. It requires proceeds to go to the state’s general fund, not to individual law enforcement agencies. The Act amends and revises forfeiture procedures when the State seeks to administer pecuniary punishment on a person convicted of a crime in instances where the State can also prove that property was used in or acquired from criminal activity.

Submitted as:
New Mexico
HB 560
Status: Signed into law on April 10, 2015.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Purpose.]
A. The purposes of the [Forfeiture] Act are to:
   1) make uniform the standards and procedures for the seizure and forfeiture of property subject to forfeiture;
   2) protect the constitutional rights of persons whose property is subject to forfeiture and of innocent owners holding interests in property subject to forfeiture;
   3) deter criminal activity by reducing its economic incentives;
   4) increase the pecuniary loss from criminal activity;
   5) protect against the wrongful forfeiture of property; and
   6) ensure that only criminal forfeiture is allowed in this state.
B. The [Forfeiture] Act:
   1) applies to seizures, forfeitures and dispositions of property subject to forfeiture pursuant to laws that specifically apply the [Forfeiture] Act; and
   2) does not apply to contraband, which is subject to seizure pursuant to applicable state laws, but is not subject to forfeiture pursuant to the [Forfeiture] Act.

Section 2. [Definitions]
A. “abandoned property”:
   1) means personal property the rights to which and the control of which an owner has intentionally relinquished; and
   2) does not mean real property;
B. “actual knowledge” means a direct and clear awareness of information, a fact or a condition;
C. “contraband” means goods that may not be lawfully imported, exported or possessed, including drugs that are listed in Schedule I, II, III, IV or V of the Controlled Substances Act and that are possessed without a valid prescription;
D. “conveyance” means a device used for transportation and:
   1) includes a motor vehicle, trailer, snowmobile, airplane, vessel and any equipment attached to the conveyance; but
   2) does not include property that is stolen or taken in violation of a law;
E. “conviction” or “convicted” means that a person has been found guilty of a crime in a trial court whether by a plea of guilty or nolo contendere or otherwise and whether the sentence is deferred or suspended;
F. “crime” means a violation of a criminal statute for which property of the offender is subject to seizure and forfeiture;
G. “instrumentality” means all property that is otherwise lawful to possess that is used in the furtherance or commission of an offense to which forfeiture applies and includes land, a building, a container, a conveyance, equipment, materials, a product, a computer, computer software, a telecommunications device, a firearm, ammunition, a tool, money, a security and a negotiable instrument and other devices used for exchange of property;
H. “law enforcement agency” means the employer of a law enforcement officer that is authorized to seize or has seized property pursuant to the [Forfeiture] Act;
I. “law enforcement officer” means:
(1) a state or municipal police officer, county sheriff, deputy sheriff, conservation officer, motor transportation enforcement officer or other state employee authorized by state law to enforce criminal statutes; but
(2) does not mean a correctional officer;
J. “owner” means a person who has a legal or equitable ownership interest in property;
K. “property” means tangible or intangible personal property or real property;
L. “property subject to forfeiture” means property or an instrumentality described and declared to be subject to forfeiture by the [Forfeiture] Act or a state law outside of the [Forfeiture] Act; and
M. “secured party” means a person with a security or other protected interest in property, whether the interest arose by mortgage, security agreement, lien, lease or otherwise; the purpose of which interest is to secure the payment of a debt or protect a potential debt owed to the secured party.

Section 3 [Forfeiture—Conviction Required—Seizure of Property—With Process—Without Process]
A. A person's property is subject to forfeiture if:
(1) the person was arrested for an offense to which forfeiture applies;
(2) the person is convicted by a criminal court of the offense; and
(3) the state establishes by clear and convincing evidence that the property is subject to forfeiture as provided in Subsection B of this section.
B. Following a person's conviction for an offense to which forfeiture applies, a court may order the person to forfeit:
(1) property the person acquired through commission of the offense;
(2) property directly traceable to property acquired through the commission of the offense; and
(3) any instrumentality the person used in the commission of the offense.
C. Nothing in this section shall prevent property from being forfeited by the terms of a plea agreement that is approved by a court or by other agreement of the parties to a criminal proceeding.
D. Subject to the provisions of [Insert citation], at any time, at the request of the state, a court may issue an ex parte preliminary order to seize property that is subject to forfeiture and for which forfeiture is sought and to provide for the custody of the property. The execution on
the order to seize the property and the return of the property, if applicable, are subject to the
[Forfeiture] Act and other applicable state laws. Before issuing an order pursuant to this
subsection, the court shall make a determination that:
(1) there is a substantial probability that:
   (a) the property is subject to forfeiture;
   (b) the state will prevail on the issue of forfeiture; and
   (c) failure to enter the order will result in the property being destroyed, removed from the
       state or otherwise made unavailable for forfeiture; and
(2) the need to preserve the availability of the property through the entry of the requested
order outweighs the hardship to the owner and other parties known to be claiming
interests in the property.
E. Property subject to forfeiture may be seized at any time, without a prior court order, if:
(1) the seizure is incident to a lawful arrest for a crime or a search lawfully conducted
    pursuant to a search warrant and the law enforcement officer making the arrest or
    executing the search has probable cause to believe the property is subject to forfeiture and
    that the subject of the arrest or search warrant is an owner of the property;
(2) the property subject to seizure is the subject of a previous judgment in favor of the state;
    or
(3) the law enforcement officer making the seizure has probable cause to believe the property
    is subject to forfeiture and that the delay occasioned by the need to obtain a court order
    would result in the removal or destruction of the property or otherwise frustrate the
    seizure.

Section 4. [Receipt for Seized Property—Replevin Hearing]
A. When a law enforcement officer seizes property that is subject to forfeiture, the officer shall
    provide an itemized receipt to the person possessing the property or, in the absence of a
    person to whom the receipt could be given, shall leave the receipt in the place where the
    property was found, if possible.
B. Following the seizure of property, the defendant in the related criminal matter or another
    person who claims an interest in seized property may, at any time before sixty days prior to a
    related criminal trial, claim an interest in seized property by a motion to the court to issue a
    writ of replevin. A motion filed pursuant to this section shall include facts to support the
    person's alleged interest in the property.
C. A person who makes a timely motion pursuant to this section shall have a right to a hearing
    on the motion before the resolution of any related criminal matter or forfeiture proceeding
    and within thirty days of the date on which the motion is filed.
D. At least ten days before a hearing on a motion filed pursuant to this section, the state shall
    file an answer or responsive motion that shows probable cause for the seizure.
E. A court shall grant a claimant's motion if the court finds that:
   (1) it is likely that the final judgment will require the state to return the property to the
        claimant;
   (2) the property is not reasonably required to be held for investigatory reasons; or
   (3) the property is the only reasonable means for a defendant to pay for legal representation
        in a related criminal or forfeiture proceeding.
F. In its discretion, the court may order the return of funds or property sufficient to obtain legal
counsel but less than the total amount seized, and it may require an accounting.
G. In lieu of ordering the issuance of the writ of replevin, a court may order:

1. the state to give security or written assurance for satisfaction of any judgment, including damages, that may be rendered in a related forfeiture action; or
2. any other relief the court deems to be just.

Section 5. [Complaint of Forfeiture—Service of Process.]

A. Within thirty days of making a seizure of property or simultaneously upon filing a related criminal indictment, the state shall file a complaint of ancillary forfeiture proceedings or return the property to the person from whom it was seized. A complaint of ancillary forfeiture proceedings shall include:

1. a description of the property seized;
2. the date and place of seizure of the property;
3. the name and address of the law enforcement agency making the seizure;
4. the specific statutory and factual grounds for the seizure;
5. whether the property was seized pursuant to an order of seizure, and if the property was seized without an order of seizure, an affidavit from a law enforcement officer stating the legal and factual grounds why an order of seizure was not required; and
6. in the complaint caption and in the complaint, the names of persons known to the state who may claim an interest in the property and the basis for each person's alleged interest.

B. The complaint shall be served upon the person from whom the property was seized, the person's attorney of record and all persons known or reasonably believed by the state to claim an interest in the property. A copy of the complaint shall also be published at least three times in a newspaper of general circulation in the district of the court having jurisdiction or on the sunshine portal until the forfeiture proceeding is resolved.

Section 6. [Forfeiture Proceedings— Determination—Substitution of Property— Constitutionality—Appeal.]

A. A person who claims an interest in seized property shall file an answer to the complaint of forfeiture within thirty days of the date of service of the complaint. The answer shall include facts to support the claimant's alleged interest in the property.

B. The district courts have jurisdiction over forfeiture proceedings, and venue for a forfeiture proceeding is in the same court in which venue lies for the criminal matter related to the seized property.

C. The forfeiture proceeding shall begin after the conclusion of the trial for the related criminal matter in an ancillary proceeding that relates to a defendant's property before the same judge and jury, if applicable, and the court, and the jury, if applicable, may consider the forfeiture of property seized from other persons at the same time or in a later proceeding. If the criminal defendant in the related criminal matter is represented by the public defender department, the chief public defender or the district public defender may authorize department representation of the defendant in the forfeiture proceeding.

D. Discovery conducted in an ancillary forfeiture proceeding is subject to the rules of criminal procedure.

E. An ancillary forfeiture proceeding that relates to the forfeiture of property valued at less than twenty thousand dollars ($20,000) shall be held before a judge only.

F. If the state fails to prove, by clear and convincing evidence, that a person whose property is alleged to be subject to forfeiture is an owner of the property:
(1) the forfeiture proceeding shall be dismissed and the property shall be delivered to the owner, unless the owner's possession of the property is illegal; and
(2) the owner shall not be subject to any charges by the state for storage of the property or expenses incurred in the preservation of the property.

G. The court shall enter a judgment of forfeiture and the seized property shall be forfeited to the state if the state proves by clear and convincing evidence that:
(1) the property is subject to forfeiture;
(2) the criminal prosecution of the owner of the seized property resulted in a conviction; and
(3) the value of the property to be forfeited does not unreasonably exceed:
   (a) the pecuniary gain derived or sought to be derived by the crime;
   (b) the pecuniary loss caused or sought to be caused by the crime; or
   (c) the value of the convicted owner's interest in the property.

H. A court shall not accept a plea agreement or other arrangement by which a defendant contributes or donates property to a person, charity or other organization in full or partial fulfillment of responsibility established in the court's proceeding.

I. Following a person's conviction, the state may make a motion for forfeiture of substitute property owned by the person that is equal to but does not exceed the value of property that is subject to forfeiture but that the state is unable to seize. The court shall order the forfeiture of substitute property only if the state proves by a preponderance of the evidence that the person intentionally transferred, sold or deposited property with a third party to avoid the court's jurisdiction and the forfeiture of the property.

J. A person is not jointly and severally liable for orders for forfeiture of another person's property. When ownership of property is unclear, a court may order each person to forfeit the person's property on a pro rata basis or by another means the court deems equitable.

K. At any time following the conclusion of a forfeiture proceeding, the person whose property was forfeited may petition the court to determine whether the forfeiture was unconstitutionally excessive pursuant to the state or federal constitution.

L. At a non-jury hearing on the petition, the petitioner has the burden of establishing by a preponderance of the evidence that the forfeiture was grossly disproportional to the seriousness of the criminal offense for which the person was convicted.

M. In determining whether the forfeiture is unconstitutionally excessive, the court may consider all relevant factors, including:
   (1) the seriousness of the criminal offense and its impact on the community, the duration of the criminal activity and the harm caused by the defendant;
   (2) the extent to which the defendant participated in the offense;
   (3) the extent to which the property was used in committing the offense;
   (4) the sentence imposed for the commission of the crime that relates to the property that is subject to forfeiture; and
   (5) whether the criminal offense was completed or attempted.

N. In determining the value of the property subject to forfeiture, the court may consider relevant factors, including the:
   (1) fair market value of the property;
   (2) value of the property to the defendant, including hardship that the defendant will suffer if the forfeiture is realized; and hardship from the loss of a primary residence, motor vehicle or other property to the defendant's family members or others if the property is forfeited.
O. The court shall not consider the value of the property to the state when it determines whether
the forfeiture of property is constitutionally excessive.

P. A party to a forfeiture proceeding may appeal a district court's decision regarding the seizure,
forfeiture and distribution of property pursuant to the [Forfeiture] Act.

Section 7, [Title to Seized Property—Disposition of Forfeited Property and Proceeds.]
A. The state acquires provisional title to seized property at the time the property was used or
acquired in connection with an offense that subjects the property to forfeiture. Provisional
title authorizes the state to hold and protect the property. Title to the property shall vest with
the state when a trier of fact renders a final forfeiture verdict and the title relates back to the
time when the state acquired provisional title; provided that the title is subject to claims by
third parties that are adjudicated pursuant to the [Forfeiture] Act.

B. Unless possession of the property is illegal or a different disposition is specifically provided
for by law and except as provided in this section, forfeited property that is not currency shall
be delivered along with any abandoned property to the state treasurer for disposition at a
public auction. Forfeited currency and all sale proceeds of the sale of forfeited or abandoned
property shall be deposited in the general fund.

C. Proceeds from the sale of forfeited property received by the state from another jurisdiction
shall be deposited in the general fund.

D. A property interest forfeited to the state pursuant to the [Forfeiture] Act is subject to the
interest of a secured party unless, in the forfeiture proceeding, the state proves by clear and
convincing evidence that the secured party had actual knowledge of the crime that relates to
the seizure of the property.

Section 8. [Innocent Owners.]
A. The property of an innocent owner, as provided in this section, shall not be forfeited.

B. A person who claims to be an innocent owner has the burden of production to show that the
person:
   (1) holds a legal right, title or interest in the property seized; and
   (2) held an ownership interest in the seized property at the time the illegal conduct that gave
rise to the seizure of the property occurred or was a bona fide purchaser for fair value.

C. The state shall immediately return property to an established innocent owner who has an
interest in homesteaded property, a motor vehicle valued at less than ten thousand dollars
($10,000) or a conveyance that is encumbered by a security interest that was perfected
pursuant to state law or that is subject to a lease or rental agreement, unless the secured party
or lessor had actual knowledge of the criminal act upon which the forfeiture was based.

D. If a person establishes that the person is an innocent owner pursuant to [Insert citation] and
the state pursues a forfeiture proceeding with respect to that person's property, other than
property described in [Insert citation], to successfully forfeit the property, the state shall
prove by clear and convincing evidence that the innocent owner had actual knowledge of the
underlying crime giving rise to the forfeiture.

E. A person who acquired an ownership interest in property subject to forfeiture after the
commission of a crime that gave rise to the forfeiture and who claims to be an innocent
owner has the burden of production to show that the person has legal right, title or interest in
the property seized under this section.
F. If a person establishes that the person is an innocent owner as provided in Subsection B of this section and the state pursues a forfeiture proceeding against the person's property, to successfully forfeit the property, the state shall prove by clear and convincing evidence that at the time the person acquired the property, the person:
   (1) had actual knowledge that the property was subject to forfeiture; or
   (2) was not a bona fide purchaser who was without notice of any defect in title and who gave valuable consideration.

G. If the state fails to meet its burdens as provided in Subsections C and D of this section, the court shall find that the person is an innocent owner and shall order the state to relinquish all claims of title to the innocent owner's property.

Section 9. [Safekeeping of Seized Property Pending Disposition—Selling or Retaining Seized Property Prohibited.]
A. Seized currency alleged to be subject to forfeiture shall be deposited with the clerk of the district court in an interest-bearing account.
B. Seized property other than currency or real property, not required by federal or state law to be destroyed, shall be:
   (1) placed under seal; and
   (2) removed to a place designated by the district court; or
   (3) held in the custody of a law enforcement agency.
C. Seized property shall be kept by the custodian in a manner to protect it from theft or damage and, if ordered by the district court, insured against those risks.
D. A law enforcement agency shall not retain forfeited or abandoned property.

Section 10. [Reporting.]
A. Every law enforcement agency shall prepare an annual report of the agency's seizures and forfeitures conducted pursuant to the [Forfeiture] Act, and seizures and forfeitures conducted pursuant to federal forfeiture law, and the report shall include:
   (1) the total number of seizures of currency and the total amount of currency seized in each seizure;
   (2) the total number of seizures of property and the number and types of items seized in each seizure;
   (3) the market value of each item of property seized; and
   (4) the total number of occurrences of each class of crime that resulted in the agency's seizure of property.
B. A law enforcement agency shall submit its annual reports to the department of public safety and to the district attorney's office in the agency's district. An agency that did not engage in seizure or forfeiture pursuant to the [Forfeiture] Act or federal forfeiture law, or both, shall report that fact in its annual report.
C. The department of public safety shall compile the reports submitted by each law enforcement agency and issue an aggregate report of all forfeitures in the state.
D. By April 1 of each year, the department of public safety shall publish on its website the department's aggregate report and individual law enforcement agency reports submitted for the previous year.
Section 11. [Return of Property—Damages—Costs.]

A. A law enforcement agency that holds seized property shall return the seized property to the owner of the property within a reasonable period of time that does not exceed five days after:

1. a court finds that a person had a bona fide security interest in the property;
2. a court finds that the owner was an innocent owner;
3. the acquittal of or dismissal of related criminal charges against the owner of the property; or
4. the disposal of the criminal charge that was the basis of the forfeiture proceedings by nolle prosequi.

B. A law enforcement agency that holds seized property is responsible for any damages, storage fees and related costs applicable to property that is returned to an owner pursuant to this section.

Section 12. [Transfer of Forfeitable Property to the Federal Government.]

A. A law enforcement agency shall not directly or indirectly transfer seized property to a federal law enforcement authority or other federal agency unless:

1. the value of the seized property exceeds fifty thousand dollars ($50,000), excluding the potential value of the sale of contraband; and
2. the law enforcement agency determines that the criminal conduct that gave rise to the seizure is interstate in nature and sufficiently complex to justify the transfer of the property; or
3. the seized property may only be forfeited under federal law.

B. The law enforcement agency shall not transfer property to the federal government if the transfer would circumvent the protections of the [Forfeiture] Act that would otherwise be available to a putative interest holder in the property.
Crime Victim Address Protection Program

The Act establishes crime victim address protection program for victims of domestic violence and abuse, stalking, and felony sexual offenses. It allows crime victims to use an address provided by the Secretary of State in lieu of the person's actual physical address and allows program participants to vote by mail-in absentee ballot.

Submitted as:
Kentucky
HB 222
Status: Signed into law on March 22, 2013.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Definitions.]
(1) “Address” means a residential street address, school address, or work address of an individual, as specified on the application of an individual to be a program participant under this section;
(2) “Applicant” means a person applying for certification in the address confidentiality program under Sections 1 to 10 of this Act;
(3) “Criminal offense against a victim who is a minor” has the same meaning as in [Insert citation.];
(4) “Domestic violence and abuse” has the same meaning as in [Insert citation.];
(5) “Program participant” means a person certified as a program participant under Sections 1 to 10 of this Act;
(6) “Sex crime” means an offense or an attempt to commit an offense defined in [Insert citation.] or any criminal attempt to commit an offense specified in this subsection, regardless of the penalty for the attempt;
(7) “Specified offense” means:
   (a) Domestic violence and abuse;
   (b) Stalking;
   (c) A sex crime;
   (d) A criminal offense against a victim who is a minor;
   (e) A similar federal offense; or
   (f) A similar offense from another state or territory; and
(8) “Stalking” means conduct prohibited [Insert citation.]

Section 2. [Crime victim address protection program.]
(1) On or after [July 1, 2013], the Secretary of State shall create a crime victim address protection program.
(2) The crime victim address protection program shall be open to victims of a specified offense who are United States citizens and residents of the state, without any cost to the program participant.
(3) The Secretary of State shall require that each person employed in the Office of the Secretary of State directly responsible for the administration of the crime victim address protection program submit his or her fingerprints to the Department of State. The Department of State shall exchange fingerprint data with the [State Police] and the Federal Bureau of Investigation in order to conduct a criminal history background check of each employee directly responsible for the administration of the program.

Section 3. [Address for voting purposes.]

(1) Upon the creation of the crime victim address protection program, an applicant, a parent or guardian acting on behalf of a minor, a guardian acting on behalf of a person who is declared incompetent, or a designee of an applicant or a parent or guardian of a minor or a guardian of a person declared incompetent who cannot for any reason apply themselves, may apply to the Secretary of State to have an address designated by the Secretary of State serve for voting purposes as the address of the applicant, the minor, or the incompetent person. The Secretary of State shall approve an application if it is filed in the manner and on the form prescribed by the Secretary of State by administrative regulation and if it contains:

(a) A sworn statement by the applicant that:
1. The applicant or the minor or the incompetent person on whose behalf the application is made is a victim of a specified offense in an ongoing criminal case or in a criminal case that resulted in a conviction by a judge or jury or by a defendant's guilty plea; or
2. The applicant or the minor or the incompetent person on whose behalf the application is made has been granted an emergency protective order or a domestic violence order under [Insert citation.] by a court of competent jurisdiction within the [state] and the order is in effect at the time of application;

(b) A sworn statement by the applicant that disclosure of the address of the applicant would endanger the safety of the applicant or the safety of the children of the applicant, or the minor or incompetent person on whose behalf the application is made.

(c) The mailing address and the phone number or numbers where the applicant can be contacted by the Secretary of State;

(d) The new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of a specified offense; and

(e) The signature of the applicant and of a representative of any office designated under Section 6 of this Act as a referring agency who assisted in the preparation of the application, and the date on which the applicant signed the application.

(2) Applications shall be filed with the Office of the Secretary of State.

(3) Upon the filing of a properly completed application, the Secretary of State shall certify the applicant as a program participant if the applicant is not required to register as a sex offender or is not otherwise prohibited from participating in the program.

(4) Applicants shall be certified for two (2) years following the date of filing unless the certification is withdrawn or invalidated before that date. The Secretary of State shall promulgate an administrative regulation to establish a renewal procedure.

(5) A person who falsely attests in an application that disclosure of the address of the applicant would endanger the safety of the applicant or the safety of the children of the applicant, or
the minor or incompetent person on whose behalf the application is made, or who knowingly
provides false or incorrect information upon making an application may be found guilty of a
violation of [Insert citation.]
(6) The addresses of individuals applying for entrance into the crime victim address
confidentiality program and the addresses of those certified as program participants shall be
exempt from disclosure under the Open Records Act [Insert citation.]
(7) A program participant shall notify the Office of the Secretary of State of a change of address
within seven (7) days of the change of address.

Section 4. [Cancellation of certification of program participants.]
(1) The Secretary of State may cancel certification of a program participant if within fourteen
(14) days:
1) From the date of the program participant changing his or her name, the program
participant fails to notify the Secretary of State that he or she has obtained a name
change; however, the program participant may reapply under his or her new name; or
2) From the date of changing his or her address, the program participant fails to notify
the Secretary of State of the change of address.
(2) The Secretary of State shall cancel certification of a program participant who applies using
false information.
(3) The Secretary of State shall send notice of certification cancellation to the program
participant. The notice of certification cancellation shall set out the reasons for cancellation.
The program participant has the right to appeal the decision within thirty (30) days under
procedures established by the Office of the Secretary of State by administrative regulation.
(4) The Secretary of State shall cancel certification of a program participant who is required to
register as a sex offender.
(5) A program participant may withdraw from the program by providing the Secretary of State
with notice of his or her intention to withdraw from the program. The Secretary of State shall
promulgate by administrative regulations a secure procedure by which to ensure that the
program participant's request for withdrawal is legitimate.

Section 5. [Protection of files of program participants.] The Secretary of the State shall not make available for inspection or copying any records in a file
of a program participant, other than the address designated by the Secretary of State, except
under the following circumstances:
(1) If directed by a court order signed by a judge or justice of a court of competent jurisdiction
within the [state]; or
(2) Upon written request by the chief law enforcement officer of a city or county, or the
commander of a Department of [Kentucky] State Police post or branch, if related to an
ongoing official investigation. Requests shall include the reason the information is needed by
the law enforcement agency.

Section 6. [Counseling and shelter services.] The Secretary of State shall establish a list of state and local agencies and nonprofit agencies that
provide counseling and shelter services to victims of a specified offense to assist persons
applying to be program participants. Any assistance and counseling rendered to applicants by the
Office of the Secretary of State or its designees shall in no way be construed as legal advice.
Section 7. [Absentee ballots.]

(1) A program participant who is otherwise qualified to vote may register to vote and apply for and submit a mail-in absentee ballot under this section.

(2) Using the authority granted under subsection (1) of Section 10 of this Act, the State Board of Elections shall design a system allowing a county clerk to shield from public view all voting records of a program participant, including the name and address of a program participant, and allowing a program participant to vote by mail-in absentee ballot. This authority may be used to modify statutory or regulatory requirements that would lead to disclosure of the program participant's name and address, but shall not include authority to waive or modify any other requirements relative to the program participant's qualifications to vote, including age and geographic residency.

(3) The program participant may receive mail-in absentee ballots for all elections in the jurisdiction in which that individual resides in the same manner as a person requesting an absentee ballot under subsection (1)(a) of Section 11 of this Act. The county clerk shall transmit a mail-in absentee ballot to the program participant at the address designated by the participant in his or her application.

(4) Neither the name nor the address of a program participant shall be included in any list of registered voters available to the public, including any list inspected under [Insert citation.]

Section 8. [Custody or visitation orders.]
Nothing in this chapter, nor participation in the program created in this chapter, shall affect custody or visitation orders in effect prior to or during program participation.

Section 9. [Negligent disclosure of actual address.]
No actionable duty or any right of action shall accrue against the state, a county, a municipality, an agency of the state or county or municipality, or an employee of the state or county or municipality in the event of negligent disclosure of a program participant's actual address.

Section 10. [Administrative regulations.]

(1) The State Board of Elections may promulgate administrative regulations to implement Sections 7 and 11 of this Act.

(2) The Secretary of State may promulgate administrative regulations to implement Sections 1 to 6, 8, and 9 of this Act.

Section 11. [Requests for absentee ballots.]

(1) All requests for an application for an absentee ballot may be transmitted by telephone, facsimile machine, by mail, by electronic mail, or in person. Except as provided in paragraph (b) of this subsection, all applications for an absentee ballot shall be transmitted only by mail to the voter or in person at the option of the voter, except that the county clerk shall hand an application for an absentee ballot to a voter permitted to vote by absentee ballot who appears in person to request the application, or shall mail the application to a voter permitted to vote by absentee ballot who requests the application by telephone, facsimile machine, or mail. The absentee ballot application may be requested by the voter or the spouse, parents, or children of the voter, but shall be restricted to the use of the voter. Except for qualified voters who apply pursuant to the requirements of [Insert citation.], those who are incarcerated in jail but have yet to be convicted, military personnel confined to a military base on election day, and
persons who qualify under paragraph (a)7 of this subsection, absentee ballots shall not be
mailed to a voter's residential address located in the county in which the voter is registered.
In the case of ballots returned by mail, the county clerk shall provide an absentee ballot, two
(2) official envelopes for returning the ballot, and instructions for voting to a voter who
presents a completed application for an absentee ballot as provided in this section and who is
properly registered as stated in his or her application.

(a) The following voters may apply to cast their votes by mail-in absentee ballot if the
application is received not later than the close of business hours seven (7) days before the
election:
1. Voters permitted to vote by absentee ballot pursuant to [Insert citation.];
2. Voters who are residents of [state] who are members of the Armed Forces,
dependents of members of the Armed Forces, and citizens residing overseas;
3. Voters who are students who temporarily reside outside the county of their residence;
4. Voters who are incarcerated in jail who have been charged with a crime but have not
been convicted of the crime;
5. Voters who change their place of residence to a different state while the registration
books are closed in the new state of residence before an election of electors for
President and Vice President of the United States, who shall be permitted to cast an
absentee ballot for electors for President and Vice President of the United States only;
6. Voters who temporarily reside outside the state but who are still eligible to vote in
this state;
7. Voters who are prevented from voting in person at the polls on election day and from
casting an absentee ballot in person in the county clerk's office on all days absentee
voting is conducted prior to election day because their employment location requires
them to be absent from the county all hours and all days absentee voting is conducted
in the county clerk's office; and
8. Voters who are program participants in the Secretary of State's crime victim address
confidentiality protection program as authorized by Section 7 of this Act.
(b) Residents of [state] who are members of the Armed Forces, dependents of members of
the Armed Forces, and overseas citizens, may apply for an absentee ballot by means of
the federal post-card application, which may be transmitted to the county clerk's office by
mail or by facsimile machine. The application may be used to register, reregister, and to
apply for an absentee ballot. If the federal post-card application is received at any time
not less than seven (7) days before the election, the county clerk shall affix his or her seal
to the application form upon receipt.
(c) Absentee voting shall be conducted in the county clerk's office or other place designated
by the county board of elections and approved by the State Board of Elections during
normal business hours for at least the twelve (12) working days before the election. A
county board of elections may permit absentee voting to be conducted on a voting
machine for a period longer than the twelve (12) working days before the election.
(d) Any qualified voter in the county who is not permitted to vote by absentee ballot under
paragraph (a) of this subsection who will be absent from the county on any election day
may, at any time during normal business hours on those days absentee voting is
conducted in the county clerk's office, make application in person to the county clerk to
vote on a voting machine in the county clerk's office or other place designated by the
county board of elections and approved by the State Board of Elections.

(e) The following voters may, at any time during normal business hours on those days
absentee voting is conducted in the county clerk's office, make application in person to
the county clerk to vote on a voting machine in the county clerk's office or other place
designated by the county board of elections and approved by the State Board of
Elections:

1) Voters who are residents of [state] who are members of the Armed Forces,
dependents of members of the Armed Forces, and citizens residing overseas, who will
be absent from the county on any election day;
2) Voters who are students who temporarily reside outside the county of their residence;
3) Voters who have surgery scheduled that will require hospitalization on election day,
and the spouse of the voter;
4) Voters who temporarily reside outside the state but who are still eligible to vote in
this state and who will be absent from the county on any election day;
5) Voters who are residents of [state] who are members of the Armed Forces confined to
a military base on election day and who learn of that confinement within seven (7)
days or less of an election and are not eligible for a paper absentee ballot under this
subsection; and
6) A voter who is a pregnant woman in her last trimester of pregnancy at the time she
wishes to vote under this paragraph. The application form for a voter under this
subparagraph shall be prescribed by the State Board of Elections, which shall contain
the woman's sworn statement that she is in fact in her last trimester of pregnancy at
the time she wishes to vote.

(f) Voters who change their place of residence to a different state while the registration
books are closed in the new state of residence before a presidential election shall be
permitted to cast an absentee ballot for President and Vice President only, by making
application in person to the county clerk to vote on a voting machine in the county clerk's
office or other place designated by the county board of elections and approved by the
State Board of Elections.

(g) Any member of the county board of elections, any precinct election officer appointed to
serve in a precinct other than that in which he or she is registered, any alternate precinct
election officer, any deputy county clerk, any staff for the State Board of Elections, and
any staff for the county board of elections may vote on a voting machine in the county
clerk's office or other place designated by the county board of elections, and approved by
the State Board of Elections, up to the close of normal business hours on the day before
the election. The application form for those persons shall be prescribed by the State
Board of Elections and, in the case of application by precinct election officers, shall
contain a verification of appointment signed by a member of the county board of
elections. If an alternate precinct election officer or a precinct election officer appointed
to serve in a precinct other than that in which he or she is registered receives his or her
appointment while absentee voting is being conducted in the county, such officer may
vote on a voting machine in the county clerk's office or other place designated by the
county board of elections, and approved by the State Board of Elections, up to the close
of normal business hours on the day before the election. In case of such voters, the
verification of appointment shall also contain the date of appointment. The applications
shall be restricted to the use of the voter only.

(h) The members of the county board of elections or their designees who provide equal
representation of both political parties may serve as precinct election officers, without
compensation, for all absentee voting performed on a voting machine in the county
clerk’s office or other place designated by the county board of elections and approved by
the State Board of Elections. If the members of the county board of elections or their
designees serve as precinct election officers for the absentee voting, they shall perform
the same duties and exercise the same authority as precinct election officers who serve on
the day of an election. If the members of the county board of elections or their designees
do not serve as precinct election officers for the absentee voting, the county clerk or
deputy county clerks shall supervise the absentee voting.

(i) Any individual qualified to appoint challengers for the day of an election may also
appoint challengers to observe all absentee voting performed at the county clerk’s office
or other place designated by the county board of elections, and approved by the State
Board of Elections, and those challengers may exercise the same privileges as challengers
appointed for observing voting on the day of an election at a regular polling place.

(2) The clerk shall type the name of the voter permitted to vote by absentee ballot on the
application form for that person’s use and no other. The absentee ballot application form shall
be in the form prescribed by the State Board of Elections, shall bear the seal of the county
clerk, and shall contain the following information: name, residential address, precinct, party
affiliation, statement of the reason the person cannot vote in person on election day,
statement of where the voter shall be on election day, statement of compliance with residency
requirements for voting in the precinct, and the voter’s mailing address for an absentee ballot.
The form shall be verified and signed by the voter. A notice of the actual penalty provisions
in [Insert citation.] shall be printed on the application.

(3) If the county clerk finds that the voter is properly registered as stated in his or her application
and qualifies to receive an absentee ballot by mail, he or she shall mail to the voter an
absentee ballot, two (2) official envelopes for returning the ballot, and instructions for voting.
The county clerk shall complete a postal form for a certificate of mailing for ballots mailed
within the fifty (50) states, and it shall be stamped by the postal service when the ballots are
mailed. An absentee ballot may be transmitted by facsimile machine to a resident of [state]
who is a member of the Armed Forces, a dependent of a member of the Armed Forces, or a
citizen residing overseas.

(4) Absentee ballots which are requested prior to the printing of the ballots shall be mailed by the
county clerk to the voter within three (3) days of the receipt of the printed ballots; and
absentee ballots which are requested subsequent to the receipt of the ballots by the county
clerk shall be mailed to the voter within three (3) days of the receipt of the request.

(5) The clerk shall cause ballots to be printed fifty (50) days prior to each primary or general
election.

(6) The outer envelope shall bear the words "Absentee Ballot" and the address and official title
of the county clerk and shall provide space for the voter’s signature, voting address, precinct
number, and signatures of two (2) witnesses if the voter signs the form with the use of a mark
instead of the voter’s signature. A detachable flap on the inner envelope shall provide space
for the voter’s signature, voting address, precinct number, signatures of two (2) witnesses if
the voter signs the form with the use of a mark instead of the voter’s signature and notice of
penalty provided in [insert citation.] The clerk shall type the voter's address and precinct number in the upper left hand corner of the outer envelope and of the detachable flap on the inner envelope immediately below the blank space for the voter's signature. The inner envelope shall be blank. The clerk shall retain the application and the postal form required by subsection (3) of this section for twenty-two (22) months after the election.

(7) Any person who has received an absentee ballot by mail but who knows at least seven (7) days before the date of the election that he or she will be in the county on election day and who has not voted pursuant to the provisions of [Insert citation.] shall cancel his or her absentee ballot and vote in person. The voter shall return the absentee ballot to the county clerk's office no later than seven (7) days prior to the date of the election. Upon the return of the absentee ballot, the clerk shall mark on the outer envelope of the sealed ballot or the unmarked ballot the words “Canceled because voter appeared to vote in person.” Sealed envelopes so marked shall not be opened. The clerk shall remove the voter's name from the list of persons who were sent absentee ballots, and the voter may vote in the precinct in which he or she is properly registered.

(8) Any voter qualified for a mail-in absentee ballot who does not receive a requested mail-in ballot within a reasonable amount of time shall contact the county clerk, who shall reissue a second ballot. The county clerk shall keep a record of the absentee ballots issued and returned by mail, and the absentee voting that is performed on the voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections, to verify that only the first voted ballot to be returned by the voter is counted. Upon the return of any ballot after the first ballot is returned, the clerk shall mark on the outer envelope of the sealed ballot or the unmarked ballot the words “Canceled because ballot reissued.”

(9) Any member of the military who has received an absentee ballot by mail but who knows that he or she will be in the county on election day and who has not voted pursuant to the provisions of [Insert citation.] shall cancel his or her absentee ballot and vote in person. The voter shall return the absentee ballot to the county clerk's office on or before election day. Upon the return of the absentee ballot, the clerk shall mark on the outer envelope of the sealed ballot or the unmarked ballot the words “Canceled because voter appeared to vote in person.” Sealed envelopes so marked shall not be opened. The clerk shall remove the voter's name from the list of persons who were sent absentee ballots, provide the voter with written authorization to vote at the precinct, and the voter may vote in the precinct in which he or she is properly registered.
Establishing THC Blood Levels for the Purposes of DUI Law (Statement)

This Act states that if a driver's blood contains five nanograms or more of delta 9-tetrahydrocannabinol (THC) per milliliter in whole blood (5 ng/mL) at the time of the offense or within a reasonable time thereafter, this fact gives rise to a permissible inference that the defendant was under the influence of one or more drugs. THC is the primary psychoactive component of marijuana. DUI and DWAI are misdemeanors. Vehicular homicide is a class 3 felony if the driver was under the influence of alcohol, drugs, or both. Vehicular assault is a class 4 felony if the driver was under the influence of alcohol, drugs, or both.

In a trial for DUI or DWAI, a defendant's valid medical marijuana registry identification card may not be used as part of the prosecution's case in chief. In addition, in a traffic stop, the driver's possession of a valid medical marijuana registry identification card must not, in the absence of other contributing factors, constitute probable cause for a peace officer to require the analysis of the driver's blood.

The Act also clarifies state law to match current practice by stating that in cases of vehicular homicide or vehicular assault, if a driver's BAC was 0.08 or greater at the time of the offense or within a reasonable time thereafter, this fact gives rise to a permissible inference that the defendant was under the influence of alcohol, rather than stating that it is presumed that the defendant was under the influence of alcohol. Finally, the Act repeals the law specifying that it is a misdemeanor for a habitual user of any controlled substance to drive a motor vehicle or low-power scooter. Other references to charges of "habitual user" are also repealed.

A permissible inference allows a judge to instruct a jury that if it finds that a defendant's whole blood contained at least 5 ng/mL of THC while driving or shortly thereafter, then the jury may conclude that the defendant was driving under the influence. A permissible inference does not require a jury to conclude that a defendant was driving under the influence when a THC concentration level is met. In addition, the jury may consider all of the evidence in the case to evaluate whether the prosecution has proved the offense beyond a reasonable doubt.

Submitted as:
Colorado
HB 1035
Status: Signed into law on May 28, 2013.
Hit and Run Driver Alert System

The Act allows the Department of Public Safety (DPS) to establish a program to alert the public when a hit-and-run accident involving serious bodily injury or death occurs and law enforcement needs assistance in locating the suspect's vehicle.

Submitted as:
Colorado
HB 1191
Status: Signed into law on March 24, 2014.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Medina alert program – definitions – rules.]
A. The General Assembly hereby finds that:
   (a) A person who kills or inflicts a serious bodily injury upon a person during a motor vehicle accident and flees the scene poses a serious and imminent threat to the safety of the public;
   (b) When a person kills or inflicts a serious bodily injury upon a person during a motor vehicle accident and flees the scene, the first few hours after the act are critically important to apprehending the person; and
   (c) It is therefore necessary to create an alert system to facilitate the immediate apprehension of such persons by law enforcement agencies of the state.

B. As used in this section, unless the context otherwise requires:
   (a) "Designated broadcaster" means a broadcaster that is designated by rules promulgated pursuant to paragraph (e) of subsection (4) of this section to receive and broadcast a Medina alert.
   (b) "Hit-and-run accident" means an incident when the driver of a vehicle involved in an accident fails to stop at the scene of the accident as required by [Insert citation.]
   (c) "Medina alert" means an alert issued by the bureau pursuant to the provisions of this section.
   (d) “Notification period” means the period of time established by rules promulgated pursuant to paragraph (c) of subsection (4) of this section, during which time a medina alert must remain effective unless it is cancelled by the bureau as described in paragraph (g) of subsection (3) of this section.
   (e) "Program" means the Medina alert program created pursuant to paragraph (a) of subsection (3) of this section.
   (f) "Serious bodily injury" has the same meaning as defined in [Insert citation.]

(3)
(a) To facilitate the immediate apprehension of persons who kill or cause serious bodily injury to another person during a hit-and-run accident, there is created the Medina alert program to be implemented by the bureau on and after January 1, 2015. The program is a coordinated effort among the bureau, law enforcement agencies, and the state's public and commercial television and radio broadcasters.
(b) Using procedures established by rules promulgated pursuant to subsection (4) of this section, a law enforcement agency may notify the bureau after verifying that:

I. A person has been killed or has suffered serious bodily injury during a hit-and-run accident; and

II. The law enforcement agency has additional information concerning the suspect or the suspect's vehicle, including but not limited to:
   A. A complete license plate number of the suspect's vehicle;
   B. A partial license plate number and the make, style, and color of the suspect's vehicle; or
   C. The identity of the suspect.

(c) Upon receipt of a notice from a law enforcement agency that a person has been killed or has suffered serious bodily injury during a hit-and-run accident and there is additional information concerning the suspect or the suspect's vehicle, the bureau, using procedures established by rules promulgated pursuant to subsection (4) of this section, shall confirm the accuracy of the information and issue a Medina alert.

(d) The bureau shall send the Medina alert, including the notification period associated with the Medina alert, to each designated broadcaster to be broadcast at designated intervals as specified in rules promulgated pursuant to subsection (4) of this section.

(e) A Medina alert must include:

I. All appropriate information that the reporting law enforcement agency has that may assist in the apprehension of the suspect or suspects;

II. A statement instructing anyone with information related to the hit-and-run accident to contact his or her local law enforcement agency; and

III. A warning that the suspect or suspects are dangerous and that members of the public should not attempt to apprehend the suspect or suspects themselves.

(f) A federal, state, or local law enforcement agency that locates or apprehends the suspect or suspects shall notify the bureau as soon as practicable of such fact.

(g) A Medina alert is cancelled when the bureau notifies the designated broadcaster that the suspect or suspects have been apprehended or at the end of the notification period, whichever occurs first.

(4) On or before [January 1, 2015], the executive director of the department of public safety shall promulgate rules for the implementation of the program. The rules shall include but need not be limited to:

(a) Procedures for a law enforcement agency to use to notify the bureau that a person has been killed or has suffered serious bodily injury during a hit-and-run accident and there is additional information concerning the suspect or the suspect's vehicle;

(b) Procedures for the bureau to follow in confirming the reporting law enforcement agency's information and reporting the information to each designated broadcaster;

(c) The establishment of a notification period to be used for each Medina alert;

(d) The intervals at which designated broadcasters shall issue a Medina alert; and

(e) A list of designated broadcasters who have volunteered to participate in the broadcasting of medina alerts.

(5) The bureau and the department of transportation shall coordinate the priority of other messages for the public when determining whether to issue a Medina alert on the department of transportation's variable message signs.
Juvenile Justice Legislation Regarding Status Offenders (Note)

By The CSG Justice Center

The Juvenile Justice and Delinquency Prevention Act, or JJDPA, contains provisions that limit detention, mandate service provision and provide guidelines for status offenders who violate a valid court order, or VCO. And over the past several years, many states have passed additional legislation to decriminalize status offenses—crimes that are only illegal because of the offender’s age. A wide range of behaviors may be considered status offenses (laws related to status offenses vary by state), including truancy, running away from home, curfew violations, being beyond a parent or guardian’s control, and underage consumption of alcohol or tobacco.

Some states have integrated status offender changes into larger juvenile justice reform legislation. For example:

In 2013, Georgia passed HB 242, a sweeping bill that overhauled the state’s juvenile justice system. Under the new law, juveniles charged with status offenses will no longer be held in the state’s detention centers. Additionally, the law places a greater emphasis on providing offenders with community-based alternatives to detention.

Kentucky passed SB 200 in 2012, and, to reduce confinement for youth who commit status offenses, created Family Accountability, Intervention and Response, or FAIR, teams, whose aim is to work with youth and families to target the roots of delinquent behavior.

Louisiana passed a senate concurrent resolution (S.C.R. 44) in 2011 that created the Families in Need of Services, or FINS, Commission to study Louisiana’s FINS system, including how the state handles youth who commit status offenses. The commission issued its final report in February 2012, which recommends limited use of detention for youth who commit status offenses, use of alternatives to detention and appropriate graduated sanctions, and gathering and analysis of data related to the FINS system in order to track outcomes.

Other states have passed legislation focused on a particular status offense category:

Texas passed HB 2398 in 2015, which repealed the criminal offense of failing to attend school (truancy), and instead establishes a civil enforcement procedure.

Massachusetts passed SB 2410 in 2012, which prohibits the arrest of youth who run away or are habitually truant. These youth may not be confined in shackles or placed in court lockup or any other facility meant for youth in the delinquency system. Instead, law enforcement may place such youth in custodial protection and must immediately notify their parents or guardians. The law also establishes a statewide network of child and family service programs and resource centers to support these young people and their families.

In 2010, Kansas passed SB 452, which prohibits the use of detention or jail for youth under age 18 who are arrested for possession or consumption of alcohol.
Non-Violent Crimes Expunged for Human Trafficking Victims

The Act allows non-violent crimes committed by victims of human trafficking to be expunged. Victims charged with non-violent offenses may make a motion in the court to expunge the offense after 60 days of being charged. If the court finds that the offense occurred because the individual was a victim of human trafficking the charges may be dismissed with prejudice.

Submitted as:
Kentucky
SB 184
Status: Signed into law on April 9, 2014.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Non-violent crimes expunged for human trafficking victims.]

(1) When a person is charged or convicted under this chapter, or with an offense which is not a violent crime as defined in [Insert citation.], and the person's participation in the offense is determined to be the direct result of being a victim of human trafficking, the person may make a motion in the court in which the charges were filed to expunge all records of the offense.

(2) The motion shall be filed no sooner than sixty (60) days following the date the final judgment was entered by the court in which the charges were filed.

(3)

(a) A motion filed under this section, any hearing conducted on the motion, and any relief granted, are governed by [Insert citation.] unless otherwise provided in this section.

(b) For the purposes of expungement under [Insert citation.], a finding by the court that the person’s participation in the offense was a direct result of being a victim of human trafficking shall deem the charges as dismissed with prejudice.

(c) No official determination or documentation is required to find that the person’s participation in the offense was a direct result of being a victim of human trafficking, but documentation from a federal, state, local, or tribal governmental agency indicating that the defendant was a victim at the time of the offense shall create a presumption that the defendant's participation in the offense was a direct result of being a victim.

Section 2. [Affirmative Defense.]

A person charged under this chapter, or charged with an offense which is not a violent crime as defined in [Insert citation.], may assert being a victim of human trafficking as an affirmative defense to the charge.
Uniform Collateral Consequences of Conviction Act

The key provisions of the UCCCA are:

Collection
All collateral consequences contained in state laws and regulations, and provisions for avoiding or mitigating them, must be collected in a single document. The compilation must include both collateral sanctions (automatic bars) and disqualifications (discretionary penalties). In fulfilling their obligations under the Uniform Act, jurisdictions will be assisted by the federally-financed effort to compile collateral consequences for each jurisdiction that was authorized by the Court Security Act of 2007.

Notification
Defendants must be notified about collateral consequences at important points in a criminal case: At or before formal notification of charges, so a defendant can make an informed decision about how to proceed; and at sentencing and when leaving custody, so that a defendant can comport his or her conduct to the law. Given that collateral consequences will have been collected in a single document, it will not be difficult to make this information available.

The 2010 Supreme Court decision in Padilla v. Kentucky has significantly raised the profile of the problem of collateral consequences with the public and the bar. Judges, prosecutors, and other policy makers who understand the risk that defense counsel’s failure to adequately advise as to important and certain collateral consequences will want to put measures in place to be sure that such consequences are addressed. Section 5 of the Act instructs trial courts to confirm that the defendant has received and understood notice of collateral consequences and had an opportunity to discuss them with defense counsel.

The UCCCA facilitates notification of collateral consequences before, during, and after sentencing and aids courts and lawyers in providing the defendant with a constitutionally adequate defense.

Authorization
Collateral sanctions may not be imposed by ordinance, policy or rule, but must be authorized by statute. An ambiguous law will be considered as authorizing only discretionary case-by-case disqualification.

Standards for Disqualification
A decision-maker retains the ability to disqualify a person based on a criminal conviction, but only if it is determined, based on an individual assessment, that the essential elements of the person’s crime, or the particular facts and circumstances involved, are substantially related to the benefit or opportunity at issue.

Overturned and Pardoned Convictions; Relief Granted by Other Jurisdictions
Convictions that have been overturned or pardoned, including convictions from other jurisdictions, may not be the basis for imposing collateral consequences. Charges dismissed pursuant to deferred prosecution or diversion programs will not be considered a conviction for
purposes of imposing collateral consequences. The Act gives jurisdictions a choice about whether to give effect to other types of relief granted by other jurisdictions based on rehabilitation or good behavior, such as expungement or set-aside.

**Relief from Collateral Consequences**

The Act creates two different forms of relief, one to be available as early as sentencing to facilitate reentry (Order of Limited Relief) and the other after a period of law-abiding conduct (Certificate of Restoration of Rights).

- An Order of Limited Relief permits a court or agency to lift the automatic bar of a collateral sanction, leaving a licensing agency or public housing authority, for example, free to consider whether to disqualify a particular individual on the merits.
- A Certificate of Restoration of Rights offers potential public and private employers, landlords and licensing agencies concrete and objective information about an individual under consideration for an opportunity or benefit, and a degree of assurance about that individual’s progress toward rehabilitation, and will thereby facilitate the reintegration of individuals whose behavior demonstrates that they are making efforts to conform their conduct to the law.

Submitted as:
Vermont
HB 413
Status: Signed into law on June 10, 2014.

**Suggested State Legislation**

(Title, enacting clause, etc.)

1 Section 1. [Definitions.]
2 As used in this chapter:
3 (1) “Collateral consequence” means a mandatory sanction or a discretionary disqualification.
4 (2) “Conviction” includes an adjudication for delinquency for purposes of this chapter only, unless otherwise specified. “Convicted” has a corresponding meaning.
5 (3) “Court” means the Criminal Division of the Superior Court.
6 (4) “Decision-maker” means the state acting through a department, agency, officer, or instrumentality, including a political subdivision, educational institution, board, or commission, or its employees or a government contractor, including a subcontractor, made subject to this chapter by contract, by law other than this chapter, or by ordinance.
7 (5) “Discretionary disqualification” means a penalty, disability, or disadvantage that an administrative agency, governmental official, or court in a civil proceeding is authorized, but not required, to impose on an individual on grounds relating to the individual’s conviction of an offense. Discretionary disqualifications do not encompass charging decisions, such as the imposition of pre-charge diversion or intervention programs.
8 (6) “Mandatory sanction” means a penalty, disability, or disadvantage imposed on an individual as a result of the individual’s conviction of an offense which applies by operation of law whether or not the penalty, disability, or disadvantage is included in the judgment or
sentence. The term does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

(7) “Offense” means a felony, misdemeanor, or delinquent act under the laws of this State, another state, or the United States.

(8) “Incarceration” means confinement in jail or prison.

(9) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Section 2. [Limitation on Scope.]

(a) This chapter does not provide a basis for:

(1) invalidating a plea, conviction, or sentence;

(2) a cause of action for money damages;

(3) a claim for relief from or defense to the application of a collateral consequence based on a failure to comply with this chapter; or

(4) seeking relief from a collateral consequence imposed by another state or the United States or a subdivision, agency, or instrumentality thereof, unless the law of such jurisdiction provides for such relief.

(b) This chapter shall not affect:

(1) the duty an individual’s attorney owes to the individual;

(2) a claim or right of a victim of an offense; or

(3) a right or remedy under law other than this chapter available to an individual convicted of an offense.

Section 3. [Identification, collection, and publication of laws regarding collateral consequences.]

(a)

(1) The Attorney General shall:

(A) identify or cause to be identified any provision in this State’s Constitution, statutes, and administrative rules which imposes a mandatory sanction or authorizes the imposition of a discretionary disqualification and any provision of law that may afford relief from a collateral consequence;

(B) prepare or compile from available sources a collection of citations to, and the text or short descriptions of, the provisions identified under subdivision (a)(1)(A) of this section not later than [Insert date]; and

(C) update the collection provided under subdivision (B) of this subdivision (1) annually by January 1.

(2) In complying with subdivision (a)(1) of this section, the Attorney General may rely on or incorporate the summary of this State’s mandatory sanctions, discretionary disqualifications, and relief provisions prepared by the National Institute of Justice described in Section 510 of the Court Security Improvement Act of 2007, Pub. L. No. 110 -177, § 510, 121 Stat. 2534 (2008) as it exists and as it may be amended.

(b) The Attorney General shall include or cause to be included the following statements in a prominent manner at the beginning of the collection required by subsection (a) of this section:
(1) This collection has not been enacted into law and does not have the force of law.
(2) An error or omission in this collection or any reference work cited in this collection is not a reason for invalidating a plea, conviction, or sentence or for not imposing a mandatory sanction or authorizing a discretionary disqualification.
(3) The laws of other jurisdictions that impose additional mandatory sanctions and authorize additional discretionary disqualifications are not included in this collection.
(4) This collection does not include any law or other provision regarding the imposition of or relief from a mandatory sanction or a discretionary disqualification enacted or adopted after [insert date the collection was prepared or last updated].

(c) The Attorney General shall publish or cause to be published the collection prepared and updated as required by subsection (a) of this section.
(d) The Attorney General shall publish or cause to be published as part of the collection the title and Internet address, if available, of the most recent collection of:
(1) the collateral consequences imposed by federal law; and
(2) any provision of federal law that may afford relief from a collateral consequence.
(e) An agency that adopts a rule pursuant to [Insert citation] which implicates collateral consequences to a conviction shall forward a copy of the rule to the Attorney General.

Section 4. [Notice of collateral consequences in pretrial proceeding.]
(a) When an individual receives formal notice that the individual is charged with an offense, the Court shall provide either oral or written notice substantially similar to the following to be communicated to the individual:
(1) If you plead guilty or are convicted of an offense, you may suffer additional legal consequences beyond jail or prison, home confinement, probation, and fines. These consequences may include:
   (A) being unable to get or keep some licenses, permits, or jobs;
   (B) being unable to get or keep benefits such as public housing or education;
   (C) receiving a harsher sentence if you are convicted of another offense in the future;
   (D) having the government take your property;
   (E) being unable to serve in the military or on a jury;
   (F) being unable to possess a firearm; and
   (G) being unable to exercise your right to vote if you move to another state.
(2) If you are not a United States citizen, a guilty plea or conviction may also result in your deportation, removal, exclusion from admission to the United States, or denial of citizenship.
(3) The law may provide ways to obtain some relief from these consequences.
(4) Further information about the consequences of conviction is available on the Internet at [insert Internet address of the collection of laws published under this chapter].
(b) Before the Court accepts a plea of guilty or nolo contendere from an individual, the Court shall:
   (1) confirm that the individual received the notice required by subsection (a) of this section and had an opportunity to discuss the notice with counsel, if represented, and understands that there may be collateral consequences to a conviction; and
   (2) provide written notice, as part of a written plea agreement or through another form, of the following:
(A) that collateral consequences may apply because of the conviction;
(B) the Internet address of the collection of laws published under this chapter;
(C) that there may be ways to obtain relief from collateral consequences;
(D) contact information for government or nonprofit agencies, groups, or organizations, if
   any, offering assistance to individuals seeking relief from collateral consequences; and
(E) that conviction of a crime in this State does not prohibit an individual from voting in
this State.

Section 5. [Notice of collateral consequences upon release]
(a) Prior to the completion of a sentence, an individual in the custody of the Commissioner of
Corrections shall be given written notice of the following:
(1) that collateral consequences may apply because of the conviction;
(2) the Internet address of the collection of laws published under this chapter;
(3) that there may be ways to obtain relief from collateral consequences;
(4) contact information for government or nonprofit agencies, groups, or organizations, if
   any, offering assistance to individuals seeking relief from collateral consequences; and
(5) that conviction of a crime in this State does not prohibit an individual from voting in this
State.
(b) For persons sentenced to incarceration, the notice shall be provided not more than 30 days
and at least 10 days before completion of the sentence. If the sentence is for a term of less
than 30 days then notice shall be provided when the sentence is completed.
(c) For persons receiving a sentence involving community supervision, such as probation,
furlough, home confinement, conditional reentry, or parole, the notice shall be provided by
the Department of Corrections in keeping with its mission of ensuring rehabilitation and
public safety.

Section 6. [Authorization required for mandatory sanction; ambiguity.]
(a) A mandatory sanction may be imposed only by statute or ordinance or by a rule adopted in
the manner provided in [Insert citation]. A law or rule shall impose unambiguously a
collateral consequence in order for a court to impose a collateral consequence.
(b) A law creating a collateral consequence that is ambiguous as to whether it imposes an
automatic mandatory sanction or whether it authorizes a decision-maker to disqualify a
person based upon his or her conviction shall be construed as authorizing a discretionary
disqualification.

Section 7. [Decision to disqualify.]
In deciding whether to impose a discretionary disqualification, a decision-maker shall undertake
an individualized assessment to determine whether the benefit or opportunity at issue should be
denied the individual. In making that decision, the decision-maker may consider, if substantially
related to the benefit or opportunity at issue, the particular facts and circumstances involved in
the offense and the essential elements of the offense. A conviction itself may not be considered
except as having established the elements of the offense. The decision-maker shall also consider
other relevant information, including the effect on third parties of granting the benefit or
opportunity and whether the individual has been granted relief such as an order of limited relief
or a certificate of restoration of rights.
Section 8. [*Effect of conviction by another state or the United States; relieved or pardoned conviction.*]

(a) For purposes of authorizing or imposing a collateral consequence in this State, a conviction of an offense in a court of another state or the United States is deemed a conviction of the offense in this State with the same elements. If there is no offense in this State with the same elements, the conviction is deemed a conviction of the most serious offense in this State which is established by the elements of the offense. A misdemeanor in the jurisdiction of conviction may not be deemed a felony in this State, and an offense lesser than a misdemeanor in the jurisdiction of conviction may not be deemed a conviction of a felony or misdemeanor in this State.

(b) For purposes of authorizing or imposing a collateral consequence in this State, a juvenile adjudication in another state or the United States may not be deemed a conviction of a felony, misdemeanor, or offense lesser than a misdemeanor in this State, but may be deemed a juvenile adjudication for the delinquent act in this State with the same elements. If there is no delinquent act in this State with the same elements, the juvenile adjudication is deemed an adjudication of the most serious delinquent act in this State which is established by the elements of the offense.

(c) A conviction that is reversed, overturned, or otherwise vacated by a court of competent jurisdiction of this State, another state, or the United States on grounds other than rehabilitation or good behavior may not serve as the basis for authorizing or imposing a collateral consequence in this State.

(d) A pardon issued by another state or the United States has the same effect for purposes of authorizing, imposing, and relieving a collateral consequence in this State as it has in the issuing jurisdiction.

(e) A conviction that has been relieved by expungement, sealing, annulment, set-aside, or vacation by a court of competent jurisdiction of another state or the United States on grounds of rehabilitation or good behavior, or for which civil rights are restored pursuant to statute, has the same effect for purposes of authorizing or imposing collateral consequences in this State as it has in the jurisdiction of conviction. However, such relief or restoration of civil rights does not relieve collateral consequences applicable under the law of this State for which relief could not be granted under section 11 of this title or for which relief was expressly withheld by the court order or by the law of the jurisdiction that relieved the conviction. An individual convicted in another jurisdiction may seek relief under section 9 or 10 of this title from any collateral consequence for which relief was not granted in the issuing jurisdiction, other than those listed in section 11 of this title, and the Court shall consider that the conviction was relieved or civil rights restored in deciding whether to issue an order of limited relief or certificate of restoration of rights.

(f) A charge or prosecution in any jurisdiction which has been finally terminated without a conviction and imposition of sentence based on successful participation in a deferred adjudication or diversion program may not serve as the basis for authorizing or imposing a collateral consequence in this State. This subsection does not affect the validity of any restriction or condition imposed by law as part of participation in the deferred adjudication or diversion program, before or after the termination of the charge or prosecution.
Section 9. [Order of limited relief]

(a) An individual convicted of an offense may petition for an order of limited relief from one or more mandatory sanctions related to employment, education, housing, public benefits, or occupational licensing. The individual seeking an order of relief shall provide the prosecutor’s office with notice of his or her petition. After notice, the petition may be presented to the sentencing court at or before sentencing or to the Superior Court at any time after sentencing. If the petition is filed prior to sentencing, it shall be treated as a motion in the criminal case. If the petition is filed after sentencing, it shall be treated as a post-judgment motion.

(b) Except as otherwise provided in section 11 of this title, the Court may issue an order of limited relief relieving one or more of the mandatory sanctions described in this chapter if, after reviewing the petition, the individual’s criminal history record, any filing by a victim under section 13 of this title, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

1. granting the petition will materially assist the individual in obtaining or maintaining employment, education, housing, public benefits, or occupational licensing;
2. the individual has substantial need for the relief requested in order to live a law-abiding life; and granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

(c) The order of limited relief shall specify:

1. the mandatory sanction from which relief is granted; and
2. any restriction imposed pursuant to subsections 12(a) and (b) of this title.

(d) An order of limited relief relieves a mandatory sanction to the extent provided in the order.

(e) If a mandatory sanction has been relieved pursuant to this section, a decision-maker may consider the conduct underlying a conviction as provided in section 7 of this title.

Section 10. [Certificate of restoration of rights.]

(a) An individual convicted of an offense may petition the Court for a certificate of restoration of rights relieving mandatory sanctions not sooner than five years after the individual’s most recent conviction of a felony or misdemeanor in any jurisdiction, or not sooner than five years after the individual’s release from incarceration pursuant to a criminal sentence in any jurisdiction, whichever is later. The individual seeking restoration of rights shall provide the prosecutor’s office with notice of his or her petition.

(b) Except as otherwise provided in section 11 of this title, the Court may issue a certificate of restoration of rights if, after reviewing the petition, the individual’s criminal history, any filing by a victim under section 14 of this title or a prosecuting attorney, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

1. the individual is engaged in or seeking to engage in a lawful occupation or activity, including employment, training, education, or rehabilitative programs, or the individual otherwise has a lawful source of support;
2. the individual is not in violation of the terms of any criminal sentence or that any failure to comply is justified, excused, involuntary, or insubstantial;
3. a criminal charge is not pending against the individual; and
4. granting the petition would not pose an unreasonable risk to the safety or welfare of the public or to any individual.
(c) A certificate of restoration of rights must specify any restriction imposed and mandatory sanction from which relief has not been granted under section 12 of this title.

(d) A certificate of restoration of rights relieves all mandatory sanctions, except those listed in section 11 of this title and any others specifically excluded in the certificate.

(e) If a mandatory sanction has been relieved pursuant to this section, a decision-maker may consider the conduct underlying a conviction as provided in section 7 of this title.

Section 11. [Discretionary disqualifications and mandatory sanctions not subject to order of limited relief or certificate of restoration of rights.]

(a) An order of limited relief or certificate of restoration of rights may not be issued to relieve the following mandatory sanctions:

(1) requirements imposed by [sex offender registration, law enforcement notification.]
(2) a motor vehicle license suspension, revocation, limitation, or ineligibility pursuant to Title 23 for which restoration or relief is available; or
(3) ineligibility for employment by law enforcement agencies, including the Office of the Attorney General, State’s Attorney, police departments, sheriff’s departments, State Police, or the Department of Corrections.

(b) An order of limited relief or certificate of restoration of rights may not be issued to relieve a discretionary disqualification or mandatory sanction imposed due to:

(1) a conviction of a listed crime as defined in [Insert citation]; or
(2) a conviction of trafficking of regulated drugs pursuant to [Insert citation].

Section 12. [Issuance, modification, and revocation of order of limited relief and certificate of restoration of rights.]

(a) When a petition is filed under section 9 or 10 of this title, including a petition for enlargement of an existing order of limited relief or certificate of restoration of rights, the Court shall notify the office that prosecuted the offense giving rise to the collateral consequence from which relief is sought and, if the conviction was not obtained in a court of this State, the Attorney General. The Court may issue an order or certificate subject to restriction or condition.

(b) The Court may restrict an order of limited relief or certificate of restoration of rights if it finds just cause by a preponderance of the evidence. Just cause includes subsequent conviction of a related felony in this State or of an offense in another jurisdiction that is deemed a felony in this State. An order of restriction may be issued:

(1) on motion of the Court, the prosecuting attorney who obtained the conviction, or a government agency designated by that prosecutor;
(2) after notice to the individual and any prosecutor that has appeared in the matter; and
(3) after a hearing if requested by the individual or the prosecutor that made the motion or any prosecutor that has appeared in the matter.

(c) The Court shall order any test, report, investigation, or disclosure by the individual it reasonably believes necessary to its decision to issue or modify an order of limited relief or certificate of restoration of rights. If there are material disputed issues of fact or law, the individual and any prosecutor notified under subsection (a) of this section or another prosecutorial agency designated by a prosecutor notified under subsection (a) of this section may submit evidence and be heard on those issues.
Section 12. [Uniformity of application and construction.]
In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 13. [Reliance on order or certificate as evidence of due care.]
In a judicial or administrative proceeding alleging negligence or other fault, an order of limited relief or a certificate of restoration of rights may be introduced as evidence of a person’s due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the order was issued, if the person knew of the order or certificate at the time of the alleged negligence or other fault.

Section 14. [Victim’s Rights.]
A victim of an offense may participate in a proceeding for issuance of an order of limited relief or a certificate of restoration of rights in the same manner as at a sentencing proceeding pursuant to section 5321 of this title to the extent permitted by rules adopted by the court.

Section 15. [Uniformity of application and construction.]
In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 16. [Savings and transitional provisions.]
(a) This chapter applies to collateral consequences whenever enacted or imposed, unless the law creating the collateral consequence expressly states that this chapter does not apply.
(b) This chapter does not invalidate the imposition of a mandatory sanction on an individual before [Insert date], but a mandatory sanction validly imposed before [Insert date] may be the subject of relief under this chapter.
Uniform Act on Prevention of and Remedies for Human Trafficking (UAPR) (Note)

By the Uniform Law Commission

Described as modern-day slavery that victimizes more than 27 million people worldwide, human trafficking is a global concern that affects the United States on federal, state and local levels. By 2012, human trafficking had become the second fastest growing criminal activity in the United States, following drug trafficking.

In recognition of the human trafficking crisis and of the need to “create uniform state anti-human trafficking legislation,” the Uniform Law Commission, in response to a July 2010 proposal from the American Bar Association Center for Human Rights, began its work directed against human trafficking. This new uniform state law—the Uniform Act on Prevention of and Remedies for Human Trafficking, or UAPRHT—received final approval at the Uniform Law Commission’s Annual Meeting in July 2013 and at the American Bar Association’s House of Delegates in August 2013.

The UAPRHT is a comprehensive law directed against human trafficking. It provides the three components necessary for ending human trafficking: comprehensive criminal penalties; protections for human-trafficking victims; and public awareness and prevention methods.

Working with states to combat human trafficking
The UAPRHT enables states to update and strengthen their existing state laws with state-of-the-art provisions that reflect emerging best practices. Some states have comprehensive criminal laws on most facets of human trafficking. Others have only minimal criminal provisions. Some states cover all forms of labor and sex trafficking and protect all children under age 18. Others may cover only sex trafficking or fail to protect all children under 18. Some states cover all methods that traffickers use to keep their workers as virtual slaves. Others do not cover some methods that traffickers use to ensure their workers remain under their control and unable to escape, such as threatening to hurt or kill workers’ loved ones, confiscating workers’ immigration papers or “debt bondage” — ensnaring victims in ever-rising and often-fictitious debt to be repaid through physical labor that can never satisfy the debt.

The three-pronged fight against human trafficking
The uniform act presents the three-pronged approach that law enforcement and victims’ advocates consider essential. Under the first prong, the uniform act seeks to prevent and to penalize the criminal conduct—trafficking, forced labor and sexual servitude—at the core of human trafficking. Clear offenses are created that reflect the ways in which human traffickers operate: the act provides states the latitude to align the classification of offenses with existing state law. The act recognizes the forms of coercion that human traffickers use, such as threats, force, debt bondage, abuse of the legal process and use of a victim’s disability/mental impairment.
Section 1 (Short Title) and Section 2 (Definitions) open the UAPRHT. In the Definitions section, key terms associated with human trafficking—including ‘coercion,’ ‘commercial sexual activity’ and ‘debt bondage’—are explained.

Section 3 (Trafficking an Individual) offers a comprehensive definition tied to the act’s provisions on forced labor (Section 4) and sexual servitude (Section 5). Trafficking occurs when a person ‘knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains or entices an individual.’ The crime of forced labor occurs when a person knowingly uses coercion to compel an individual to provide labor or services, with enhanced penalties if the individual is a minor. Similarly, sexual servitude gives rise to an enhanced penalty when a minor is made available or maintained for the purposes of commercial sexual activity.

Two provisions (Section 6: Patronizing a Victim of Sexual Servitude and Section 7: Patronizing a Minor) augment existing criminal penalties in most states for patrons of commercial sexual activity. Section 6 imposes felony-level punishment when the defendant offers anything of value to engage in commercial sexual activity with an individual whom the defendant knows is a victim of sexual servitude. When the defendant intends to engage in commercial sexual activity with a minor and offers anything of value, felony-level penalties are imposed.

Section 8 (Business Entity Liability) establishes liability when an entity knowingly engages in human trafficking or does not effectively stop an employee or agent from doing so when the entity knows of the human-trafficking activity. The Act creates an aggravating circumstance when the defendant (under Section 3, 4 or 5) recruited, enticed or obtained the victim from a shelter for human-trafficking victims or others (Section 9).

Courts shall order persons convicted under Section 3, 4 or 5 to pay restitution to the victim (Section 10). On motion, a court shall order forfeiture of real or personal property used in or derived from human trafficking activities under Section 3, 4 or 5 (Section 11). The statute of limitations under the UAPRHT is 20 years (Section 12).

Under its second prong, the uniform act provides essential protections for human trafficking victims. The identity and images of the victim and the victim’s family shall be kept confidential unless required for investigation or prosecution (Section 13). Consistent with states’ rape shield laws, the act prohibits evidence of the alleged victim’s past sexual behavior (Section 14).

Section 15 provides immunity to minors who are human trafficking victims and commit prostitution or nonviolent offenses directly resulting from being a victim, and classifies such minors as children in need of services. Immunity for minors and the ability to seek vacation of convictions allow victims to rebuild their lives and restore their future. Connecticut, Illinois, Kentucky, Louisiana, Massachusetts, Minnesota, New Jersey, New York, Tennessee, Vermont and Washington have ‘safe harbor’ laws; the Texas Supreme Court recently ruled that minors are victims, not criminals, in prostitution cases.

An affirmative defense to a charge of prostitution or other non-violent offense is created in Section 16, and all victims may seek vacation of convictions for prostitution or other non-violent
offenses that directly resulted from being a human-trafficking victim under the provisions of
Section 17. Section 18 allows victims to bring a civil action against their traffickers.

The act’s third prong promotes partnerships in the fight against human trafficking, elevates
public awareness and fosters development of coordinated victim services. A human-trafficking
council is created to develop a systematic plan to assist victims, collect human trafficking data
and promote awareness in Section 19. Public awareness signs and the national human trafficking
hotline number are to be posted in locations where victims of human-trafficking are often found
(Section 20). The act ensures that human-trafficking victims have access to a state’s crime
victims’ compensation fund (Section 21), and the act provides that law enforcement officers
shall provide visa information to persons reasonably believed to be human-trafficking victims
(Section 22). Finally, the act permits the state to grant funds—to the extent that funds are
appropriated—to third-party providers of victim services (Section 23).

The advantages of uniformity
State enactment of this new uniform law will aid efforts to combat human trafficking in the
United States. Uniformity will improve coordination and “promote collaboration among law
enforcement officers, prosecutors, NGOs, lawyers, and other stakeholders in the investigation
and prosecution of human trafficking,” as stated in the 2010 ABA Proposal to the ULC. The act
discourages ‘forum-shopping’ by traffickers who seek to operate in jurisdictions with fewer
and/or lower criminal sanctions. National and regional victim-advocates organizations will be
better able to advise victims across the country.

During the drafting process, the ULC Drafting Committee worked closely with representatives of
a wide range of organizations, including the ABA Center for Human Rights, the ABA Task
Force on Human Trafficking, the ABA Section on Business Law, the Polaris Project, the
National Association of Attorneys General, the National Violence Against Women Project, the
U.S. Department of State Office to Monitor & Combat Trafficking in Persons, Shared Hope
International, the Global Freedom Center, LexisNexis, and representatives from a number of
state and local prosecutors’ offices.

Status: Because every state had enacted some human-trafficking laws, primarily focused upon
establishing definitions and criminal sanctions, the UAPRHT has not been enacted in whole in
any one state. Rather, states have used the UAPRHT to update their criminal laws and to add
victim remedies and protections, public awareness and support provisions.
Unlawful Distribution of An Image (Revenge Porn)

The Act makes “non-consensual dissemination of private sexual images,” otherwise known as “revenge porn” a Class 4 felony. It is a crime to knowingly post sexually explicit photos, video, voice recordings, etc. of another person online without the person’s consent. Revenge porn is a growing problem due to increased use of social media and other technology. Posts are sexual exploitation and often include names, addresses, e-mail addresses and other information that compromises the safety of victims and their families.

The Act includes exceptions for telecommunications and law enforcement and voluntary exposure in public or commercial settings.

Submitted as:
Illinois
SB 1009
Status: Signed into law on December 29, 2014.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Non-consensual dissemination of private sexual images.]
(a) Definitions. For the purposes of this Section:
“Computer” means a device that accepts, processes, stores, retrieves, or outputs data and includes, but is not limited to, auxiliary storage and telecommunications devices connected to computers.
“Computer program” means a series of coded instructions or statements in a form acceptable to a computer which causes the computer to process data and supply the results of the data processing.
“Data” means a representation in any form of information, knowledge, facts, concepts, or instructions, including program documentation, which is prepared or has been prepared in a formalized manner and is stored or processed in or transmitted by a computer or in a system or network. Data is considered property and may be in any form, including, but not limited to, printouts, magnetic or optical storage media, punch cards, or data stored internally in the memory of the computer.
“Image” includes a photograph, film, videotape, digital recording, or other depiction or portrayal of an object, including a human body.
“Intimate parts” means the fully unclothed, partially unclothed or transparently clothed genitals, pubic area, anus, or if the person is female, a partially or fully exposed nipple, including exposure through transparent clothing.
“Sexual act” means sexual penetration, masturbation, or sexual activity.
“Sexual activity” means any:
(1) knowing touching or fondling by the victim or another person or animal, either directly or through clothing, of the sex organs, anus, or breast of the victim or another person or animal for the purpose of sexual gratification or arousal; or
(2) any transfer or transmission of semen upon any part of the clothed or unclothed body of the victim, for the purpose of sexual gratification or arousal of the victim or another; or
(3) an act of urination within a sexual context; or
(4) any bondage, fetter, or sadism masochism; or
(5) sadomasochism abuse in any sexual context.

(b) A person commits non-consensual dissemination of private sexual images when he or she:
(1) intentionally disseminates an image of another person:
   (A) who is at least 18 years of age; and
   (B) who is identifiable from the image itself or information displayed in connection with the image; and
   (C) who is engaged in a sexual act or whose intimate parts are exposed, in whole or in part; and
(2) obtains the image under circumstances in which a reasonable person would know or understand that the image was to remain private; and
(3) knows or should have known that the person in the image has not consented to the dissemination.

(c) The following activities are exempt from the provisions of this Section:
(1) The intentional dissemination of an image of another identifiable person who is engaged in a sexual act or whose intimate parts are exposed when the dissemination is made for the purpose of a criminal investigation that is otherwise lawful.
(2) The intentional dissemination of an image of another identifiable person who is engaged in a sexual act or whose intimate parts are exposed when the dissemination is for the purpose of, or in connection with, the reporting of unlawful conduct.
(3) The intentional dissemination of an image of another identifiable person who is engaged in a sexual act or whose intimate parts are exposed when the images involve voluntary exposure in public or commercial settings.
(4) The intentional dissemination of an image of another identifiable person who is engaged in a sexual act or whose intimate parts are exposed when the dissemination serves a lawful public purpose.

(d) Nothing in this Section shall be construed to impose liability upon the following entities solely as a result of content or information provided by another person:
(1) an interactive computer service, as defined in 47 U.S.C. 230(f)(2);
(2) a provider of public mobile services or private radio services, as defined in [Insert citation (Public Utilities Act)]; or
(3) a telecommunications network or broadband provider.

(e) A person convicted under this Section is subject to the forfeiture provisions in [Insert Citation (Asset Forfeiture)].

(f) Sentence. Non-consensual dissemination of private sexual images is a Class 4 felony.
Section 2. [Applicability; offenses; forfeiture of property.]

This Article applies to forfeiture of property in connection with the following:

(1) A violation of [Section 1].

Section 3. [Persons and property subject to forfeiture.]

A person who commits child pornography, aggravated child pornography, or non-consensual dissemination of private sexual images under [Insert citations, including Section 1] shall forfeit the following property to the State:

(1) Any profits or proceeds and any property the person has acquired or maintained in violation of [Insert citations, including Section 1] that the sentencing court determines, after a forfeiture hearing under this Article, to have been acquired or maintained as a result of child pornography, aggravated child pornography, or non-consensual dissemination of private sexual images.

(2) Any interest in, securities of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise that the person has established, operated, controlled, or conducted in violation of [Insert citations, including Section 1] that the sentencing court determines, after a forfeiture hearing under this Article, to have been acquired or maintained as a result of child pornography, aggravated child pornography, or non-consensual dissemination of private sexual images.

(3) Any computer that contains a depiction of child pornography in any encoded or decoded format in violation of [Insert citations].
Achieving a Better Life Experience Act

The Act establishes ABLE savings trust accounts to be administered by the Virginia College Savings Plan to facilitate the saving of private funds for paying the qualified disability expenses of certain disabled individuals. Under the federal Achieving a Better Life Experience Act of 2014, Congress authorized states to establish ABLE savings trust accounts to assist individuals and families in saving and paying for the education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, and other expenses of individuals who were disabled or blind prior to the age of 26. Earnings on contributions to ABLE savings trust accounts are exempt from federal income tax. Because Virginia conforms to the federal income tax laws, earnings on contributions to ABLE savings trust accounts will also be excluded from Virginia taxable income.

Submitted as:
Virginia
HB 2306
Status: Signed into law on March 17, 2015.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Definitions.]
As used in this chapter, unless the context requires a different meaning:

“ABLE savings trust account” means an account established pursuant to this chapter to assist individuals and families to save private funds to support individuals with disabilities to maintain health, independence, and quality of life, with such account used to apply distributions for qualified disability expenses for an eligible individual, both as defined in § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

“Board” means the [Board of the Virginia] College Savings Plan. “College savings trust account” means an account established pursuant to this chapter to assist individuals and families to enhance the accessibility and affordability of higher education, with such account used to apply distributions from the account toward qualified higher education expenses at eligible educational institutions, both as defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

“Contributor” means a person who contributes money to a savings trust account established pursuant to this chapter on behalf of a qualified beneficiary and who is listed as the owner of the savings trust account.

“Plan” means the [Virginia] College Savings Plan.

“Prepaid tuition contract” means the contract entered into by the Board and a purchaser pursuant to this chapter for the advance payment of tuition at a fixed, guaranteed level by the purchaser for a qualified beneficiary to attend any two-year or four-year public institution of higher education in the [Commonwealth] to which the qualified beneficiary is admitted.
“Purchaser” means a person who makes or is obligated to make advance payments in accordance with a prepaid tuition contract and who is listed as the owner of the prepaid tuition contract.

“Qualified beneficiary” or “beneficiary” means (i) a resident of the [Commonwealth], as determined by the Board, who is the beneficiary of a prepaid tuition contract and who may apply advance tuition payments to tuition as set forth in this chapter; (ii) a beneficiary of a prepaid tuition contract purchased by a resident of the [Commonwealth], as determined by the Board, who may apply advance tuition payments to tuition as set forth in this chapter; or (iii) a beneficiary of a savings trust account established pursuant to this chapter.

“Savings trust account” means an ABLE savings trust account or a college savings trust account.

“Savings trust agreement” means the agreement entered into by the Board and a contributor establishing a savings trust account.

“Tuition” means the quarter, semester, or term charges imposed for undergraduate tuition by any two-year or four-year public institution of higher education in the [Commonwealth] and all mandatory fees required as a condition of enrollment of all students. A beneficiary may apply benefits under a prepaid tuition contract and distributions from a savings trust account toward graduate-level tuition and toward tuition costs at such eligible educational institutions, as that term is defined in 26 U.S.C. § 529 or any other applicable section of the Internal Revenue Code of 1986, as amended, as determined by the Board in its sole discretion.

Section 2. [College Savings Plan established; governing board; terms.]

A. To enhance the accessibility and affordability of higher education for all citizens of the [Commonwealth], there is hereby established as a body politic and corporate and an independent agency of the [Commonwealth], the [state] College Savings Plan (the Plan).

Certain moneys of the Plan that are contributions to savings trust accounts made pursuant to this chapter, except as otherwise authorized or provided in this chapter, shall be deposited as soon as practicable in a separate account or accounts in banks or trust companies organized under the laws of the [Commonwealth], national banking associations, federal home loan banks, or to the extent then permitted by law, savings institutions organized under the laws of the [Commonwealth] or the United States. The savings program moneys in such accounts shall be paid out on checks, drafts payable on demand, electronic wire transfers, or other means authorized by officers or employees of the Plan.

All other moneys of the Plan, including payments received pursuant to prepaid tuition contracts, bequests, endowments, grants from the United States government or its agencies or instrumentalities, and any other available sources of funds, public or private, shall be first deposited in the state treasury in a special nonreverting fund (the Fund). Such moneys then shall be deposited as soon as practicable in a separate account or accounts in banks or trust companies organized under the laws of the [Commonwealth], national banking associations, federal home loan banks, or to the extent then permitted by law, savings institutions organized under the laws of the [Commonwealth] or the United States. Benefits related to prepaid tuition contracts and Plan operating expenses shall be paid from the Fund. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest and income earned from the investment of such funds shall remain in the Fund and be credited to it.
B. The Plan shall be administered by an 11-member Board, as follows: [the Director of the State Council of Higher Education for Virginia or his designee; the Chancellor of the Virginia Community College System or his designee; the State Treasurer or his designee; the State Comptroller or his designee; and seven nonlegislative citizen members, four to be appointed by the Governor, one to be appointed by the Senate Committee on Rules and two to be appointed by the Speaker of the House of Delegates, with significant experience in finance, accounting, law, or investment management]. Appointments shall be for terms of four years, except that appointments to fill vacancies shall be for the unexpired terms. No person shall be appointed to serve for or during more than two successive four-year terms, but after the expiration of a term of three years or less, or after the expiration of the remainder of a term to which appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto. Ex officio members of the Board shall serve terms coincident with their terms of office.

C. Members of the Board shall receive no compensation but shall be reimbursed for actual expenses incurred in the performance of their duties. The Board shall elect from its membership a chairman and a vice-chairman annually. A majority of the members of the Board shall constitute a quorum.

Section 3. [Powers and duties of Board.]
The Board shall administer the Plan established by this chapter and shall develop and implement programs for (i) the prepayment of undergraduate tuition, as defined in [Insert citation], at a fixed, guaranteed level for application at a two-year or four-year public institution of higher education in the [Commonwealth]; (ii) contributions to college savings trust accounts established pursuant to this chapter on behalf of a qualified beneficiary in order to apply distributions from the account toward qualified higher education expenses at eligible educational institutions, both as defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law; and (iii) contributions to ABLE savings trust accounts established pursuant to this chapter on behalf of a qualified beneficiary in order to apply distributions from the account toward qualified disability expenses for an eligible individual, both as defined in § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law. In addition, the Board shall have the power and duty to:

1. Invest moneys in the Plan in any instruments, obligations, securities, or property deemed appropriate by the Board;
2. Develop requirements, procedures, and guidelines regarding prepaid tuition contracts and savings trust accounts, including, but not limited to, residency and other eligibility requirements; the number of participants in the Plan; the termination, withdrawal, or transfer of payments under a prepaid tuition contract or savings trust account; time limitations for the use of tuition benefits or savings trust account distributions; and payment schedules;
3. Enter into contractual agreements, including contracts for legal, actuarial, financial, and consulting services and contracts with other states to provide savings trust accounts for residents of contracting states;
4. Procure insurance against any loss in connection with the Plan's property, assets, or activities and indemnifying Board members from personal loss or accountability from liability arising from any action or inaction as a Board member;
5. Make arrangements with two-year and four-year public institutions in the [Commonwealth] to fulfill obligations under prepaid tuition contracts and to apply college savings trust account distributions, including, but not limited to, payment from the Plan of the then actual in-state undergraduate tuition cost on behalf of a qualified beneficiary of a prepaid tuition contract to the institution in which the beneficiary is admitted and enrolled and application of such benefits towards graduate-level tuition and towards tuition costs at such eligible educational institutions, as that term is defined in 26 U.S.C. § 529 or any other applicable section of the Internal Revenue Code of 1986, as amended, as determined by the Board in its sole discretion;

6. Develop and implement scholarship and/or matching grant programs, as the Board may deem appropriate, to further its goal of making higher education more affordable and accessible to all citizens of the [Commonwealth];

7. Apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to carry out its objectives;

8. Promulgate regulations and procedures and to perform any act or function consistent with the purposes of this chapter; and

9. Reimburse, at its option, all or part of the cost of employing legal counsel and such other costs as are demonstrated to have been reasonably necessary for the defense of any Board member, officer, or employee of the Plan upon the acquittal, dismissal of charges, nolle prosequi, or any other final disposition concluding the innocence of such member, officer or employee who is brought before any regulatory body, summoned before any grand jury, investigated by any law-enforcement agency, arrested, indicted, or otherwise prosecuted on any criminal charge arising out of any act committed in the discharge of his official duties which alleges a violation of state or federal securities laws. The Board shall provide for the payment of such legal fees and expenses out of funds appropriated or otherwise available to the Board.

Section 4. [Standard of care; investment and administration of Plan.]

A. In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of the Plan, the Board, and any person, investment manager, or committee to whom the Board delegates any of its investment authority, shall act as trustee and shall exercise the judgment of care under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but to the permanent disposition of funds, considering the probable income as well as the probable safety of their capital. If the annual accounting and audit required by [Insert citation] reveal that there are insufficient funds to ensure the actuarial soundness of the Plan, the Board shall be authorized to adjust the terms of subsequent prepaid tuition contracts, arrange refunds for current purchasers to ensure actuarial soundness, or take such other action the Board deems appropriate.

B. The assets of the Plan shall be preserved, invested, and expended solely pursuant to and for the purposes of this chapter and shall not be loaned or otherwise transferred or used by the [Commonwealth] for any other purpose. Within the standard prescribed in subsection A, the Board, and any person, investment manager, or committee to whom the Board delegates any of its investment authority, is authorized to acquire and retain every kind of property and every kind of investment, specifically including but not limited to (i) debentures and other...
corporate obligations of foreign or domestic corporations; (ii) common or preferred stocks traded on foreign or domestic stock exchanges; (iii) not less than all of the stock or 100 percent ownership of a corporation or other entity organized by the Board under the laws of the [Commonwealth] for the purposes of acquiring and retaining real property that the Board is authorized under this chapter to acquire and retain; and (iv) securities of any open-end or closed-end management type investment company or investment trust registered under the federal Investment Company Act of 1940, as amended, including such investment companies or investment trusts which, in turn, invest in the securities of such investment companies or investment trusts, which persons of prudence, discretion, and intelligence acquire or retain for their own account. Within the limitations of the foregoing standard, the Board may retain property properly acquired, without time limitation and without regard to its suitability for original purchase. This section shall not be construed to prohibit the investment of the Plan, by purchase or otherwise, in bonds, notes, or other obligations of the [Commonwealth] or its agencies and instrumentalities. All provisions of this subsection shall apply to the portion of the Plan assets attributable to savings trust account contributions and the earnings thereon.

C. The selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, recordkeeping, or consulting services, shall be governed by the foregoing standard and shall not be subject to the provisions of the [state] Public Procurement Act ([Insert Citation]).

D. No Board member nor any person, investment manager, or committee to whom the Board delegates any of its investment authority who acts within the standard of care set forth in subsection A shall be held personally liable for losses suffered by the Plan on investments made pursuant to this chapter.

E. To the extent necessary to lawfully administer the Plan and in order to comply with federal, state, and local tax reporting requirements, the Plan may obtain all necessary social security account or tax identification numbers and such other data as the Plan deems necessary for such purposes, whether from a contributor or purchaser or from another state agency.

Section 5. [Prepaid tuition contracts and college and ABLE savings trust agreements; terms; termination; etc.]

A. Each prepaid tuition contract made pursuant to this chapter shall include the following terms and provisions:

1. The amount of payment or payments and the number of payments required from a purchaser on behalf of a qualified beneficiary;

2. The terms and conditions under which purchasers shall remit payments, including the dates of such payments;

3. Provisions for late payment charges, defaults, withdrawals, refunds, and any penalties;

4. The name and date of birth of the qualified beneficiary on whose behalf the contract is made;

5. Terms and conditions for a substitution for the qualified beneficiary originally named;

6. Terms and conditions for termination of the contract, including any refunds, withdrawals, or transfers of tuition prepayments, and the name of the person or persons entitled to terminate the contract;

7. The time period during which the qualified beneficiary must claim benefits from the Plan;
8. The number of credit hours or quarters, semesters, or terms contracted for by the purchaser;
9. All other rights and obligations of the purchaser and the trust; and
10. Any other terms and conditions which the Board deems necessary or appropriate, including those necessary to conform the contract with the requirements of Internal Revenue Code § 529, as amended, which specifies the requirements for qualified state tuition programs.

B. Each college savings trust agreement made pursuant to this chapter shall include the following terms and provisions:
1. The maximum and minimum contribution allowed on behalf of each qualified beneficiary for the payment of qualified higher education expenses at eligible institutions, both as defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law;
2. Provisions for withdrawals, refunds, transfers, and any penalties;
3. The name, address, and date of birth of the qualified beneficiary on whose behalf the savings trust account is opened;
4. Terms and conditions for a substitution for the qualified beneficiary originally named;
5. Terms and conditions for termination of the account, including any refunds, withdrawals, or transfers, and applicable penalties, and the name of the person or persons entitled to terminate the account;
6. The time period during which the qualified beneficiary must use benefits from the savings trust account;
7. All other rights and obligations of the contributor and the Plan; and
8. Any other terms and conditions which the Board deems necessary or appropriate, including those necessary to conform the savings trust account with the requirements of § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

C. Each BLE savings trust agreement made pursuant to this chapter shall include the following terms and provisions:
1. The maximum and minimum annual contribution and maximum account balance allowed on behalf of each qualified beneficiary for the payment of qualified disability expenses, as defined in § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law;
2. Provisions for withdrawals, refunds, transfers, return of excess contributions, and any penalties;
3. The name, address, and date of birth of the qualified beneficiary on whose behalf the savings trust account is opened;
4. Terms and conditions for a substitution for the qualified beneficiary originally named;
5. Terms and conditions for termination of the account, including any transfers to the state upon the death of the qualified beneficiary, refunds, withdrawals, transfers, applicable penalties, and the name of the person or persons entitled to terminate the account;
6. The time period during which the qualified beneficiary must use benefits from the savings trust account;
7. All other rights and obligations of the contributor and the Plan; and
8. Any other terms and conditions that the Board deems necessary or appropriate, including those necessary to conform the savings trust account with the requirements of § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law.
D. In addition to the provisions required by subsection A, each prepaid tuition contract shall include provisions for the application of tuition prepayments (i) at accredited, nonprofit, independent institutions of higher education located in [state], including actual interest and income earned on such prepayments and (ii) at public and at accredited, nonprofit, independent institutions of higher education located in other states, including principal and reasonable return on such principal as determined by the Board. Payments authorized for accredited, nonprofit, independent institutions located in [state] may not exceed the projected highest payment made for tuition at a public institution of higher education in [state] in the same academic year, less a fee to be determined by the Board. Payments authorized for public and for accredited, nonprofit, independent institutions of higher education located in other states may not exceed the projected average payment made for tuition at a public institution of higher education in [state] in the same academic year, less a fee to be determined by the Board.

E. All prepaid tuition contracts and savings trust agreements shall specifically provide that, if after a specified period of time the contract or savings trust agreement has not been terminated nor the qualified beneficiary's rights exercised, the Board, after making reasonable effort to contact the purchaser or contributor and the qualified beneficiary or their agents, shall report such unclaimed moneys to the State Treasurer pursuant to [Insert citation.]

F. Notwithstanding any provision of law to the contrary, money in the Plan shall be exempt from creditor process and shall not be liable to attachment, garnishment, or other process, nor shall it be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of any purchaser, contributor or beneficiary, provided, however, that the state of residence of the beneficiary of an ABLE savings trust account shall be a creditor of such account in the event of the death of the beneficiary.

G. No contract or savings trust account shall be assigned for the benefit of creditors, used as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge.

H. The Board's decision on any dispute, claim, or action arising out of or related to a prepaid tuition contract or savings trust agreement made or entered into pursuant to this chapter or benefits thereunder shall be considered a case decision as defined in [Insert citation.] and all proceedings related thereto shall be conducted pursuant to [the Administrative Process Act]. Judicial review shall be exclusively provided pursuant to [the Administrative Process Act].
Adult Abuse Registries (Note)

By the Alabama Legislative Reference Service

Kentucky SB 98, adopted and signed into law in 2014 (Ky. Acts, ch. 110), creates a registry to identify certain caregivers involved in abuse cases substantiated by the Adult Protective Branch within the Kentucky Cabinet for Health and Family Services. The law requires “vulnerable adult services providers” to query, by secure means, the cabinet as to whether a prospective employee, contractor or volunteer has been the subject of a validated substantiated finding of adult abuse, neglect or exploitation and allows periodic query regarding current employees and volunteers. Examples of “vulnerable adult services providers” under the law include adult day health care program centers, adult day training facilities, assisted-living communities, home health agencies, hospice programs and long-term care facilities. An individual is allowed to query the cabinet with regard to whether an abuse, neglect or exploitation finding has been entered against him or her.

The Kentucky law also requires the cabinet to provide an administrative error resolution process to allow an individual whose name has been erroneously reported for adult abuse, neglect or exploitation to request correction of the cabinet’s records. The law also provides immunity for a provider hiring or utilizing an employee before receiving the cabinet’s response if the cabinet does not respond to the inquiry within 24 hours.

Several other states have adopted some form of adult abuse registries. For example, Missouri law requires the Department of Health and Senior Services to maintain a central registry capable of receiving and maintaining adult abuse and neglect reports in a manner that facilitates rapid access and recall of the information reported and of any subsequent investigations or other relevant material. (See Mo. Rev. Stat. § 192.2435). Under the Missouri law, the unauthorized dissemination of information contained in the central registry is a Class A misdemeanor.

Ohio law requires the Department of Job and Family Services to establish and maintain a uniform statewide automated adult protective services information system, which is a repository for: (1) all reports of abuse, neglect or exploitation of adults made to county departments of job and family services; (2) related investigations; (3) protective services provided to adults; and (4) any other information related to adults in need of protective services that state or federal law or rule requires the department or a county department to maintain. (See Oh. Rev. Code § 5101.612). The Ohio law provides that the information contained in the information system may be accessed or used only in a manner authorized by rules adopted by the department.

Tennessee law requires any state government agency that finds that an individual has committed abuse, neglect, or misappropriation or exploitation of the property of a vulnerable person to notify the Department of Health. (See Tenn. Code Ann. § 68-11-1003). Upon receipt of the notice, the department must include the individual’s name on the state registry. Similarly, upon a conviction of a person for physical abuse or gross neglect of an impaired adult under Tennessee law, the clerk of the court is required to notify the Department of Health in order for the individual’s name to be placed on the registry. (See Tenn. Code Ann. § 71-6-117). The individual’s name remains in the registry regardless of any expunction that may be ordered by a court. Similar to the Kentucky law, an individual may challenge the accuracy of a report of a
criminal disposition that has resulted in the entry of the individual’s name in the registry. The law provides an administrative process for the removal of an individual’s name from the registry.

West Virginia law establishes a central abuse registry maintained by the Criminal Identification Bureau of the West Virginia State Police, which includes the names of individuals convicted of certain felony or misdemeanor offenses constituting abuse, neglect, or misappropriation of the property of a child or an incapacitated adult or an adult receiving behavioral health services. (See W. Va. Code § 15-2C-1). The law requires the prosecuting attorneys in each county to report relevant convictions to the central abuse registry.

Under the West Virginia law, authorized law enforcement and governmental agencies may request information listed in the registry, and the Department of Health and Human Resources may certify additional requesters who are authorized to receive information in the registry. Upon proper registration with the West Virginia State Police, providers of home care services to adults and all residential care facilities, day care centers and providers to adults with behavioral needs are authorized to access information from the registry to screen current employees and applicants for employment. These providers are also required to provide notice to employees that certain convictions relating to abuse, neglect or misappropriation of property of an adult may result in inclusion of the individual’s information in the registry.
Termination of Parental Rights for Rapists

The Act provides that a person convicted of rape in which a child was born as a result of the offense shall lose parental rights, visitation rights, and rights of inheritance with respect to that child; provides for an exception at the request of the mother, and provides that a court shall impose an obligation of child support against the offender unless waived by the mother and, if applicable, a public agency supporting the child.

Submitted as:
Kentucky
SB108
Status: Signed into law on April 25, 2014.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [Termination of parental rights for rapists.]
2 (1) The [Commonwealth] recognizes that certain victims of sexual assault may conceive a child
3 as a result of the sexual assault and may choose to bear and raise the child. The
4 [Commonwealth] also recognizes that victims of a sexual assault who have elected to raise a
5 child born as a result of the sexual assault, as well as that child, may suffer serious emotional
6 or physical trauma if the perpetrator of the assault is granted parental rights with the child.
7 (2) Except as provided in subsection (3) of this section, any person who has been convicted of a
8 felony offense under [Insert citation (laws against rape)], in which the victim of that offense
9 has conceived and delivered a child, shall not have custody or visitation rights, or the rights
10 of inheritance under [Insert citation] with respect to that child.
11 (3) The mother of the child may waive the protection afforded under subsection (2) of this
12 section regarding visitation and request that the court grant reasonable visitation rights with
13 the child if paternity has been acknowledged.
14 (4) Unless waived by the mother and, if applicable, the public agency substantially contributing
15 to the support of the child, a court shall establish a child support obligation against the father
16 of the child pursuant to [Insert citation.]
Civics Education

The Act directs the State Board of Education to include the requirement for students to pass a civics test in the high school competency requirements for graduation, beginning in the 2016-17 school year.

Submitted as:
Arizona
HB 2064

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [High school; graduation; requirements; community college or university courses; transfer from private schools; academic credit.]

A. The state board of education shall:

1. Prescribe a minimum course of study, as defined in [Insert citation] and incorporating the academic standards adopted by the state board of education, for the graduation of pupils from high school.

2. Prescribe competency requirements for the graduation of pupils from high school incorporating the academic standards in at least the areas of reading, writing, mathematics, science and social studies. Beginning in the 2016-2017 school year, the competency requirements for social studies shall include a requirement that, in order to graduate from high school or obtain a high school equivalency diploma, a pupil must correctly answer at least sixty of the one hundred questions listed on a test that is identical to the civics portion of the naturalization test used by the United States Citizenship and Immigration Services. A district school or charter school shall document on the pupil's transcript that the pupil has passed a test that is identical to the civics portion of the naturalization test used by the United States Citizenship and Immigration Services as required by this section.

B. The governing board of a school district shall:

1. Prescribe curricula that include the academic standards in the required subject areas pursuant to subsection A, paragraph 1 of this section.

2. Prescribe criteria for the graduation of pupils from the high schools in the school district. These criteria shall include accomplishment of the academic standards in at least reading, writing, mathematics, science and social studies, as determined by district assessment. Other criteria may include additional measures of academic achievement and attendance. Pursuant to the prescribed graduation requirements adopted by the state board of education, the governing board may approve a rigorous computer science course that would fulfill a mathematics course required for graduation from high school. The governing board may approve a rigorous computer science course only if the rigorous computer science course includes significant mathematics content and the governing board determines the high school where the rigorous computer science course is offered has sufficient capacity, infrastructure and qualified staff, including competent teachers of
computer science. The school district governing board or charter school governing body
may determine the method and manner in which to administer a test that is identical to
the civics portion of the naturalization test used by the United States Citizenship and
Immigration Services. A pupil who does not obtain a passing score on the test that is
identical to the civics portion of the naturalization test may retake the test until the pupil
obtains a passing score.

Section 2. [Plan for providing special education; definition.]
All school districts and charter schools shall develop policies and procedures for providing
special education to all children with disabilities within the district or charter school. All children
with disabilities shall receive special education programming commensurate with their abilities
and needs. Each child shall be ensured access to the general curriculum and an opportunity to
meet the state's academic standards. Pupils who receive special education shall not be required to
achieve passing scores on the Arizona instrument to measure standards test or the test that is
identical to the civics portion of the naturalization test under Section 1 in order to graduate from
high school unless the pupil is learning at a level appropriate for the pupil's grade level in a
specific academic area and unless a passing score on the [state] instrument to measure standards
test or the test that is identical to the civics portion of the naturalization test under Section 1 is
specifically required in a specific academic area by the pupil's individualized education program
as mutually agreed on by the pupil's parents and the pupil's individualized education program
team or the pupil, if the pupil is at least eighteen years of age. The pupil's individualized
education program shall include any necessary testing accommodations. Special education
services shall be provided at no cost to the parents of children with disabilities.
Course Credit by Exam

The Act allows secondary school students to earn credit for core courses by passing a mastery exam. School districts are required to develop assessment tools and standards for demonstrating mastery in specific secondary school courses, including mathematics, language arts, science, social studies, and world languages. Students who pass such assessment tests will be provided full credit for the course.

Submitted as:
Alaska
HB 278 (Section 2)
Status: Signed into law on May 14, 2014.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Secondary school course credit].
(a) A school district shall provide the opportunity for students enrolled in a secondary school in the district to challenge a course provided by the district by demonstrating mastery in mathematics, language arts, science, social studies, and world languages at the level of the course challenged. A school district shall give full credit for a course to a student who successfully challenges that course as provided under this section.
(b) A school district shall establish, within a reasonable time, an assessment tool and a standard for demonstrating mastery in secondary school courses provided by the district under this section.
(c) The board shall adopt regulations to implement this section.
(d) In this section, “school district” means a borough school district, a city school district, a regional educational attendance area, a state boarding school, and the state centralized correspondence study program.
School Discipline Reform (Note)

By The CSG Justice Center

Each year, millions of students are removed from their classrooms for disciplinary reasons, mostly for minor discretionary offenses.\(^1\) Disciplinary removals may be appropriate in situations in which a student poses an immediate safety risk to himself/herself or others on a school campus. But when such removals are administered for minor misconduct, they are often detrimental to students’ academic and behavioral progress. Research, including the groundbreaking *Breaking Schools’ Rules* study conducted by The Council of State Governments’ Justice Center,\(^2\) demonstrates that exclusionary disciplinary actions increase a student’s likelihood of falling behind academically, dropping out of school, and coming into contact with the juvenile justice system. A disproportionately large percentage of disciplined students are youth of color, students with disabilities, and youth who identify as lesbian, gay, bisexual, or transgender.\(^3\)

In response, states across the country are passing legislation that limits the number of students who are removed from school for disciplinary reasons and provides more supportive responses to misbehavior. In 2014, the CSG Justice Center also released the *School Discipline Consensus Report*, which provides state and local government officials with a comprehensive roadmap for overhauling their approach to school discipline.

Arkansas passed Act 1329 in 2013, which requires the preparation of an annual report to evaluate the impact of school discipline on student achievement by July 1 of each year, beginning in 2014, to include:

- District enrollment, subgroup enrollment, disciplinary rates, achievement, and disciplinary disparity among subgroups.
- Possible disciplinary strategies and resources that Arkansas school districts can access.

California passed AB 420 in 2014, which:

- Eliminated the authority to suspend a student out of school or in-school in kindergarten through third grade for “disruption” and “willful defiance.”
- Eliminated student expulsions for “disruption and “willful defiance.”

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\(^1\) See e.g., Losen, D. J., & Martinez, T. E. (2013). *Out of School & Off Track: The Overuse of Suspensions in American Middle and High Schools*. The Center for Civil Rights Remedies at The Civil Rights Project.


Colorado enacted **HB 12-1345** in 2012, which:

- **Required School Codes of Conduct to include**
  - Policies and procedures for removing disruptive students from class.
  - Proportionate disciplinary interventions (including in-school suspension) designed to reduce the number of school expulsions and referrals to law enforcement.
  - Plans for appropriate use of prevention, intervention, restorative justice, peer mediation, counseling, or other approaches to minimize student exposure to criminal justice system.
  - School districts should ensure student familiarity with the code.
  - School district accountability committees to consider and provide input regarding codes.

- **Defined “Referral to Law Enforcement.”**

- **Required a Disruptive Students Behavioral Plan.**
  - Principals must develop and implement a behavioral plan after the first or second removal.
  - The student and parent must be notified of each disruption counted toward habitually disruptive.
  - Upon third removal [habitual] teacher may remove disruptive student for remainder of term.

- **Eliminated mandatory expulsions in all categories, including habitually disruptive students (three or more times), with the exception of the federal gun law requirement.**

- **Asked schools to consider age, disciplinary history, disability, seriousness of the violation, threat to safety of student or staff and whether a lesser intervention would properly address violation.**

- **Eliminated mandatory denial of admission (student has 10 days to appeal expulsion or denial of admission).**

- **Required Peace Officers Standards and Training, or POST, board to establish standards for training and identify training curriculum, which incorporates suggestions of advocates and stakeholders (every municipal and county agency shall employ at least one person who has successfully completed the training; agencies are encouraged to ensure SRO’s have completed training within six months of school assignment).**

- **Required schools to provide the opportunity for suspended students to make up school work for full or partial academic credit to the extent possible.**

- **Required schools to adopt an implement a safe school plan and review and revise as necessary in response to relevant data collected by the district.**

- **Articulated the following reporting requirements:**
  - Schools report to Board of Education conduct and discipline code violations (most serious).
  - Law enforcement agencies report to Division of Criminal Justice the number of students investigated and type of offense, number of students arrested and type of offense, number of summons issued, and the age, gender, school, race, ethnicity of student.
  - District Attorneys report to Division of Criminal Justice the number of school cases, type of offense, disposition of the case, and the age, gender, school, race, ethnicity of student.
District attorney shall report to the extent practicable the number of cases referred by law enforcement that were not filed in court, and the number of cases and types of offenses referred to juvenile diversion program
Division of Criminal Justice shall provide data collected to public upon request.

Connecticut passed SB 1053 in 2015, which prohibits out-of-school suspensions and expulsions for students enrolled in a preschool program or grades kindergarten through second grade.

Illinois passed SB 100 in 2015, which:

- Eliminated “zero-tolerance” policies. Schools will no longer be allowed to use policies that require suspension or expulsion in response to particular student behaviors.
- Put tighter restrictions on the use of harsh disciplinary consequences. Out-of-school suspensions of longer than three days, expulsions, and disciplinary referrals to alternative schools can only be used when all other appropriate and available disciplinary interventions have been exhausted. School officials are also required to "limit the number and duration of expulsions and suspensions to the greatest extent practicable."
- Ensured out-of-school suspensions, expulsions, and disciplinary referrals to alternative schools are only used for legitimate educational purposes. The most severe disciplinary consequences are only to be used to preserve a safe and productive learning environment, not as punishment for misbehavior.
- Focused on meeting student needs and addressing root causes of disciplinary issues. Students that are suspended out of school for longer than four days must be provided appropriate and available support services. School districts must also create a policy for re-engaging students returning to school from suspensions and expulsions.
- Promoted proven disciplinary alternatives and improved professional development for school officials and staff. Districts are recommended to provide ongoing professional development to all school officials and staff members on “the adverse consequences of school exclusion and justice-system involvement, effective classroom management strategies, culturally responsive discipline, and developmentally appropriate disciplinary methods that promote positive and healthy school climates."
- Protected students from additional academic consequences. Schools are required to provide suspended students with the opportunity to make up work they missed for equivalent academic credit.
- Ensured greater transparency and accountability to parents/guardians. Schools are required to give parents/guardians more information about why their children are being excluded from school and why the particular length of exclusion was chosen.
- Prohibited school “pushout.” Schools can no longer advise students to drop out when they have academic or behavioral challenges.
- Eliminated disciplinary fines and fees. Students can no longer be charged monetary fines or fees (an increasingly common practice in certain local charter schools) as a disciplinary consequence.
- Holds charter schools and traditional public schools to the same standards.
Maine passed **LD 1503** in 2012. Key provisions included:
- Establishing target goals for graduation rates by specific dates.
- Defining truancy for elementary, middle and high school students.
- Defining mandatory age for school attendance.
- Giving guidelines for due process expulsion and re-entry plans.

Massachusetts passed **Chapter 222** in 2012, which stipulated that:
- Exclusion from school is a last resort, especially for all but the most serious offenses.
- If a student is to be excluded for more than 10 consecutive school days for any offense, the school district must offer the student alternative education services.
- Required schools for all offenses, during the first 10 days of exclusion, to assist the student to make academic progress despite absence from classes.
- Required the state Department of Elementary and Secondary Education to collect additional school discipline data from school districts, post the data, analyze the data, and follow up when schools exclude high numbers of students and when students of color or students with disabilities are disproportionately disciplined.

Oregon passed **HB 2192** in 2013, which:
- Removed mandatory expulsion (zero tolerance) language regarding weapons because it has been poorly understood and inconsistently applied to include items like small pocket knives and toys. This change increases school administrator discretion.
- Limited expulsion to conduct that poses a threat to health or safety, repeated behaviors that have not responded to other interventions, and expulsions mandated by law.
- Added additional guidance to school districts for making decisions about discipline, including:
  - Using discipline that is proportionate to the offense;
  - Taking the student’s developmental capacities into account;
  - Keeping students in class as much as possible in order to maximize their opportunities to learn;
  - Providing opportunities for students to learn from their mistakes; Establishing clear expectations for behavior;
  - Creating and maintaining a positive learning environment for all students;
  - Using consequences that are designed to promote positive behavior and correct misconduct;
  - Using research-based interventions as much as is practicable.
- Added a 10 school-day limit to complete a mental health risk assessment for a student when the school administrator elects this option. Allows the school to exceed the 10-day limit for good cause.
- Specified that school policies are designed to impose discipline without bias against students from protected classes.
- Required districts to ensure that policies comply with state and federal laws concerning students with disabilities.
Texas passed **HB 2398** and **SB 107** in 2015. Key provisions included:

- Repealed the criminal offense of failing to attend school, and instead establishes a civil enforcement procedure.
- A student is not to be referred to truancy court if the truancy is a result of pregnancy, foster care, homelessness, or being the principal income earner for the student’s family. Instead, a district is to offer the student access to additional counseling services.
- On the third unexcused absence within a four-week period, a school must initiate a truancy prevention program for the student.
- School districts’ truancy prevention measures must now include at least one of the following:
  - A behavior improvement plan that includes a specific description of required or prohibited behavior, the period the plan will be effective (not to exceed 45 days after the effective date of the contract) or penalties for additional absences;
  - School-based community service; or
  - Referral to counseling, mediation, mentoring, teen court, community-based services or other services to address the student’s truancy.
- School districts are required to employ a truancy prevention facilitator or juvenile case manager to implement its truancy prevention measures. A school district may designate an existing district employee to serve in this position.
- Each campus must have a staff person designated as the Campus Behavior Coordinator, primarily responsible for maintaining student discipline (The person designated as the Campus Behavior Coordinator may be the principal of the campus or any other campus administrator selected by the principal.)
- The Campus Behavior Coordinator is required to:
  - Promptly notify a student's parent or guardian if a student is placed into in-school or out-of-school suspension, placed in a disciplinary alternative education program, expelled, or placed in a juvenile justice alternative education program or is taken into custody by a law enforcement officer.
  - Promptly contact the parent or guardian by telephone or in person; and
  - Make a good faith effort to provide written notice of the disciplinary action to the student, on the day the action is taken, for delivery to the student's parent or guardian.

Texas also passed **SB 393** in 2013, which:

- Prevents school police officers from issuing citations for misbehavior at school, excluding traffic violations. Officers can still submit complaints about students, but it will be up to a local prosecutor whether to charge the student with a Class C misdemeanor.
- If students are charged, prosecutors can choose to make students get tutoring, do community service or undergo counseling before they get sent to court.

Washington passed **SB 5946** in 2013. Key provisions include:

- One-year limit to expulsions
- One-semester limit to long-term suspensions
- Emergency expulsions must now end or be changed to another form of discipline within 10 school days.
- Public school discipline data must be provided by the Office of the Superintendent of Public Instruction, or OSPI, that is broken down by demographics such as race, socioeconomic status, and gender.
- Reengagement plans and meetings should be developed for students by their schools, tailored to the student’s circumstances, including consideration of the incident that led to the student’s suspension or expulsion.
- Students cannot be suspended or expelled for expressing suicidal thoughts.
- A statewide taskforce was created as a result of the law that will develop consistent definitions of discipline and an increased collection of discipline data. This will include information about what educational services are being provided while students are out of school, the status of petitions to reenroll in school, and the number of school dropouts as a result of discipline.
Tuition-Free Community College

The Act will effectively make tuition free for all high school graduates who go to a two-year college. Participating students will have to maintain a 2.0 grade point average, attend mandatory meetings, work with a mentor, and perform community service. The program, expected to cost $34 million per year, will be paid for using $300 million in excess lottery reserve funds and by creating a $47 million endowment.

Submitted as:
Tennessee
SB 2471 (Section 1-2)
Status: Signed into law on May 12, 2014.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Tennessee Promise Scholarship Program.]

(a) As used in this section:

(1) “Continuous enrollment” means a student is enrolled in the fall and spring semesters of a single academic year. Enrollment in summer semester or inter-session terms is not required;

(2) “Eligible high school” means


(B) A private secondary school that is located in this state and is approved by the state board of education as a Category 1, 2 or 3 secondary school in accordance with the applicable rules and regulations;

(C) A secondary school operated by the United States department of defense on a military base that is located in whole or in part in this state;

(D) An out-of-state public secondary school located in a county bordering this state that [Tennessee] residents are authorized to attend under [Insert citation]; or

(E) An out-of-state boarding school accredited by a regional accrediting association that is attended by a bona fide [Tennessee] resident;

(3) “Eligible postsecondary institution” means a [Tennessee] public college or university, a [Tennessee] college of applied technology, or a regionally accredited four-year private, non-profit institution located in this state and having its primary campus domiciled in this state;

(4) “Full-time student” means a student attending a postsecondary educational institution and enrolled for at least twelve (12) semester hours during each semester of attendance;

(5) “Gift aid” means scholarships and grants from any source that do not require repayment, including funds provided through the federal Foster Care Independence Act of 1999, compiled generally in title 42 U.S.C., and other similar programs. Student loans and work-study awards shall not be considered gift aid;

(6) “Home school student” means a student who completed high school in a [Tennessee] home school associated with a church-related school as defined by [Insert citation (church-related schools)] or an independent home school student whose parent or
guardian has given notice to the local director of a [Tennessee] school district under [Insert citation (homeschool law)] of intent to conduct a home school;

(7) “Resident” means a student as defined by regulations promulgated by the board of regents under [Insert citation]; and

(8) “TSAC” means the [Tennessee] student assistance corporation.

(b) TSAC shall administer the [Tennessee] Promise Scholarship Program for [Tennessee] residents seeking an associate’s degree, certificate or diploma from an eligible postsecondary institution under the following terms and conditions:

(1) To be eligible for the scholarship a student shall be admitted to and enrolled full-time in an eligible postsecondary program in the fall term following graduation from an eligible high school, or completion of high school as a [Tennessee] home school student, or obtaining a GED® or HiSET® diploma; provided, that the student obtains the GED® or HiSET® diploma prior to the student reaching nineteen (19) years of age. Exceptions to initial enrollment may be made for extenuating circumstances as provided in rules and regulations promulgated by TSAC;

(2) Students applying for the scholarship shall complete the [Tennessee] Promise application in their initial year of enrollment. Students shall complete the free application for federal student aid (FAFSA) each academic year in which they seek to receive the [Tennessee] Promise Scholarship;

(3) To continue to receive a [Tennessee] Promise Scholarship, a student shall maintain satisfactory academic progress as determined by the rules and regulations promulgated by TSAC. TSAC shall develop the selection and renewal criteria for students and shall have the authority to work with outside organizations to develop the most effective means for delivering the scholarships;

(4) Scholarship recipients shall participate in mentoring and community service programs under the rules and regulations promulgated by TSAC. TSAC shall develop the selection criteria for students and shall have the authority to work with outside organizations to deliver the scholarships;

(5) Subject to the amounts appropriated by the general assembly, a [Tennessee] Promise Scholarship shall be the cost of tuition and mandatory fees at the eligible postsecondary institution attended less all other gift aid. Gift aid shall be credited first to the student’s tuition and mandatory fees;

(6) Notwithstanding subdivision (b)(5), the amount of the [Tennessee] Promise Scholarship at an eligible four-year public postsecondary institution or an eligible private institution shall not exceed the average cost of tuition and mandatory fees at public two-year postsecondary institutions;

(7) A [Tennessee] Promise Scholarship student who has an approved medical or personal leave of absence from an eligible postsecondary institution may continue to receive the scholarship upon resuming the student's education at an eligible postsecondary institution so long as the student continues to meet all applicable eligibility requirements. The sum of all approved leaves of absence shall not exceed six (6) months. The student shall be eligible for the scholarship until the occurrence of the first of the following events:

(A) The student has earned a certificate, diploma, or associate degree; or

(B) The sum of the number of years the student attended a postsecondary institution, exclusive of approved leaves of absence, equals two and one-half (2½) years from the date of the student’s initial enrollment at an eligible postsecondary institution; and

(8) Except for a medical or personal leave of absence, as approved by an eligible postsecondary institution, a [Tennessee] Promise Scholarship student shall maintain continuous enrollment at an eligible postsecondary institution.
(c) The [Tennessee] Promise Scholarship program shall be funded under the following terms and conditions:

1. There is established an endowment for the purpose of funding the [Tennessee] Promise Scholarship, which shall be funded from program-generated revenues of the TSAC and shall be invested as a part of the chairs of excellence endowment fund established by [Insert citation], the intermediate-term investment fund established by [Insert citation], or the state pooled investment fund established by [Insert citation]. To the extent that the endowment is invested in the chairs of excellence endowment fund, the chairs of excellence endowment fund shall serve exclusively as an investment vehicle; accordingly, the chairs of excellence program and funding requirements shall not apply;

2. In addition to the endowment described in subdivision (c)(1) there is established an additional endowment for the purpose of funding the [Tennessee] Promise Scholarship, which shall be funded from the lottery for education account established in [Insert citation]. Such endowment shall be established as a separate account in the state treasury. Moneys in this endowment shall be invested by the state treasurer pursuant to [Insert citation] for the sole benefit of that fund;

3. Beginning in fiscal year [2014-2015], all funds in the lottery for education account, in excess of ten million dollars ($10,000,000) shall be transferred on a quarterly basis to the [Tennessee] Promise Scholarship endowment described in subdivision (b)(2). Such transfers shall occur after all required expenditures have been made for [Tennessee] education lottery scholarship programs, [Tennessee] student assistance awards, and administrative expenses, and after any required deposits into the general shortfall reserve subaccount have been made; and

4. Funds appropriated for the [Tennessee] Promise Scholarship program, including matching funds or other appropriations made by the general assembly, may be placed in an endowment fund created solely for the program, the interest income from which shall be used to provide scholarships under this section. The corpus of each endowment established under this section shall not be expended. Unexpended funds remaining in each endowment in any fiscal year shall not revert to the general fund, but shall remain available in the [Tennessee] Promise Scholarship program for scholarship expenditures in subsequent fiscal years.

Section 2. [Rules.] TSAC is authorized to promulgate rules to effectuate the purposes of Section 1 of this act. All such rules shall be promulgated in accordance with [Insert citation].
HEALTH CARE

Caregiver Advise, Record and Enable Act

The Act requires hospitals to give each patient or patient’s legal guardian an opportunity to designate a caregiver who will provide after-care assistance to the patient following discharge from the hospital. The Act also requires the hospital to record the name and contact information of the caregiver in the patient’s medical record and to notify the caregiver upon the patient’s discharge or transfer to another facility.

Submitted as:
Oklahoma
SB 1536
Status: Signed into law on May 9, 2014.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Definitions.]
1. “Aftercare” means any assistance provided by a designated lay caregiver to an individual under this act after the patient's discharge from a hospital. Such assistance may include tasks that are limited to the patient's condition at the time of discharge that do not require a licensed professional;
2. “Discharge” means a patient's exit or release from a hospital to the patient's residence following any inpatient stay;
3. “Hospital” means a facility licensed pursuant to the provisions of [Insert citation.];
4. “Lay caregiver” means any individual eighteen (18) years of age or older, including next of kin, duly designated as a lay caregiver pursuant to the provisions of this act who provides aftercare assistance to a patient in the patient's residence; and
5. “Residence” means a dwelling considered by a patient to be his or her home, not including any hospital as defined by [Insert citation.], nursing home or group home as defined by [Insert citation.], or assisted living facility as defined by [Insert citation.]

Section 2. [Designation of a lay caregiver.]
A. Hospitals shall provide each patient or the patient's legal guardian with an opportunity to designate one lay caregiver following the patient's admission into a hospital and prior to the patient's discharge to the patient's residence:
1. In the event the patient is unconscious or otherwise incapacitated upon admission to the hospital, the hospital shall provide the patient's legal guardian with an opportunity to designate a lay caregiver following the patient's recovery of consciousness or capacity, so long as the designation or lack of a designation does not interfere with, delay or otherwise affect the medical care provided to the patient.
2. In the event the patient or the patient's legal guardian declines to designate a lay caregiver under this act, the hospital shall promptly document such in the patient's medical record, and the hospital shall be deemed to comply with the provisions of this act.
3. In the event that the patient or the patient's legal guardian designates an individual as a lay caregiver under this act, the hospital shall promptly request the written consent of the
patient or the patient's legal guardian to release medical information to the patient's
designated lay caregiver pursuant to the hospital's established procedures for releasing
personal health information and in compliance with applicable state and federal law.

4. If the patient or the patient's legal guardian declines to consent to the release of medical
information to the patient's designated lay caregiver, the hospital is not required to
provide notice to the lay caregiver pursuant to the provisions of Section 3 of this act.

5. The hospital shall record the patient's designation of a lay caregiver, the relationship of
the lay caregiver to the patient, and the name, telephone number, and physical address of
the patient's designated lay caregiver in the patient's medical record.

B. A patient may elect to change his or her designated lay caregiver in the event that the lay
caregiver becomes incapacitated.

C. Designation of a lay caregiver by a patient or a patient's legal guardian pursuant to the
provisions of this act does not obligate any individual to perform any aftercare tasks for the
patient.

D. This section shall not be construed so as to require a patient or a patient's legal guardian to
designate any individual as a lay caregiver as defined by this act.

Section 3. [Notification of discharge to designated lay caregiver.]
If a patient has designated a lay caregiver, a hospital shall notify the patient's designated lay
caregiver of the patient's discharge to the patient's residence or transfer to another licensed
facility as soon as practicable. In the event the hospital is unable to contact the designated lay
caregiver, the lack of contact shall not interfere with, delay or otherwise affect the medical care
provided to the patient, or an appropriate discharge of the patient.

Section 4. [Consultation with designated lay caregiver.]
As soon as practicable, the hospital shall attempt to consult with the designated lay caregiver to
prepare him or her for aftercare and issue a discharge plan describing a patient's aftercare needs.
In the event the hospital is unable to contact the designated lay caregiver, the lack of contact
shall not interfere with, delay or otherwise affect an appropriate discharge of the patient.

Section 5. [Health care decisions; private rights of action.]
A. Nothing in this act shall be construed to interfere with the rights of a person legally
authorized to make health care decisions as defined in [Insert citation.]
B. Nothing in this act shall be construed to create a private right of action against a hospital,
hospital employee, a duly authorized agent of the hospital, or otherwise supersede or replace
existing rights or remedies under any other general or special law.

Section 6. [Prohibition of payment to lay caregivers.]
No state or federal dollars shall be used for payment to any lay caregiver as defined in this act
after discharge from a hospital. No state or federal program funding shall be impacted by this act.
Collaborative Practice Agreements Between Physicians and Pharmacists

The Act (Sections 1, 9) allows the practice of collaborative drug therapy management by a pharmacist. A pharmacist is allowed to perform patient care functions for a specific patient delegated to the pharmacist by a physician through a collaborative practice agreement. The physician remains responsible for the care of the patient throughout the collaborative drug therapy management process. A pharmacist may not alter a physician’s orders or directions, diagnose or treat any disease, independently prescribe drugs, or independently practice medicine. The Act also establishes a seven-member collaborative drug therapy management advisory committee.

Submitted as: Kansas
HB 2146
Status: Signed into law on April 10, 2014.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [Practice of pharmacy.]
2 (a) For the purpose of the pharmacy act of the [state], the following persons shall be deemed to
3 be engaged in the practice of pharmacy:
4 (1) Persons who publicly profess to be a pharmacist, or publicly profess to assume the duties
5 incident to being a pharmacist and their knowledge of drugs or drug actions, or both; and
6 (2) persons who attach to their name any words or abbreviation indicating that they are a
7 pharmacist licensed to practice pharmacy in [state].
8 (b)
9 (1) “Practice of pharmacy’’ means the interpretation and evaluation of prescription orders;
10 the compounding, dispensing and labeling of drugs and devices pursuant to prescription
11 orders; the administering of vaccine pursuant to a vaccination protocol; the participation
12 in drug selection according to state law and participation in drug utilization reviews; the
13 proper and safe storage of prescription drugs and prescription devices and the
14 maintenance of proper records thereof in accordance with law; consultation with patients
15 and other health care practitioners about the safe and effective use of prescription drugs
16 and prescription devices; performance of collaborative drug therapy management
17 pursuant to a written collaborative practice agreement with one or more physicians who
18 have an established physician-patient relationship; and participation in the offering or
19 performing of those acts, services, operations or transactions necessary in the conduct,
20 operation, management and control of a pharmacy. Nothing in this section shall be
21 construed to add any additional requirements for registration or for a permit under the
22 pharmacy act of the state of Kansas or for approval under [Insert citation], or to prevent
23 persons other than pharmacists from engaging in drug utilization review, or to require
24 persons lawfully in possession of prescription drugs or prescription devices to meet any
storage or record keeping requirements except such storage and record keeping
requirements as may be otherwise provided by law or to affect any person consulting
with a health care practitioner about the safe and effective use of prescription drugs or
prescription devices.

(2) ‘‘Collaborative drug therapy management’’ means a practice of pharmacy where a
pharmacist performs certain pharmaceutical-related patient care functions for a specific
patient which have been delegated to the pharmacist by a physician through a
collaborative practice agreement. A physician who enters into a collaborative practice
agreement is responsible for the care of the patient following initial diagnosis and
assessment and for the direction and supervision of the pharmacist throughout the
collaborative drug therapy management process. Nothing in this subsection shall be
construed to permit a pharmacist to alter a physician’s orders or directions, diagnose or
treat any disease, independently prescribe drugs or independently practice medicine and
surgery.

(3) ‘‘Collaborative practice agreement’’ means a written agreement or protocol between one
or more pharmacists and one or more physicians that provides for collaborative drug
therapy management. Such collaborative practice agreement shall contain certain
specified conditions or limitations pursuant to the collaborating physician’s order,
standing order, delegation or protocol. A collaborative practice agreement shall be: (A)
Consistent with the normal and customary specialty, competence and lawful practice of
the physician; and (B) appropriate to the pharmacist’s training and experience.

(4) ‘‘Physician’’ means a person licensed to practice medicine and surgery in this state.

Section 2. [Collaborative drug therapy management advisory committee.]
(a) Not later than 90 days after the effective date of this act, the state board of pharmacy and the
state board of healing arts shall appoint a seven-member committee to be known as the
collaborative drug therapy management advisory committee for the purpose of promoting
consistent regulation and to enhance coordination among such boards with jurisdiction over
licensees involved in collaborative drug therapy management. Such committee shall advise
and make recommendations to the state board of pharmacy and state board of healing arts on
matters relating to collaborative drug therapy management.

(b) The collaborative drug therapy management advisory committee shall consist of seven
members: (1) One member of the board of pharmacy appointed by the board of pharmacy,
who shall serve as the nonvoting chairperson; (2) three licensed pharmacists appointed by the
state board of pharmacy, at least two of whom shall have experience in collaborative drug
therapy management; and (3) three persons licensed to practice medicine and surgery
appointed by the state board of healing arts, at least two of whom shall have experience in
collaborative drug therapy management. The state board of pharmacy shall give
consideration to any names submitted by the [state] pharmacists association when making
appointments to the committee. The state board of healing arts shall give consideration to any
names submitted by the [state] medical society when making appointments to the committee.
Members appointed to the committee shall serve terms of two years, except that of the four
members of the committee first appointed to the committee by the state board of pharmacy,
two shall be appointed for terms of two years and two shall be appointed for terms of one
year as specified by the state board of pharmacy and that of the three members of the
committee first appointed to the committee by the state board of healing arts, two shall be
appointed for terms of two years and one shall be appointed for a term of one year as
specified by the state board of healing arts. Members appointed to the committee shall serve
without compensation. All expenses of the committee shall be equally divided and paid by
the state board of pharmacy and state board of healing arts.
Dental Hygiene Therapists (Note)

By Debra Miller, CSG Director of Health Policy

In 2014, roughly 47 million Americans lived in “dental health professional shortage areas,” a geographic area or a population group where there are 5,000 or more individuals per dentist so designated by the U.S. Department of Health and Human Services. In six states, at least 20 percent of the population lives in shortage areas with little or no access to dentists.

Dental care is the greatest unmet health need among children in the United States, according to the Pew Charitable Trusts. Every year, tens of millions of children, many of them from low-income families, go without seeing a dentist.

The dental workforce traditionally has been limited to dentists, dental hygienists and dental assistants, all of whom are licensed at the state level. However, Minnesota and Maine have authorized mid-level dental practitioners to expand the reach of the dental workforce.

In 2009, Minnesota (SF 2083) became the first state to establish new mid-level dental practitioners, called dental therapists and advanced dental therapists. The advanced dental therapist is required to complete more education and 2,000 hours of clinical practice. The Minnesota statute requires that a dental therapist—or DT—work under the direct or indirect supervision of a dentist, while the advanced dental therapist—or ADT—may work without a dentist onsite. The scope of practice of the DT and the ADT differs only in that the ADT may extract mobile permanent teeth and may “provide” limited medications. Dental therapists are authorized to work in nursing homes, community health centers, Head Start programs and U.S. Department of Veterans Affairs clinics. They can also work in other settings, including private practices, as long as more than 50 percent of patients are low-income, disabled, chronically ill or uninsured.

Maine (HP 870 – L.D. 1230) is the second state to create a new mid-level dental provider. Passed in 2014, the bill created a new level of dental practitioners. The dental hygiene therapists will be able to perform assessments, preventive services, simple cavity preparation and restoration, and simple extractions, as well as prepare and place stainless steel crowns and aesthetic crowns, and provide urgent management of dental trauma. Dental hygienists can become dental hygiene therapists after statutorily prescribed schooling and clinical hours and after passing an exam. They are required to work under a dentist’s supervision.

The Indian Health Service in Alaska has used a midlevel provider since 2003, called a dental health aide therapist. Dental health aides are congressionally authorized by the Indian Health Care Improvement Act (Section 121, 25 U.S.C. 1616l) and are exclusively for use in Alaska. The aides practice in remote rural areas of the state with a focus on increasing access to preventive and basic dental care for the Alaska Native population. The aides are under the general supervision of a dentist but can provide services without being in the physical presence of a dentist.

Bills are pending for the 2016 legislative sessions in Hawaii (HB 257), Massachusetts (S. 1118), South Carolina (S. 245) and Vermont (S. 20).
Emergency Allergy Treatment

The Act expands the law governing insect sting emergency treatment to create the “Emergency Allergy Treatment Act,” which makes epinephrine auto-injectors (EAIs) available for the treatment of any severe allergic reaction and in more public places. The Act permits certain authorized entities, such as restaurants and youth sports leagues, to obtain a prescription for an epinephrine auto-injector. Authorized entities may stock and store EAIs, and their employees who have completed certain training and are certified may provide an EAI to a person suffering a severe allergic reaction for self-administration, administer an EAI to a person suffering a severe allergic reaction, or provide an EAI to a person to administer it to another person suffering a severe allergic reaction. The Act extends the civil liability immunity protections of the Good Samaritan Act to any person who possesses, administers, or stores EAIs in compliance with Emergency Allergy Treatment Act.

Submitted as:
Florida
HB 1131
Status: Signed into law on June 13, 2014.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [Emergency allergy treatment.]
2 (1) Definitions:
3 (a) “Administer” means to directly apply an epinephrine auto-injector to the body of an individual.
4 (b) “Authorized entity” means an entity or organization at or in connection with which allergens capable of causing a severe allergic reaction may be present. The term includes, but is not limited to, restaurants, recreation camps, youth sports leagues, theme parks and resorts, and sports arenas. However, a school as described in [Insert citation] is an authorized entity for the purposes of subsection (4) only.
5 (c) “Authorized health care practitioner” means a licensed practitioner authorized by the laws of the state to prescribe drugs.
6 (d) “Department” means the Department of Health.
7 (e) “Epinephrine auto-injector” means a single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body.
8 (f) “Self-administration” means an individual's discretionary administration of an epinephrine auto-injector on herself or himself.
9 (2) The purpose of this section is to provide for the certification of persons who administer lifesaving treatment to persons who have severe allergic reactions when a physician is not immediately available.
10 (3) The department may:
11 (a) Adopt rules necessary to administer this section.
12 (b) Conduct educational training programs as described in subsection (4), and approve programs conducted by other persons or governmental agencies.
(c) Issue and renew certificates of training to persons who have complied with this section and the rules adopted by the department.

(d) Collect fees necessary to administer this section.

(4) Educational training programs required by this section must be conducted by a nationally recognized organization experienced in training laypersons in emergency health treatment or an entity or individual approved by the department. The curriculum must include at a minimum:

(a) Recognition of the symptoms of systemic reactions to food, insect stings, and other allergens; and

(b) The proper administration of an injection epinephrine auto-injector.

(5) A certificate of training may be given to a person who:

(a) Is 18 years of age or older;

(b) Has, or reasonably expects to have, responsibility for or contact with at least one other person as a result of his or her occupational or volunteer status, including, but not limited to, a camp counselor, scout leader, school teacher, forest ranger, tour guide, or chaperone; and

(c) Has successfully completed an educational training program as described in subsection (4).

(6) A person who successfully completes an educational training program may obtain a certificate upon payment of an application fee of $25.

(7) A certificate issued pursuant to this section authorizes the holder to receive, upon presentation of the certificate, a prescription for epinephrine auto-injectors from an authorized health care practitioner or the department. The certificate also authorizes the holder, in an emergency situation when a physician is not immediately available, to possess and administer a prescribed epinephrine auto-injector to a person experiencing a severe allergic reaction.

Section 2. [Epinephrine auto-injectors; emergency administration.]

(1) Prescribing to an authorized entity. — An authorized health care practitioner may prescribe epinephrine auto-injectors in the name of an authorized entity for use in accordance with this section, and pharmacists may dispense epinephrine auto-injectors pursuant to a prescription issued in the name of an authorized entity.

(2) Maintenance of supply. — An authorized entity may acquire and stock a supply of epinephrine auto-injectors pursuant to a prescription issued in accordance with this section. Such epinephrine auto-injectors must be stored in accordance with the epinephrine auto-injector's instructions for use and with any additional requirements that may be established by the department. An authorized entity shall designate employees or agents who hold a certificate pursuant to [this Act] to be responsible for the storage, maintenance, and general oversight of epinephrine auto-injectors acquired by the authorized entity.

(3) Use of Epinephrine Auto-Injectors. — An individual who holds a certificate issued pursuant to [this Act] may, on the premises of or in connection with the authorized entity, use epinephrine auto-injectors prescribed pursuant to subsection (1) to:

(a) Provide an epinephrine auto-injector to a person who the certified individual in good faith believes is experiencing a severe allergic reaction for that person's immediate self-administration, regardless of whether the person has a prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy.
(b) Administer an epinephrine auto-injector to a person who the certified individual in good faith believes is experiencing a severe allergic reaction, regardless of whether the person has a prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy.

(4) Expanded availability.—An authorized entity that acquires a stock supply of epinephrine auto-injectors pursuant to a prescription issued by an authorized health care practitioner in accordance with this section may make the auto-injectors available to individuals other than certified individuals identified in subsection (3) who may administer the auto-injector to a person believed in good faith to be experiencing a severe allergic reaction if the epinephrine auto-injectors are stored in a locked, secure container and are made available only upon remote authorization by an authorized health care practitioner after consultation with the authorized health care practitioner by audio, televideo, or other similar means of electronic communication. Consultation with an authorized health care practitioner for this purpose is not considered the practice of telemedicine or otherwise construed as violating any law or rule regulating the authorized health care practitioner's professional practice.

(5) Immunity from liability.—Any person, as defined under [Insert citation.], including an authorized health care practitioner, a dispensing health care practitioner or pharmacist, an individual trainer under Section 1(4) and a person certified pursuant to Section 1(6) who possesses, administers, or stores an epinephrine auto-injector in compliance with this act, and an uncertified person who administers an epinephrine auto-injector as authorized under subsection (4) in compliance with this act, is afforded the civil liability immunity protections provided 155 under [Insert citation.]
Hepatitis C Screening (Note)

By Debra Miller, CSG Director of Health Policy

Hepatitis C is a liver disease that results from infection with the hepatitis C virus. It can range in severity from a mild illness lasting a few weeks to a serious, lifelong illness. Hepatitis C is usually spread when blood from a person infected with the virus enters the body of someone who is not infected. Today, most people become infected with the hepatitis C virus by sharing needles or other equipment to inject drugs. Before 1992, when widespread screening of the blood supply began in the United States, hepatitis C was also commonly spread through blood transfusions and organ transplants.

There is no vaccine to prevent hepatitis C. Vaccines are available only for hepatitis A and B. The best way to prevent hepatitis C is by avoiding behaviors that can spread the disease, especially injection drug use.

Also according to the CDC, an estimated 3.2 million persons in the United States have chronic hepatitis C virus infection, though most infected people do not know they are infected because they don’t look or feel sick. Approximately 75 to 85 percent of people who become infected with the hepatitis C virus develop chronic infection.

Two new drugs approved by the FDA in late 2013, have cure rates between 90 and 95 percent and treatment regimens with far fewer side effects than earlier treatments. However, the estimated cost for treatment is $1,000 to $2,000 a day, with a 12-week course costing between $84,000 and $168,000 per patient. States and insurance companies have made various decisions to target the expensive drugs for patients at later stages of the disease.

During the 2013 legislative session, the New York State Legislature passed a first-in-the-nation law (Bill A1286A) requiring that hospitals offer hepatitis C screening tests for baby boomers (those born between 1945 and 1965). The New York legislation is in alignment with recommendations from the CDC released in August 2012. The bill is modeled after both federal guidelines and New York’s existing HIV testing law and requires hospitals and health clinics to offer hepatitis C testing to baby boomers, the age group with the highest infection rate. In June 2013, the U.S. Preventative Services Task Force, USPSTF, issued its final recommendations for screening for hepatitis C virus infection consistent with those of the CDC. The USPSTF recommends screening for hepatitis C virus infection in persons at high-risk for infection and recommends offering one-time screening to all adults born between 1945 and 1965.

Since the passage of the legislation in New York, lawmakers in Connecticut (CT HB 257 (2014), CT ALS 203) and Massachusetts (MA Chapter 165 of 2014 Acts) also have passed legislation requiring hepatitis C virus screening to be offered to individuals born between 1945 and 1965.

A 2014 Colorado law (CO SB 14-173) recommends, but does not require, that health care providers offer hepatitis C screenings to people born between 1945 and 1965.

In 2015, the Illinois governor vetoed a bill (IL S 661) to require screening. In addition, four states took up bills in 2015 to address hepatitis C virus screening but failed to pass them.
Mammographic Breast Density

The Act requires health care facilities that perform mammography examinations to communicate mammographic breast density information to patients.

Submitted as:
North Carolina
HB 467
Status: Signed into law on July 23, 2013.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Communication of mammographic breast density information to patients.]
(a) All health care facilities that perform mammography examinations shall include in the summary of the mammography report, required by federal law to be provided to a patient, information that identifies the patient's individual breast density classification based on the Breast Imaging Reporting and Data System established by the American College of Radiology. If the facility determines that a patient has heterogeneously or extremely dense breasts, the summary of the mammography report shall include the following notice:

“Your mammogram indicates that you may have dense breast tissue. Dense breast tissue is relatively common and is found in more than forty percent (40%) of women. The presence of dense tissue may make it more difficult to detect abnormalities in the breast and may be associated with an increased risk of breast cancer. We are providing this information to raise your awareness of this important factor and to encourage you to talk with your physician about this and other breast cancer risk factors. Together, you can decide which screening options are right for you. A report of your results was sent to your physician.”

(b) Patients who receive diagnostic or screening mammograms may be directed to informative material about breast density. This informative material may include the American College of Radiology's most current brochure on the subject of breast density.
By Debra Miller, CSG Director of Health Policy

Naloxone is a very effective and safe substance to reduce the effects of opioid drug overdose and prevent deaths. Overdose deaths more than doubled between 1999 and 2010. In 2010, deaths from both prescription drug and illicit drug overdoses surpassed traffic accidents as the number one cause of death for persons less than 65 years old. States essentially use two policy options to increase access to naloxone. A small minority of states allow naloxone sales by a pharmacy without a prescription. A majority of states allow pharmacists to dispense naloxone under a standing order from a licensed medical professional.

Allow Dispensing Without a Prescription
Legislation passed in California in 2014 (AB 1535) authorizes a pharmacist to furnish naloxone hydrochloride without a prescription in accordance with standardized procedures or protocols developed and approved by both the Pharmacy Board and the Medical Board of California, in consultation with specified entities. The bill requires the Pharmacy Board and the Medical Board of California, in developing those procedures and protocols, to include procedures requiring the pharmacist to provide a consultation to educate person to whom the drug is furnished, as specified, and notify the patient’s primary care provider of drugs or devices furnished to the patient, as specified. The bill prohibits a pharmacist furnishing naloxone hydrochloride pursuant to its provisions from permitting the person to whom the drug is furnished to waive the consultation described above. The bill requires a pharmacist to complete a training program on the use of opioid antagonists prior to performing this procedure.

California joined five other states in 2014—New Mexico, New York, Rhode Island, Vermont and Washington—that allow dispensing the antidote without a prescription.

In 2015, Kentucky adopted legislation (SB 192) as part of a broader drug abuse effort that also allows pharmacists to dispense naloxone hydrochloride without a prescription.

Also in 2015, the Ohio governor issued an executive order (OH 9 2015) to permit the Board of Pharmacy to adopt a specified emergency rule that would allow the adoption of protocols that would permit a pharmacist to dispense naloxone without a prescription.

Allow Pharmacists to Dispense Under a Standing Order
In New York, legislation (AB 8637) approved in 2014 allows for the prescribing, dispensing and distribution of an opioid antagonist by a non-patient specific order, what is commonly called a standing order. The law also authorizes a recipient of the opioid antagonist to possess, distribute and administer the opioid antagonist. Any recipient of the antidote who is acting reasonably and in good faith is not liable under the new law.

Washington approved similar legislation (H 1671) in 2015.

Massachusetts allowed pharmacies to dispense under a standing order in a 2012 law.
In September 2015, CVS Health made national news when they announced they would allow their pharmacists to sell naloxone without a prescription in 12 states in addition to Rhode Island and Massachusetts. According to the *Pharmacy Times*, nine of those 12 states targeted by CVS allowed pharmacists to dispense naloxone under a standing order:

- **Arkansas**: The Naloxone Access Act allows pharmacists acting in good faith to dispense an opioid antagonist in accordance with a protocol specified by a practitioner.
- **Minnesota**: Chapter 232, S.F. No. 1900 includes a Good Samaritan Overdose Prevention section that releases health care professionals from liability if they directly or by standing order dispense naloxone. Physicians can enter into a protocol with pharmacists to prepare valid prescriptions for naloxone, and pharmacists can administer naloxone to patients experiencing an overdose.
- **Mississippi**: The Emergency Response and Overdose Prevention Act states that pharmacists acting in good faith can dispense an opioid antagonist under a prescription by standing order of a physician.
- **Montana**: Allows standing orders.
- **New Jersey**: The Overdose Prevention Act of 2013 gives immunity for pharmacists involved in dispensing naloxone under a standing order.
- **Pennsylvania**: Opioid Overdose Reversal Act 139 allows first responders and law enforcement officers to enter into a written agreement with a certified emergency medical services provider to obtain a supply of naloxone.
- **South Carolina**: The South Carolina Overdose Prevention Act allows pharmacists acting in good faith to dispense opioid antagonists pursuant to a standing order by a prescriber.
- **Tennessee**: Allows standing orders.
- **Wisconsin**: Allows standing orders.

According to the *College of Psychiatric and Neurologic Pharmacists*, as of June 2015, an additional 18 states to those listed above have legislation that allows pharmacies to sell naloxone under standing orders, for a total of 27 states.

**Other State Policies on Naloxone Dispensing**

Two states in the CVS news announcement (California allowed dispensing without a prescription under a law passed in 2014), according to the *Pharmacy Times*, had these laws in place:

- **North Dakota**: Senate Bill 2104 allows the Board of Pharmacy to establish rules for pharmacists to have *limited prescriptive authority* to provide naloxone rescue kits to treat an opioid overdose.
- **Utah**: The Emergency Administration of Opiate Antagonist Act allows the *direct dispensing of an opiate antagonist to someone who is “reasonably believed” to be experiencing an overdose.*
Right to Try Act

The Act establishes findings concerning barriers that terminally ill patients may face in access to potentially life-preserving treatments.

Submitted as:
Louisiana HB 891

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Legislative Findings.]
The Legislature of [Louisiana] hereby finds and declares the following:
(1) The process of approval for investigational drugs, biological products, and devices in the United States often takes many years.
(2) A patient who has a terminal illness does not have the luxury of waiting until an investigational drug, biological product, or device receives final approval from the United States Food and Drug Administration.
(3) The standards of the United States Food and Drug Administration for the use of investigational drugs, biological products, and devices may deny the benefits of potentially life-saving treatments to terminally ill patients.
(4) A patient with a terminal illness has a fundamental right to attempt to preserve his own life by accessing available investigational drugs, biological products, and devices.
(5) Whether to use available investigational drugs, biological products, or devices is a decision that rightfully should be made by the patient with a terminal illness in consultation with his physician, and is not a decision to be made by the government.

Section 2. [Definitions.]
As used in this Part, the following terms have the meaning ascribed to them in this Section:
(1) “Eligible patient” means a person to whom all of the following criteria apply:
(a) Has a terminal illness.
(b) As determined by the person's physician, has no comparable or satisfactory treatment options that are approved by the United States Food and Drug Administration and available to diagnose, monitor, or treat the person's disease or condition, and the probable risk to the person from the investigational drug, biological product, or device is not greater than the probable risk from the person's disease or condition.
(c) Has received a prescription or recommendation from his physician for an investigational drug, biological product, or device.
(d) Has given his consent in writing for the use of the investigational drug, biological product, or device; or, if he is a minor or lacks the mental capacity to provide consent, a parent or legal guardian has given consent in writing on his behalf.
(e) Has documentation from his physician indicating that he has met the requirements provided in this Part.
(2) “Investigational drug, biological product, or device” means a drug, biological product, or device that has successfully completed phase one of a United States Food and Drug Administration approved clinical trial, but has not been approved for general use by the United States Food and Drug Administration and remains under investigation in a clinical trial.

(3) “Terminal illness” means a disease that, without life-sustaining procedures, will result in death in the near future or a state of permanent unconsciousness from which recovery is unlikely. This diagnosis shall be confirmed by a second independent evaluation by a board-certified physician in an appropriate specialty.

Section 3. [Availability of drugs, biological products, and devices; costs; insurance coverage.]
A.
(1) A manufacturer of an investigational drug, biological product, or device may make available such drug, product, or device to eligible patients in accordance with the provisions of this Section.
(2) Nothing in this Section shall be construed to require a manufacturer to make available any drug, product, or device.
B. A manufacturer may do any of the following:
(1) Provide an investigational drug, biological product, or device to an eligible patient without receiving compensation.
(2) Require an eligible patient to pay the costs of or associated with the manufacture of the investigational drug, biological product, or device.
C. (1) A health insurance issuer may choose to provide coverage for the cost of an investigational drug, biological product, or device.
D. Nothing in this Section shall be construed to require a health insurance issuer to provide coverage for the cost of any investigational drug, biological product, or device.

Section 4. [Limitation of liability.]
Notwithstanding any provision of law to the contrary, a physician who prescribes an investigational drug, biological product, or device to an eligible patient pursuant to the provisions of this Part shall be immune from civil liability, including but not limited to any cause of action arising under [Insert citation.], for any adverse action, condition, or other outcome resulting from the patient’s use of the investigational drug, biological product, or device.

Section 5. [Action against physician license prohibited.]
Notwithstanding any provision of law to the contrary, the [Louisiana] State Board of Medical Examiners shall not revoke, fail to renew, or take any other action against the license of a physician issued pursuant to the provisions of [Insert citation.] based solely upon the recommendation of the physician to an eligible patient regarding, or prescription for, or treatment with, an investigational drug, biological product, or device when such recommendation, prescription, or treatment is undertaken in strict conformance with the provisions of this Part.
Substituting Interchangeable Biological Products

(Note)

By Debra Miller, CSG Director of Health Policy, and Samantha-Jane Harris, CSG Graduate Fellow

Background:
Biological products are a growing class of medicines available to treat disease. Biological products differ from traditional drugs in a few key ways. Biologics are manufactured in living cells, while drugs are manufactured through a chemical process. Many biologics are produced using recombinant DNA technology. Biologics are large, complex molecules, while chemical drugs are much smaller molecules.

A generic drug, a substitute to a brand-name drug developed through a chemical process, is approved by the FDA when analysis demonstrates the same active ingredient, strength, dosage form and route of administration as the brand-name drug. The generic drug becomes available on the market after the patent for the brand-name drug expires. Generic drugs are less expensive. Pharmaceutical companies say the price differential is because the brand-name drugs’ costs must recover companies’ research and development costs.

Biosimilars, interchangeable biologicals and follow-on biologics are the names given to the “generic” versions of brand-name biologics. These substitutes will not be identical to the brand-name biologic due to the complexity of the manufacturing process. According to a 2014 research report prepared for the Connecticut legislature, the difference in price between generic (chemical) drugs and the brand-name reference drug can be as high as 80 percent. However, the development and approval process costs for a biosimilar are much higher and the difference in price between the original biologic and the biosimilar typically ranges from 15 to 30 percent. At least 14 biosimilars are currently approved for use in the European Union.

The FDA was authorized to approve an expedited pathway for biosimilars and interchangeable biologicals in March 2010 when the Biologics Price Competition and Innovation Act of 2009 was included in the Affordable Care Act. The law provides a 12-year patent protection period for brand-name biologics. While draft guidance for the expedited pathway has been released by the FDA, no final guidance has been approved, nor have any biosimilars been approved for sale in the United States.

Even after an interchangeable biological is approved by the FDA, it must meet additional requirements to be considered “interchangeable.” The FDA must determine that the biosimilar can be expected to produce the same clinical result as the brand-name product in any patient and that it has similar safety risks as the brand-name product. At the point that the FDA deems a biosimilar interchangeable, state law will govern how substitutions will be allowed. The first FDA approval was announced March 6, 2015.
Biosimilar State Laws: First Round in 2013-14

In anticipation of FDA approval of interchangeable biologicals, eight states--Delaware, Florida, Indiana, Massachusetts, North Dakota, Oregon, Utah and Virginia--passed bills in 2013 and 2014 to regulate the substitution of biosimilars for brand-name biologics by pharmacists. In California, a bill was passed in the 2013 session but was vetoed by Gov. Jerry Brown. At least 11 other states have considered bills on biosimilar substitution but failed to approve them.

All eight enacted bills restrict substitution to FDA-approved interchangeable biosimilars. Seven of the eight states provide that a pharmacist or assistant can make a substitution unless the prescribing authority indicates a prohibition against substitution. The Indiana law reverses the substitution assumption and allows substitution if the prescribing authority specifically authorizes it. Virginia’s law specifically provides that the substitution is not allowed if the patient “insists” on the brand-name biologic. The Utah law requires that the purchaser specifically requests or consents to the substitution.

All states require notice to the patient, or the person receiving the medication, of the substitution of a biosimilar for the name-brand prescribed. The Virginia law, the first in nation to be adopted, requires the label indicate the biosimilar name and manufacturer, and if substituted, the brand-name biologic. Delaware also requires the name of the biosimilar on the label.

All states require the pharmacist provide notice to the prescribing authority of a substitution. Indiana adds that that the prescribing authority also be provided the name of the substitution and the manufacturer. Florida’s notification is limited to certain classes of pharmacies placing notice in electronic records.

Record keeping requirements vary across the eight states, from not less than one year to not less than five years for the pharmacies. Indiana, North Dakota, Massachusetts and Virginia also mandate record keeping for the prescribing authority. Utah specifies that the pharmacy record include the name of the substitution and the manufacturer.

Utah’s law is the only one that specifies that it applies to out-of-state mail order pharmacies. Delaware, Florida and Indiana require that the state boards of pharmacy maintain on their public websites a listing of FDA approved interchangeable biosimilars.

Certain provisions of the early laws in Utah and Virginia were set to sunset May 1 and July 1, 2015, respectively. Utah subsequently amended its law in 2015 removing the sunset provision altogether. Virginia provisions requiring pharmacists making a substitution to notify the prescriber within five days did sunset on July 1, 2015, as did the requirement that the pharmacist notify a patient of the retail cost of both the prescribed biologic and the interchangeable biosimilar. The Oregon law sunset the physician (prescribing authority) notification provision Jan. 1, 2016.
State Laws Adopted in 2015
In 2015, 11 states passed legislation addressing interchangeable biological products. Utah amended its 2013 law, removing the sunset set for 2015. Eighteen states and Puerto Rico have passed laws to regulate the substitution of interchangeable biologics. One state, Idaho, made changes to its Board of Pharmacy regulations, bypassing legislation.

In 2014, the leading companies involved in biologic, biosimilar and interchangeable biologics met and agreed to principles related to pharmacist-prescriber communication provisions in state legislation. Eighteen manufacturers of biologics have currently signed on as members of the biosimilar coalition. The principles agreed to are:

- State pharmacy laws should be updated to enable pharmacy substitution of only interchangeable biologics, as approved by the FDA.
- In settings where interoperable electronic health records, or EHR, are in place, entry by the pharmacist of the biologic product dispensed shall satisfy requirements for pharmacist-prescriber communication.
- In instances where EHR are not yet available, the pharmacist shall communicate the dispensing of a biologic product to the prescriber, using any prevailing means, provided that communication shall not be required where:
  - There is no FDA-approved interchangeable biologic for the product prescribed; or
  - A refill prescription is not changed from the product originally dispensed.
- Other provisions related to the dispensing of a biologic product shall replicate state law pertaining to small molecule products, including that the patient is aware of the medicine they receive, physicians retain dispense-as-written authority and pharmacy records are retained.
## Substituting Interchangeable Biological Products

<table>
<thead>
<tr>
<th>Bill / Law</th>
<th>Signed by Governor</th>
<th>Prescribing authority approval / prohibition of biosimilar substitution</th>
<th>Notice of biosimilar substitution to patient</th>
<th>Notice of biosimilar substitution to prescribing authority</th>
<th>Record keeping requirements</th>
<th>Sunset</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Virginia HB 1422</td>
<td>First adopted 3/16/2013</td>
<td>Can substitute unless prescribing authority indicate &quot;brand medically necessary&quot; or patient insists on brand</td>
<td>Yes; label with substitution and manufacturer, and if substituted, label as such with brand name</td>
<td>Pharmacist must notify prescribing authority.</td>
<td>Pharmacy and prescribing authority for not less than 2 years</td>
<td>7/1/2015: Notifying prescriber; notifying patient of retail cost comparison</td>
<td></td>
</tr>
<tr>
<td>North Dakota SB 2190</td>
<td>3/29/2013</td>
<td>Can substitute unless prescribing authority indicates prohibition</td>
<td>Yes</td>
<td>Pharmacist must notify prescribing authority</td>
<td>Pharmacy and prescribing authority keep records not less than 5 years</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utah SB 78</td>
<td>4/1/2013</td>
<td>Can substitute unless prescribing authority indicates prohibition and the purchaser specifically requests or consents to the substitute</td>
<td>Yes</td>
<td>Pharmacist must notify prescribing authority</td>
<td>Name of substitution and manufacturer on file copy</td>
<td>5/15/2015</td>
<td>Applies to out-of-state mail service pharmacies</td>
</tr>
<tr>
<td>Florida HB 365</td>
<td>5/31/2013</td>
<td>Can substitute unless prescribing authority indicates prohibition</td>
<td>Yes</td>
<td>In certain class of pharmacies, enter into electronic medical record</td>
<td>Pharmacy keeps records not less than 2 years</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oregon SB 460</td>
<td>6/6/2013</td>
<td>Can substitute unless prescribing authority indicates prohibition</td>
<td>Yes</td>
<td>Pharmacist must notify prescribing authority</td>
<td>Pharmacy keeps records not less than 3 years</td>
<td>Physician notification sunsets 1/1/2016</td>
<td>Requires Board of Pharmacy to maintain website listing of FDA-approved substitutions</td>
</tr>
<tr>
<td>Indiana SB 262</td>
<td>3/25/2014</td>
<td>Prescribing authority has indicated &quot;may substitute&quot;</td>
<td>Yes</td>
<td>Notice of name and manufacturer of substitution to prescribing authority</td>
<td>As already required under law (2 years for pharmacy and 7 years for prescribing authority)</td>
<td></td>
<td>Requires Board of Pharmacy to maintain website listing of FDA-approved substitutions</td>
</tr>
<tr>
<td>Delaware Senate Substitute 1 for SB 118</td>
<td>5/28/2014</td>
<td>Can substitute unless prescribing authority indicates prohibition</td>
<td>Yes</td>
<td>Pharmacist must notify prescribing authority</td>
<td></td>
<td></td>
<td>Requires Board of Pharmacy to maintain website listing of FDA-approved substitutions</td>
</tr>
<tr>
<td>Massachusetts H 3734</td>
<td>6/24/2014</td>
<td>Can substitute unless prescribing authority indicates prohibition</td>
<td>Yes</td>
<td>Pharmacist must notify prescribing authority</td>
<td>Pharmacy, prescribing authority and administering practitioner no less than 1 year</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bill/Law</td>
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<tr>
<td>Utah HB 279</td>
<td>3/27/2015</td>
<td>Within 5 business days, name of product and manufacturer (electronic and/or other mediums)</td>
<td>Removes 5/15/2015 sunset</td>
<td>Amends 2013 law. Deletes “biosimilar” and defines “interchangeable biological product”</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Colorado SB 71</td>
<td>4/3/2015</td>
<td>Can substitute if FDA has determined biological product is interchangeable and if practitioner has not indicated that the prescription must be dispensed as written</td>
<td>Pharmacist must notify prescribing authority</td>
<td>Within a reasonable amount of time in an electronic system, the name of the product and manufacturer; pharmacy must keep records for 2 years</td>
<td>Board must maintain on website link to FDA resource that identifies all approved interchangeable biological products</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tennessee SB 984</td>
<td>5/4/2015</td>
<td>Can substitute unless the prescriber indicates intent to dispense as written</td>
<td>Yes, noting the substitution on the prescription label</td>
<td>Specific product provided to the patient, including the name of the product and the manufacturer</td>
<td>The board of pharmacy shall maintain a link on its web site to the current list of all biological products determined by the FDA to be interchangeable biological products</td>
<td></td>
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</tr>
<tr>
<td>Georgia SB 51</td>
<td>5/6/2015</td>
<td>May substitute when there is an interchangeable biological product. If a practitioner prescribes a biological product by its nonproprietary name, the pharmacist shall dispense the lowest retail priced interchangeable biological product in stock. A patient may instruct the pharmacist not to substitute an interchangeable biological product.</td>
<td>Yes, on prescription label, state the fact there has been a substitution and disclose the identity and manufacturer of the dispensed product</td>
<td>Yes, product name and manufacturer</td>
<td>The board shall maintain a link on its website to the current list of all biological products determined by the FDA to be interchangeable with a specific biological product.</td>
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</tr>
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<tr>
<td><strong>Washington SB 5935</strong></td>
<td>5/11/2015</td>
<td>Can substitute unless the prescribed biological product is requested by the patient or the patient's representative</td>
<td>Yes</td>
<td>Yes</td>
<td>Within five business days following the dispensing of a biological product, either the name of the product and the manufacturer or the FDA code.</td>
<td></td>
<td>The pharmacy quality assurance commission shall maintain a link on its website to the current list of all biological products determined by the FDA as interchangeable. Pharmacies must post sign that substitution is allowed with consent of physician.</td>
</tr>
<tr>
<td><strong>North Carolina HB 195</strong></td>
<td>5/21/2015</td>
<td>Can dispense prescription of interchangeable biological product if it meets the following: manufacturer/distributor’s names are on the label of the package, manufactured in accordance with good manufacturing practices, manufacturer has adequate provisions for drug recall and return of outdated drugs</td>
<td>Yes, on prescription label</td>
<td>Must communicate by electronic medical records</td>
<td>Within a reasonable time following dispensing</td>
<td></td>
<td>Board of Pharmacy must maintain web link to FDA list of approved interchangeable biological products</td>
</tr>
<tr>
<td><strong>Texas HB 751</strong></td>
<td>6/19/2015</td>
<td>Can dispense biological product as long as it costs less than the prescribed drug or product. Must inform patient there is a less expensive product available, ask patient to choose between the biological product.</td>
<td>Yes, record on the prescription form and prescription label.</td>
<td>Yes. Not required if there is no interchangeable product or if a refill is not changed from the product dispensed on the prior filling</td>
<td>No later than the third business day after dispensing</td>
<td>Section 5 about communication regarding dispensed biological product expires 9/1/2019.</td>
<td>Board shall link to FDA list of approved interchangeable biological products</td>
</tr>
<tr>
<td><strong>Louisiana HB 319</strong></td>
<td>7/1/2015</td>
<td>Can substitute unless prescribing authority indicates prohibition</td>
<td>No</td>
<td>Yes, unless there is no interchangeable equivalent biological product approved by FDA</td>
<td>No later than 5 business days after dispensing by any means of communication</td>
<td></td>
<td><em>This bill only addresses notifying the prescriber</em></td>
</tr>
<tr>
<td>Bill/Law</td>
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<tr>
<td>Illinois SB 455</td>
<td>7/30/2015</td>
<td>Can be substituted if drug is deemed interchangeable by FDA, if the prescribing physician does not indicate that substitution is prohibited, if the pharmacy informs the patient of the substitution</td>
<td>Yes</td>
<td>Yes</td>
<td>No later than 5 business days after dispensing by electronic records; records to be maintained for 5 years</td>
<td></td>
<td>The Dept. shall maintain a link on its website to the current list of all biological products determined by the FDA to be interchangeable with a specific biological product.</td>
</tr>
<tr>
<td>California SB 671</td>
<td>10/6/2015</td>
<td>Approved, only if biological product selected is not the same or of lesser cost than the prescribed product. Cannot substitute if prescriber does not indicate a substitution cannot be made.</td>
<td>Yes</td>
<td>Yes, electronically accessible record</td>
<td>No later than 5 business days after dispensing by electronic records</td>
<td></td>
<td>California State Board of Pharmacy shall link to FDA list of approved interchangeable biological products.</td>
</tr>
<tr>
<td>New Jersey AB 2477</td>
<td>11/9/2015</td>
<td>Allowed, only if authorized prescriber indicates there should be no substitution, if it’s determined by FDA to be interchangeable or equivalent</td>
<td>Yes, recorded on prescription label</td>
<td>Yes, including name of product and manufacturer</td>
<td>No later than 5 business days after dispensing</td>
<td></td>
<td>Every pharmacy or drug store selling biological products shall post sign no smaller than 12” x 12” at the entrance disclosing that upon request, consumer is told of the price savings for a substitution</td>
</tr>
</tbody>
</table>
Agricultural Nutrient Management (Note)

By Cassandra Yannelli, CSG Graduate Fellow

Facing a growing problem of harmful algal blooms, or HABs, in Lake Erie and other state waterways and related public health and drinking water concerns in 2014 and 2015, Ohio enacted two pieces of legislation to address agricultural nutrient management. HABs develop and thrive in shallow bodies of water accompanied by warm temperatures, sunlight, and excessive nitrogen and phosphorus composition. Phosphorus and nitrogen are often found in animal and human wastes and in fertilizers. HABs can produce toxic chemicals that affect the nervous system, liver and skin.

To respond to the issue, Ohio Gov. John Kasich signed into law Senate Bill 150 on May 22, 2014. Under the bill, passed unanimously by the legislature, farmers who apply nutrients on farms of 50 or more acres must undergo a “best management practice / fertilizer” seminar in order to become state certified. It provides an affirmative defense against complaints for any farmer who voluntarily creates a nutrient management plan that meets the Act’s criteria.

In 2015, Ohio legislators unanimously approved SB1, which restricts the spreading of manure and other fertilizers that contribute to toxic algae blooms, limits open-lake dumping of dredged material, and increases monitoring at water-treatment plants. Specifically, the bill bans the surface spreading of manure or fertilizer on frozen, snow-covered or saturated ground in the Lake Erie area. The Act also requires specified training for people who distribute manure from large-scale livestock farms. Previously, this training was only required of people who used chemical fertilizer. It also prohibits the disposal of dredging sentiment into Lake Erie and calls for monitoring wastewater treatment plants to look for excessive phosphorus discharges starting Dec. 1, 2016.
CONSUMER PROTECTION

Information Breach Notification and Cloud Providers

The Act requires that in the event of a data security breach information holders are to contact anyone whose data may have been accessed by an unauthorized person. Additionally, this Act requires that cloud computing service providers will not process student data without parental permission.

Submitted as:
Kentucky
HB 232
Status: Signed into law on April 10, 2014.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Security breach notifications.]

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

(a) “Breach of the security of the system” means unauthorized acquisition of unencrypted and unredacted computerized data that compromises the security, confidentiality, or integrity of personally identifiable information maintained by the information holder as part of a database regarding multiple individuals that actually causes, or leads the information holder to reasonably believe has caused or will cause, identity theft or fraud against any resident of the Commonwealth of Kentucky. Good faith acquisition of personally identifiable information by an employee or agent of the information holder for the purposes of the information holder is not a breach of the security of the system if the personally identifiable information is not used or subject to further unauthorized disclosure;

(b) “Information holder” means any person or business entity that conducts business in this state; and

(c) “Personally identifiable information” means an individual's first name or first initial and last name in combination with any one (1) or more of the following data elements, when the name or data element is not redacted:

1. Social Security number;
2. Driver's license number; or
3. Account number, credit or debit card number, in combination with any required security code, access code, or password permit access to an individual's financial account.

(2) Any information holder shall disclose any breach of the security of the system, following discovery or notification of the breach in the security of the data, to any resident of Kentucky whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (4) of this section, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.
Any information holder that maintains computerized data that includes personally identifiable information that the information holder does not own shall notify the owner or licensee of the information of any breach of the security of the data as soon as reasonably practicable following discovery, if the personally identifiable information was, or is reasonably believed to have been, acquired by an unauthorized person.

The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made promptly after the law enforcement agency determines that it will not compromise the investigation.

For purposes of this section, notice may be provided by one (1) of the following methods:

(a) Written notice;

(b) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. sec. 7001; or

(c) Substitute notice, if the information holder demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000), or that the affected class of subject persons to be notified exceeds five hundred thousand (500,000), or the information holder does not have sufficient contact information. Substitute notice shall consist of all of the following:

1. E-mail notice, when the information holder has an e-mail address for the subject persons;

2. Conspicuous posting of the notice on the information holder's Internet Web site page, if the information holder maintains a Web site page; and

3. Notification to major statewide media.

Notwithstanding subsection (5) of this section, an information holder that maintains its own notification procedures as part of an information security policy for the treatment of personally identifiable information, and is otherwise consistent with the timing requirements of this section, shall be deemed to be in compliance with the notification requirements of this section, if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.

If a person discovers circumstances requiring notification pursuant to this section of more than one thousand (1,000) persons at one (1) time, the person shall also notify, without unreasonable delay, all consumer reporting agencies and credit bureaus that compile and maintain files on consumers on a nationwide basis, as defined by 15 U.S.C. sec. 1681a, of the timing, distribution, and content of the notices.

The provisions of this section and the requirements for nonaffiliated third parties in [Insert citation] shall not apply to any person who is subject to the provisions of Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, as amended, or the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as amended, or any agency of the [Commonwealth of Kentucky] or any of its local governments or political subdivisions.

Section 2. [Student data; cloud computing services.]

As used in this section:

(a) “Cloud computing service” means a service that provides, and that is marketed and designed to provide, an educational institution with account-based access to online computing resources;
(b) “Cloud computing service provider” means any person other than an educational institution that operates a cloud computing service;

(c) “Educational institution” means any public, private, or school administrative unit serving students in kindergarten to grade twelve (12);

(d) “Person” means an individual, partnership, corporation, association, company, or any other legal entity;

(e) “Process” means to use, access, collect, manipulate, scan, modify, analyze, transform, disclose, store, transmit, aggregate, or dispose of student data;

(f) “Student data” means any information or material, in any medium or format, that concerns a student and is created or provided by the student in the course of the student's use of cloud computing services, or by an agent or employee of the educational institution in connection with the cloud computing services. Student data includes the student's name, email address, email messages, postal address, phone number, and any documents, photos, or unique identifiers relating to the student.

(2) A cloud computing service provider shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student's parent. However, a cloud computing service provider may assist an educational institution to conduct educational research as permitted by the Family Educational Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g. A cloud computing service provider shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purpose, and shall not sell, disclose, or otherwise process student data for any commercial purpose.

(3) A cloud computing service provider that enters into an agreement to provide cloud computing services to an educational institution shall certify in writing to the educational institution that it will comply with subsection (2) of this section.

(4) The [Kentucky] Board of Education may promulgate administrative regulations as necessary to carry out the requirements of this section.
Uniform Recognition of Substitute Decision-Making Documents Act

All states have statutes which allow individuals to delegate substitute decision-making authority. In Idaho, the main examples are financial powers of attorney and medical powers of attorney and mental health powers of attorney. If the person executes the document in Idaho and stays in Idaho, the documents will be recognized.

However, in our mobile society, individuals move, travel, and may end up needing the document to be recognized in another jurisdiction. This Act is creating that ability. For financial powers of attorney, Idaho has adopted some of these provisions already in the Statutory Power of Attorney Act, and therefore this bill defers to those existing provisions. In the medical power of attorney, on the other hand, there are very limited provisions for recognition of documents from other jurisdictions. This creates great problems for individuals and medical providers when treatment is needed but the authorizing document is from another jurisdiction. This Act defers to the limited existing provisions in Idaho law, but adds major provisions. This Act protects good faith acceptance or rejection of the document. It also provides limits on what the entity or person to whom the document is presented can request, using the same limits as the existing Idaho Statutory Power of Attorney Act. This Act will allow individuals to have control over their financial and medical decisions and their choices of who can act when the individual cannot act.

Submitted as:
Idaho
SB 1054
Status: Signed into law on March 25, 2015.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [Definitions.]
2 As used in this chapter:
3 (1) “Decision maker” means a person authorized to act for an individual under a substitute
4 decision-making document, whether denominated a decision maker, agent, attorney in fact,
5 proxy, representative or by another title. The term includes an original decision maker, a co-
6 decision maker, a successor decision maker and a person to which a decision maker's
7 authority is delegated.
8 (2) “Good faith” means honesty in fact.
9 (3) “Health care” means a service or procedure to maintain, diagnose, treat or otherwise affect an
10 individual's physical or mental condition.
11 (4) “Person” means an individual, estate, business or nonprofit entity, public corporation,
12 government or governmental subdivision, agency, or instrumentality or other legal entity.
13 (5) “Personal care” means an arrangement or service to provide an individual shelter, food,
14 clothing, transportation, education, recreation, social contact or assistance with the activities
15 of daily living.
(6) “Property” means anything that may be subject to ownership, whether real or personal or legal or equitable, or any interest or right therein.

(7) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(8) “Substitute decision-making document” means a record created by an individual to authorize a decision maker to act for the individual with respect to property, health care or personal care.

Section 2. [Validity of substitute decision-making document.]

(1) A substitute decision-making document for property executed outside this state is valid in this state if, when the document was executed, the execution complied with the law of the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction in which the document was executed.

(2) A substitute decision-making document for health care or personal care executed outside this state is valid in this state if, when the document was executed, the execution complied with:

(a) The law of the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction in which the document was executed; or

(b) The law of this state other than this chapter.

(3) Except as otherwise provided by law of this state other than this chapter, a photocopy or electronically transmitted copy of an original substitute decision-making document has the same effect as the original.

Section 3. [Meaning and effect of substitute decision-making document.]

The meaning and effect of a substitute decision-making document and the authority of the decision maker are determined by the law of the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction in which the document was executed.

Section 4. [Reliance upon substitute decision-making document.]

(1) Except as otherwise provided for in [Insert citation (Uniform Power of Attorney Act) and (The Medical Consent and Natural Death Act)], a person that in good faith accepts a substitute decision-making document without actual knowledge that the document is void, invalid or terminated, or that the authority of the purported decision maker is void, invalid or terminated, may assume without inquiry that the document is genuine, valid and still in effect and that the decision maker's authority is genuine, valid and still in effect.

(2) A person that is asked to accept a substitute decision-making document may request and without further investigation rely upon:

(a) The decision maker's assertion of a fact concerning the individual for whom a decision will be made, the decision maker or the document;

(b) A translation of the document if the document contains, in whole or in part, language other than English; and

(c) An opinion of counsel regarding any matter of law concerning the document if the person provides in a record the reason for the request.

Section 5. [Obligation to accept substitute decision-making document.]

(1) Except as otherwise provided in subsection (2) of this section or by law of this state other than this act, including [Insert citation (Uniform Power of Attorney Act)], a person that is
asked to accept a substitute decision-making document shall accept within a reasonable time a document that purportedly meets the validity requirements of section 2. The person may not require an additional or different form of document for authority granted in the document presented.

(2) A person that is asked to accept a substitute decision-making document is not required to accept the document if:

(a) The person otherwise would not be required in the same circumstances to act if requested by the individual who executed the document;

(b) The person has actual knowledge of the termination of the decision maker's authority or the document;

(c) The person's request under section 4(2) for the decision maker's assertion of fact, a translation or an opinion of counsel is refused;

(d) The person in good faith believes that the document is not valid or the decision maker does not have the authority to request a particular transaction or action; or

(e) The person makes, or has actual knowledge that another person has made, a report to the local office of adult protective services stating a belief that the individual for whom a decision will be made may be subject to abuse, neglect, exploitation or abandonment by the decision maker or a person acting for or with the decision maker.

(3) A person that in violation of the provisions of this section refuses to accept a substitute decision-making document is subject to:

(a) A court order mandating acceptance of the document; and

(b) Liability for reasonable attorney's fees and costs incurred in an action or proceeding that mandates acceptance of the document.

Section 6. [Remedies under other law.]
The remedies under this act are not exclusive and do not abrogate any right or remedy under law of this state other than this chapter.

Section 7. [Uniformity of application and construction.]
In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

Section 8. [Relation to electronic signatures in global and national commerce act.]
This chapter modifies, limits or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. section 7001 et seq., but does not modify, limit or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

Section 9. [Applicability.]
This chapter applies to a substitute decision-making document created before, on or after the effective date of this chapter.