Laws

of the

State of Maryland

At the Session of the General Assembly Begun and Held in the
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VOLUME II

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Chapter 149

(Senate Bill 236)

AN ACT concerning

Sustainable Growth and Agricultural Preservation Act of 2012

FOR the purpose of ~~altering~~ authorizing a local jurisdiction to adopt ~~and certify to the Department of Planning~~ certain growth tier designations; requiring a local jurisdiction under certain circumstances to alter the contents of ~~certain elements that are required in~~ a certain plan; authorizing a local jurisdiction to submit proposed tier designations to the Department of Planning before ~~certification~~ adoption for certain purposes; establishing certain mandatory and certain discretionary provisions relating to the adoption of certain tiers by certain local jurisdictions; requiring a local jurisdiction to provide documentation to the Department of Planning if the jurisdiction does not adopt a certain tier; requiring growth tiers ~~certified~~ adopted by a local jurisdiction to meet certain criteria; prohibiting the approval of a residential major subdivision if a local jurisdiction has established certain tiers unless a planning board reviews and recommends ~~the~~ approval under certain circumstances; establishing the requirements for the review of a residential major subdivision by a planning board; requiring a planning board to hold a certain hearing under certain circumstances; ~~requiring a planning board to publish a certain notice in a certain manner; requiring a planning board to provide copies of a proposed major subdivision to certain units and jurisdictions within a certain period of time~~ ~~requiring the Department of Planning to provide certain information to certain State agencies and post certain information on the Department's Web site;~~ requiring a planning board to recommend a proposed major subdivision in a certain manner; ~~requiring a planning board to send a certain resolution and certain documents to the Department of the Environment and the Department of Planning under certain circumstances~~ prohibiting ~~the Department of the Environment or the Department's designee from approving~~ a local jurisdiction from authorizing a certain residential subdivision until the local jurisdiction adopts certain growth tiers; authorizing ~~the Department or the Department's designee~~ a local jurisdiction, if a local jurisdiction has not adopted certain growth tiers, to approve a certain residential subdivision under certain circumstances~~; authorizing the Department to extend the time period for recordation of a subdivision plat in certain circumstances~~; establishing certain requirements for the approval of a residential subdivision plat by the Department ~~of the Environment,~~ or the Department's designee; authorizing a local jurisdiction to request a verification of a certain overall yield under certain circumstances; requiring the Department of Planning to verify a certain overall yield after consultation with the Maryland Sustainable Growth Commission; providing for the resolution of conflicting tier designations; ~~requiring the Department of the Environment to submit a certain subdivision plat to the Department of Planning for certain advice;~~ prohibiting the Department of the

Environment from approving a major residential subdivision under certain circumstances on or before a certain date; ~~requiring a local jurisdiction to notify~~ provide certain information to the Department of Planning under certain ~~circumstances;~~ ~~authorizing the Department of the Environment to adopt certain regulations to require offsets for new subdivisions~~ ~~requiring the Department of Planning to provide a certain notification to the Department of the Environment;~~ prohibiting the subdivision or resubdivision of a certain tract or parcel of land or a minor residential subdivision under certain circumstances on or after a certain date; requiring the subdivision plat of a residential minor subdivision to state certain information; authorizing the subdivision or resubdivision of a certain tract or parcel of land or a minor residential subdivision under certain circumstances on or after a certain date; ~~authorizing the owner of certain property used for agricultural activities to install certain numbers of on–site sewage disposal systems in accordance with certain requirements; requiring certain on–site sewage disposal systems installed on certain property to be clustered together under certain circumstances;~~ authorizing a local jurisdiction to enact a local law or ordinance for the transfer of certain rights of an owner to subdivide certain property used for agricultural activities to the owner of certain other property used for agricultural activities under certain circumstances; establishing certain requirements for the approval of a shared facility or community sewerage system; ~~requiring the Department of the Environment to establish certain requirements for a shared facility and a community sewerage system;~~ defining certain terms; ~~requiring the Department of the Environment to adopt regulations to require certain residential subdivisions to receive a permit;~~ establishing certain requirements for the verification by the Department of Planning of a certain yield for zoning; requiring a local jurisdiction to submit to the Department of Planning on or before a certain date a certain definition or description; requiring the Department of Planning to prepare a list of certain definitions and descriptions for publication on certain Web sites on or after a certain date; providing that this Act may not be construed to limit certain authority granted to the Critical Area Commission; *requiring the Department of the Environment to propose certain regulations by a certain date; requiring the Department of the Environment to consult with certain counties and stakeholders in drafting certain proposed regulations; requiring the Department of the Environment to brief certain committees of the General Assembly on certain proposed regulations; requiring the Department of Planning, in consultation with the Department of the Environment, to submit a certain report to the General Assembly by a certain date;* establishing the intent of the General Assembly; providing for the application of certain provisions of this Act; providing for the construction of this Act; providing for the effective date of certain provisions of this Act; providing for the termination of certain provisions of this Act; and generally relating to the subdivision of land and planning for growth.

BY repealing and reenacting, with amendments,
Article – Environment
Section 9–206

Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

BY adding to
Article – Environment
Section 9–1110
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article 66B – Land Use
Section 1.00~~,~~ and 1.03~~, 1.04(b)(1)(iv), and 3.05(a)(4)(ii)~~
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

~~BY repealing and reenacting, without amendments,~~
~~Article 66B – Land Use~~
~~Section 1.04(a) and 3.05(a)(4)(i)~~
~~Annotated Code of Maryland~~
~~(2010 Replacement Volume and 2011 Supplement)~~

BY adding to
Article 66B – Land Use
Section ~~1.04(b)(5),~~ 1.05~~,~~ and ~~3.05(a)(9)~~ 1.06
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Environment
~~Section 9–206(a)(10), (b)(2)(iv), and (d)(1)~~
Section 9–206(a)(3), (d)(1), (g)(1)(iv) and (2), and (j)(1)
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)
(As enacted by Section 1 of this Act)

BY repealing and reenacting, with amendments,
Article – Land Use
Section 1–401~~, 1–407, 3–103,~~ and 5–104
Annotated Code of Maryland
(As enacted by Chapter 426 (H.B. ____)(2lr0396) of the Acts of the General Assembly of 2012)

~~BY repealing and reenacting, without amendments,~~
~~Article – Land Use~~
~~Section 1–405 and 3–101(a)~~
~~Annotated Code of Maryland~~

~~(As enacted by Chapter ____ (H.B. ____)(2lr0396) of the Acts of the General Assembly of 2012)~~

BY adding to
Article – Land Use
Section 1–501 through ~~1–507~~ 1–509 to be under the new subtitle "Subtitle 5. Growth Tiers"; and 5–104
Annotated Code of Maryland
(As enacted by Chapter 426 (H.B. ____)(2lr0396) of the Acts of the General Assembly of 2012)

~~BY repealing and reenacting, with amendments,~~
~~Article – Land Use~~
~~Section 5–104~~
~~Annotated Code of Maryland~~
~~(As enacted by Chapter ____ (H.B. ___)(2lr0396) of the Acts of the General Assembly of 2012)~~

Preamble

WHEREAS, Governor O'Malley on April 18, 2011, issued an Executive Order creating the Task Force on Sustainable Growth and Wastewater Disposal, which consisted of a broad cross–section of representatives from business, agriculture, science, environmental advocacy, and government from throughout Maryland; and

WHEREAS, The Task Force was charged with recommending regulatory, statutory and other actions to address the impact of major developments served by on–site sewage disposal systems, commonly known as septic systems, and their effects on pollution, land preservation, agri–business, and smart growth; and

WHEREAS, The Task Force met several times from July 2011 until November 2011 and created several workgroups to review, study, and make findings and recommendations to the entire Task Force; and

WHEREAS, The Task Force reported its findings in December 2011 to the Governor, the Speaker of the House, the President of the Senate, the House Environmental Matters Committee and the Senate Education, Health, and Environmental Affairs Committee; and

WHEREAS, The Sustainable Growth and Agricultural Preservation Act of 2012 embodies the nearly unanimous recommendations of the Task Force on planning for growth served by on–site sewage disposal systems and where major subdivisions served by on–site sewage disposal systems and shared facilities can be located; and

WHEREAS, Maryland has approximately 426,000 on–site sewage disposal systems on developed parcels and roughly 411,000 of these are on residential parcels; and

WHEREAS, On–site sewage disposal systems release nitrogen and other pollutants into drinking water aquifers and other ground waters that feed surface waters, including streams, rivers, and the Chesapeake Bay and Atlantic Coastal Bays; and

WHEREAS, Maryland is expected to grow by approximately 500,000 new households in the next 25 years and how that development occurs is critical for our existing communities, farms, other resource lands, and waters, including the Chesapeake Bay; and

WHEREAS, If current trends continue, 120,000 new on–site sewage disposal systems will be added over the next 25 years, resulting in a 31% increase in the State's total nitrogen load from on–site sewage disposal systems; and

WHEREAS, The number of new households projected to use public sewerage systems is three times the number projected to use on–site sewage disposal systems, but the wastewater and stormwater nitrogen load from new development of on–site sewage disposal systems is likely to be twice that from new development using public sewerage systems; and

WHEREAS, In 2010 the U.S. Environmental Protection Agency (EPA) set limits on the amount of nutrient and sediment pollution that can enter the Chesapeake Bay, known as Total Maximum Daily Loads (TMDLs); and

WHEREAS, As required by EPA, Maryland submitted and EPA approved Phase I Watershed Implementation Plans (WIP) which allocate the allowable pollution load among different sources and identify strategies for reducing nutrients and sediments that harm the Chesapeake Bay; and

WHEREAS, Maryland is in the process of developing the Phase II WIP, which will refine the Phase I WIP and provide additional detail on pollution reductions; and

WHEREAS, The Phase II WIP will also identify a set of specific actions that, once implemented, will achieve the reductions necessary to meet the nutrient and sediment limits by 2025; and

WHEREAS, Without action to reduce the nitrogen loads from new development served by on–site sewage disposal systems, the Phase II WIP will force other sources, such as wastewater treatment plants, urban stormwater, and various agricultural sources to reduce their loads even further, constraining economic growth and placing additional burdens on the agricultural community and other sources; and

WHEREAS, The use of on–site sewage disposal systems has other land use impacts such as increasing land consumption outside of growth areas and fragmenting our agricultural and forest lands; and

WHEREAS, On–site sewage disposal systems can lead to increased public costs for extending sewer service to failing systems and providing additional roads, schools, and other public services; and

WHEREAS, Planning for growth served by on–site sewage disposal systems and shared systems should be done through established planning processes such as the local comprehensive plan, the water and sewer plan, and subdivision plan approval; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Environment

9–206.

(A) (1) IN THIS ~~SUBSECTION~~ SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "COMMUNITY SEWERAGE SYSTEM" MEANS A PUBLICLY OR PRIVATELY OWNED SEWERAGE SYSTEM THAT SERVES AT LEAST TWO LOTS.

(3) "GROWTH TIERS" MEANS THE TIERS ADOPTED BY A LOCAL JURISDICTION IN ACCORDANCE WITH ARTICLE 66B, § 1.05 OF THE CODE.

~~(3)~~ (4) "LOT" INCLUDES A PART OF A SUBDIVISION THAT:

(I) IS USED OR IS INTENDED TO BE USED AS A BUILDING SITE; AND

(II) IS NOT INTENDED TO BE FURTHER SUBDIVIDED.

~~(4)~~ (5) "MAJOR SUBDIVISION" MEANS ~~THE~~:

(I) THE SUBDIVISION OF LAND: ~~INTO~~

1. INTO NEW LOTS, PLATS, BUILDING SITES, OR OTHER DIVISIONS OF LAND DEFINED OR DESCRIBED AS A MAJOR SUBDIVISION IN ~~THE~~ A LOCAL ~~LAW AS A MAJOR SUBDIVISION~~ ORDINANCE OR REGULATION:

A. THAT IS IN EFFECT ON OR BEFORE JANUARY 1, 2012~~,~~; OR

B. ~~IF~~ ADOPTED ON OR BEFORE DECEMBER 31, 2012, IF A LOCAL JURISDICTION CHOOSES TO CREATE A DEFINITION OR DESCRIPTION

APPLICABLE SOLELY TO THIS SECTION OR IF A LOCAL ORDINANCE OR REGULATION DOES NOT DEFINE OR DESCRIBE A MAJOR SUBDIVISION UNDER ITEM A OF THIS ITEM~~, THAT IS ADOPTED ON OR BEFORE DECEMBER 31, 2012~~; OR

2. IF A LOCAL JURISDICTION HAS NOT ADOPTED A DEFINITION OR DESCRIPTION OF A MAJOR SUBDIVISION ON OR BEFORE DECEMBER 31, 2012, UNDER ITEM 1 OF THIS ITEM, INTO FIVE OR MORE NEW LOTS, PLATS, BUILDING SITES, OR OTHER DIVISIONS OF LAND; AND

(II) IF THE LOCAL ORDINANCE OR REGULATION HAS ~~TWO~~ MULTIPLE DEFINITIONS OR DESCRIPTIONS OF A MAJOR SUBDIVISION UNDER PARAGRAPH (I) OF THIS SUBSECTION, THE DEFINITION OR DESCRIPTION OF A MAJOR SUBDIVISION THAT IS DETERMINED BY THE LOCAL JURISDICTION TO APPLY FOR THE PURPOSES OF THIS SECTION.

~~(5)~~ (6) "MINOR SUBDIVISION" MEANS ~~THE~~:

(I) THE SUBDIVISION OF LAND: ~~INTO~~

1. INTO NEW LOTS, PLATS, BUILDING SITES, OR OTHER DIVISIONS OF LAND DEFINED OR DESCRIBED AS A MINOR SUBDIVISION IN ~~THE~~ A LOCAL ~~LAW AS A MINOR SUBDIVISION~~ ORDINANCE OR REGULATION:

A. THAT IS IN EFFECT ON OR BEFORE JANUARY 1, 2012~~.~~; OR

B. ~~IF~~ ADOPTED ON OR BEFORE DECEMBER 31, 2012, IF A LOCAL JURISDICTION CHOOSES TO CREATE A DEFINITION OR DESCRIPTION APPLICABLE SOLELY TO THIS SECTION OR IF A LOCAL ORDINANCE OR REGULATION DOES NOT DEFINE OR DESCRIBE A MINOR SUBDIVISION UNDER ITEM A OF THIS ITEM, ~~ADOPTED ON OR BEFORE DECEMBER 31, 2012,~~ PROVIDED THAT A MINOR SUBDIVISION DEFINED OR DESCRIBED IN THE ADOPTED ORDINANCE OR REGULATION DOES NOT EXCEED SEVEN NEW LOTS, PLATS, BUILDING SITES, OR OTHER DIVISIONS OF LAND; OR

2. IF A LOCAL JURISDICTION HAS NOT ADOPTED A DEFINITION OR DESCRIPTION OF A MINOR SUBDIVISION ON OR BEFORE DECEMBER 31, 2012, UNDER ITEM 1 OF THIS ITEM, INTO FEWER THAN FIVE NEW LOTS, PLATS, BUILDING SITES, OR OTHER DIVISIONS OF LAND; AND

(II) IF THE LOCAL ORDINANCE OR REGULATION HAS ~~TWO~~ MULTIPLE DEFINITIONS OR DESCRIPTIONS OF A MINOR SUBDIVISION UNDER ITEM (I) OF THIS PARAGRAPH, THE DEFINITION OR DESCRIPTION OF A MINOR

SUBDIVISION THAT IS DETERMINED BY THE LOCAL JURISDICTION TO APPLY FOR THE PURPOSES OF THIS SECTION.

~~(6)~~ (7) "ON–SITE SEWAGE DISPOSAL" MEANS THE DISPOSAL OF SEWAGE BENEATH THE SOIL SURFACE.

~~(7)~~ (8) (I) "ON–SITE SEWAGE DISPOSAL SYSTEM" MEANS A SEWAGE TREATMENT UNIT, COLLECTION SYSTEM, DISPOSAL AREA, AND RELATED APPURTENANCES.

(II) "ON–SITE SEWAGE DISPOSAL SYSTEM" INCLUDES A SHARED FACILITY OR COMMUNITY SEWERAGE SYSTEM THAT DISPOSES OF SEWAGE EFFLUENT BENEATH THE SOIL SURFACE.

(9) "PUBLIC SEWER" MEANS A COMMUNITY, SHARED, OR MULTIUSE SEWERAGE SYSTEM.

~~(8)~~ (10) "SHARED FACILITY" MEANS A SEWERAGE SYSTEM THAT:

(I) SERVES MORE THAN ONE:

1. LOT AND IS OWNED IN COMMON BY THE USERS;

2. CONDOMINIUM UNIT AND IS OWNED IN COMMON BY THE USERS OR BY A CONDOMINIUM ASSOCIATION;

3. USER AND IS LOCATED ON INDIVIDUAL LOTS OWNED BY THE USERS; OR

4. USER ON ONE LOT AND IS OWNED IN COMMON BY THE USERS; OR

(II) IS LOCATED WHOLLY OR PARTLY ON ANY OF THE COMMON ELEMENTS OF A CONDOMINIUM; OR

(III) SERVES A HOUSING OR ANOTHER MULTIPLE OWNERSHIP COOPERATIVE.

(11) "STATE AGENCY" MEANS:

(I) THE MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION;

(II) THE MARYLAND ENVIRONMENTAL TRUST;

(III) THE DEPARTMENT OF NATURAL RESOURCES; OR

(IV) THE MARYLAND–NATIONAL CAPITAL PARK AND PLANNING COMMISSION.

~~(9)~~ **(12)** ~~(I)~~ **"SUBDIVISION" MEANS A DIVISION OF A TRACT OR PARCEL OF LAND INTO AT LEAST TWO LOTS FOR THE IMMEDIATE OR FUTURE PURPOSE OF SALE OR BUILDING DEVELOPMENT.**

~~(II) "SUBDIVISION" INCLUDES:~~

~~1. A CHANGE IN STREET LINES OR LOT LINES, UNLESS THE SECRETARY, OR THE SECRETARY'S DESIGNEE, DETERMINES THAT THE CHANGE WILL NOT ADVERSELY AFFECT THE SAFETY AND ADEQUACY OF WELL SITES OR SEWAGE DISPOSAL AREAS; OR~~

~~2. RESUBDIVISION.~~

~~(III) "SUBDIVISION" DOES NOT INCLUDE A CHANGE IN STREET LINES OR LOT LINES IF THE CHANGE IN THE STREET OR LOT LINES DOES NOT:~~

~~1. RESULT IN A NET INCREASE IN THE NUMBER OF LOTS; AND~~

~~2. ADVERSELY AFFECT THE SAFETY AND ADEQUACY OF WELL SITES OR SEWAGE DISPOSAL AREAS, AS DETERMINED BY THE SECRETARY OR THE SECRETARY'S DESIGNEE.~~

~~(10) "TIER I", "TIER II", "TIER III", AND "TIER IV" MEAN THE RESPECTIVE AREAS FOR GROWTH SO DESIGNATED IN A LOCAL COMPREHENSIVE PLAN ESTABLISHED BY A LOCAL JURISDICTION IN ACCORDANCE WITH ARTICLE 66B, § 1.04 OR § 3.05 OF THE CODE.~~

(B) (1) ~~THIS SUBSECTION DOES~~ **SUBSECTIONS (F) THROUGH (K) AND SUBSECTION (N) OF THIS SECTION APPLY TO RESIDENTIAL SUBDIVISIONS.**

~~(2) SUBSECTIONS (F) THROUGH (K) AND SUBSECTION (N) OF THIS SECTION:~~

~~(I) APPLY TO A SUBDIVISION PLAT APPROVAL BY THE DEPARTMENT OR THE DEPARTMENT'S DESIGNEE; AND~~

~~(II) DO NOT APPLY TO A SUBDIVISION PLAT APPROVAL BY A LOCAL JURISDICTION.~~

~~(3)~~ (2) ~~EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, SUBSECTIONS~~ SUBSECTIONS (F) THROUGH (K) DO NOT APPLY TO AN APPLICATION FOR APPROVAL OF A RESIDENTIAL SUBDIVISION UNDER § 9–512(E) OF THIS TITLE IF:

~~(I) 1. THE APPLICATION IS MADE ON OR BEFORE JULY 1, 2012; AND~~

~~2. THE SUBDIVISION PLAT IS RECORDED ON OR BEFORE DECEMBER 31, 2013; OR~~

~~(II) 1. THE APPLICATION IS MADE ON OR AFTER JULY 1, 2012; AND~~

~~2. THE SUBDIVISION PLAT IS RECORDED ON OR BEFORE DECEMBER 31, 2012.~~

(I) 1. BY OCTOBER 1, 2012, A SUBMISSION FOR PRELIMINARY PLAN APPROVAL IS MADE TO A LOCAL JURISDICTION THAT INCLUDES, AT A MINIMUM, THE PRELIMINARY ENGINEERING, DENSITY, ROAD NETWORK, LOT LAYOUT, AND EXISTING FEATURES OF THE PROPOSED SITE DEVELOPMENT;

2. BY JULY 1, 2012, IN A LOCAL JURISDICTION THAT REQUIRES A SOIL PERCOLATION TEST BEFORE A SUBMISSION FOR PRELIMINARY APPROVAL:

A. AN APPLICATION FOR A SOIL PERCOLATION TEST APPROVAL FOR ALL LOTS THAT WILL BE INCLUDED IN THE SUBMISSION FOR PRELIMINARY APPROVAL IS MADE TO THE LOCAL HEALTH DEPARTMENT; AND

B. WITHIN 18 MONTHS AFTER APPROVAL OF THE SOIL PERCOLATION TESTS FOR THE LOTS THAT WILL BE INCLUDED IN THE SUBMISSION FOR PRELIMINARY APPROVAL, A SUBMISSION FOR PRELIMINARY APPROVAL IS MADE TO A LOCAL JURISDICTION THAT INCLUDES, AT A MINIMUM, THE PRELIMINARY ENGINEERING, DENSITY, ROAD NETWORK, LOT LAYOUT, AND EXISTING FEATURES OF THE PROPOSED SITE DEVELOPMENT; OR

3. BY JULY 1, 2012, IN A LOCAL JURISDICTION THAT REQUIRES A SOIL PERCOLATION TEST BEFORE A SUBMISSION FOR

PRELIMINARY APPROVAL AND THE LOCAL JURISDICTION DOES NOT ACCEPT APPLICATIONS FOR SOIL PERCOLATION TESTS YEAR ROUND:

A. DOCUMENTATION THAT A MARYLAND PROFESSIONAL ENGINEER OR SURVEYOR HAS PREPARED AND CERTIFIED UNDER SEAL A SITE PLAN IN ANTICIPATION OF AN APPLICATION FOR SOIL PERCOLATION TESTS;

B. AN APPLICATION FOR A SOIL PERCOLATION TEST APPROVAL FOR ALL LOTS THAT WILL BE INCLUDED IN THE SUBMISSION FOR PRELIMINARY APPROVAL IS MADE TO THE LOCAL HEALTH DEPARTMENT AT THE NEXT AVAILABLE SOIL PERCOLATION TEST SEASON; AND

C. WITHIN 18 MONTHS AFTER APPROVAL OF THE SOIL PERCOLATION TESTS FOR THE LOTS THAT WILL BE INCLUDED IN THE SUBMISSION FOR PRELIMINARY APPROVAL, A SUBMISSION FOR PRELIMINARY APPROVAL IS MADE TO A LOCAL JURISDICTION THAT INCLUDES, AT A MINIMUM, THE PRELIMINARY ENGINEERING, DENSITY, ROAD NETWORK, LOT LAYOUT, AND EXISTING FEATURES OF THE PROPOSED SITE DEVELOPMENT; AND

(II) BY OCTOBER 1, 2016, THE PRELIMINARY PLAN IS APPROVED.

~~**(2) (4) THE DEPARTMENT MAY EXTEND THE DATE FOR RECORDATION OF A SUBDIVISION PLAT UNDER PARAGRAPH (3) OF THIS SUBSECTION BY ONE ADDITIONAL 6–MONTH PERIOD IF THE APPLICANT DEMONSTRATES TO THE DEPARTMENT OR THE DEPARTMENT'S DESIGNEE THAT THE APPLICANT IS UNABLE TO RECORD THE PLAT BECAUSE THE APPLICANT CANNOT PERFORM THE REQUIRED TESTS FOR ADEQUACY OF AN ON–SITE SEWAGE DISPOSAL SYSTEM IN ACCORDANCE WITH THE REGULATIONS ADOPTED BY THE DEPARTMENT.**~~

(C) (1) SUBSECTIONS (F) THROUGH (K) AND SUBSECTION (N) OF THIS SECTION DO NOT APPLY TO COVENANTS, RESTRICTIONS, CONDITIONS, OR CONSERVATION EASEMENTS THAT WERE CREATED OR ENTERED INTO AT ANY TIME UNDER § 2–118 OF THE REAL PROPERTY ARTICLE FOR THE BENEFIT OF, OR HELD BY, A STATE AGENCY OR A LOCAL JURISDICTION FOR THE PURPOSE OF CONSERVING NATURAL RESOURCES OR AGRICULTURAL LAND.

(2) SUBSECTIONS (F) THROUGH (K) OF THIS SECTION MAY NOT BE CONSTRUED AS GRANTING ANY ADDITIONAL RIGHTS IN COVENANTS, RESTRICTIONS, CONDITIONS, OR CONSERVATION EASEMENTS THAT WERE CREATED OR ENTERED INTO AT ANY TIME UNDER § 2–118 OF THE REAL PROPERTY ARTICLE FOR THE BENEFIT OF, OR HELD BY, A STATE AGENCY OR A

LOCAL JURISDICTION FOR THE PURPOSE OF CONSERVING NATURAL RESOURCES OR AGRICULTURAL LAND.

(D) SUBSECTIONS (F) THROUGH ~~(K)~~ (I) AND SUBSECTION ~~(N)~~ (L) OF THIS SECTION DO NOT:

(1) AFFECT A LOCAL TRANSFER OF DEVELOPMENT RIGHTS PROGRAM AUTHORIZED UNDER ARTICLE 25A, § 5(X), ARTICLE 28, § 8–101, OR ARTICLE 66B, § 11.01 OF THE CODE; OR

(2) DIMINISH THE LOCAL DEVELOPMENT RIGHTS TRANSFERRED IN THESE TRANSFER OF DEVELOPMENT RIGHTS PROGRAMS.

(E) SUBSECTIONS (F) THROUGH ~~(K)~~ (I) AND SUBSECTION ~~(N)~~ (L) OF THIS SECTION MAY NOT BE CONSTRUED AS PROHIBITING A LOCAL JURISDICTION FROM ALTERING THE DEFINITION OR DESCRIPTION OF A MAJOR OR MINOR SUBDIVISION IN A LOCAL ORDINANCE OR REGULATION FOR LOCAL ZONING OR DEVELOPMENT PURPOSES.

(F) ON OR AFTER DECEMBER 31, 2012, ~~THE DEPARTMENT OR THE DEPARTMENT'S DESIGNEE~~ A LOCAL JURISDICTION:

(1) MAY NOT ~~APPROVE~~ AUTHORIZE A *RESIDENTIAL* MAJOR ~~RESIDENTIAL~~ SUBDIVISION SERVED BY ON–SITE SEWAGE DISPOSAL SYSTEMS, COMMUNITY SEWERAGE SYSTEMS, OR SHARED SYSTEMS UNTIL THE LOCAL JURISDICTION ADOPTS THE GROWTH TIERS IN ACCORDANCE WITH ARTICLE 66B, § 1.05 OF THE CODE; OR

(2) IF THE LOCAL JURISDICTION HAS NOT ADOPTED THE GROWTH TIERS IN ACCORDANCE WITH ARTICLE 66B, § 1.05 OF THE CODE, MAY ~~APPROVE~~ AUTHORIZE:

(I) A *RESIDENTIAL* MINOR ~~RESIDENTIAL~~ SUBDIVISION SERVED BY ON–SITE SEWAGE DISPOSAL SYSTEMS IF THE RESIDENTIAL SUBDIVISION OTHERWISE MEETS THE REQUIREMENTS OF THIS TITLE; OR

(II) A MAJOR OR MINOR SUBDIVISION SERVED BY PUBLIC SEWER IN A TIER I AREA.

(G) (1) EXCEPT AS PROVIDED IN SUBSECTION ~~(E)(2)~~ (F)(2) OF THIS SECTION *AND SUBJECT TO SUBSECTION (I) OF THIS SECTION*, ~~THE DEPARTMENT, OR THE DEPARTMENT'S DESIGNEE, MAY APPROVE~~ A LOCAL JURISDICTION MAY AUTHORIZE A RESIDENTIAL SUBDIVISION PLAT ONLY IF:

(I) ALL LOTS PROPOSED IN AN AREA DESIGNATED FOR TIER I GROWTH WILL BE SERVED BY PUBLIC SEWER;

(II) ALL LOTS PROPOSED IN AN AREA DESIGNATED FOR TIER II GROWTH:

1. WILL BE SERVED BY PUBLIC SEWER; OR

2. IF THE SUBDIVISION IS A MINOR SUBDIVISION, MAY BE SERVED BY ON–SITE SEWAGE DISPOSAL SYSTEMS;

(III) EXCEPT AS PROVIDED IN SUBSECTION ~~(C)~~ (H) OF THIS SECTION, THE SUBDIVISION IS A MINOR SUBDIVISION ~~UTILIZING~~ SERVED BY INDIVIDUAL ON–SITE SEWAGE DISPOSAL SYSTEMS IN A TIER III OR TIER IV AREA; OR

(IV) THE SUBDIVISION IS A MAJOR SUBDIVISION SERVED BY ON–SITE SEWAGE DISPOSAL SYSTEMS, A COMMUNITY SYSTEM, OR A SHARED FACILITY LOCATED IN A TIER III AREA~~, SUBJECT TO THE FOLLOWING:~~

~~1. THE SUBDIVISION~~ AND HAS BEEN RECOMMENDED BY THE LOCAL PLANNING BOARD IN ACCORDANCE WITH ARTICLE 66B, § ~~1.05~~ *1.06* OF THE CODE~~; AND~~

~~2. IN CONSULTATION WITH THE DEPARTMENT OF PLANNING IN ACCORDANCE WITH SUBSECTIONS (I) AND (J) OF THIS SECTION, THE DEPARTMENT HAS DETERMINED THAT THE TIER III OR TIER IV AREA IS GROWTH TIERS ARE CONSISTENT WITH: ARTICLE 66B, § 1.05 OF THE CODE.~~

~~A. THE REQUIREMENTS OF A TIER III OR TIER IV AREA IN ARTICLE 66B, § 1.04 OR § 3.05 OF THE CODE, AS APPROPRIATE; AND~~

~~B. THE MUNICIPAL GROWTH ELEMENT AND THE PRIORITY PRESERVATION ELEMENT, IF APPLICABLE.~~

(2) ANY DELAY IN THE APPROVAL OF A RESIDENTIAL SUBDIVISION PLAT UNDER THIS SUBSECTION MAY NOT BE CONSTRUED AS APPLYING TO ANY DEADLINE FOR APPROVING OR DISAPPROVING A SUBDIVISION PLAT UNDER ARTICLE 28 OF THE CODE, ARTICLE 66B, § 5.04 OF THE CODE, OR A LOCAL ORDINANCE.

~~(C)~~ (H) (1) THE LIMITATION OF MINOR SUBDIVISIONS IN SUBSECTION ~~(B)(2)(III)~~ (G)(1)(III) OF THIS SECTION DOES NOT APPLY TO A LOCAL JURISDICTION, IF THE SUBDIVISION AND ZONING REQUIREMENTS IN

THEIR CUMULATIVE TIER IV AREAS RESULT IN ~~A~~ AN ACTUAL OVERALL YIELD OF NOT MORE THAN ONE DWELLING UNIT PER ~~25~~ 20 ACRES THAT HAS BEEN VERIFIED BY THE DEPARTMENT OF PLANNING.

(2) A LOCAL JURISDICTION MAY REQUEST, IN WRITING, A VERIFICATION OF THE ACTUAL OVERALL YIELD FROM THE DEPARTMENT OF PLANNING.

(3) THE DEPARTMENT OF PLANNING SHALL VERIFY THE ACTUAL OVERALL YIELD AFTER CONSULTATION WITH THE MARYLAND SUSTAINABLE GROWTH COMMISSION, ESTABLISHED IN § 5–702 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(I) (1) IF TWO OR MORE LOCAL JURISDICTIONS ADOPT CONFLICTING GROWTH TIER DESIGNATIONS FOR THE SAME AREA, THE DEPARTMENT AND THE DEPARTMENT OF PLANNING SHALL CONFER WITH THE LOCAL JURISDICTIONS TO SEEK RESOLUTION OF THE CONFLICTING DESIGNATIONS.

(2) IF A CONFLICT IN GROWTH TIER DESIGNATIONS IS NOT RESOLVED, THE DEPARTMENT OF PLANNING SHALL RECOMMEND TO THE DEPARTMENT *AND THE DEPARTMENT MAY APPROVE* THE PREFERRED LOCAL JURISDICTION DESIGNATIONS AS ~~DETERMINED~~ *RECOMMENDED* BY THE DEPARTMENT OF PLANNING BASED ON THE FOLLOWING BEST PLANNING PRACTICES OR FACTORS:

(I) THE COMPREHENSIVE PLAN, INCLUDING THE MUNICIPAL GROWTH ELEMENT, THE WATER RESOURCES ELEMENT, THE LAND USE ELEMENT, AND, IF APPLICABLE, THE PRIORITY PRESERVATION ELEMENT;

(II) GROWTH PROJECTIONS AND DEVELOPMENT CAPACITY; AND

(III) AVAILABILITY OF INFRASTRUCTURE.

~~(D) (J)~~ ~~BEFORE THE DEPARTMENT APPROVES THE INITIAL SUBDIVISION PLAT FOR A MAJOR SUBDIVISION IN A TIER III AREA UNDER SUBSECTION (B) (G)(1)(IV) OF THIS SECTION, THE DEPARTMENT SHALL SUBMIT THE INITIAL SUBDIVISION PLAT TO THE DEPARTMENT OF PLANNING FOR ADVICE ON WHETHER THE TIER III OR TIER IV AREA IS GROWTH TIERS ARE CONSISTENT WITH:~~

~~(1) THE REQUIREMENTS OF A TIER III OR TIER IV AREA FOR THE GROWTH TIERS IN ARTICLE 66B, § 1.04 OR § 3.05 § 1.05 OF THE CODE, AS APPROPRIATE; AND~~

~~(2) THE COMPREHENSIVE PLAN, INCLUDING THE MUNICIPAL GROWTH ELEMENT, THE WATER RESOURCES ELEMENT, THE LAND USE ELEMENT, AND, IF APPLICABLE, THE PRIORITY PRESERVATION ELEMENT, IF APPLICABLE, AND THE WATER RESOURCES ELEMENT OF THE LOCAL COMPREHENSIVE PLAN.~~

~~(E) ON OR AFTER DECEMBER 31, 2012, THE DEPARTMENT OR THE DEPARTMENT'S DESIGNEE:~~

~~(1) MAY NOT APPROVE A MAJOR RESIDENTIAL SUBDIVISION SERVED BY ON-SITE SEWAGE DISPOSAL SYSTEMS, COMMUNITY SEWERAGE SYSTEMS, OR SHARED SYSTEMS UNTIL THE LOCAL JURISDICTION AMENDS THE LOCAL COMPREHENSIVE PLAN TO INCLUDE THE TIER I, TIER II, TIER III, AND TIER IV AREAS; OR~~

~~(2) IF THE LOCAL JURISDICTION HAS NOT AMENDED THE LOCAL COMPREHENSIVE PLAN TO INCLUDE TIER I, TIER II, TIER III, OR TIER IV AREAS, MAY APPROVE:~~

~~(I) A MINOR RESIDENTIAL SUBDIVISION SERVED BY ON-SITE SEWAGE DISPOSAL SYSTEMS IF THE RESIDENTIAL SUBDIVISION OTHERWISE MEETS THE REQUIREMENTS OF THIS TITLE; OR~~

~~(II) A MAJOR OR MINOR SUBDIVISION SERVED BY PUBLIC SEWER.~~

~~(F)~~ (K) ~~(1) IF A LOCAL JURISDICTION AMENDS A TIER III OR TIER IV AREA, THE DEPARTMENT OF PLANNING SHALL NOTIFY THE DEPARTMENT OF THE AMENDMENT.~~

~~(2) AFTER THE AMENDMENT OF A TIER III OR TIER IV AREA, THE DEPARTMENT SHALL SEND THE FIRST SUBDIVISION PLAT FOR A MAJOR SUBDIVISION IN A TIER III AREA TO THE DEPARTMENT OF PLANNING FOR ADVICE UNDER SUBSECTION (D) OF THIS SECTION.~~

~~(3) THE APPROVAL OF THE FIRST SUBDIVISION PLAT AFTER AN AMENDMENT TO A TIER III OR TIER IV AREA GROWTH TIER SHALL BE COMPLETED IN ACCORDANCE WITH SUBSECTION (B)~~ (G) ~~OF THIS SECTION.~~

~~(G) THE DEPARTMENT MAY ESTABLISH REGULATIONS REQUIRING NUTRIENT OFFSETS FOR ALL NEW SUBDIVISIONS.~~

[(a)**]** ~~**(H)**~~ ~~**(L)**~~ **(J)** With respect to land that is platted for subdivision, a person may not offer any of the land for sale or development or erect a permanent building on the land, unless there have been submitted to the Department:

(1) A plat of the subdivision;

(2) A statement of the methods, consistent with Subtitle 5 of this title, by which the subdivision is to be supplied with water and sewerage service; ~~and~~

(3) DOCUMENTATION BY THE LOCAL JURISDICTION THAT A MAJOR SUBDIVISION ON–SITE SEWAGE DISPOSAL SYSTEM, A COMMUNITY SEWERAGE SYSTEM, OR A SHARED FACILITY IS IN A:

(I) TIER III AREA AS ADOPTED BY THE LOCAL JURISDICTION; OR

(II) TIER IV AREA IN A LOCAL JURISDICTION THAT IS EXEMPT FROM THE LIMITATION OF MINOR SUBDIVISIONS AS PROVIDED IN SUBSECTION (H) OF THIS SECTION; AND

~~(3)~~ **(4)** Any other information that the Department requires.

[(b)**]** ~~**(I)**~~ ~~**(M)**~~ **(K)** On the basis of information provided under subsection **[**(a)**]** ~~**(H)**~~ ~~**(L)**~~ **(I)** of this section, the Department may order:

(1) Preparation and submission, within any time the Department sets, of any plans and specifications that the Department considers necessary to provide for adequate water supply and sewerage service to the subdivision; and

(2) Installation, within any time the Department sets, of the whole or any part of a water supply system or sewerage system for the subdivision that:

(i) Conforms to the plans submitted to the Department and to any revision of the plans that the Department approves; and

(ii) In the judgment of the Department, is needed for the public health.

~~**(J)**~~ ~~**(N)**~~ **(L) (1) THIS SUBSECTION APPLIES TO A *RESIDENTIAL* MINOR** ~~**RESIDENTIAL**~~ **SUBDIVISION IN A TIER II, TIER III, OR TIER IV AREA.**

(2) EXCEPT AS PROVIDED IN PARAGRAPHS (4) AND (5) OF THIS SUBSECTION, ON OR AFTER DECEMBER 31, 2012, IF A TRACT OR PARCEL OF LAND IS SUBDIVIDED INTO A RESIDENTIAL MINOR SUBDIVISION LEAVING ANY REMAINDER PARCEL OR TRACT OF LAND:

(I) THE RESIDENTIAL MINOR SUBDIVISION MAY NOT BE RESUBDIVIDED OR FURTHER SUBDIVIDED; AND

(II) THE REMAINDER PARCEL OR TRACT OF LAND MAY NOT BE SUBDIVIDED.

(3) EXCEPT AS PROVIDED IN PARAGRAPHS (4) AND (5) OF THIS SUBSECTION, ON OR AFTER DECEMBER 31, 2012, THE SUBDIVISION PLAT OF THE RESIDENTIAL MINOR SUBDIVISION SHALL STATE THAT:

(I) THE RESIDENTIAL MINOR SUBDIVISION MAY NOT BE RESUBDIVIDED OR FURTHER SUBDIVIDED; ~~AND~~

(II) THE REMAINDER PARCEL OR TRACT OF LAND MAY NOT BE SUBDIVIDED; AND

(III) THE SUBDIVISION PLAT IS SUBJECT TO STATE LAW AND LOCAL ORDINANCES AND REGULATIONS.

(4) ON OR AFTER DECEMBER 31, 2012, IF A TRACT OR PARCEL OF LAND IS SUBDIVIDED INTO A RESIDENTIAL MINOR SUBDIVISION, THE RESIDENTIAL MINOR SUBDIVISION OR THE REMAINDER PARCEL OR TRACT OF LAND MAY BE RESUBDIVIDED OR FURTHER SUBDIVIDED IF THE SUBDIVISION OR THE REMAINDER PARCEL OR TRACT OF LAND IS:

(I) WITHIN A PRIORITY FUNDING AREA AS DEFINED IN TITLE 5, SUBTITLE 7B OF THE STATE FINANCE AND PROCUREMENT ARTICLE; AND

(II) DESIGNATED FOR PUBLIC SEWERAGE SERVICE WITHIN 10 YEARS IN THE APPROVED WATER AND SEWER PLAN.

(5) (I) A TRACT OR PARCEL OF LAND MAY BE SUBDIVIDED INTO A RESIDENTIAL MINOR SUBDIVISION IN TIER II, TIER III, OR TIER IV AREAS OVER TIME IF EACH TIME A NEW LOT OR PARCEL IS CREATED, THE SUBDIVISION PLAT STATES THE NUMBER OF NEW LOTS, PLATS, BUILDING SITES, OR OTHER DIVISIONS OF LAND THAT ARE LEFT WITH THE NUMBER OF LOTS, PLATS, BUILDING SITES, OR OTHER DIVISIONS OF LAND ALLOWED AS A SUBDIVISION.

(II) EXCEPT AS PROVIDED IN PARAGRAPH (III) OF THIS PARAGRAPH, WHEN THE TRACT OR PARCEL OF LAND THAT IS SUBDIVIDED OVER TIME REACHES THE TOTAL NUMBER OF LOTS, PLATS, BUILDING SITES, OR

OTHER DIVISIONS OF LAND THAT ARE ALLOWED AS A RESIDENTIAL MINOR SUBDIVISION, THE SUBDIVISION PLAT SHALL STATE THAT:

1. THE RESIDENTIAL MINOR SUBDIVISION MAY NOT BE RESUBDIVIDED OR FURTHER SUBDIVIDED; ~~AND~~

2. THE REMAINDER PARCEL OR TRACT OF LAND MAY NOT BE SUBDIVIDED; AND

3. THE SUBDIVISION PLAT IS SUBJECT TO STATE LAW AND LOCAL ORDINANCES AND REGULATIONS.

(III) A REMAINDER PARCEL OR TRACT OF LAND MAY BE SUBDIVIDED FOR NONRESIDENTIAL AGRICULTURAL PURPOSES, INCLUDING A FARM MARKET, AGRICULTURAL PROCESSING FACILITY, OR CREAMERY, AND THE OWNER MAY APPLY FOR APPROVAL OF AN ON–SITE SEWAGE DISPOSAL SYSTEM TO SERVE THE NONRESIDENTIAL AGRICULTURAL PURPOSES.

~~(O)~~ (M) (1) IN THIS SUBSECTION ~~AND SUBSECTION (P) (N) OF THIS SECTION~~, "AGRICULTURAL ACTIVITIES" INCLUDES:

(I) PLOWING, TILLAGE, CROPPING, SEEDING, CULTIVATING, AND HARVESTING FOR THE PRODUCTION OF FOOD AND FIBER PRODUCTS; AND

(II) THE GRAZING OF LIVESTOCK.

~~(2) THIS SUBSECTION APPLIES ONLY TO LAND THAT IS ZONED FOR AGRICULTURAL USE USED FOR AGRICULTURAL ACTIVITIES IN A TIER III OR TIER IV AREA.~~

~~(3) NOTWITHSTANDING ANY OTHER LAW EXCEPT AS PROVIDED IN SUBSECTION (H) OF THIS SECTION, AN OWNER OF PROPERTY USED FOR AGRICULTURAL ACTIVITIES MAY INSTALL, IF APPROVED, THE FOLLOWING NUMBER OF ON–SITE SEWAGE DISPOSAL SYSTEMS:~~

~~(I) THREE ON–SITE SEWAGE DISPOSAL SYSTEMS FOR A PROPERTY THAT IS NO MORE THAN 25 ACRES;~~

~~(II) FOUR ON–SITE SEWAGE DISPOSAL SYSTEMS FOR A PROPERTY THAT IS AT LEAST 25 ACRES AND LESS THAN 75 ACRES;~~

~~(III) FIVE ON–SITE SEWAGE DISPOSAL SYSTEMS FOR A PROPERTY THAT IS AT LEAST 75 ACRES AND LESS THAN 125 ACRES;~~

~~(IV) SIX ON–SITE SEWAGE DISPOSAL SYSTEMS FOR A PROPERTY THAT IS AT LEAST 125 ACRES AND LESS THAN 175 ACRES; AND~~

~~(V) SEVEN ON–SITE SEWAGE DISPOSAL SYSTEMS FOR A PROPERTY THAT IS 175 ACRES OR MORE.~~

~~(4) EXCEPT FOR AN ON–SITE SEWAGE DISPOSAL SYSTEM THAT SERVES THE MAIN FARM HOUSE ON THE PROPERTY, THE ON–SITE SEWAGE DISPOSAL SYSTEMS SHALL BE CLUSTERED TOGETHER.~~

~~(P) (N)~~ ~~(1)~~ *(2)* A LOCAL JURISDICTION MAY ENACT A LOCAL LAW OR ORDINANCE FOR THE TRANSFER OF THE RIGHT TO SUBDIVIDE, UP TO 7 LOTS, ~~AS PROVIDED IN THIS SECTION,~~ BY AN OWNER OF PROPERTY USED FOR AGRICULTURAL ACTIVITIES TO THE OWNER OF ANOTHER PROPERTY USED FOR AGRICULTURAL ACTIVITIES IN ACCORDANCE WITH THIS SUBSECTION.

~~(2)~~ *(3)* THE LOCAL LAW OR ORDINANCE SHALL PROVIDE FOR THE RECORDATION OF ANY RIGHTS TO SUBDIVIDE THAT ARE TRANSFERRED UNDER THIS SUBSECTION.

~~(3)~~ *(4)* A PROPERTY USED FOR AGRICULTURAL ACTIVITIES THE OWNER OF WHICH RECEIVES RIGHTS TO SUBDIVIDE UNDER THIS SUBSECTION:

(I) IS LIMITED TO A TOTAL OF 15 LOTS; AND

(II) SHALL CLUSTER THE LOTS ON THE PROPERTY.

~~(4)~~ *(5)* RIGHTS TO SUBDIVIDE MAY NOT BE TRANSFERRED FROM THE OWNER OF PROPERTY USED FOR AGRICULTURAL ACTIVITIES IN A TIER III AREA TO THE OWNER OF PROPERTY USED FOR AGRICULTURAL ACTIVITIES IN A TIER IV AREA.

9–1110.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "COMMUNITY SEWERAGE SYSTEM" MEANS A PUBLICLY OR PRIVATELY OWNED SEWERAGE SYSTEM THAT SERVES AT LEAST TWO LOTS.

(3) "CONTROLLING AUTHORITY" MEANS A UNIT OF GOVERNMENT, A BODY PUBLIC AND CORPORATE, OR AN INTERCOUNTY AGENCY AUTHORIZED BY THE STATE, A COUNTY, OR A MUNICIPAL CORPORATION TO

PROVIDE FOR THE MANAGEMENT, OPERATION, AND MAINTENANCE OF A COMMUNITY SEWERAGE SYSTEM, SHARED FACILITY, OR MULTIUSE SEWERAGE SYSTEM.

(4) "SHARED FACILITY" MEANS A SEWERAGE SYSTEM THAT:

(I) SERVES MORE THAN ONE:

1. LOT AND IS OWNED IN COMMON BY THE USERS;

2. CONDOMINIUM UNIT AND IS OWNED IN COMMON BY THE USERS OR BY A CONDOMINIUM ASSOCIATION;

3. USER AND IS LOCATED ON INDIVIDUAL LOTS OWNED BY THE USERS; OR

4. USER ON ONE LOT AND IS OWNED IN COMMON BY THE USERS;

(II) IS LOCATED WHOLLY OR PARTLY ON ANY OF THE COMMON ELEMENTS OF A CONDOMINIUM; OR

(III) SERVES A HOUSING COOPERATIVE OR OTHER MULTIPLE OWNERSHIP COOPERATIVE.

(B) THIS SECTION MAY NOT BE CONSTRUED AS REQUIRING A LOCAL JURISDICTION TO:

(1) BE A CONTROLLING AUTHORITY; OR

(2) AUTHORIZE OR ALLOW THE USE OF A SHARED FACILITY OR A COMMUNITY SEWERAGE SYSTEM WITHIN THE LOCAL JURISDICTION.

(C) A SHARED FACILITY OR COMMUNITY SEWERAGE SYSTEM MAY BE APPROVED ONLY IF THE SYSTEM:

(1) IS MANAGED, OPERATED, AND MAINTAINED BY:

(I) A CONTROLLING AUTHORITY; OR

(II) A THIRD PARTY UNDER CONTRACT WITH THE CONTROLLING AUTHORITY; AND

(2) DISCHARGES:

(I) TO THE SURFACE WATERS OF THE STATE IN ACCORDANCE WITH A PERMIT ISSUED UNDER § 9–323 OF THIS TITLE;

(II) BY WAY OF LAND APPLICATION UNDER A NUTRIENT MANAGEMENT PLAN REQUIRED UNDER § 8–803.1 OF THE AGRICULTURE ARTICLE THAT ASSURES 100% OF THE NITROGEN AND PHOSPHORUS IN THE APPLIED EFFLUENT WILL BE TAKEN UP BY VEGETATION; OR

(III) BY WAY OF AN ON–SITE SEWERAGE SYSTEM.

~~**(C) THE DEPARTMENT SHALL ESTABLISH THE NUTRIENT OFFSET REQUIREMENTS FOR SHARED FACILITIES AND COMMUNITY SEWERAGE SYSTEMS.**~~

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article 66B – Land Use

1.00.

(a) In this article the following words have the meanings indicated, except where the context clearly indicates otherwise.

(b) "Adaptive reuse" means a change granted by a local legislative body, under § 4.05 of this article, to the use restrictions in a zoning classification, as those restrictions are applied to a particular improved property.

(c) "Development" means any activity, other than normal agricultural activity, which materially affects the existing condition or use of any land or structure.

(d) "Development rights and responsibilities agreement" means an agreement made between a governmental body of a jurisdiction and a person having a legal or equitable interest in real property for the purpose of establishing conditions under which development may proceed for a specified time.

(e) (1) "Local executive" means the chief executive of a political subdivision.

(2) "Local executive" includes:

(i) A county executive;

(ii) A board of county commissioners;

(iii) An executive head; or

(iv) A mayor.

(f) (1) "Local legislative body" means the elected body of a political subdivision.

(2) "Local legislative body" includes:

(i) A board of county commissioners;

(ii) A county council; or

(iii) A governing body of a municipal corporation.

(g) "Local jurisdiction" means a county or municipal corporation and the territory within which its powers may be exercised.

(h) (1) "Plan" means the policies, statements, goals, and interrelated plans for private and public land use, transportation, and community facilities documented in texts and maps which constitute the guide for the area's future development.

(2) "Plan" includes a general plan, master plan, comprehensive plan, or community plan adopted in accordance with §§ 1.04 and 3.01 through 3.09 of this article.

(I) "PRIORITY FUNDING AREA" HAS THE MEANING STATED IN § ~~5–7B–02~~ TITLE 5, SUBTITLE 2 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

[(i)**] (J)** "Regulation" means any rule of general applicability and future effect, including any map or plan.

[(j)**] (K)** "Sensitive areas" includes:

(1) Streams, wetlands, and their buffers;

(2) 100–year flood plains;

(3) Habitats of threatened and endangered species;

(4) Steep slopes;

(5) Agricultural and forest lands intended for resource protection or conservation; and

(6) Other areas in need of special protection, as determined in the plan.

[(k)**] (L)** "Special exception" means a grant of a specific use that would not be appropriate generally or without restriction and shall be based upon a finding that certain conditions governing special exceptions as detailed in the zoning ordinance exist, that the use is consistent with the plan and is compatible with the existing neighborhood.

[(l)**] (M)** (1) "Subdivision" means the division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the immediate or future purposes of selling the land or of building development.

(2) (i) "Subdivision" includes resubdivision.

(ii) As appropriate to the context, "subdivision" may include either the process of resubdividing or the land or territory resubdivided.

[(m)**] (N)** "Variance" means a modification only of density, bulk, or area requirements in the zoning ordinance that is:

(1) Not contrary to the public interest; and

(2) Specified by the local governing body in a zoning ordinance to avoid a literal enforcement of the ordinance that, because of conditions peculiar to the property and not any action taken by the applicant, would result in unnecessary hardship or practical difficulty.

1.03.

(a) Except as provided in this section, this article does not apply to charter counties.

(b) The following sections of this article apply to a charter county:

(1) **[**§ 1.00(j) (Definition of "sensitive areas")**] § 1.00(H), (I), AND (K), ~~AND (M)~~ (DEFINITIONS OF "PLAN", "PRIORITY FUNDING AREA", AND "SENSITIVE AREAS",); ~~AND "SUBDIVISION");~~**

(2) § 1.01 (Visions);

(3) § 1.02 (Consistency with comprehensive plans);

(4) § 1.04 (Charter county – Comprehensive plans);

(5) § 1.05 (ADOPTION OF GROWTH TIERS);

(6) § 1.06 (MAJOR SUBDIVISION – REVIEW);

[(5)**]** ~~**(6)**~~ **(7)** § 3.02(h) (Planning Commission – Education);

[(6)**]** ~~**(7)**~~ **(8)** § 3.09 (Annual report – Preparation and filing);

[(7)**]** ~~**(8)**~~ **(9)** § 3.10 (Annual report – Smart Growth goals, measures, and indicators);

[(8)**]** ~~**(9)**~~ **(10)** § 4.01(b)(2) (Regulation of bicycle parking);

[(9)**]** ~~**(10)**~~ **(11)** § 4.04(c) (Exceptions related to the Maryland Accessibility Code);

[(10)**]** ~~**(11)**~~ **(12)** § 4.07(i) (Board of Appeals – Education);

[(11)**]** ~~**(12)**~~ **(13)** § 5.03(d) (Easements for burial sites);

[(12)**]** ~~**(13)**~~ **(14)** § 7.02 (Civil penalty for zoning violation);

[(13)**]** ~~**(14)**~~ **(15)** § 10.01 (Adequate Public Facilities Ordinances);

[(14)**]** ~~**(15)**~~ **(16)** § 11.01 (Transfer of Development Rights);

[(15)**]** ~~**(16)**~~ **(17)** § 12.01 (Inclusionary Zoning);

[(16)**]** ~~**(17)**~~ **(18)** Except in Montgomery County or Prince George's County, § 13.01 (Development rights and responsibilities agreements);

[(17)**]** ~~**(18)**~~ **(19)** For Baltimore County only, § 14.02; and

[(18)**]** ~~**(19)**~~ **(20)** For Howard County only, § 14.06.1.

(c) This section supersedes any inconsistent provision of Article 28 of the Code.

~~1.04.~~

~~(a) A charter county shall enact, adopt, amend, and execute a plan as provided in this section.~~

~~(b) (1) When developing a comprehensive plan for a charter county, a planning commission shall include:~~

~~(iv) An element which contains the planning commission's recommendation for land development regulations to implement the comprehensive plan and which [encourages]:~~

~~1. ENCOURAGES:~~

~~[1.] A. Streamlined review of applications for development, including permit review and subdivision plat review within the areas designated for growth in the comprehensive plan;~~

~~[2.] B. The use of flexible development regulations to promote innovative and cost–saving site design and protect the environment; and~~

~~[3.] C. Economic development in areas designated for growth in the comprehensive plan through the use of innovative techniques; [and]~~

~~2. MAY INCLUDE MAPPED AREAS DESIGNATED FOR TIER I GROWTH IF THE TIER I AREAS ARE PRIORITY FUNDING AREAS THAT HAVE RECEIVED NO COMMENTS FROM THE DEPARTMENT OF PLANNING AND ARE:~~

~~A. SERVED BY COMMUNITY, SHARED, OR MULTIUSE SEWERAGE SYSTEMS; OR~~

~~B. PLANNED TO BE SERVED BY COMMUNITY, SHARED, OR MULTIUSE SEWERAGE SYSTEMS;~~

~~3. MAY INCLUDE MAPPED AREAS DESIGNATED FOR TIER II GROWTH IF THE TIER II AREAS ARE PLANNED TO BE SERVED BY COMMUNITY, SHARED, AND MULTIUSE SEWERAGE SYSTEMS AND:~~

~~A. I. ARE PRIORITY FUNDING AREAS THAT HAVE BEEN COMMENTED ON BY THE DEPARTMENT OF PLANNING; OR~~

~~II. ARE MAPPED LOCALLY DESIGNATED GROWTH AREAS; AND~~

~~B. THE TIER II AREAS ARE NEEDED TO SATISFY DEMAND FOR DEVELOPMENT AT DENSITIES CONSISTENT WITH THE LONG–TERM DEVELOPMENT POLICY AFTER CONSIDERATION OF THE CAPACITY OF LAND AREAS AVAILABLE FOR DEVELOPMENT, INCLUDING IN FILL AND REDEVELOPMENT, WITHIN THE LOCAL JURISDICTION;~~

~~4. MAY INCLUDE MAPPED AREAS DESIGNATED FOR TIER III GROWTH IF:~~

~~A. THE TIER III AREAS ARE NOT PLANNED FOR SEWERAGE SERVICE; AND~~

~~B. THE AREAS ARE PRIORITY FUNDING AREAS, MAPPED LOCALLY DESIGNATED GROWTH AREAS, OR AREAS PLANNED AND ZONED FOR LARGE LOT AND RURAL DEVELOPMENT THAT:~~

~~I. ARE NOT PLANNED OR ZONED FOR AGRICULTURAL PROTECTION, RURAL PROTECTION, RESOURCE PROTECTION OR SIMILAR ZONES WITH THE PRIMARY PURPOSE BEING LAND PRESERVATION;~~

~~II. ARE DOMINATED BY EXISTING LOW DENSITY DEVELOPMENT; OR~~

~~III. ARE AREAS NOT DOMINATED BY FARMLAND OR FOREST LAND; AND~~

~~5. MAY INCLUDE MAPPED AREAS DESIGNATED FOR TIER IV GROWTH IF THE TIER IV AREAS ARE NOT PLANNED FOR SEWERAGE SERVICE AND ARE:~~

~~A. AREAS PLANNED OR ZONED FOR LAND PRESERVATION, AGRICULTURAL PRESERVATION, OR RESOURCE CONSERVATION;~~

~~B. AREAS DOMINATED BY AGRICULTURAL LANDS, FOREST LANDS, OR OTHER NATURAL AREAS; OR~~

~~C. RURAL LEGACY AREAS, PRIORITY PRESERVATION AREAS, AREAS MAPPED FOR ECOLOGICAL PRESERVATION BY THE DEPARTMENT OF NATURAL RESOURCES AT THE TIME OF THE ADOPTION OF THE PLAN OR AMENDMENT OR AREAS MAPPED FOR AGRICULTURAL PRESERVATION BY THE DEPARTMENT OF PLANNING AT THE TIME OF THE ADOPTION OF THE PLAN OR AMENDMENT.~~

~~(5) (I) IF A LOCAL JURISDICTION PROPOSES TIERS IN THE PLAN UNDER PARAGRAPH (1)(IV) OF THIS SUBSECTION, THE LOCAL JURISDICTION SHALL PROVIDE TO THE DEPARTMENT OF PLANNING A DESCRIPTION OF THE PROPOSED TIERS NOT LESS THAN 60 DAYS BEFORE THE PUBLIC HEARING ON THE TIERS.~~

~~(II) IF THE PLAN INCLUDES TIER I, TIER II, TIER III, OR TIER IV AREAS, THE LOCAL JURISDICTION SHALL PROVIDE TO THE~~

~~DEPARTMENT OF PLANNING ALL INFORMATION NECESSARY TO DEMONSTRATE THE PRECISE LOCATION OF THE AREA, INCLUDING A MAP OF THE AREA SHOWING PLANNING AND ZONING CHARACTERISTICS, AND EXISTING AND PLANNED WATER AND SEWER SERVICES AS APPROPRIATE.~~

~~(III) THE DEPARTMENT OF PLANNING, AS APPROPRIATE, SHALL PROVIDE TO EACH STATE UNIT THAT APPROVES SUBDIVISION PLANS COPIES OF MAPS ILLUSTRATING:~~

~~1. THE TIERS IDENTIFIED BY THE LOCAL JURISDICTION; AND~~

~~2. ANY COMMENTS BY THE DEPARTMENT OF PLANNING ON THE AREAS IDENTIFIED.~~

1.05.

(A) IN THIS SECTION~~,~~ THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(1) "PLANNING BOARD" MEANS A PLANNING BOARD ESTABLISHED UNDER THIS ARTICLE.

(2) "PLANNING BOARD" INCLUDES A PLANNING COMMISSION OR BOARD ESTABLISHED UNDER ARTICLE 25A OR ARTICLE 28 OF THE CODE.

(B) ON OR BEFORE DECEMBER 31, 2012, A LOCAL JURISDICTION MAY ~~CERTIFY TO THE DEPARTMENT OF PLANNING~~ ADOPT THE MAPPED GROWTH TIERS ~~DESIGNATED BY THE LOCAL JURISDICTION~~ IN ACCORDANCE WITH THIS SECTION.

~~(B)~~ (C) BEFORE ~~CERTIFICATION~~ ADOPTION OF THE GROWTH TIERS, A LOCAL JURISDICTION MAY SUBMIT THE PROPOSED TIERS AND ANY RELEVANT INFORMATION TO THE DEPARTMENT OF PLANNING FOR:

(1) TECHNICAL ASSISTANCE, REVIEW, AND COMMENT; AND

(2) THE OPPORTUNITY FOR PUBLIC REVIEW.

~~(C)~~ (D) ~~ON CERTIFICATION~~ AFTER ADOPTION OF THE GROWTH TIERS, THE LOCAL JURISDICTION SHALL PROVIDE TO THE DEPARTMENT OF PLANNING ALL INFORMATION NECESSARY TO DEMONSTRATE THE PRECISE LOCATION OF THE TIERS, INCLUDING, AS APPROPRIATE:

(1) A MAP OF THE AREA SHOWING PLANNING AND ZONING CHARACTERISTICS OF EACH TIER; AND

(2) EXISTING AND PLANNED WATER AND SEWER SERVICES.

~~(D)~~ **(E) THE DEPARTMENT OF PLANNING~~, AS APPROPRIATE, SHALL PROVIDE TO EACH STATE AGENCY AND POST ON THE DEPARTMENT OF PLANNING'S WEB SITE, COPIES OF MAPS ILLUSTRATING:~~**

~~(1) GROWTH TIERS CERTIFIED BY LOCAL JURISDICTIONS; AND~~

~~(2) ANY COMMENTS BY THE DEPARTMENT OF PLANNING ON THE CERTIFIED TIERS~~ MAY COMMENT ON THE GROWTH TIERS ADOPTED BY THE LOCAL JURISDICTIONS.**

~~(E)~~ **(F) (1) SUBJECT TO PARAGRAPHS (2), (3), AND (4) OF THIS SUBSECTION, A LOCAL JURISDICTION THAT CHOOSES TO ~~CERTIFY~~ ADOPT GROWTH TIERS ~~TO THE DEPARTMENT OF PLANNING~~ IS NOT REQUIRED TO ADOPT ALL OF THE TIERS.**

(2) A MUNICIPAL CORPORATION THAT EXERCISES PLANNING AND ZONING AUTHORITY SHALL ADOPT TIER I AND MAY ADOPT TIER II.

(3) A COUNTY SHALL ADOPT TIERS I, III, AND IV, AND MAY ADOPT TIER II.

(4) IF A LOCAL JURISDICTION DOES NOT ADOPT ALL OF THE TIERS AUTHORIZED UNDER THIS SECTION, THE LOCAL JURISDICTION SHALL ~~PROVIDE DOCUMENTATION TO THE DEPARTMENT OF PLANNING OF~~ *DOCUMENT* THE REASONS THE JURISDICTION IS NOT ADOPTING A PARTICULAR TIER.

(G) (1) IF THE DEPARTMENT OF PLANNING COMMENTS UNDER SUBSECTION (E) OF THIS SECTION ON ANY OF THE TIERS OR ON AN AREA WITHIN ONE OF THE TIERS, THE LOCAL LEGISLATIVE BODY OR THE PLANNING BOARD SHALL HOLD AT LEAST ONE PUBLIC HEARING ON THE COMMENTS BY THE DEPARTMENT OF PLANNING.

(2) THE LOCAL LEGISLATIVE BODY OR THE PLANNING BOARD SHALL REVIEW THE MAPPED GROWTH TIERS ADOPTED BY THE LOCAL JURISDICTION IN LIGHT OF THE COMMENTS BY THE DEPARTMENT OF PLANNING.

(3) IF THE PLANNING BOARD HOLDS THE PUBLIC HEARING UNDER PARAGRAPH (1) OF THIS SECTION, AFTER THE PUBLIC HEARING AND

THE CONSIDERATION OF THE COMMENTS BY THE DEPARTMENT OF PLANNING, THE PLANNING BOARD SHALL RECOMMEND TO THE LOCAL JURISDICTION THAT EITHER THE TIERS OR AN AREA WITHIN THE TIERS:

(I) BE CHANGED; OR

(II) THAT THE ADOPTED TIERS REMAIN UNCHANGED.

(4) IF THE PLANNING BOARD RECOMMENDS THAT THE TIERS OR AN AREA WITHIN THE TIERS BE CHANGED UNDER PARAGRAPH (3) OF THIS SUBSECTION, THE PLANNING BOARD SHALL PROVIDE THE RECOMMENDED MAPPED GROWTH TIER CHANGES TO THE LOCAL JURISDICTION.

~~(F)~~ (H) THE GROWTH TIERS ~~CERTIFIED~~ ADOPTED BY A LOCAL JURISDICTION SHALL MEET THE FOLLOWING CRITERIA:

(1) TIER I AREAS ARE AREAS THAT ARE:

(I) SERVED BY PUBLIC SEWERAGE SYSTEMS AND MAPPED LOCALLY DESIGNATED GROWTH AREAS; OR

(II) A MUNICIPAL CORPORATION THAT IS A PRIORITY FUNDING AREA THAT IS SERVED BY PUBLIC SEWERAGE SYSTEMS;

(2) TIER II AREAS ARE AREAS THAT ARE:

(I) 1. PLANNED TO BE SERVED BY PUBLIC SEWERAGE SYSTEMS AND IN THE MUNICIPAL GROWTH ELEMENT; OR

2. MAPPED LOCALLY DESIGNATED GROWTH AREAS; AND

(II) NEEDED TO SATISFY DEMAND FOR DEVELOPMENT AT DENSITIES CONSISTENT WITH THE LONG–TERM DEVELOPMENT POLICY AFTER CONSIDERATION OF THE CAPACITY OF LAND AREAS AVAILABLE FOR DEVELOPMENT, INCLUDING IN–FILL AND REDEVELOPMENT, WITHIN THE LOCAL JURISDICTION;

(3) TIER III AREAS ARE AREAS THAT ~~ARE~~:

(I) ~~NOT~~ ARE NOT PLANNED FOR SEWERAGE SERVICE AND NOT DOMINATED BY AGRICULTURAL OR FOREST LAND; ~~AND~~

(II) ARE NOT PLANNED OR ZONED BY A LOCAL JURISDICTION FOR LAND, AGRICULTURAL, OR RESOURCE PROTECTION, PRESERVATION, OR CONSERVATION; AND

~~(II)~~ (III) ~~ONE~~ ARE ONE OF THE FOLLOWING:

1. MUNICIPAL CORPORATIONS NOT SERVED BY A PUBLIC SEWERAGE SYSTEM;

~~2. ESTABLISHED COMMUNITIES PLANNED AND ZONED FOR DEVELOPMENT;~~

~~3.~~ 2. RURAL VILLAGES AS DESCRIBED IN § 5–7B–03(F) OF THE STATE FINANCE AND PROCUREMENT ARTICLE; ~~OR~~

~~4.~~ 3. MAPPED LOCALLY DESIGNATED GROWTH AREAS; OR

4. AREAS PLANNED AND ZONED FOR LARGE LOT AND RURAL DEVELOPMENT; AND

~~(III) ADJOINING AND CONTIGUOUS TO ONE OF THE FOLLOWING:~~

~~1. MUNICIPAL CORPORATIONS NOT SERVED BY A WASTEWATER TREATMENT PLANT;~~

~~2. ESTABLISHED COMMUNITIES PLANNED AND ZONED FOR DEVELOPMENT; OR~~

~~3. RURAL VILLAGES AS DESCRIBED IN § 5–7B–03(F) OF THE STATE FINANCE AND PROCUREMENT ARTICLE; AND~~

(4) TIER IV AREAS ARE AREAS THAT ARE NOT PLANNED FOR SEWERAGE SERVICE AND ARE:

(I) AREAS PLANNED OR ZONED BY A LOCAL JURISDICTION FOR LAND, AGRICULTURAL, OR RESOURCE PROTECTION, PRESERVATION, OR CONSERVATION;

(II) AREAS DOMINATED BY AGRICULTURAL LANDS, FOREST LANDS, OR OTHER NATURAL AREAS; OR

(III) ~~1.~~ RURAL LEGACY AREAS, PRIORITY PRESERVATION AREAS, OR AREAS ~~MAPPED FOR ECOLOGICAL PRESERVATION BY THE DEPARTMENT OF NATURAL RESOURCES AT THE TIME OF THE ADOPTION OF THE PLAN OR AMENDMENT; OR~~

~~2.~~ ~~AREAS MAPPED FOR AGRICULTURAL PRESERVATION BY THE DEPARTMENT OF PLANNING AT THE TIME OF THE ADOPTION OF THE PLAN OR AMENDMENT~~ SUBJECT TO COVENANTS, RESTRICTIONS, CONDITIONS, OR CONSERVATION EASEMENTS FOR THE BENEFIT OF, OR HELD BY A STATE AGENCY, AS DEFINED IN § 9–206 OF THE ENVIRONMENT ARTICLE, OR A LOCAL JURISDICTION FOR THE PURPOSE OF CONSERVING NATURAL RESOURCES OR AGRICULTURAL LAND.

(G) ~~(1)~~ A LOCAL JURISDICTION SHALL STRIVE TO AVOID CREATING A TIER III AREA THAT IS BOUNDED ON ALL SIDES BY LAND IN A TIER IV AREA.

~~(2) IF AN AREA NOT PLANNED FOR SEWERAGE SERVICE DOES NOT MEET THE DESCRIPTION OF A TIER III OR TIER IV AREA, THEN THE AREA IS A TIER IV AREA.~~

(H) (1) A LOCAL JURISDICTION THAT ~~CERTIFIES~~ ADOPTS GROWTH TIERS ~~TO THE DEPARTMENT OF PLANNING~~ SHALL INCORPORATE THE TIERS INTO THE LOCAL COMPREHENSIVE PLAN OR AN ELEMENT OF THE PLAN:

(I) WHEN THE LOCAL JURISDICTION CONDUCTS THE 6–YEAR REVIEW OF THE PLAN UNDER §§ 1.04(D) AND 3.05(B) OF THIS ARTICLE; AND

(II) IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.

(2) IF A LOCAL JURISDICTION DOES NOT INCORPORATE ALL OF THE GROWTH TIERS AUTHORIZED UNDER THIS SECTION INTO THE LOCAL COMPREHENSIVE PLAN OR AN ELEMENT OF THE PLAN, THE LOCAL JURISDICTION SHALL STATE THAT A TIER IS NOT ADOPTED.

1.06.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "COMMUNITY SEWERAGE SYSTEM" MEANS A PUBLICLY OR PRIVATELY OWNED SEWERAGE SYSTEM THAT SERVES AT LEAST TWO LOTS.

(3) "MAJOR SUBDIVISION" ~~MEANS THE SUBDIVISION OF LAND INTO NEW LOTS, PLATS, BUILDING SITES, OR OTHER DIVISIONS OF LAND DEFINED IN LOCAL LAW AS A MAJOR SUBDIVISION IN EFFECT BEFORE JANUARY 1, 2012~~ HAS THE MEANING STATED IN § 9–206 OF THE ENVIRONMENT ARTICLE.

(4) "ON–SITE SEWAGE DISPOSAL SYSTEM" HAS THE MEANING STATED IN § 9–206 OF THE ENVIRONMENT ARTICLE.

~~(5) "SHARED FACILITY" HAS THE MEANING STATED IN § 9–206 OF THE ENVIRONMENT ARTICLE.~~

~~(6)~~ *(5)* (I) "PLANNING BOARD" MEANS A PLANNING BOARD ESTABLISHED UNDER THIS ARTICLE.

(II) "PLANNING BOARD" INCLUDES A PLANNING COMMISSION OR BOARD ESTABLISHED UNDER ARTICLE 25A OR ARTICLE 28 OF THE CODE.

(6) "SHARED FACILITY" HAS THE MEANING STATED IN § 9–206 OF THE ENVIRONMENT ARTICLE.

(B) THIS SECTION APPLIES ONLY TO A RESIDENTIAL MAJOR SUBDIVISION IN A TIER III AREA SERVED BY:

(1) ON–SITE SEWAGE DISPOSAL SYSTEMS;

(2) A SHARED FACILITY; OR

(3) A COMMUNITY SEWERAGE SYSTEM.

(C) IF A LOCAL JURISDICTION ESTABLISHES ~~TIERS FOR~~ THE GROWTH ~~IN THE LAND DEVELOPMENT ELEMENT OF THE PLAN~~ TIERS UNDER ~~§ 1.04~~ § 1.05 OF THIS ~~SUBHEADING OR § 3.05 OF THIS~~ ARTICLE, A RESIDENTIAL MAJOR SUBDIVISION IN A TIER III AREA MAY NOT BE APPROVED UNLESS THE PLANNING BOARD HAS REVIEWED AND RECOMMENDED THE APPROVAL OF THE MAJOR SUBDIVISION IN ~~A~~ THE TIER III AREA ~~SERVED BY:~~

~~(1) ON–SITE SEWAGE DISPOSAL SYSTEMS;~~

~~(2) A COMMUNITY SEWERAGE SYSTEM; OR~~

~~(3) A SHARED FACILITY~~.

~~(C)~~ (D) (1) BEFORE RECOMMENDING THE APPROVAL OF A PROPOSED MAJOR SUBDIVISION ~~SERVED BY ON-SITE SEWAGE DISPOSAL SYSTEMS, A COMMUNITY SEWERAGE SYSTEM, OR A SHARED FACILITY~~ IN A TIER III AREA, THE PLANNING BOARD SHALL HOLD AT LEAST ONE PUBLIC HEARING.

(2) THE PLANNING BOARD SHALL CONDUCT THE PUBLIC HEARING IN ACCORDANCE WITH ITS RULES AND PROCEDURES.

~~(D)~~ (E) THE REVIEW OF ~~THE~~ A RESIDENTIAL MAJOR SUBDIVISION BY THE PLANNING BOARD SHALL INCLUDE:

(1) THE COST OF PROVIDING LOCAL GOVERNMENTAL SERVICES TO THE RESIDENTIAL MAJOR SUBDIVISION UNLESS A LOCAL JURISDICTION'S ADEQUATE PUBLIC FACILITIES ORDINANCE ALREADY REQUIRES A REVIEW OF GOVERNMENT SERVICES; AND

(2) THE POTENTIAL ENVIRONMENTAL ~~IMPACT OF~~ ISSUES OR A NATURAL RESOURCES INVENTORY RELATED TO THE PROPOSED RESIDENTIAL MAJOR SUBDIVISION~~; AND~~

~~(3) ANY NUTRIENT OFFSETS, ACCORDING TO IF REQUIRED BY STATE POLICY, THAT WILL BE REQUIRED FOR THE AS A RESULT OF THE APPROVAL OF THE PROPOSED RESIDENTIAL MAJOR SUBDIVISION~~.

~~(E)~~ (F) THE PLANNING BOARD SHALL RECOMMEND THE PROPOSED RESIDENTIAL MAJOR SUBDIVISION BY RESOLUTION OF THE PLANNING BOARD.

~~3.05.~~

~~(a) (4) The plan shall contain at a minimum the following elements:~~

~~(i) A statement of goals and objectives, principles, policies, and standards, which shall serve as a guide for the development and economic and social well-being of the local jurisdiction;~~

~~(ii) A land use plan element, which:~~

~~1. Shall propose the most appropriate and desirable patterns for the general location, character, extent, and interrelationship of the uses of public and private land, on a schedule that extends as far into the future as is reasonable; [and]~~

~~2. May include public and private, residential, commercial, industrial, agricultural, forestry, in accordance with § 5-101 of the Natural Resources Article, and recreational land uses;~~

~~3. MAY INCLUDE MAPPED AREAS DESIGNATED FOR TIER I GROWTH IF THE TIER I AREAS ARE PRIORITY FUNDING AREAS THAT HAVE RECEIVED NO COMMENTS FROM THE DEPARTMENT OF PLANNING AND ARE:~~

~~A. SERVED BY COMMUNITY, SHARED, OR MULTIUSE SEWERAGE SYSTEMS; OR~~

~~B. PLANNED TO BE SERVED BY COMMUNITY, SHARED, OR MULTIUSE SEWERAGE SYSTEMS;~~

~~4. MAY INCLUDE MAPPED AREAS DESIGNATED FOR TIER II GROWTH IF THE TIER II AREAS ARE:~~

~~A. PLANNED TO BE SERVED BY COMMUNITY, SHARED, AND MULTIUSE SEWERAGE SYSTEMS;~~

~~B. NEEDED TO SATISFY DEMAND FOR DEVELOPMENT AT DENSITIES CONSISTENT WITH THE LONG–TERM DEVELOPMENT POLICY AFTER CONSIDERATION OF THE CAPACITY OF LAND AREAS AVAILABLE FOR DEVELOPMENT, INCLUDING IN–FILL AND REDEVELOPMENT, WITHIN THE LOCAL JURISDICTION; AND~~

~~C. I. PRIORITY FUNDING AREAS THAT HAVE BEEN COMMENTED ON BY THE DEPARTMENT OF PLANNING; OR~~

~~II. MAPPED LOCALLY DESIGNATED GROWTH AREAS;~~

~~5. MAY INCLUDE MAPPED AREAS DESIGNATED FOR TIER III GROWTH IF:~~

~~A. THE TIER III AREAS ARE NOT PLANNED FOR SEWERAGE SERVICE; AND~~

~~B. THE AREAS ARE PRIORITY FUNDING AREAS, MAPPED LOCALLY DESIGNATED GROWTH AREAS, OR AREAS PLANNED AND ZONED FOR LARGE LOT AND RURAL DEVELOPMENT THAT:~~

~~I. ARE NOT PLANNED OR ZONED FOR AGRICULTURAL PROTECTION, RURAL PROTECTION, RESOURCE PROTECTION OR SIMILAR ZONES WITH THE PRIMARY PURPOSE BEING LAND PRESERVATION;~~

~~II. ARE DOMINATED BY EXISTING LOW DENSITY DEVELOPMENT; OR~~

~~III. ARE AREAS NOT DOMINATED BY FARMLAND OR FOREST LAND; AND~~

~~6. MAY INCLUDE MAPPED AREAS DESIGNATED FOR TIER IV GROWTH IF THE TIER IV AREAS ARE NOT PLANNED FOR SEWERAGE SERVICE AND ARE:~~

~~A. AREAS PLANNED OR ZONED FOR LAND PRESERVATION, AGRICULTURAL PRESERVATION, OR RESOURCE CONSERVATION;~~

~~B. AREAS DOMINATED BY AGRICULTURAL LANDS, FOREST LANDS, OR OTHER NATURAL AREAS; OR~~

~~C. RURAL LEGACY AREAS, PRIORITY PRESERVATION AREAS, AREAS MAPPED FOR ECOLOGICAL PRESERVATION BY THE DEPARTMENT OF NATURAL RESOURCES AT THE TIME OF THE ADOPTION OF THE PLAN OR AMENDMENT OR AREAS MAPPED FOR AGRICULTURAL PRESERVATION BY THE DEPARTMENT OF PLANNING AT THE TIME OF THE ADOPTION OF THE PLAN OR AMENDMENT.~~

~~(9) (I) IF A LOCAL JURISDICTION PROPOSES TIERS IN THE PLAN UNDER PARAGRAPH (4)(II) OF THIS SUBSECTION, THE LOCAL JURISDICTION SHALL PROVIDE TO THE DEPARTMENT OF PLANNING A DESCRIPTION OF THE PROPOSED TIERS NOT LESS THAN 60 DAYS BEFORE THE PUBLIC HEARING ON THE TIERS.~~

~~(II) IF THE PLAN INCLUDES TIER I, TIER II, TIER III, OR TIER IV AREAS, THE LOCAL JURISDICTION SHALL PROVIDE TO THE DEPARTMENT OF PLANNING ALL INFORMATION NECESSARY TO DEMONSTRATE THE PRECISE LOCATION OF EACH AREA, INCLUDING A MAP OF THE AREA SHOWING PLANNING AND ZONING CHARACTERISTICS, AND EXISTING AND PLANNED WATER AND SEWER SERVICES AS APPROPRIATE.~~

~~(III) THE DEPARTMENT OF PLANNING, AS APPROPRIATE, SHALL PROVIDE TO EACH STATE UNIT THAT APPROVES SUBDIVISION PLANS COPIES OF MAPS ILLUSTRATING:~~

~~1. THE TIERS IDENTIFIED BY THE LOCAL JURISDICTION; AND~~

~~**2. ANY COMMENTS BY THE DEPARTMENT OF PLANNING ON THE AREAS IDENTIFIED.**~~

SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Environment

9–206.

(a) ~~(10)~~ (3) ~~"Tier I", "Tier II", "Tier III", and "Tier IV" mean the respective areas for growth so designated in THE DEVELOPMENT REGULATIONS ELEMENT OF a local comprehensive plan established by a local jurisdiction in accordance with [Article 66B, § 1.04 or § 3.05 of the Code] § 1–407 OR § 3–103~~ "Growth tiers" means the tiers adopted by a local jurisdiction in accordance with **[**Article 66B, § 1.05 of the Code**]** **TITLE 1, SUBTITLE 5 OF THE LAND USE ARTICLE**.

(d) Subsections (f) through (k) and subsection (n) of this section do not:

(1) Affect a local transfer of development rights program authorized under Article 25A, § 5(x) **[**, Article 28, § 8–101, or Article 66B, § 11.01**]** of the Code **OR TITLE 7, SUBTITLE 2 OR § 22–105 OF THE LAND USE ARTICLE**; or

~~(b) (2) (G)~~ *(g)* **(1)** Except as provided in subsection ~~(e)(2) (H)(2)~~ *(f)(2)* of this section~~, the Department, or the Department's designee, may only approve~~ *and subject to subsection (i) of this section, a local jurisdiction may authorize* a residential subdivision plat ~~ONLY~~ *only* if:

(iv) The subdivision is a major subdivision served by on–site sewage disposal systems, a community system, or a shared facility located in a Tier III area~~, subject to the following:~~

~~1. The subdivision~~ has been recommended by the local planning board in accordance with **[**Article 66B, § ~~1.05~~ *1.06* of the Code**]** **§ 5–104 OF THE LAND USE ARTICLE**~~; and~~

~~2. In consultation with the Department of Planning IN ACCORDANCE WITH SUBSECTIONS (I) AND (J) OF THIS SECTION, the Department has determined that the Tier III or Tier IV area is GROWTH TIERS ARE consistent with: [Article 66B, § 1.05 of the Code] TITLE 1, SUBTITLE 5 OF THE LAND USE ARTICLE~~

~~A. The requirements of a Tier III or Tier IV area in [Article 66B, § 1.04 or § 3.05 of the Code] § 1–407 OR § 3–103 OF THE LAND USE ARTICLE, as appropriate; and~~

~~B. The municipal growth element and the priority preservation element, if applicable~~.

(2) Any delay in the approval of a residential subdivision plat under this section may not be construed as applying to any deadline for approving or disapproving a subdivision plat under **[**Article 66B, § 5.04 of the Code**]** **ARTICLE 28 OF THE CODE, § 5–201 OF THE LAND USE ARTICLE,** or a local ordinance.

~~(d)~~ **(J)** ~~Before the Department approves the initial subdivision plat~~ **FOR A MAJOR SUBDIVISION IN A TIER III AREA** ~~under subsection (b)~~ **(D)** ~~of this section, the Department shall submit the initial subdivision plat to the Department of Planning for advice on whether the Tier III or Tier IV area is~~ **GROWTH TIERS ARE** ~~consistent with:~~

~~(1) The requirements of a Tier III or Tier IV area~~ **THE TIERS** ~~in~~ **[**~~Article 66B, § 1.04 or § 3.05 of the Code~~**] § 1–407 OR § 3–103 TITLE 1, SUBTITLE 5 OF THE LAND USE ARTICLE**, ~~as appropriate; and~~

Article – Land Use

1–401.

(a) Except as provided in this section, this division does not apply to charter counties.

(b) The following provisions of this division apply to a charter county:

(1) this subtitle, including Parts II and III (Charter county – Comprehensive plans);

(2) § **[**1–101(o)**] 1–101(L), (M),** AND **(O)**~~, AND (R)~~ (Definitions – **"PLAN", "PRIORITY FUNDING AREA",** AND "Sensitive area"~~, AND "SUBDIVISION");~~ **);**

(3) § 1–201 (Visions);

(4) § 1–206 (Required education);

(5) § 1–207 (Annual report – In general);

(6) § 1–208 (Annual report – Measures and indicators);

(7) Title 1, Subtitle 3 (Consistency);

(8) TITLE 1, SUBTITLE 5 (GROWTH TIERS);

~~(8)~~ **(9)** § 4–104(b) (Limitations – Bicycle parking);

~~(9)~~ **(10)** § 4–208 (Exceptions – Maryland Accessibility Code);

~~(10)~~ **(11)** § 5–102(d) (Subdivision regulations – Burial sites);

~~**(11)**~~ **(12)** **§ 5–104 (MAJOR SUBDIVISION – REVIEW);**

[(11)**]** ~~**(12)**~~ **(13)** Title 7, Subtitle 1 (Development Mechanisms);

[(12)**]** ~~**(13)**~~ **(14)** Title 7, Subtitle 2 (Transfer of Development Rights);

[(13)**]** ~~**(14)**~~ **(15)** Except in Montgomery County or Prince George's County, Title 7, Subtitle 3 (Development Rights and Responsibilities Agreements);

[(14)**]** ~~**(15)**~~ **(16)** Title 7, Subtitle 4 (Inclusionary Zoning);

[(15)**]** ~~**(16)**~~ **(17)** § 8–401 (Conversion of overhead facilities);

[(16)**]** ~~**(17)**~~ **(18)** For Baltimore County only, Title 9, Subtitle 3 (Single–County Provisions – Baltimore County);

[(17)**]** ~~**(18)**~~ **(19)** For Howard County only, Title 9, Subtitle 13 (Single–County Provisions – Howard County); and

[(18)**]** ~~**(19)**~~ **(20)** Title 11, Subtitle 2 (Civil Penalty).

(c) This section supersedes any inconsistent provision of Division II of this article.

~~1–405.~~

~~A charter county shall enact, adopt, amend, and execute a plan in accordance with this part and Part III of this subtitle.~~

~~1–407.~~

~~(a) The development regulations element shall include the planning commission's recommendation for land development regulations to implement the plan.~~

~~(b) The development regulations element shall encourage:~~

~~(1) the use of flexible development regulations to promote innovative and cost–saving site design and protect the environment; and~~

~~(2) within the areas designated for growth in the plan:~~

~~(i) economic development through the use of innovative techniques; and~~

~~(ii) streamlined review of applications for development, including permit review and subdivision plat review.~~

~~(C) THE DEVELOPMENT REGULATIONS ELEMENT MAY INCLUDE MAPPED AREAS DESIGNATED FOR:~~

~~(1) TIER I GROWTH IF THE TIER I AREAS ARE:~~

~~(I) PRIORITY FUNDING AREAS THAT HAVE RECEIVED NO COMMENTS FROM THE DEPARTMENT OF PLANNING; AND~~

~~(II) 1. SERVED BY COMMUNITY, SHARED, OR MULTIUSE SEWERAGE SYSTEMS; OR~~

~~2. PLANNED TO BE SERVED BY COMMUNITY, SHARED, OR MULTIUSE SEWERAGE SYSTEMS;~~

~~(2) TIER II GROWTH IF THE TIER II AREAS ARE:~~

~~(I) PLANNED TO BE SERVED BY COMMUNITY, SHARED, AND MULTIUSE SEWERAGE SYSTEMS;~~

~~(II) NEEDED TO SATISFY DEMAND FOR DEVELOPMENT AT DENSITIES CONSISTENT WITH THE LONG–TERM DEVELOPMENT POLICY AFTER CONSIDERATION OF THE CAPACITY OF LAND AREAS AVAILABLE FOR DEVELOPMENT, INCLUDING IN–FILL AND REDEVELOPMENT, IN THE LOCAL JURISDICTION; AND~~

~~(III) 1. PRIORITY FUNDING AREAS THAT HAVE BEEN COMMENTED ON BY THE DEPARTMENT OF PLANNING; OR~~

~~2. MAPPED LOCALLY DESIGNATED GROWTH AREAS;~~

~~(3) TIER III GROWTH IF THE TIER III AREAS ARE:~~

~~(I) NOT PLANNED FOR SEWERAGE SERVICE; AND~~

~~(II) PRIORITY FUNDING AREAS, MAPPED LOCALLY DESIGNATED GROWTH AREAS, OR AREAS PLANNED AND ZONED FOR LARGE LOT AND RURAL DEVELOPMENT THAT ARE:~~

~~1. NOT PLANNED OR ZONED FOR AGRICULTURAL PROTECTION, RURAL PROTECTION, RESOURCE PROTECTION, OR SIMILAR ZONES WITH THE PRIMARY PURPOSE BEING LAND PRESERVATION;~~

~~2. DOMINATED BY EXISTING LOW DENSITY DEVELOPMENT; OR~~

~~3. NOT DOMINATED BY FARMLAND OR FOREST LAND; AND~~

~~(4) TIER IV GROWTH IF THE TIER IV AREAS ARE:~~

~~(I) NOT PLANNED FOR SEWERAGE SERVICE; AND~~

~~(II) 1. AREAS PLANNED OR ZONED FOR LAND PRESERVATION, AGRICULTURAL PRESERVATION, OR RESOURCE CONSERVATION;~~

~~2. AREAS DOMINATED BY AGRICULTURAL LANDS, FOREST LANDS, OR OTHER NATURAL AREAS;~~

~~3. RURAL LEGACY AREAS OR PRIORITY PRESERVATION AREAS; OR~~

~~4. AT THE TIME OF THE ADOPTION OF THE PLAN OR AMENDMENT:~~

~~A. AREAS MAPPED FOR ECOLOGICAL PRESERVATION BY THE DEPARTMENT OF NATURAL RESOURCES; OR~~

~~B. AREAS MAPPED FOR AGRICULTURAL PRESERVATION BY THE DEPARTMENT OF PLANNING.~~

~~(D) (1) IF A LOCAL JURISDICTION PROPOSES TIERS IN THE PLAN REQUIRED UNDER § 1–405 OF THIS SUBTITLE, THE LOCAL JURISDICTION SHALL PROVIDE TO THE DEPARTMENT OF PLANNING A DESCRIPTION OF THE PROPOSED TIERS NOT LESS THAN 60 DAYS BEFORE THE PUBLIC HEARING ON THE TIERS.~~

~~(2) IF THE PLAN INCLUDES TIER I, TIER II, TIER III, OR TIER IV AREAS, THE LOCAL JURISDICTION SHALL PROVIDE TO THE DEPARTMENT OF PLANNING ALL INFORMATION NECESSARY TO DEMONSTRATE THE PRECISE LOCATION OF EACH AREA, INCLUDING A MAP OF THE AREA SHOWING PLANNING AND ZONING CHARACTERISTICS, AND EXISTING AND PLANNED WATER AND SEWER SERVICES AS APPROPRIATE.~~

~~(3) THE DEPARTMENT OF PLANNING, AS APPROPRIATE, SHALL PROVIDE TO EACH STATE UNIT THAT APPROVES SUBDIVISION PLANS COPIES OF MAPS ILLUSTRATING:~~

~~(I) THE TIERS IDENTIFIED BY THE LOCAL JURISDICTION; AND~~

~~(II) ANY COMMENTS BY THE DEPARTMENT OF PLANNING ON THE AREAS IDENTIFIED.~~

~~3–101.~~

~~(a) A local jurisdiction shall enact, adopt, amend, and execute a plan in accordance with this division.~~

~~3–103.~~

~~(a) The development regulations element shall include the planning commission's recommendation for land development regulations to implement the plan.~~

~~(b) The development regulations element shall encourage:~~

~~(1) the use of flexible development regulations to promote innovative and cost–saving site design and protect the environment; and~~

~~(2) within the areas designated for growth in the plan:~~

~~(i) economic development through the use of innovative techniques; and~~

~~(ii) streamlined review of applications for development, including permit review and subdivision plat review.~~

~~(C) THE DEVELOPMENT REGULATIONS ELEMENT MAY INCLUDE MAPPED AREAS DESIGNATED FOR:~~

~~(1) TIER I GROWTH IF THE TIER I AREAS ARE:~~

~~(I) PRIORITY FUNDING AREAS THAT HAVE RECEIVED NO COMMENTS FROM THE DEPARTMENT OF PLANNING; AND~~

~~(II) 1. SERVED BY COMMUNITY, SHARED, OR MULTIUSE SEWERAGE SYSTEMS; OR~~

~~2. PLANNED TO BE SERVED BY COMMUNITY, SHARED, OR MULTIUSE SEWERAGE SYSTEMS;~~

~~(2) TIER II GROWTH IF THE TIER II AREAS ARE:~~

~~(I) PLANNED TO BE SERVED BY COMMUNITY, SHARED, AND MULTIUSE SEWERAGE SYSTEMS;~~

~~(II) NEEDED TO SATISFY DEMAND FOR DEVELOPMENT AT DENSITIES CONSISTENT WITH THE LONG–TERM DEVELOPMENT POLICY AFTER CONSIDERATION OF THE CAPACITY OF LAND AREAS AVAILABLE FOR DEVELOPMENT, INCLUDING IN–FILL AND REDEVELOPMENT, IN THE LOCAL JURISDICTION; AND~~

~~(III) 1. PRIORITY FUNDING AREAS THAT HAVE BEEN COMMENTED ON BY THE DEPARTMENT OF PLANNING; OR~~

~~2. MAPPED LOCALLY DESIGNATED GROWTH AREAS;~~

~~(3) TIER III GROWTH IF THE TIER III AREAS ARE:~~

~~(I) NOT PLANNED FOR SEWERAGE SERVICE; AND~~

~~(II) PRIORITY FUNDING AREAS, MAPPED LOCALLY DESIGNATED GROWTH AREAS, OR AREAS PLANNED AND ZONED FOR LARGE LOT AND RURAL DEVELOPMENT THAT ARE:~~

~~1. NOT PLANNED OR ZONED FOR AGRICULTURAL PROTECTION, RURAL PROTECTION, RESOURCE PROTECTION, OR SIMILAR ZONES WITH THE PRIMARY PURPOSE BEING LAND PRESERVATION;~~

~~2. DOMINATED BY EXISTING LOW DENSITY DEVELOPMENT; OR~~

~~3. NOT DOMINATED BY FARMLAND OR FOREST LAND; AND~~

~~(4) TIER IV GROWTH IF THE TIER IV AREAS ARE:~~

~~(I) NOT PLANNED FOR SEWERAGE SERVICE; AND~~

~~(II) 1. AREAS PLANNED OR ZONED FOR LAND PRESERVATION, AGRICULTURAL PRESERVATION, OR RESOURCE CONSERVATION;~~

~~2. AREAS DOMINATED BY AGRICULTURAL LANDS, FOREST LANDS, OR OTHER NATURAL AREAS;~~

~~3. RURAL LEGACY AREAS OR PRIORITY PRESERVATION AREAS; OR~~

~~4. AT THE TIME OF THE ADOPTION OF THE PLAN OR AMENDMENT:~~

~~A. AREAS MAPPED FOR ECOLOGICAL PRESERVATION BY THE DEPARTMENT OF NATURAL RESOURCES; OR~~

~~B. AREAS MAPPED FOR AGRICULTURAL PRESERVATION BY THE DEPARTMENT OF PLANNING.~~

~~(D) (1) IF A LOCAL JURISDICTION PROPOSES TIERS IN THE PLAN REQUIRED UNDER § 3–101 OF THIS SUBTITLE, THE LOCAL JURISDICTION SHALL PROVIDE TO THE DEPARTMENT OF PLANNING A DESCRIPTION OF THE PROPOSED TIERS NOT LESS THAN 60 DAYS BEFORE THE PUBLIC HEARING ON THE TIERS.~~

~~(2) IF THE PLAN INCLUDES TIER I, TIER II, TIER III, OR TIER IV AREAS, THE LOCAL JURISDICTION SHALL PROVIDE TO THE DEPARTMENT OF PLANNING ALL INFORMATION NECESSARY TO DEMONSTRATE THE PRECISE LOCATION OF EACH AREA, INCLUDING A MAP OF THE AREA SHOWING PLANNING AND ZONING CHARACTERISTICS, AND EXISTING AND PLANNED WATER AND SEWER SERVICES AS APPROPRIATE.~~

~~(3) THE DEPARTMENT OF PLANNING, AS APPROPRIATE, SHALL PROVIDE TO EACH STATE UNIT THAT APPROVES SUBDIVISION PLANS COPIES OF MAPS ILLUSTRATING:~~

~~(I) THE TIERS IDENTIFIED BY THE LOCAL JURISDICTION; AND~~

~~(II) ANY COMMENTS BY THE DEPARTMENT OF PLANNING ON THE AREAS IDENTIFIED.~~

SUBTITLE 5. GROWTH TIERS.

1–501.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "PLANNING BOARD" MEANS A PLANNING BOARD ESTABLISHED UNDER THIS ARTICLE.

(C) "PLANNING BOARD" INCLUDES A PLANNING COMMISSION OR BOARD ESTABLISHED UNDER ARTICLE 25A OR ARTICLE 28 OF THE CODE.

1–502.

ON OR BEFORE DECEMBER 31, 2012, A LOCAL JURISDICTION MAY ~~CERTIFY TO THE DEPARTMENT OF PLANNING~~ ADOPT THE MAPPED GROWTH TIERS ~~DESIGNATED BY THE LOCAL JURISDICTION~~ IN ACCORDANCE WITH THIS SUBTITLE.

~~1–502.~~ 1–503.

BEFORE ~~CERTIFICATION~~ ADOPTION OF THE GROWTH TIERS, A LOCAL JURISDICTION MAY SUBMIT THE PROPOSED TIERS AND ANY RELEVANT INFORMATION TO THE DEPARTMENT OF PLANNING FOR:

(1) TECHNICAL ASSISTANCE, REVIEW, AND COMMENT; AND

(2) THE OPPORTUNITY FOR PUBLIC REVIEW.

~~1–503.~~ 1–504.

~~ON CERTIFICATION~~ AFTER ADOPTION OF THE GROWTH TIERS, THE LOCAL JURISDICTION SHALL PROVIDE TO THE DEPARTMENT OF PLANNING ALL INFORMATION NECESSARY TO DEMONSTRATE THE PRECISE LOCATION OF THE TIERS, INCLUDING, AS APPROPRIATE:

(1) A MAP OF THE AREA SHOWING PLANNING AND ZONING CHARACTERISTICS OF EACH TIER; AND

(2) EXISTING AND PLANNED WATER AND SEWER SERVICES.

~~1–504.~~ 1–505.

THE DEPARTMENT OF PLANNING~~, AS APPROPRIATE, SHALL PROVIDE TO EACH STATE AGENCY AND POST ON THE DEPARTMENT OF PLANNING'S WEB SITE, COPIES OF MAPS ILLUSTRATING:~~

~~(1) GROWTH TIERS CERTIFIED BY LOCAL JURISDICTIONS; AND~~

~~(2) ANY COMMENTS BY THE DEPARTMENT OF PLANNING ON THE CERTIFIED TIERS~~ MAY COMMENT ON THE GROWTH TIERS ADOPTED BY THE LOCAL JURISDICTIONS.

~~1–505.~~ 1–506.

(A) SUBJECT TO SUBSECTIONS (B), (C), AND (D) OF THIS SECTION, A LOCAL JURISDICTION THAT CHOOSES TO ~~CERTIFY~~ ADOPT GROWTH TIERS ~~TO THE DEPARTMENT OF PLANNING~~ IS NOT REQUIRED TO ADOPT ALL OF THE TIERS.

(B) A MUNICIPAL CORPORATION THAT EXERCISES PLANNING AND ZONING AUTHORITY SHALL ADOPT TIER I AND MAY ADOPT TIER II.

(C) A COUNTY SHALL ADOPT TIERS I, III, AND IV, AND MAY ADOPT TIER II.

(D) IF A LOCAL JURISDICTION DOES NOT ADOPT ALL OF THE TIERS AUTHORIZED UNDER THIS SECTION, THE LOCAL JURISDICTION SHALL ~~PROVIDE DOCUMENTATION TO THE DEPARTMENT OF PLANNING OF~~ *DOCUMENT* THE REASONS THE JURISDICTION IS NOT ADOPTING A PARTICULAR TIER.

1–507.

(A) IF THE DEPARTMENT OF PLANNING COMMENTS UNDER § 5–105 OF THIS SUBTITLE ON ANY OF THE TIERS OR ON AN AREA WITHIN ONE OF THE TIERS, THE LOCAL LEGISLATIVE BODY OR THE PLANNING BOARD SHALL HOLD AT LEAST ONE PUBLIC HEARING ON THE COMMENTS BY THE DEPARTMENT OF PLANNING.

(B) THE LOCAL LEGISLATIVE BODY OR THE PLANNING BOARD SHALL REVIEW THE MAPPED GROWTH TIERS ADOPTED BY THE LOCAL JURISDICTION IN LIGHT OF THE COMMENTS BY THE DEPARTMENT OF PLANNING.

(C) IF THE PLANNING BOARD HOLDS THE PUBLIC HEARING UNDER SUBSECTION (A) OF THIS SECTION, AFTER THE PUBLIC HEARING AND THE CONSIDERATION OF THE COMMENTS BY THE DEPARTMENT OF PLANNING, THE

PLANNING BOARD SHALL RECOMMEND TO THE LOCAL JURISDICTION THAT EITHER THE TIERS OR AN AREA WITHIN THE TIERS:

(1) BE CHANGED; OR

(2) THAT THE ADOPTED TIERS REMAIN UNCHANGED.

(D) IF THE PLANNING BOARD RECOMMENDS THAT THE TIERS OR AN AREA WITHIN THE TIERS BE CHANGED UNDER SUBSECTION (C) OF THIS SECTION, THE PLANNING BOARD SHALL PROVIDE THE RECOMMENDED MAPPED GROWTH TIER CHANGES TO THE LOCAL JURISDICTION.

~~**1–506.**~~ **1–508.**

(A) THE GROWTH TIERS ~~CERTIFIED~~ ADOPTED BY A LOCAL JURISDICTION SHALL MEET THE FOLLOWING CRITERIA:

(1) TIER I AREAS ARE AREAS THAT ARE:

(I) SERVED BY PUBLIC SEWERAGE SYSTEMS AND MAPPED LOCALLY DESIGNATED GROWTH AREAS; OR

(II) A MUNICIPAL CORPORATION THAT IS A PRIORITY FUNDING AREA THAT IS SERVED BY PUBLIC SEWERAGE SYSTEMS;

(2) TIER II AREAS ARE AREAS THAT ARE:

(I) 1. PLANNED TO BE SERVED BY PUBLIC SEWERAGE SYSTEMS AND IN THE MUNICIPAL GROWTH ELEMENT; OR

2. MAPPED LOCALLY DESIGNATED GROWTH AREAS; AND

(II) NEEDED TO SATISFY DEMAND FOR DEVELOPMENT AT DENSITIES CONSISTENT WITH THE LONG–TERM DEVELOPMENT POLICY AFTER CONSIDERATION OF THE CAPACITY OF LAND AREAS AVAILABLE FOR DEVELOPMENT, INCLUDING IN–FILL AND REDEVELOPMENT, WITHIN THE LOCAL JURISDICTION;

(3) TIER III AREAS ARE AREAS THAT ~~ARE~~:

(I) ~~NOT~~ ARE NOT PLANNED FOR SEWERAGE SERVICE AND NOT DOMINATED BY AGRICULTURAL OR FOREST LAND; ~~AND~~

(II) ARE NOT PLANNED OR ZONED BY A LOCAL JURISDICTION FOR LAND, AGRICULTURAL, OR RESOURCE PROTECTION, PRESERVATION, OR CONSERVATION; AND

~~(II)~~ (III) ~~ONE~~ ARE ONE OF THE FOLLOWING:

1. MUNICIPAL CORPORATIONS NOT SERVED BY A PUBLIC SEWERAGE SYSTEM;

~~2. ESTABLISHED COMMUNITIES PLANNED AND ZONED FOR DEVELOPMENT;~~

~~3.~~ 2. RURAL VILLAGES AS DESCRIBED IN § 5–7B–03(F) OF THE STATE FINANCE AND PROCUREMENT ARTICLE; OR

~~4.~~ 3. MAPPED LOCALLY DESIGNATED GROWTH AREAS; OR

4. AREAS PLANNED AND ZONED FOR LARGE LOT AND RURAL DEVELOPMENT; AND

~~(III) ADJOINING AND CONTIGUOUS TO ONE OF THE FOLLOWING:~~

~~1. MUNICIPAL CORPORATIONS NOT SERVED BY A WASTEWATER TREATMENT PLANT;~~

~~2. ESTABLISHED COMMUNITIES PLANNED AND ZONED FOR DEVELOPMENT; OR~~

~~3. RURAL VILLAGES AS DESCRIBED IN § 5–7B–03(F) OF THE STATE FINANCE AND PROCUREMENT ARTICLE; AND~~

(4) TIER IV AREAS ARE AREAS THAT ARE NOT PLANNED FOR SEWERAGE SERVICE AND ARE:

(I) AREAS PLANNED OR ZONED BY A LOCAL JURISDICTION FOR LAND, AGRICULTURAL, OR RESOURCE PROTECTION, PRESERVATION, OR CONSERVATION;

(II) AREAS DOMINATED BY AGRICULTURAL LANDS, FOREST LANDS, OR OTHER NATURAL AREAS; OR

(III) RURAL LEGACY AREAS, PRIORITY PRESERVATION AREAS, OR AREAS ~~MAPPED FOR ECOLOGICAL PRESERVATION BY THE DEPARTMENT OF NATURAL RESOURCES AT THE TIME OF THE ADOPTION OF THE PLAN OR AMENDMENT OR AREAS MAPPED FOR AGRICULTURAL PRESERVATION BY THE DEPARTMENT OF PLANNING AT THE TIME OF THE ADOPTION OF THE PLAN OR AMENDMENT~~ SUBJECT TO COVENANTS, RESTRICTIONS, CONDITIONS, OR CONSERVATION EASEMENTS FOR THE BENEFIT OF, OR HELD BY A STATE AGENCY, AS DEFINED IN § 9–206 OF THE ENVIRONMENT ARTICLE, OR A LOCAL JURISDICTION FOR THE PURPOSE OF CONSERVING NATURAL RESOURCES OR AGRICULTURAL LAND.

(B) A LOCAL JURISDICTION SHALL STRIVE TO AVOID CREATING A TIER III AREA THAT IS BOUNDED ON ALL SIDES BY LAND IN A TIER IV AREA.

~~(C) IF AN AREA NOT PLANNED FOR SEWERAGE SERVICE DOES NOT MEET THE DESCRIPTION OF A TIER III OR TIER IV AREA, THEN THE AREA IS A TIER IV AREA.~~

~~1–507.~~ 1–509.

(A) A LOCAL JURISDICTION THAT ~~CERTIFIES~~ ADOPTS GROWTH TIERS ~~TO THE DEPARTMENT OF PLANNING~~ SHALL INCORPORATE THE TIERS INTO THE ~~DEVELOPMENT REGULATIONS ELEMENT OF THE~~ COMPREHENSIVE PLAN *OR AN ELEMENT OF THE PLAN*:

(1) WHEN THE LOCAL JURISDICTION CONDUCTS THE 6–YEAR REVIEW OF THE PLAN UNDER §§ 1–416(A) AND 3–301(A) OF THIS ARTICLE; AND

(2) IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.

(B) IF A LOCAL JURISDICTION DOES NOT INCORPORATE ALL OF THE GROWTH TIERS AUTHORIZED UNDER THIS SECTION INTO THE ~~DEVELOPMENT REGULATIONS ELEMENT OF THE~~ COMPREHENSIVE PLAN *OR AN ELEMENT OF THE PLAN*, THE LOCAL JURISDICTION SHALL STATE THAT A TIER IS NOT ADOPTED.

5–104.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "COMMUNITY SEWERAGE SYSTEM" MEANS A PUBLICLY OR PRIVATELY OWNED SEWERAGE SYSTEM THAT SERVES AT LEAST TWO LOTS.

(3) "MAJOR SUBDIVISION" ~~MEANS THE SUBDIVISION OF LAND INTO NEW LOTS, PLATS, BUILDING SITES, OR OTHER DIVISIONS OF LAND DEFINED IN LOCAL LAW AS A MAJOR SUBDIVISION IN EFFECT BEFORE JANUARY 1, 2012~~ HAS THE MEANING STATED IN § 9–206 OF THE ENVIRONMENT ARTICLE.

(4) "ON–SITE SEWAGE DISPOSAL SYSTEM" HAS THE MEANING STATED IN § 9–206 OF THE ENVIRONMENT ARTICLE.

~~(5) "SHARED FACILITY" HAS THE MEANING STATED IN § 9–206 OF THE ENVIRONMENT ARTICLE.~~

~~(6)~~ *(5)* **(I) "PLANNING BOARD" MEANS A PLANNING BOARD ESTABLISHED UNDER THIS ARTICLE.**

(II) "PLANNING BOARD" INCLUDES A PLANNING COMMISSION OR BOARD ESTABLISHED UNDER DIVISION II OF THIS ARTICLE OR ARTICLE 25A OF THE CODE.

(6) "SHARED FACILITY" HAS THE MEANING STATED IN § 9–206 OF THE ENVIRONMENT ARTICLE.

(B) THIS SECTION APPLIES ONLY TO A RESIDENTIAL MAJOR SUBDIVISION IN A TIER III AREA SERVED BY:

(1) ON–SITE SEWAGE DISPOSAL SYSTEMS;

(2) A SHARED FACILITY; OR

(3) A COMMUNITY SEWERAGE SYSTEM.

(C) IF A LOCAL JURISDICTION ESTABLISHES ~~TIERS FOR~~ **THE GROWTH** ~~IN THE DEVELOPMENT REGULATIONS ELEMENT OF THE PLAN~~ **TIERS UNDER** ~~§ 1–407 OR §~~ **TITLE 1, SUBTITLE 5** ~~3–103~~ **OF THIS ARTICLE, A RESIDENTIAL MAJOR SUBDIVISION IN A TIER III AREA MAY NOT BE APPROVED UNLESS THE PLANNING BOARD HAS REVIEWED AND RECOMMENDED THE APPROVAL OF THE MAJOR SUBDIVISION IN** ~~A~~ **THE TIER III AREA** ~~SERVED BY:~~

~~(1) ON–SITE SEWAGE DISPOSAL SYSTEMS;~~

~~(2) A COMMUNITY SEWERAGE SYSTEM; OR~~

~~(3) A SHARED FACILITY~~.

~~(C)~~ (D) (1) BEFORE RECOMMENDING THE APPROVAL OF A PROPOSED MAJOR SUBDIVISION ~~SERVED BY ON–SITE SEWAGE DISPOSAL SYSTEMS, A COMMUNITY SEWERAGE SYSTEM, OR A SHARED FACILITY~~ IN A TIER III AREA, THE PLANNING BOARD SHALL HOLD AT LEAST ONE PUBLIC HEARING.

(2) THE PLANNING BOARD SHALL CONDUCT THE PUBLIC HEARING IN ACCORDANCE WITH ITS RULES AND PROCEDURES.

~~(D)~~ (E) THE REVIEW OF ~~THE~~ A RESIDENTIAL MAJOR SUBDIVISION BY THE PLANNING BOARD SHALL INCLUDE:

(1) THE COST OF PROVIDING LOCAL GOVERNMENTAL SERVICES TO THE RESIDENTIAL MAJOR SUBDIVISION UNLESS A LOCAL JURISDICTION'S ADEQUATE PUBLIC FACILITIES ORDINANCE ALREADY REQUIRES A REVIEW OF GOVERNMENT SERVICES; AND

(2) THE POTENTIAL ENVIRONMENTAL ~~IMPACT OF~~ ISSUES OR A NATURAL RESOURCES INVENTORY RELATED TO THE PROPOSED RESIDENTIAL MAJOR SUBDIVISION~~; AND~~

~~(3) ANY NUTRIENT OFFSETS, ACCORDING TO~~ IF REQUIRED BY STATE POLICY, ~~THAT WILL BE REQUIRED FOR THE~~ AS A RESULT OF ~~THE~~ APPROVAL OF THE ~~PROPOSED~~ RESIDENTIAL ~~MAJOR SUBDIVISION~~.

~~(E)~~ (F) THE PLANNING BOARD SHALL RECOMMEND THE PROPOSED RESIDENTIAL MAJOR SUBDIVISION BY RESOLUTION OF THE PLANNING BOARD.

[5–104.] **5–105.**

(a) After a planning commission begins to exercise control over subdivisions under this subtitle, the authority of the planning commission over plats shall be exclusive within the territory under its jurisdiction.

(b) Unless otherwise provided in this division, all statutory control over plats or subdivisions granted by other statutes shall be considered transferred to the planning commission of the local jurisdiction.

~~SECTION 4. AND BE IT FURTHER ENACTED, That the Department of the Environment shall adopt regulations requiring major residential subdivisions served by on–site septic systems to receive a permit.~~

SECTION ~~5.~~ 4. AND BE IT FURTHER ENACTED, That:

(a) (1) It is the intent of the General Assembly that local jurisdictions should use their existing comprehensive plan and zoning ordinance, if desired, to

create the tiers as provided in Article 66B, ~~§§ 1.04 and 3.05~~ § 1.05 of the Code and ~~§§ 1–407~~ Title 1, Subtitle 5 ~~and 3–103~~ of the Land Use Article, as enacted by this Act.

(2) The tiers may be adopted as an amendment to the comprehensive plan under Article 66B, § 1.05 of the Code or Title 1, Subtitle 5 of the Land Use Article and be included as an appendix that delineates the tiers and the comprehensive plan land use categories and zoning ordinance districts that are included in each tier.

(b) This Act may not be construed to imply that local comprehensive plans, including the land use and development regulation elements of the plans, may not be amended in accordance with the process set forth in either State law or local law.

SECTION ~~6.~~ 5. AND BE IT FURTHER ENACTED, That, if requested by a local jurisdiction to verify the actual overall yield for zoning in a Tier IV area under § 9–206(h) of the Environment Article, the Department of Planning shall:

(a) review the local zoning code, along with any relevant subdivision or development regulations or rules, to help determine the overall development yield;

(b) request, if appropriate, information from the local jurisdiction to help determine the overall yield of development in Tier IV;

(c) examine any additional information that the local jurisdiction provides supporting qualification of the jurisdiction's zoning districts; and

(d) discuss any discrepancies or questions with the local jurisdiction before determining if the jurisdiction's Tier IV area meets the overall actual yield of one dwelling unit per ~~25~~ 20 acres within the Tier IV area.

SECTION ~~7.~~ 6. AND BE IT FURTHER ENACTED, That:

(a) each local jurisdiction shall submit any definition or description of a major or minor subdivision in the jurisdiction's local ordinance or regulation to the Department of Planning on or before December 31, 2012, in accordance with the provisions of § 9–206 of the Environment Article; and

(b) the Department of Planning shall prepare a list of definitions and descriptions of major and minor subdivisions submitted by local jurisdictions for publication on the Web sites of the Department of Planning and the Department of the Environment on or after December 31, 2012.

SECTION ~~8.~~ 7. AND BE IT FURTHER ENACTED, That the provisions of this Act may not be construed to limit the authority granted to the Critical Area Commission under Chapter 119 of the Acts of 2008 to adopt regulations under § 8–1806(b) of the Natural Resources Article.

SECTION 8. AND BE IT FURTHER ENACTED, That:

(a) on or before December 31, 2012, the Department of the Environment shall propose regulations that establish nutrient offset requirements for new residential major subdivisions within Tier III areas that are to be served by on–site sewage disposal systems or shared systems;

(b) the Department shall consult with the counties and other stakeholder groups during the drafting of the proposed regulations required under subsection (a) of this section;

(c) the Department shall brief the House Environmental Matters Committee and the Senate Education, Health, and Environmental Affairs Committee before the submission of the proposed regulations required under subsection (a) of this section to the Joint Committee on Administrative, Executive, and Legislative Review; and

(d) this section does not apply to, or limit the ability of the Department to develop nutrient trading and offset programs related to Maryland's Chesapeake Bay TMDL Watershed Implementation Plan.

SECTION 9. AND BE IT FURTHER ENACTED, That, on or before February 1, 2013, the Department of Planning, in consultation with the Department of the Environment, shall report to the General Assembly, in accordance with § 2–1246 of the State Government Article, on:

(a) the adoption of the tiers, as provided in Article 66B, § 1.05 of the Code and Title 1, Subtitle 5 of the Land Use Article, as enacted by this Act, by each local jurisdiction, including mapped areas of the tiers;

(b) each jurisdiction that has adopted or altered a local ordinance or regulation in implementing the provisions of this Act, including a description of the adopted or altered local ordinance or regulation; and

(c) each jurisdiction for which the Department of Planning has provided comments on any of the tiers or an area within one of the tiers under Article 66B, § 1.05 of the Code and § 1–505 of the Land Use Article, as enacted by this Act.

SECTION ~~6.~~ ~~9.~~ ~~8.~~ *10.* AND BE IT FURTHER ENACTED, That Section 3 of this Act shall take effect on the taking effect of Chapter 426 (H.B. ___)(2lr0396) of the Acts of the General Assembly of 2012. If Section 3 of this Act takes effect, Section 2 of this Act shall be abrogated and of no further force and effect.

SECTION ~~7.~~ ~~10.~~ ~~9.~~ *11.* AND BE IT FURTHER ENACTED, That, subject to the provisions of Section ~~6~~ ~~9~~ ~~8~~ *10* of this Act, this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 150

(House Bill 446)

AN ACT concerning

Environment – Bay Restoration Fund – Fees and Uses

FOR the purpose of ~~increasing~~ altering certain Bay Restoration Fees paid by users of wastewater facilities, onsite sewage disposal systems, and sewage holding tanks beginning on a certain date; *maintaining certain Bay Restoration Fees paid by users of wastewater facilities, onsite sewage disposal systems, and sewage holding tanks that do not discharge into or are not located within the Chesapeake Bay Watershed or the Coastal Bays Watershed;* ~~providing for the collection of the fees by certain billing authorities under certain circumstances~~ altering certain Bay Restoration Fees for certain buildings, groups of buildings, or nonresidential users beginning on a certain date; *maintaining certain Bay Restoration Fees for certain buildings, groups of buildings, or nonresidential users that do not discharge wastewater into the Chesapeake Bay Watershed or the Coastal Bays Watershed;* altering the manner in which the Bay Restoration Fee is calculated for certain buildings, groups of buildings, and nonresidential users; authorizing the Bay Restoration Fee to be calculated in a certain manner for a nonresidential user under certain circumstances; prohibiting a change in the manner of determining the Bay Restoration Fee that will reduce the amount of funds available for a certain purpose; requiring a local government or a certain billing authority to establish a certain hardship program, subject to approval by the Maryland Water Quality Financing Administration; establishing a maximum amount of funds that may be transferred to the Maryland Agriculture Water Quality Cost Share Program in the Department of Agriculture for certain activities beginning in a certain fiscal year; requiring certain funds remaining after certain distributions are made to be deposited in a certain account; requiring the Bay Restoration Fund to be used for grants to local governments for a certain purpose and in accordance with certain requirements in certain fiscal years; *altering a certain definition;* providing for a delayed effective date for certain provisions of this Act; repealing certain obsolete language; and generally relating to ~~increasing~~ Bay Restoration Fees.

BY repealing and reenacting, without amendments,
Article – Environment
Section *9–1601(a) and* 9–1605.2(a)
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Environment
Section *9–1601(ee) and* 9–1605.2(b), (d), and (i)

Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Environment
Section 9–1605.2(h)
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)
(As enacted by Chapter 428 of the Acts of the General Assembly of 2004)

BY repealing and reenacting, with amendments,
Article – Environment
Section 9–1605.2(b)(1)(i)
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)
(As enacted by Section 1 of this Act)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Environment

9–1601.

(a) Unless the context clearly requires otherwise, in this subtitle the following words have the meanings indicated.

(ee) (1) "Person" means an individual, corporation, partnership, association, the State, any unit of the State, commission, special taxing district, or the federal government.

*(2) "Person" does not include a county, municipal corporation, bi–county or multicounty agency under Article 28 or 29 of the Code, housing authority under Division II of the Housing and Community Development Article, school board, community college, or any other unit of a county or municipal corporation**, OR A LOCAL FIRE DEPARTMENT, AS DEFINED IN § 9–401 OF THE PUBLIC SAFETY ARTICLE**.*

9–1605.2.

(a) (1) There is a Bay Restoration Fund.

(2) It is the intent of the General Assembly that the Bay Restoration Fund be:

(i) Used, in part, to provide the funding necessary to upgrade any of the wastewater treatment facilities that are located in the State or used by

citizens of the State in order to achieve enhanced nutrient removal where it is cost–effective to do so; and

(ii) Available for treatment facilities discharging into the Atlantic Coastal Bays or other waters of the State, but that priority be given to treatment facilities discharging into the Chesapeake Bay.

(3) The Bay Restoration Fund shall be maintained and administered by the Administration in accordance with the provisions of this section and any rules or program directives as the Secretary or the Board may prescribe.

(4) There is established a Bay Restoration Fee to be paid by any user of a wastewater facility, an onsite sewage disposal system, or a holding tank that:

(i) Is located in the State; or

(ii) Serves a Maryland user and is eligible for funding under this subtitle.

(b) (1) **(I)** **[**The**]** **BEGINNING ON JULY 1, 2012, THE** Bay Restoration Fee is:

~~(i)~~ **1.** **[**Beginning January 1, 2005, for**]** **FOR** each ~~[~~residential dwelling~~]~~ ~~USER~~ that receives an individual sewer bill and each user of an onsite sewage disposal system or a holding tank that receives a water bill~~[~~**:**

A. $2.50 PER MONTH IF THE WASTEWATER GENERATED BY A RESIDENTIAL DWELLING IS TREATED AT A WASTEWATER FACILITY THAT DOES NOT DISCHARGE INTO THE CHESAPEAKE BAY WATERSHED OR THE COASTAL BAYS WATERSHED;

B. $2.50 PER MONTH IF THE ONSITE SEWAGE DISPOSAL SYSTEM OR HOLDING TANK IS NOT LOCATED WITHIN THE CHESAPEAKE BAY WATERSHED OR THE COASTAL BAYS WATERSHED;

C. ~~$2.50~~ **$5.00** per month ***IF THE WASTEWATER GENERATED BY A RESIDENTIAL DWELLING IS TREATED AT A WASTEWATER FACILITY THAT DOES DISCHARGE INTO THE CHESAPEAKE BAY WATERSHED OR THE COASTAL BAYS WATERSHED; AND***

D. $5.00 PER MONTH IF THE WASTEWATER ONSITE SEWAGE DISPOSAL SYSTEM OR HOLDING TANK IS LOCATED WITHIN THE CHESAPEAKE BAY WATERSHED OR THE COASTAL BAYS WATERSHED~~]~~**:**

~~**1. A. $0.90 PER 1,000 GALLONS OF WATER USAGE FOR THE FIRST 2,000 GALLONS PER MONTH; AND**~~

~~**B. $1.25 PER 1,000 GALLONS OF WATER THAT EXCEEDS 2,000 GALLONS OF WATER USAGE PER MONTH; OR**~~

~~**2. $5.00 PER MONTH FOR EACH EQUIVALENT DWELLING UNIT IF THE BILLING AUTHORITY DOES NOT HAVE A WATER USAGE BASED BILLING SYSTEM**~~;

~~(ii)~~ **2.** **[**Beginning October 1, 2005, for**]** **FOR** each user of an onsite sewage disposal system that does not receive a water bill~~,~~**:**

A. $30 PER YEAR IF THE ONSITE SEWAGE DISPOSAL SYSTEM IS NOT LOCATED WITHIN THE CHESAPEAKE BAY WATERSHED OR THE COASTAL BAYS WATERSHED; OR

B. **[**$30**]** **$60** per year ***IF THE ONSITE SEWAGE DISPOSAL SYSTEM IS LOCATED WITHIN THE CHESAPEAKE BAY WATERSHED OR THE COASTAL BAYS WATERSHED***; ~~AND~~

~~(iii)~~ **3.** **[**Beginning October 1, 2005, for**]** **FOR** each user of a sewage holding tank that does not receive a water bill~~,~~**:**

A. $30 PER YEAR IF THE SEWAGE HOLDING TANK IS NOT LOCATED WITHIN THE CHESAPEAKE BAY WATERSHED OR THE COASTAL BAYS WATERSHED; AND

B. **[**$30**]** **$60** per year ***IF THE SEWAGE HOLDING TANK IS LOCATED WITHIN THE CHESAPEAKE BAY WATERSHED OR THE COASTAL BAYS WATERSHED***~~**[**~~; and

~~(iv)~~ **4.** ~~Beginning January 1, 2005, for~~ **FOR** a building or group of buildings under single ownership or management that receives a sewer bill and that contains multiple residential dwellings that do not receive an individual sewer bill or for a nonresidential user:

~~1.~~ **A.** ***FOR EACH EQUIVALENT DWELLING UNIT NOT EXCEEDING 2,000 EQUIVALENT DWELLING UNITS, $2.50 PER MONTH IF THE WASTEWATER GENERATED BY A BUILDING OR GROUP OF BUILDINGS CONTAINING MULTIPLE RESIDENTIAL DWELLINGS IS TREATED AT A WASTEWATER FACILITY THAT DOES NOT DISCHARGE INTO THE CHESAPEAKE BAY WATERSHED OR THE COASTAL BAYS WATERSHED;***

B. For each equivalent dwelling unit not exceeding ~~3,000~~ **2,000** equivalent dwelling units, ~~$2.50~~ **$5.00** per month ***IF THE WASTEWATER GENERATED BY A BUILDING OR GROUP OF BUILDINGS CONTAINING MULTIPLE RESIDENTIAL DWELLINGS IS TREATED AT A WASTEWATER FACILITY THAT DOES DISCHARGE INTO THE CHESAPEAKE BAY WATERSHED OR THE COASTAL BAYS WATERSHED***; **AND**

~~2. For each equivalent dwelling unit exceeding 3,000 equivalent dwelling units and not exceeding 5,000 equivalent dwelling units, $1.25 per month; and~~

~~3.~~ ~~B.~~ ***C.*** For each equivalent dwelling unit exceeding ~~5,000~~ **2,000** equivalent dwelling units, zero~~.~~.

(II) FOR A NONRESIDENTIAL USER, THE BAY RESTORATION FEE MAY BE CALCULATED BASED ON AN ESTIMATE OF EQUIVALENT DWELLING UNITS OF WASTEWATER EFFLUENT GENERATED, IF THE NONRESIDENTIAL USER'S WASTEWATER BILL IS BASED ON WASTEWATER GENERATED AND NOT ON WATER USAGE.

(2) (i) For a residential dwelling that receives an individual sewer bill, a user of an onsite sewage disposal system or a holding tank that receives a water bill, a building or group of buildings under single ownership or management that receives a water and sewer bill and that contains multiple residential dwellings that do not receive an individual sewer bill, and a nonresidential user, the restoration fee shall be:

1. Stated in a separate line on the sewer or water bill, as appropriate, that is labeled "Bay Restoration Fee"; and

2. Collected for each calendar quarter, unless a local government or billing authority for a water or wastewater facility established some other billing period on or before January 1, 2004.

(ii) 1. A. If the user does not receive a water bill, for users of an onsite sewage disposal system and for users of a sewage holding tank, the county in which the onsite sewage disposal system or holding tank is located shall be responsible for collecting the restoration fee.

B. A county may negotiate with a municipal corporation located within the county for the municipal corporation to collect the restoration fee from onsite sewage disposal systems and holding tanks located in the municipal corporation.

2. The governing body of each county, in consultation with the Bay Restoration Fund Advisory Committee, shall determine the method and

frequency of collecting the restoration fee under subsubparagraph 1 of this subparagraph.

(3) The total fee imposed under paragraph (1) of this subsection may not exceed $120,000 annually for a single site.

(4) (i) For purposes of measuring average daily wastewater flow, the local government or billing authority for a wastewater facility shall use existing methods of measurement, which may include water usage or other estimation methods.

(ii) The averaging period is:

1. The billing period established by the local government or billing authority; or

2. If a billing period is not established by the local government or billing authority, a quarter of a calendar year.

(5) **(I)** The Bay Restoration Fee under this subsection may not be reduced as long as bonds are outstanding.

(II) ANY CHANGE IN THE MANNER OF DETERMINING THE BAY RESTORATION FEE MAY NOT REDUCE THE AMOUNT OF FUNDS AVAILABLE FOR THE PAYMENT OF OUTSTANDING BONDS.

(d) (1) Subject to the approval of the Administration, a local government or a billing authority for a water or wastewater facility **[**may**]** **SHALL** establish a program to exempt from the requirements of this section a residential dwelling able to demonstrate substantial financial hardship as a result of the restoration fee.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, the Bay Restoration Fee shall be collected by the local government or the billing authority for the water or wastewater facility, as appropriate, on behalf of the State.

(ii) For a wastewater facility without a billing authority, the Comptroller may collect the restoration fee from the facility owner.

(3) A local government, billing authority for a water or wastewater facility, or any other authorized collecting agency:

(i) May use all of its existing procedures and authority for collecting a water or sewer bill, an onsite sewage disposal system bill, or a holding tank bill in order to enforce the collection of the Bay Restoration Fee; and

(ii) Shall establish a segregated account for the deposit of funds collected under this section.

(4) (i) In Dorchester County, an unpaid Bay Restoration Fee shall be a lien against the property served by a wastewater facility, onsite sewage disposal system, or holding tank.

(ii) A notice of lien shall be recorded in the land records of Dorchester County.

(5) (i) In Caroline County, an unpaid Bay Restoration Fee shall be a lien against the property served by a wastewater facility, onsite sewage disposal system, or holding tank.

(ii) A notice of lien shall be recorded in the land records of Caroline County.

(h) (1) With regard to the funds collected under subsection **[**(b)(1)(i)**] (B)(1)(I)1**, from users of an onsite sewage disposal system or holding tank that receive a water bill, **[**(ii)**] (I)2**, and **[**(iii)**] (I)3** of this section, beginning in fiscal year 2006, the Comptroller shall:

(i) Establish a separate account within the Bay Restoration Fund; and

(ii) Disburse the funds as provided under paragraph (2) of this subsection.

(2) The Comptroller shall:

(i) Deposit 60% of the funds in the separate account to be used for:

1. Subject to paragraph (3) of this subsection, with priority first given to failing systems and holding tanks located in the Chesapeake and Atlantic Coastal Bays Critical Area and then to failing systems that the Department determines are a threat to public health or water quality, grants or loans for up to 100% of:

A. The costs attributable to upgrading an onsite sewage disposal system to the best available technology for the removal of nitrogen;

B. The cost difference between a conventional onsite sewage disposal system and a system that utilizes the best available technology for the removal of nitrogen;

C. The cost of repairing or replacing a failing onsite sewage disposal system with a system that uses the best available technology for nitrogen removal;

D. The cost, up to the sum of the costs authorized under item 1B of this item for each individual system, of replacing multiple onsite sewage disposal systems located in the same community with a new community sewerage system that is owned by a local government and that meets enhanced nutrient removal standards; or

E. The cost, up to the sum of the costs authorized under item 1C of this item for each individual system, of connecting a property using an onsite sewage disposal system to an existing municipal wastewater facility that is achieving enhanced nutrient removal level treatment.

2. The reasonable costs of the Department, not to exceed 8% of the funds deposited into the separate account, to:

A. Implement an education, outreach, and upgrade program to advise owners of onsite sewage disposal systems and holding tanks on the proper maintenance of the systems and tanks and the availability of grants and loans under item 1 of this item;

B. Review and approve the design and construction of onsite sewage disposal system or holding tank upgrades;

C. Issue grants or loans as provided under item 1 of this item; and

D. Provide technical support for owners of upgraded onsite sewage disposal systems or holding tanks to operate and maintain the upgraded systems; and

(ii) Transfer 40% of the funds to the Maryland Agriculture Water Quality Cost Share Program in the Department of Agriculture in order to fund cover crop activities.

(3) (i) Funding for the costs identified in paragraph (2)(i)1 of this subsection shall be provided in the following order of priority:

1. For owners of all levels of income, the costs identified in paragraph (2)(i)1A and B of this subsection; and

2. For low–income owners, as defined by the Department, the costs identified in paragraph (2)(i)1C of this subsection:

A. First, for best available technologies for nitrogen removal; and

B. Second, for other wastewater treatment systems.

(ii) Funding for the costs identified in paragraph (2)(i)1D of this subsection may be provided if:

1. The environmental impact of the onsite sewage disposal system is documented by the local government and confirmed by the Department;

2. It can be demonstrated that:

A. The replacement of the onsite sewage disposal system with a new community sewerage system is more cost effective for nitrogen removal than upgrading each individual onsite sewage disposal system; or

B. The individual replacement of the onsite sewage disposal system is not feasible; and

3. The new community sewerage system will only serve lots that have received a certificate of occupancy, or equivalent certificate, on or before October 1, 2008.

(iii) Funding for the costs identified in paragraph (2)(i)1E of this subsection may be provided only if all of the following conditions are met:

1. The environmental impact of the onsite sewage disposal system is documented by the local government and confirmed by the Department;

2. It can be demonstrated that:

A. The replacement of the onsite sewage disposal system with service to an existing municipal wastewater facility that is achieving enhanced nutrient removal level treatment is more cost–effective for nitrogen removal than upgrading the individual onsite sewage disposal system; or

B. The individual replacement of the onsite sewage disposal system is not feasible;

3. The project is consistent with the county's comprehensive plan and water and sewer master plan;

4. The onsite sewage disposal system was installed as of October 1, 2008, and the property the system serves is located in a priority funding area, in accordance with § 5–7B–02 of the State Finance and Procurement Article; and

5. The local government has adopted a policy or procedure that will guarantee that any future connection to an existing municipal wastewater facility that is funded under paragraph (2)(i)1E of this subsection will meet all of the requirements under this subparagraph.

(4) The Comptroller, in consultation with the Administration, may establish any other accounts and subaccounts within the Bay Restoration Fund as necessary to:

(i) Effectuate the purposes of this subtitle;

(ii) Comply with the provisions of any bond resolution;

(iii) Meet the requirements of any federal or State law or of any grant or award to the Bay Restoration Fund; and

(iv) Meet any rules or program directives established by the Secretary or the Board.

(i) (1) In this subsection, "eligible costs" means the additional costs that would be attributable to upgrading a wastewater facility from biological nutrient removal to enhanced nutrient removal, as determined by the Department.

(2) Funds in the Bay Restoration Fund shall be used only:

(i) To award grants for up to 100% of eligible costs of projects relating to planning, design, construction, and upgrade of a wastewater facility for flows up to the design capacity of the wastewater facility, as approved by the Department, to achieve enhanced nutrient removal in accordance with paragraph (3) of this subsection;

(ii) 1. In fiscal years 2005 through 2009, inclusive, for a portion of the costs of projects relating to combined sewer overflows abatement, rehabilitation of existing sewers, and upgrading conveyance systems, including pumping stations, not to exceed an annual total of $5,000,000; **[**and**]**

2. In fiscal years 2010 and thereafter, for a portion of the operation and maintenance costs related to the enhanced nutrient removal technology, which may not exceed 10% of the total restoration fee collected from users of wastewater facilities under this section by the Comptroller annually;

3. IN FISCAL YEARS 2018 AND THEREAFTER, AFTER PAYMENT OF OUTSTANDING BONDS AND THE ALLOCATION OF FUNDS TO OTHER

REQUIRED USES OF THE BAY RESTORATION FUND FOR FUNDING IN THE FOLLOWING ORDER OF PRIORITY:

A. FOR FUNDING AN UPGRADE OF A WASTEWATER FACILITY TO ENHANCED NUTRIENT REMOVAL AT WASTEWATER FACILITIES WITH A DESIGN CAPACITY OF 500,000 GALLONS OR MORE PER DAY;

B. FOR FUNDING FOR THE MOST COST–EFFECTIVE ENHANCED NUTRIENT REMOVAL UPGRADES AT WASTEWATER FACILITIES WITH A DESIGN CAPACITY OF LESS THAN 500,000 GALLONS PER DAY;

C. FOR COSTS IDENTIFIED UNDER SUBSECTION (H)(2)(I)1 OF THIS SECTION; AND

D. WITH RESPECT TO A LOCAL GOVERNMENT THAT HAS ENACTED AND IMPLEMENTED A SYSTEM OF CHARGES UNDER § 4–204 OF THIS ARTICLE TO FULLY FUND THE IMPLEMENTATION OF A STORMWATER MANAGEMENT PROGRAM, FOR GRANTS TO THE LOCAL GOVERNMENT FOR A PORTION OF THE COSTS OF THE MOST COST–EFFECTIVE AND EFFICIENT STORMWATER CONTROL MEASURES, AS DETERMINED AND APPROVED BY THE DEPARTMENT, FROM THE RESTORATION FEES COLLECTED ANNUALLY BY THE COMPTROLLER FROM USERS OF WASTEWATER FACILITIES UNDER THIS SECTION;

(iii) As a source of revenue or security for the payment of principal and interest on bonds issued by the Administration if the proceeds of the sale of the bonds will be deposited in the Bay Restoration Fund;

(iv) To earn interest on Bay Restoration Fund accounts;

(v) For the reasonable costs of administering the Bay Restoration Fund, which may not exceed 1.5% of the total restoration fees imposed on users of wastewater facilities that are collected by the Comptroller annually;

(vi) For the reasonable administrative costs incurred by a local government or a billing authority for a water or wastewater facility collecting the restoration fees, in an amount not to exceed 5% of the total restoration fees collected by that local government or billing authority;

(vii) For future upgrades of wastewater facilities to achieve additional nutrient removal or water quality improvement, in accordance with paragraphs (6) and (7) of this subsection;

(viii) For costs associated with the issuance of bonds; and

(ix) Subject to the allocation of funds and the conditions under subsection (h) of this section, for projects related to the removal of nitrogen from onsite sewage disposal systems and cover crop activities.

(3) The grant agreement and State discharge permit, if applicable, shall require an owner of a wastewater facility to operate the enhanced nutrient removal facility in a manner that optimizes the nutrient removal capability of the facility in order to achieve enhanced nutrient removal performance levels.

(4) The grant agreement shall require a grantee to demonstrate, to the satisfaction of the Department, that steps were taken to include small business enterprises, minority business enterprises, and women's business enterprises by:

(i) Placing qualified small business enterprises, minority business enterprises, and women's business enterprises on solicitation lists;

(ii) Assuring that small business enterprises, minority business enterprises, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small business enterprises, minority business enterprises, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, that encourage participation by small business enterprises, minority business enterprises, and women's business enterprises; and

(v) Using the services and assistance of the Maryland Department of Transportation and the Governor's Office of Minority Affairs in identifying and soliciting small business enterprises, minority business enterprises, and women's business enterprises.

(5) If the steps required under paragraph (4) of this subsection are not demonstrated to the satisfaction of the Department, the Department may withhold financial assistance for the project.

(6) (i) All wastewater facilities serving Maryland users that have contributed to the Bay Restoration Fund are eligible for grants under this section, including the Blue Plains Wastewater Treatment Plant in the District of Columbia.

(ii) Grants issued under paragraph (2)(i) of this subsection for upgrades to the Blue Plains Wastewater Treatment Plant may be awarded only if each party to the Blue Plains Intermunicipal Agreement of 1985 contributes a proportional share of the upgrade costs in accordance with the Blue Plains Intermunicipal Agreement of 1985, as revised and updated.

(7) Priority for funding an upgrade of a wastewater facility shall be given to enhanced nutrient removal upgrades at wastewater facilities with a design capacity of 500,000 gallons or more per day.

(8) (i) The eligibility and priority ranking of a project shall be determined by the Department based on criteria established in regulations adopted by the Department, in accordance with subsection (k) of this section.

(ii) The criteria adopted by the Department shall include, as appropriate, consideration of:

1. The cost–effectiveness in providing water quality benefit;

2. The water quality benefit to a body of water identified by the Department as impaired under Section 303(d) of the Clean Water Act;

3. The readiness of a wastewater facility to proceed to construction; and

4. The nitrogen and phosphorus loads discharged by a wastewater facility.

(9) A wastewater facility that has not been offered or has not received funds from the Department under this section or from any other fund in the Department may not be required to upgrade to enhanced nutrient removal levels, except as otherwise required under federal or State law.

SECTION 2. AND BE IT FURTHER ENACTED, That ~~this Act shall take effect July 1, 2012~~ the Laws of Maryland read as follows:

Article – Environment

9–1605.2.

(b) (1) (i) Beginning on **[**July 1, 2012**]** **JULY 1, 2030**, the Bay Restoration Fee is:

1. For each residential dwelling that receives an individual sewer bill and each user of an onsite sewage disposal system or a holding tank that receives a water bill~~,~~***/:***

A. $2.50 per month if the wastewater generated by a residential dwelling is treated at a wastewater facility that does not discharge into the Chesapeake Bay Watershed or the Coastal Bays Watershed;

B. $2.50 per month if the onsite sewage disposal system or holding tank is not located within the Chesapeake Bay Watershed or the Coastal Bays Watershed;

C. ~~[~~$5.00~~]~~ **$2.50** per month ***[****if the wastewater generated by a residential dwelling is treated at a wastewater facility that does discharge into the Chesapeake Bay Watershed or the Coastal Bays Watershed; and*

*D. $5.00 per month if the wastewater onsite sewage disposal system or holding tank is located within the Chesapeake Bay Watershed or the Coastal Bays Watershed****]***;

2. For each user of an onsite sewage disposal system that does not receive a water bill~~,~~***[****:*

A. $30 per year if the onsite sewage disposal system is not located within the Chesapeake Bay Watershed or the Coastal Bays Watershed; or

B. ~~[~~$60~~]~~ **$30** per year ***[****if the onsite sewage disposal system is located within the Chesapeake Bay Watershed or the Coastal Bays Watershed****]***;

3. For each user of a sewage holding tank that does not receive a water bill~~,~~***[****:*

A. $30 per year if the sewage holding tank is not located within the Chesapeake Bay Watershed or the Coastal Bays Watershed; and

B. ~~[~~$60~~]~~ **$30** per year ***[****if the sewage holding tank is located within the Chesapeake Bay Watershed or the Coastal Bays Watershed****]***; and

4. For a building or group of buildings under single ownership or management that receives a sewer bill and that contains multiple residential dwellings that do not receive an individual sewer bill or for a nonresidential user:

A. ***[****For each equivalent dwelling unit not exceeding 2,000 equivalent dwelling units, $2.50 per month if the wastewater generated by a building or group of buildings containing multiple residential dwellings is treated at a wastewater facility that does not discharge into the Chesapeake Bay Watershed or the Coastal Bays Watershed;*

*B.****]*** For each equivalent dwelling unit not exceeding **[**2,000**] 3,000** equivalent dwelling units, **[**$5.00**] $2.50** per month ***[****if the wastewater generated by a building or group of buildings containing multiple residential dwellings*

is treated at a wastewater facility that does *discharge into the Chesapeake Bay Watershed or the Coastal Bays Watershed*[*]*; [*and*]*

B. FOR EACH EQUIVALENT DWELLING UNIT EXCEEDING 3,000 EQUIVALENT DWELLING UNITS AND NOT EXCEEDING 5,000 EQUIVALENT DWELLING UNITS, $1.25 PER MONTH; AND

[B.**] C.** For each equivalent dwelling unit exceeding **[**2,000**] 5,000** equivalent dwelling units, zero.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect July 1, 2012.

SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect July 1, 2030.

Approved by the Governor, May 2, 2012.

Chapter 151

(House Bill 987)

AN ACT concerning

Stormwater Management – Watershed Protection and Restoration Program

FOR the purpose of requiring ~~each~~ a county ~~and~~ or municipality subject to a certain municipal stormwater permit to adopt *and implement* certain laws or ordinances to establish a watershed protection and restoration program on or before a certain date; exempting a certain county or municipality from the requirements of this Act if the county or municipality has enacted and implemented a certain system of charges in a certain manner by a certain date; requiring a watershed protection and restoration program to include a stormwater remediation fee and a local watershed protection and restoration fund; requiring ~~each~~ a county ~~and~~ or municipality to maintain ~~and~~ or administer a local watershed protection and restoration fund in accordance with this Act; establishing the purpose of a local watershed protection and restoration fund; requiring ~~each~~ a county ~~and~~ or municipality to *establish and* collect a stormwater remediation fee in accordance with this Act; requiring ~~each~~ a county ~~and~~ or municipality to set the amount of a ~~residential~~ stormwater remediation fee in a certain manner; *authorizing a county or municipality to use certain calculation methods to set a stormwater remediation fee;* ~~requiring each a county and or municipality to set the amount of a nonresidential stormwater remediation fee in a certain manner;~~ providing that a stormwater remediation

fee is separate from certain other charges; *exempting certain property from paying the stormwater remediation fee;* ~~authorizing~~ requiring a county or municipality to *establish policies and procedures approved by the Department of the Environment to* reduce a *certain* stormwater remediation fee ~~in accordance with certain policies and procedures~~ for a certain purpose; requiring the policies and procedures to include certain items; *authorizing a county or municipality to monitor and verify the effectiveness of certain measures in a certain manner;* prohibiting~~, with certain exception, a county from imposing a stormwater remediation fee on a property located within a municipality; authorizing a municipality to authorize a county to impose a stormwater remediation fee on a property located within a municipality in place of a municipal stormwater remediation fee;~~ *the assessment of a stormwater remediation fee on a property by both a county and a municipality; requiring a county to provide certain notice and a reasonable time to pass a certain ordinance before the county may impose a stormwater remediation fee on property located within a municipality; requiring a municipality to provide certain notice and a reasonable time for a county to discontinue collecting a certain stormwater remediation fee under certain circumstances;* requiring ~~each~~ a county ~~and~~ or municipality to establish a procedure for a property owner to appeal the imposition of a stormwater remediation fee; requiring ~~each~~ a county ~~and~~ or municipality to determine the method, frequency, and enforcement of the collection of the stormwater remediation fee and to deposit the fee into a local watershed protection and restoration fund; specifying the money to be deposited in a local watershed protection and restoration fund and the uses of the money in the fund; providing that money in a local watershed and restoration fund may not revert or be transferred to the general fund of any county or municipality; requiring each county and municipality to make publicly available a report on certain information; requiring a county or municipality to establish a certain hardship program; authorizing the Department of the Environment to adopt certain regulations; defining a certain term; and generally relating to stormwater management in the State.

BY repealing and reenacting, with amendments,
Article – Environment
Section 4–201.1
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

BY adding to
Article – Environment
Section 4–202.1
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Environment

4–201.1.

(a) In this subtitle the following words have the meanings indicated.

(b) "Environmental site design" means using small–scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources.

(c) "Environmental site design" includes:

(1) Optimizing conservation of natural features, such as drainage patterns, soils, and vegetation;

(2) Minimizing use of impervious surfaces**[**, such as paved surfaces, concrete channels, roofs, and pipes**]**;

(3) Slowing down runoff to maintain discharge timing and to increase infiltration and evapotranspiration; and

(4) Using other nonstructural practices or innovative stormwater management technologies approved by the Department.

(D) (1) "IMPERVIOUS SURFACE" MEANS A SURFACE THAT DOES NOT ALLOW STORMWATER TO INFILTRATE INTO THE GROUND.

(2) "IMPERVIOUS SURFACE" INCLUDES ROOFTOPS, DRIVEWAYS, SIDEWALKS, OR PAVEMENT.

4–202.1.

(A) ~~ON OR BEFORE JULY 1, 2013, A COUNTY OR MUNICIPALITY SHALL ADOPT AND IMPLEMENT LOCAL LAWS OR ORDINANCES NECESSARY TO ESTABLISH A WATERSHED PROTECTION AND RESTORATION PROGRAM.~~

~~(B)~~ (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THIS SECTION APPLIES TO A COUNTY OR MUNICIPALITY THAT IS SUBJECT TO A NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PHASE I MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT.

(2) THIS SECTION DOES NOT APPLY TO A COUNTY OR MUNICIPALITY THAT, ON OR BEFORE JULY 1, 2012, HAS ENACTED AND IMPLEMENTED A SYSTEM OF CHARGES UNDER § 4–204 OF THIS SUBTITLE FOR

THE PURPOSE OF FUNDING A WATERSHED PROTECTION AND RESTORATION PROGRAM, OR SIMILAR PROGRAM, IN A MANNER CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION.

(B) ON OR BEFORE JULY 1, 2013, A COUNTY OR MUNICIPALITY SHALL ADOPT AND IMPLEMENT LOCAL LAWS OR ORDINANCES NECESSARY TO ESTABLISH A WATERSHED PROTECTION AND RESTORATION PROGRAM.

(C) A WATERSHED PROTECTION AND RESTORATION PROGRAM ESTABLISHED UNDER THIS SECTION SHALL INCLUDE:

(1) A STORMWATER REMEDIATION FEE; AND

(2) A LOCAL WATERSHED PROTECTION AND RESTORATION FUND.

(D) (1) ~~EACH~~ A COUNTY ~~AND~~ OR MUNICIPALITY SHALL MAINTAIN ~~AND~~ OR ADMINISTER A LOCAL WATERSHED PROTECTION AND RESTORATION FUND IN ACCORDANCE WITH THIS SECTION.

(2) THE PURPOSE OF A LOCAL WATERSHED PROTECTION AND RESTORATION FUND IS TO PROVIDE FINANCIAL ASSISTANCE FOR THE IMPLEMENTATION OF LOCAL STORMWATER MANAGEMENT PLANS THROUGH STORMWATER MANAGEMENT PRACTICES AND STREAM AND WETLAND RESTORATION ACTIVITIES.

(E) (1) EXCEPT AS PROVIDED IN *PARAGRAPH (2) OF THIS SUBSECTION AND* SUBSECTION (F) OF THIS SECTION, ~~EACH~~ A COUNTY ~~AND~~ OR MUNICIPALITY SHALL ESTABLISH AND ANNUALLY COLLECT A STORMWATER REMEDIATION FEE FROM ~~PROPERTY~~ OWNERS *OF PROPERTY LOCATED* WITHIN THE COUNTY OR MUNICIPALITY IN ACCORDANCE WITH THIS SECTION.

(2) *PROPERTY OWNED BY THE STATE, A UNIT OF STATE GOVERNMENT, A COUNTY, A MUNICIPALITY, OR A REGULARLY ORGANIZED VOLUNTEER FIRE DEPARTMENT THAT IS USED FOR PUBLIC PURPOSES MAY NOT BE CHARGED A STORMWATER REMEDIATION FEE UNDER THIS SECTION.*

***(3)* (I) ~~EACH~~ A COUNTY ~~AND~~ OR MUNICIPALITY SHALL SET A ~~RESIDENTIAL~~ STORMWATER REMEDIATION FEE FOR PROPERTY IN AN AMOUNT THAT: IS BASED ON THE SHARE OF STORMWATER MANAGEMENT SERVICES RELATED TO THE PROPERTY AND PROVIDED BY THE COUNTY OR MUNICIPALITY.**

~~(II) A COUNTY OR MUNICIPALITY MAY SET A STORMWATER REMEDIATION FEE UNDER THIS PARAGRAPH IN AN AMOUNT THAT IS~~

~~GRADUATED, BASED ON THE AMOUNT OF IMPERVIOUS SURFACE ON EACH PROPERTY.~~

(II) A COUNTY OR MUNICIPALITY MAY SET A STORMWATER REMEDIATION FEE UNDER THIS PARAGRAPH BASED ON:

1. A FLAT RATE;

2. AN AMOUNT THAT IS GRADUATED, BASED ON THE AMOUNT OF IMPERVIOUS SURFACE ON EACH PROPERTY; OR

3. ANOTHER METHOD OF CALCULATION SELECTED BY THE COUNTY OR MUNICIPALITY.

~~(I) IS THE SAME FOR ALL RESIDENTIAL PROPERTY OWNERS WITHIN THE COUNTY OR MUNICIPALITY;~~

~~(II) VARIES BASED ON THE TYPE OF RESIDENTIAL PROPERTY, INCLUDING SINGLE–FAMILY OR MULTIPLE–OCCUPANCY PROPERTIES; OR~~

~~(III) IS GRADUATED, BASED ON THE AMOUNT OF IMPERVIOUS SURFACE ON EACH RESIDENTIAL PROPERTY.~~

~~(3) EACH~~ A ~~COUNTY AND OR~~ MUNICIPALITY SHALL SET A ~~NONRESIDENTIAL STORMWATER REMEDIATION FEE IN AN AMOUNT THAT:~~

~~(I) IS GREATER THAN OR EQUAL TO THE RESIDENTIAL STORMWATER REMEDIATION FEE SET UNDER PARAGRAPH (2) OF THIS SUBSECTION; AND~~

~~(II) CONSISTS OF:~~

~~1. A BASE AMOUNT THAT IS THE SAME FOR ALL NONRESIDENTIAL PROPERTY OWNERS WITHIN THE COUNTY OR MUNICIPALITY; AND~~

~~2. AN AMOUNT THAT IS GRADUATED BASED ON THE AMOUNT OF IMPERVIOUS SURFACE ON EACH NONRESIDENTIAL PROPERTY.~~

~~(4)~~ ~~*(3)*~~ *(4)* A STORMWATER REMEDIATION FEE ESTABLISHED UNDER THIS SECTION IS SEPARATE FROM ANY CHARGES THAT A COUNTY OR MUNICIPALITY ESTABLISHES RELATED TO STORMWATER MANAGEMENT FOR NEW DEVELOPMENTS UNDER § 4–204 OF THIS SUBTITLE, INCLUDING FEES FOR

PERMITTING, REVIEW OF STORMWATER MANAGEMENT PLANS, INSPECTIONS, OR MONITORING.

(F) (1) ~~IN ACCORDANCE WITH~~ A COUNTY OR MUNICIPALITY ~~MAY~~ SHALL ESTABLISH POLICIES AND PROCEDURES ~~ESTABLISHED BY A COUNTY OR MUNICIPALITY AND~~, APPROVED BY THE DEPARTMENT, ~~A COUNTY OR MUNICIPALITY MAY~~ TO REDUCE ANY PORTION OF A STORMWATER REMEDIATION FEE ESTABLISHED UNDER SUBSECTION (E) OF THIS SECTION ~~THAT IS BASED ON THE AMOUNT OF IMPERVIOUS SURFACE ON A PROPERTY~~ TO ACCOUNT FOR ON–SITE AND OFF–SITE SYSTEMS, FACILITIES, SERVICES, OR ACTIVITIES THAT REDUCE THE QUANTITY OR IMPROVE THE QUALITY OF STORMWATER DISCHARGED FROM THE PROPERTY.

(2) THE POLICIES AND PROCEDURES ESTABLISHED BY A COUNTY OR MUNICIPALITY UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE:

(I) GUIDELINES FOR DETERMINING WHICH ON–SITE SYSTEMS, FACILITIES, SERVICES, OR ACTIVITIES MAY BE THE BASIS FOR A FEE REDUCTION, INCLUDING GUIDELINES:

1. RELATING TO PROPERTIES WITH EXISTING ADVANCED STORMWATER BEST MANAGEMENT PRACTICES;

2. RELATING TO AGRICULTURAL ACTIVITIES OR FACILITIES THAT ARE OTHERWISE EXEMPTED FROM STORMWATER MANAGEMENT REQUIREMENTS BY THE COUNTY OR MUNICIPALITY; AND

3. THAT ACCOUNT FOR THE COSTS OF, AND THE LEVEL OF TREATMENT PROVIDED BY, STORMWATER MANAGEMENT FACILITIES THAT ARE FUNDED AND MAINTAINED BY A PROPERTY OWNER;

(II) THE METHOD FOR CALCULATING THE AMOUNT OF A FEE REDUCTION; AND

(III) PROCEDURES FOR MONITORING AND ~~ANNUALLY~~ VERIFYING THE EFFECTIVENESS OF THE ON–SITE SYSTEMS, FACILITIES, SERVICES, OR ACTIVITIES IN REDUCING THE QUANTITY OR IMPROVING THE QUALITY OF STORMWATER DISCHARGED FROM THE PROPERTY.

(3) FOR THE PURPOSE OF MONITORING AND VERIFYING THE EFFECTIVENESS OF ON–SITE SYSTEMS, FACILITIES, SERVICES, OR ACTIVITIES UNDER PARAGRAPH (2)(III) OF THIS SUBSECTION, A COUNTY OR MUNICIPALITY MAY:

(I) CONDUCT ON–SITE INSPECTIONS;

(II) AUTHORIZE A THIRD PARTY, CERTIFIED BY THE DEPARTMENT, TO CONDUCT ON–SITE INSPECTIONS ON BEHALF OF THE COUNTY OR MUNICIPALITY; OR

(III) REQUIRE A PROPERTY OWNER TO HIRE A THIRD PARTY, CERTIFIED BY THE DEPARTMENT, TO CONDUCT AN ON–SITE INSPECTION AND PROVIDE TO THE COUNTY OR MUNICIPALITY THE RESULTS OF THE INSPECTION AND ANY OTHER INFORMATION REQUIRED BY THE COUNTY OR MUNICIPALITY.

(G) (1) A PROPERTY MAY NOT BE ASSESSED A STORMWATER REMEDIATION FEE BY BOTH A COUNTY AND A MUNICIPALITY.

~~**(2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, A COUNTY MAY NOT IMPOSE A COUNTY STORMWATER REMEDIATION FEE ON A PROPERTY LOCATED WITHIN A MUNICIPALITY.**~~

~~**(II) A MUNICIPALITY MAY AUTHORIZE A COUNTY TO IMPOSE A COUNTY STORMWATER REMEDIATION FEE ON A PROPERTY LOCATED WITHIN THE MUNICIPALITY IN PLACE OF A MUNICIPAL STORMWATER REMEDIATION FEE.**~~

(2) (I) BEFORE A COUNTY MAY IMPOSE A STORMWATER REMEDIATION FEE ON A PROPERTY LOCATED WITHIN A MUNICIPALITY, THE COUNTY SHALL:

1. NOTIFY THE MUNICIPALITY OF THE COUNTY'S INTENT TO IMPOSE A STORMWATER REMEDIATION FEE ON PROPERTY LOCATED WITHIN THE MUNICIPALITY; AND

2. PROVIDE THE MUNICIPALITY REASONABLE TIME TO PASS AN ORDINANCE AUTHORIZING THE IMPOSITION OF A MUNICIPAL STORMWATER REMEDIATION FEE INSTEAD OF A COUNTY STORMWATER REMEDIATION FEE.

(II) IF A COUNTY CURRENTLY IMPOSES A STORMWATER REMEDIATION FEE ON PROPERTY LOCATED WITHIN A MUNICIPALITY AND THE MUNICIPALITY DECIDES TO IMPLEMENT ITS OWN STORMWATER REMEDIATION FEE UNDER THIS SECTION OR § 4–204 OF THIS SUBTITLE, THE MUNICIPALITY SHALL:

1. NOTIFY THE COUNTY OF THE MUNICIPALITY'S INTENT TO IMPOSE ITS OWN STORMWATER REMEDIATION FEE; AND

2. PROVIDE THE COUNTY REASONABLE TIME TO DISCONTINUE THE COLLECTION OF THE COUNTY STORMWATER REMEDIATION FEE WITHIN THE MUNICIPALITY BEFORE THE MUNICIPALITY'S STORMWATER REMEDIATION FEE BECOMES EFFECTIVE.

(3) ~~EACH~~ A COUNTY ~~AND~~ OR MUNICIPALITY SHALL ESTABLISH A PROCEDURE FOR A PROPERTY OWNER TO APPEAL A STORMWATER REMEDIATION FEE IMPOSED UNDER THIS SECTION.

(H) (1) ~~EACH~~ A COUNTY ~~AND~~ OR MUNICIPALITY SHALL DETERMINE THE METHOD, FREQUENCY, AND ENFORCEMENT OF THE COLLECTION OF THE STORMWATER REMEDIATION FEE.

(2) ~~EACH~~ A COUNTY ~~AND~~ OR MUNICIPALITY SHALL DEPOSIT THE STORMWATER REMEDIATION FEES IT COLLECTS INTO ITS LOCAL WATERSHED PROTECTION AND RESTORATION FUND.

(3) THERE SHALL BE DEPOSITED IN A LOCAL WATERSHED PROTECTION AND RESTORATION FUND:

(I) FUNDS RECEIVED FROM THE STORMWATER REMEDIATION FEE;

(II) INTEREST OR OTHER INCOME EARNED ON THE INVESTMENT OF MONEY IN THE LOCAL WATERSHED PROTECTION AND RESTORATION FUND; AND

(III) ANY ADDITIONAL MONEY MADE AVAILABLE FROM ANY SOURCES FOR THE PURPOSES FOR WHICH THE LOCAL WATERSHED PROTECTION AND RESTORATION FUND HAS BEEN ESTABLISHED.

(4) ~~EACH~~ ~~A~~ *SUBJECT TO PARAGRAPH (5) OF THIS SUBSECTION, A* COUNTY ~~AND~~ OR MUNICIPALITY SHALL USE THE MONEY IN ITS LOCAL WATERSHED PROTECTION AND RESTORATION FUND FOR THE FOLLOWING PURPOSES ONLY:

(I) CAPITAL IMPROVEMENTS FOR STORMWATER MANAGEMENT, INCLUDING STREAM AND WETLAND RESTORATION PROJECTS;

(II) OPERATION AND MAINTENANCE OF STORMWATER MANAGEMENT SYSTEMS AND FACILITIES;

(III) PUBLIC EDUCATION AND OUTREACH RELATING TO STORMWATER MANAGEMENT OR STREAM AND WETLAND RESTORATION;

(IV) STORMWATER MANAGEMENT PLANNING, INCLUDING:

1. MAPPING AND ASSESSMENT OF IMPERVIOUS SURFACES; AND

2. MONITORING, INSPECTION, AND ENFORCEMENT ACTIVITIES TO CARRY OUT THE PURPOSES OF THE WATERSHED PROTECTION AND RESTORATION FUND;

(V) TO THE EXTENT THAT FEES IMPOSED UNDER § 4–204 OF THIS SUBTITLE ARE DEPOSITED INTO THE LOCAL WATERSHED PROTECTION AND RESTORATION FUND, REVIEW OF STORMWATER MANAGEMENT PLANS AND PERMIT APPLICATIONS FOR NEW DEVELOPMENT;

(VI) GRANTS TO NONPROFIT ORGANIZATIONS FOR UP TO 100% OF A PROJECT'S COSTS FOR WATERSHED RESTORATION AND REHABILITATION PROJECTS RELATING TO:

1. PLANNING, DESIGN, AND CONSTRUCTION OF STORMWATER MANAGEMENT PRACTICES;

2. STREAM AND WETLAND RESTORATION; AND

3. PUBLIC EDUCATION AND OUTREACH RELATED TO STORMWATER MANAGEMENT OR STREAM AND WETLAND RESTORATION; AND

(VII) REASONABLE COSTS NECESSARY TO ADMINISTER THE LOCAL WATERSHED PROTECTION AND RESTORATION FUND.

(5) A COUNTY OR MUNICIPALITY MAY USE ITS LOCAL WATERSHED PROTECTION AND RESTORATION FUND AS AN ENVIRONMENTAL FUND, AND MAY DEPOSIT TO AND EXPEND FROM THE FUND ADDITIONAL MONEY MADE AVAILABLE FROM OTHER SOURCES AND DEDICATED TO ENVIRONMENTAL USES, PROVIDED THAT THE FUNDS RECEIVED FROM THE STORMWATER REMEDIATION FEE ARE EXPENDED ONLY FOR THE PURPOSES AUTHORIZED UNDER PARAGRAPH (4) OF THIS SUBSECTION.

~~(5)~~ *(6)* THE FUNDS DISBURSED UNDER THIS SUBSECTION ARE INTENDED TO BE IN ADDITION TO ANY EXISTING STATE OR LOCAL EXPENDITURES FOR STORMWATER MANAGEMENT.

~~(6)~~ *(7)* **MONEY IN A LOCAL WATERSHED PROTECTION AND RESTORATION FUND MAY NOT REVERT OR BE TRANSFERRED TO THE GENERAL FUND OF ANY COUNTY OR MUNICIPALITY.**

(I) BEGINNING JULY 1, 2014, AND EVERY 2 YEARS THEREAFTER, A COUNTY OR MUNICIPALITY SHALL MAKE PUBLICLY AVAILABLE A REPORT ON:

(1) THE NUMBER OF PROPERTIES SUBJECT TO A STORMWATER REMEDIATION FEE;

(2) THE AMOUNT OF MONEY DEPOSITED INTO THE WATERSHED PROTECTION AND RESTORATION FUND OVER THE PREVIOUS 2 FISCAL YEARS; AND

(3) THE PERCENTAGE OF FUNDS IN THE LOCAL WATERSHED PROTECTION AND RESTORATION FUND SPENT ON EACH OF THE PURPOSES PROVIDED IN SUBSECTION (H)(4) OF THIS SECTION.

(J) ***(1)*** **A COUNTY OR MUNICIPALITY SHALL ESTABLISH A PROGRAM TO EXEMPT FROM THE REQUIREMENTS OF THIS SECTION A PROPERTY ABLE TO DEMONSTRATE SUBSTANTIAL FINANCIAL HARDSHIP AS A RESULT OF THE STORMWATER REMEDIATION FEE.**

(2) A COUNTY OR MUNICIPALITY MAY ESTABLISH A SEPARATE HARDSHIP EXEMPTION PROGRAM OR INCLUDE A HARDSHIP EXEMPTION AS PART OF A SYSTEM OF OFFSETS ESTABLISHED UNDER SUBSECTION (F)(1) OF THIS SECTION.

~~(J)~~ **(K) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT AND ENFORCE THIS SECTION.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 152

(House Bill 443)

AN ACT concerning

Maryland Health Benefit Exchange Act of 2012

FOR the purpose of requiring the Board of Trustees of the Maryland Health Benefit Exchange, subject to a certain waiver, to submit certain regulations to certain legislative committees under certain circumstances; requiring the Board to have a certain number of standing advisory committees; requiring the Maryland Health Benefit Exchange to make certain qualified dental plans and qualified vision plans available to certain individuals and employers in a certain manner and on or before a certain date; requiring the Exchange, to the extent necessary, to modify a certain format to accommodate differences in certain plan options; requiring the Exchange to establish and implement certain navigator programs; prohibiting the Exchange from making available any vision plan that is not a qualified vision plan; authorizing the Exchange to enter into certain agreements or memoranda of understanding with another state under certain circumstances; requiring the Exchange to seek to achieve a certain enrollment and ~~use a certain market impact to pursue certain objectives~~ decrease the number of State residents without health insurance coverage; authorizing the Exchange to employ certain alternative contracting options and active purchasing strategies under certain circumstances and for a certain purpose; requiring certain participation requirements for certain carriers to be suspended under certain circumstances; requiring the Exchange, before employing an alternative contracting option or active purchasing strategy, to submit a certain plan, within a certain timeframe, to certain legislative committees for review and comment; providing that the SHOP Exchange shall be a separate insurance market within the Exchange for small employers and may not be merged with the individual market of the Individual Exchange; requiring the SHOP Exchange to be designed in a certain manner; requiring the SHOP Exchange to allow qualified employers to designate a certain coverage level ~~or~~, or a carrier or a certain insurance holding company system, for a certain purpose; authorizing the SHOP Exchange to allow qualified employers to designate certain qualified dental plans and qualified vision plans to be made available to their employees; authorizing the SHOP Exchange to reassess and modify the design of the SHOP Exchange under certain circumstances; requiring the SHOP Exchange to implement any modification of offerings and choice through regulations adopted by the SHOP Exchange; establishing certain navigator programs for the SHOP Exchange and the Individual Exchange; establishing certain requirements for the navigator programs; ~~authorizing~~ requiring a SHOP Exchange navigator program and an Individual Exchange navigator program to take certain actions; establishing certain duties of a SHOP Exchange navigator and an Individual Exchange navigator; prohibiting a SHOP Exchange navigator and an Individual Exchange navigator from taking certain actions; prohibiting the Maryland Insurance Commissioner, in the Commissioner's role as a member of the Board, from participating in certain matters under certain circumstances; providing that a carrier is not responsible for the activities and conduct of a SHOP Exchange navigator, an Individual Exchange navigator entity, or an Individual Exchange navigator; establishing a

certain licensing process and qualifications for SHOP Exchange navigators; requiring the SHOP Exchange and the Exchange to establish and administer certain insurance producer authorization ~~programs~~ processes; requiring the SHOP Exchange and the Exchange to develop, implement, and update certain training programs; requiring the Individual Exchange to consult with the Commissioner and the Department of Health and Mental Hygiene for a certain purpose; requiring the Commissioner to enter into certain memoranda of understanding; authorizing the Commissioner to require the Individual Exchange to make certain information available to the Commissioner and submit a certain corrective plan under certain circumstances; requiring the Exchange to establish and administer a certain Individual Exchange navigator certification program; specifying the consumer assistance services that are required, and are not required, to be provided by an Individual Exchange navigator; providing for the authorization of Individual Exchange navigator entities; specifying the scope of the authorization; authorizing and requiring an Individual Exchange navigator entity to take certain actions; prohibiting an Individual Exchange navigator entity from receiving certain compensation and providing certain information or services; authorizing the Commissioner to take certain disciplinary actions against an Individual Exchange navigator entity under certain circumstances; establishing certain qualifications for certification as an Individual Exchange navigator; authorizing the ~~Maryland Insurance~~ Commissioner to take certain disciplinary actions against certain individuals under certain circumstances; requiring the Commissioner, the Exchange, the SHOP Exchange, and the Individual Exchange to adopt certain regulations; providing that certain provisions of this Act may not prohibit certain organizations or units of government from providing certain services, subject to certain requirements; providing that certain provisions of this Act do not require certain programs to provide certain financial support to the Individual Exchange for certain services; requiring certain financing arrangements between the Exchange and certain programs to be governed by a certain memorandum of agreement; requiring the Exchange to certify certain dental plans as qualified dental plans and certain vision plans as qualified vision plans; altering certain requirements for certification as a qualified health plan; authorizing the Exchange to determine whether a carrier may elect to include certain nonessential benefits in a qualified health plan; providing that a qualified health plan is not required to provide certain essential benefits under certain circumstances; altering certain provisions of law relating to the offering and pricing of oral and dental benefits; establishing certain requirements for qualified vision plans offered through the Exchange; providing that a managed care organization may not be required to offer a certain plan in the Exchange; authorizing the Exchange to establish additional requirements for qualified dental plans under certain circumstances; providing for the selection of the State benchmark plan; providing for the implementation and operation of certain reinsurance and risk adjustment programs; requiring the Exchange to establish a certain fraud, waste, and abuse detection and prevention program; prohibiting certain health insurance carriers from offering certain health benefit plans in the small group market or the individual market ~~under certain~~

~~circumstances~~ unless the carriers also offer certain health benefit plans in the SHOP Exchange and the Individual Exchange; establishing certain exemptions to the requirement that the carriers offer the plans; requiring the Commissioner to establish certain procedures for a carrier to submit certain evidence relating to certain exemptions; authorizing the Commissioner, in consultation with the Exchange, to assess the impact of certain exemptions and alter the exemptions based on the assessment; requiring certain health insurance carriers to offer a certain catastrophic plan in the Exchange; defining certain terms; repealing and altering certain definitions; making certain stylistic ~~and~~, clarifying, and conforming changes; providing for the construction of certain provisions of this Act; requiring the Exchange to conduct certain studies, in consultation with certain entities and persons, and report certain findings and recommendations to the Governor and the General Assembly on or before certain dates; establishing a certain joint legislative and executive committee; requiring the committee to conduct a certain study, in consultation with certain entities and stakeholders, of financing mechanisms for the Exchange and to report its findings and recommendations to the Governor and the General Assembly on or before a certain date; providing that certain requirements of this Act shall be subject to certain clarification; authorizing the Board to adopt interim policies for a certain purpose, pending adoption of regulations and after receiving certain comment; providing for the effective dates of this Act; and generally relating to health insurance regulation and the Maryland Health Benefit Exchange.

BY renumbering
Article – Insurance
Section 31–110
to be Section 31–118
Annotated Code of Maryland
(2011 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 15–101.1
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Insurance
Section 15–1204, 15–1205, 15–1303, 31–101, 31–102(d), 31–106(c) and (g), 31–108, 31–109, and 31–111
Annotated Code of Maryland
(2011 Replacement Volume)

BY adding to
Article – Insurance
Section 15–1204.1, 31–109 through 31–114, 31–116, and 31–117

Annotated Code of Maryland
(2011 Replacement Volume)

Preamble

WHEREAS, The federal Patient Protection and Affordable Care Act (Affordable Care Act), as amended by the federal Health Care and Education Reconciliation Act of 2010, requires each state, by January 1, 2014, to establish a health benefit exchange that makes available qualified health plans to qualified individuals and employers, and meets certain other requirements; and

WHEREAS, Maryland's Health Benefit Exchange (Exchange), if successful, will make health care coverage accessible to thousands of Marylanders who have never before been able to obtain the insurance necessary for financial security, health, and well–being; and

WHEREAS, The Exchange will build on the success of the small group market and make health insurance available with subsidies to certain small employers; and

WHEREAS, In addition to those who will secure health insurance for the first time, the Exchange will benefit all Marylanders, as broader coverage results in increased revenues, decreased uncompensated care, improved population health, and reduced health care costs; and

WHEREAS, The Maryland Health Benefit Exchange Act of 2011, Chapter 2 of the Acts of the General Assembly of 2011, established the governance and structure of the Exchange, and directed its Board to undertake six policy studies and make recommendations necessary to inform further development of its operating model and functions; and

WHEREAS, After conducting these studies and incorporating the input of its advisory groups established under the law to help guide its work, the Exchange Board issued a report and recommendations to the Governor and General Assembly on December 23, 2011; and

WHEREAS, The Board has developed a set of seven principles – accessibility, affordability, sustainability, stability, health equity, flexibility, and transparency – which reflect its goals for establishing a successful Exchange and which guided its decision–making in the development of its recommendations; and

WHEREAS, These guiding principles are intended to ensure that the Exchange's policies, functions, and operations (1) make health care coverage more accessible to Marylanders; (2) promote affordable coverage; (3) contribute to the Exchange's long–term sustainability; (4) build on the strengths of the State's existing health care system to support the Exchange's stability; (5) address longstanding disparities in health care access and health outcomes; (6) facilitate flexibility to enable the Exchange to respond nimbly to changes in the insurance market, health care

delivery system, and economic conditions while also maintaining sensitivity and responsiveness to consumer needs and demands; and (7) function with the transparency necessary to render it accountable, accessible, and easily understood by the public; and

WHEREAS, Pursuant to these principles, the State seeks to give effect to such policies, embodied in the Board's recommendations, which are critical to the successful functioning of the Exchange; and

WHEREAS, The State seeks to ensure that the Exchange succeed and be operational in accordance with federal deadlines established by the Affordable Care Act, and at the same time that it continue its step–by–step approach to the development of the Exchange; and

WHEREAS, The State seeks to enact at this time those recommendations which are necessary to ensure that development of the Exchange remains on track and in compliance with federal timelines; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 31–110 of Article – Insurance of the Annotated Code of Maryland be renumbered to be Section(s) 31–118.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Health – General

15–101.1.

(A) Except as otherwise provided in this subtitle, a managed care organization is not subject to the insurance laws of the State or to the provisions of Title 19 of this article.

(B) A MANAGED CARE ORGANIZATION MAY NOT BE REQUIRED TO OFFER A QUALIFIED PLAN, AS DEFINED IN § 31–101 OF THE INSURANCE ARTICLE, IN THE MARYLAND HEALTH BENEFIT EXCHANGE.

Article – Insurance

15–1204.

(A) THIS SECTION APPLIES TO A CARRIER WITH RESPECT TO ANY HEALTH BENEFIT PLAN THAT IS:

~~(1)~~ A GRANDFATHERED HEALTH PLAN, AS DEFINED IN § 1251 OF THE AFFORDABLE CARE ACT;

~~**(2) ISSUED, DELIVERED, OR RENEWED IN THE STATE ON OR BEFORE DECEMBER 31, 2013; AND**~~

~~**(3) RENEWED IN THE STATE AFTER DECEMBER 31, 2013.**~~

~~(a)~~ **(B)** In addition to any other requirement under this article, a carrier shall:

(1) have demonstrated the capacity to administer the health benefit plan, including adequate numbers and types of administrative personnel;

(2) have a satisfactory grievance procedure and ability to respond to enrollees' calls, questions, and complaints;

(3) provide, in the case of individuals covered under more than one health benefit plan, for coordination of coverage under all of those health benefit plans in an equitable manner; and

(4) design policies to help ensure adequate access to providers of health care.

~~**(B) (1) EXCEPT AS PROVIDED IN THIS SUBSECTION, A CARRIER MAY NOT OFFER HEALTH BENEFIT PLANS IN THE SMALL GROUP MARKET IN THE STATE UNLESS THE CARRIER ALSO OFFERS QUALIFIED HEALTH PLANS IN THE SMALL BUSINESS HEALTH OPTIONS PROGRAM OF THE MARYLAND HEALTH BENEFIT EXCHANGE IN COMPLIANCE WITH THE REQUIREMENTS OF TITLE 31 OF THIS ARTICLE.**~~

~~**(2) A CARRIER THAT REPORTS LESS THAN $20,000,000 IN ANNUAL PREMIUMS WRITTEN FROM ALL HEALTH BENEFIT PLANS OFFERED BY THE CARRIER IN THE SMALL GROUP MARKET IN THE STATE IS EXEMPT FROM THE REQUIREMENT IN PARAGRAPH (1) OF THIS SUBSECTION IF:**~~

~~**(I) THE COMMISSIONER DETERMINES THAT THE CARRIER COMPLIES WITH THE PROCEDURES ESTABLISHED BY THE COMMISSIONER FOR SUBMITTING EVIDENCE EACH YEAR THAT THE CARRIER MEETS THE REQUIREMENTS NECESSARY TO QUALIFY FOR THIS EXEMPTION; AND**~~

~~**(II) WHEN THE CARRIER CEASES TO MEET THE REQUIREMENTS FOR THE EXEMPTION, THE CARRIER PROVIDES TO THE COMMISSIONER IMMEDIATE NOTICE AND ITS PLAN FOR COMING INTO COMPLIANCE WITH THE REQUIREMENT TO OFFER QUALIFIED HEALTH PLANS IN THE SMALL BUSINESS HEALTH OPTIONS PROGRAM OF THE MARYLAND HEALTH BENEFIT EXCHANGE.**~~

~~(3) THE COMMISSIONER, IN CONSULTATION WITH THE MARYLAND HEALTH BENEFIT EXCHANGE, MAY ASSESS THE IMPACT OF THE EXEMPTION IN PARAGRAPH (2) OF THIS SUBSECTION AND, BASED ON THAT ASSESSMENT, ALTER THE AMOUNT OF ANNUAL PREMIUMS NECESSARY TO QUALIFY FOR THE EXEMPTION.~~

[(b)**] (C)** A person may not offer a health benefit plan in the State unless the person offers at least the Standard Plan.

[(c)**] (D)** A carrier may not offer a health benefit plan that has fewer benefits than those in the Standard Plan.

[(d)**] (E)** A carrier may offer benefits in addition to those in the Standard Plan if:

(1) the additional benefits:

(i) are offered and priced separately from benefits specified in accordance with § 15–1207 of this subtitle; and

(ii) do not have the effect of duplicating any of those benefits; and

(2) the carrier:

(i) clearly distinguishes the Standard Plan from other offerings of the carrier;

(ii) indicates the Standard Plan is the only plan required by State law; and

(iii) specifies that all enhancements to the Standard Plan are not required by State law.

[(e)**] (F)** Notwithstanding subsection ~~(b)~~ **(C)** of this section, a health maintenance organization may provide a point of service delivery system as an additional benefit through another carrier regardless of whether the other carrier also offers the Standard Plan.

[(f)**] (G)** A carrier may offer coverage for dental care and services as an additional benefit.

[(g)**] (H)** (1) In this subsection, "prominent carrier" means a carrier that insures at least 10% of the total lives insured in the small group market.

(2) (i) A prominent carrier shall offer a wellness benefit for a health benefit plan offered under this subtitle.

(ii) A carrier that is not a prominent carrier may offer a wellness benefit for a health benefit plan offered under this subtitle.

(3) A carrier may not condition the sale of a wellness benefit to a small employer on participation of the eligible employees of the small employer in wellness programs or activities.

15–1204.1.

(A) THIS SECTION APPLIES TO A CARRIER WITH RESPECT TO ANY HEALTH BENEFIT PLAN THAT:

(1) IS NOT A GRANDFATHERED HEALTH PLAN, AS DEFINED IN § 1251 OF THE AFFORDABLE CARE ACT; AND

(2) IS ISSUED, DELIVERED, OR RENEWED IN THE STATE ON OR AFTER JANUARY 1, 2014.

(B) (1) EXCEPT AS PROVIDED IN THIS SUBSECTION AND § 31–110(F) OF THIS ARTICLE, A CARRIER MAY NOT OFFER HEALTH BENEFIT PLANS TO SMALL EMPLOYERS IN THE STATE UNLESS THE CARRIER ALSO OFFERS QUALIFIED HEALTH PLANS, AS DEFINED IN § 31–101 OF THIS ARTICLE, IN THE SMALL BUSINESS HEALTH OPTIONS PROGRAM OF THE MARYLAND HEALTH BENEFIT EXCHANGE IN COMPLIANCE WITH THE REQUIREMENTS OF TITLE 31 OF THIS ARTICLE.

(2) A CARRIER IS EXEMPT FROM THE REQUIREMENT IN PARAGRAPH (1) OF THIS SUBSECTION IF:

(I) THE REPORTED TOTAL AGGREGATE ANNUAL EARNED PREMIUM FROM ALL HEALTH BENEFIT PLANS OFFERED TO SMALL EMPLOYERS IN THE STATE FOR THE CARRIER AND ANY OTHER CARRIERS IN THE SAME INSURANCE HOLDING COMPANY SYSTEM, AS DEFINED IN § 7–101 OF THIS ARTICLE, IS LESS THAN $20,000,000;

(II) THE COMMISSIONER DETERMINES THAT THE CARRIER COMPLIES WITH THE PROCEDURES ESTABLISHED UNDER PARAGRAPH (3) OF THIS SUBSECTION; AND

(III) WHEN THE CARRIER CEASES TO MEET THE REQUIREMENTS FOR THE EXEMPTION, THE CARRIER PROVIDES TO THE

COMMISSIONER IMMEDIATE NOTICE AND ITS PLAN FOR COMPLYING WITH THE REQUIREMENT IN PARAGRAPH (1) OF THIS SUBSECTION.

(3) THE COMMISSIONER SHALL ESTABLISH PROCEDURES FOR A CARRIER TO SUBMIT EVIDENCE EACH YEAR THAT THE CARRIER MEETS THE REQUIREMENTS NECESSARY TO QUALIFY FOR AN EXEMPTION UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(4) NOTWITHSTANDING THE EXEMPTION PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE COMMISSIONER, IN CONSULTATION WITH THE MARYLAND HEALTH BENEFIT EXCHANGE:

(I) MAY ASSESS THE IMPACT OF THE EXEMPTION PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION AND, BASED ON THAT ASSESSMENT, ALTER THE LIMIT ON THE AMOUNT OF ANNUAL PREMIUMS THAT MAY NOT BE EXCEEDED TO QUALIFY FOR THE EXEMPTION; AND

(II) SHALL MAKE ANY CHANGE IN THE EXEMPTION REQUIREMENT BY REGULATION.

15–1205.

(a) **(1) THIS SUBSECTION APPLIES TO A CARRIER WITH RESPECT TO ANY HEALTH BENEFIT PLAN THAT IS:**

~~(I)~~ A GRANDFATHERED HEALTH PLAN, AS DEFINED IN § 1251 OF THE AFFORDABLE CARE ACT;

~~(II) ISSUED, DELIVERED, OR RENEWED IN THE STATE ON OR BEFORE DECEMBER 31, 2013; AND~~

~~(III) RENEWED IN THE STATE AFTER DECEMBER 31, 2013~~.

[(1)**] (2)** In establishing a community rate for a health benefit plan, a carrier shall use a rating methodology that is based on the experience of all risks covered by that health benefit plan without regard to any factor not specifically authorized under this subsection or subsection **[**(f)**] (G)** of this section.

[(2)**] (3)** A carrier may adjust the community rate only for:

(i) age;

(ii) geography based on the following contiguous areas of the State:

1. the Baltimore metropolitan area;

2. the District of Columbia metropolitan area;

3. Western Maryland; and

4. Eastern and Southern Maryland; and

(iii) health status, as provided in subsection **[**(f)**] (G)** of this section.

[(3)**] (4)** Rates for a health benefit plan may vary based on family composition as approved by the Commissioner.

[(4)**] (5)** (i) Subject to subparagraph (ii) of this paragraph, after applying the risk adjustment factors under paragraph **[**(2)**] (3)** of this subsection, a carrier may offer a discount not to exceed 20% to a small employer for participation in a wellness program.

(ii) A discount offered under subparagraph (i) of this paragraph shall be:

1. applied to reduce the rate otherwise payable by the small employer;

2. actuarially justified;

3. offered uniformly to all small employers; and

4. approved by the Commissioner.

(B) (1) THIS SUBSECTION APPLIES TO A CARRIER WITH RESPECT TO ANY HEALTH BENEFIT PLAN THAT:

(I) IS NOT A GRANDFATHERED HEALTH PLAN, AS DEFINED IN § 1251 OF THE AFFORDABLE CARE ACT; AND

(II) IS ISSUED, DELIVERED, OR RENEWED IN THE STATE ON OR AFTER JANUARY 1, 2014.

(2) IN ESTABLISHING A PREMIUM RATE FOR A HEALTH BENEFIT PLAN, A CARRIER SHALL USE A RATING METHODOLOGY THAT IS BASED ON THE EXPERIENCE OF ALL RISKS COVERED BY THAT HEALTH BENEFIT PLAN WITHOUT REGARD TO ANY FACTOR NOT SPECIFICALLY AUTHORIZED UNDER THIS SUBSECTION.

(3) IN ACCORDANCE WITH § 2701(A) OF THE AFFORDABLE CARE ACT, A PREMIUM RATE MAY VARY ONLY BY:

(I) WHETHER THE HEALTH BENEFIT PLAN COVERS AN INDIVIDUAL OR A FAMILY;

(II) RATING AREA;

(III) AGE, EXCEPT THAT A RATE MAY NOT VARY BY MORE THAN 3 TO 1 FOR ADULTS; AND

(IV) TOBACCO USE, EXCEPT THAT A RATE MAY NOT VARY BY MORE THAN 1.5 TO 1.

(4) A RATE MAY NOT VARY BY ANY FACTOR THAT IS NOT SPECIFIED IN PARAGRAPH (3) OF THIS SUBSECTION.

[(b)**] (C) (1)** A carrier shall apply all risk adjustment factors under subsections (a) and **[**(f)**] (G)** of this section consistently with respect to all health benefit plans that are**:**

(I) issued, delivered, or renewed in the State**; AND**

(II) GRANDFATHERED HEALTH PLANS, AS DEFINED IN § 1251 OF THE AFFORDABLE CARE ACT.

(2) A CARRIER SHALL APPLY ALL RISK ADJUSTMENT FACTORS UNDER SUBSECTION (B) OF THIS SECTION CONSISTENTLY WITH RESPECT TO ALL HEALTH BENEFIT PLANS THAT ARE:

(I) ISSUED, DELIVERED, OR RENEWED IN THE STATE; AND

(II) ~~ARE~~ NOT GRANDFATHERED HEALTH PLANS, AS DEFINED IN § 1251 OF THE AFFORDABLE CARE ACT.

[(c)**] (D)** (1) **THIS SUBSECTION APPLIES TO A CARRIER WITH RESPECT TO ANY HEALTH BENEFIT PLAN THAT IS A GRANDFATHERED HEALTH PLAN.**

(2) Based on the adjustments allowed under subsection **[**(a)(2)(i)**] (A)(3)(I)** and (ii) of this section, a carrier may charge a rate that is 50% above or 50% below the community rate.

~~(2)~~ **(3)** (i) On or before October 1, 2007, the Commission shall adopt regulations that require carriers to collect and report to the Commission data on participation, by rate band, in health benefit plans issued, delivered, or renewed under this subtitle.

(ii) On or before January 1, 2013, the Commission shall report to the Governor and, in accordance with § 2–1246 of the State Government Article, the Senate Finance Committee and the House Health and Government Operations Committee regarding the effect of the 50% rate adjustments authorized under paragraph (1) of this subsection and the effect of the adjustment to the community rate for health status authorized under subsection **[**(f)**] (G)** of this section on participation in health benefit plans issued, delivered, or renewed under this subtitle.

[(d)**] (E)** (1) A carrier shall base its rating methods and practices on commonly accepted actuarial assumptions and sound actuarial principles.

(2) A carrier that is a health maintenance organization and that includes a subrogation provision in its contract as authorized under § 19–713.1(d) of the Health – General Article shall:

(i) use in its rating methodology an adjustment that reflects the subrogation; and

(ii) identify in its rate filing with the Administration, and annually in a form approved by the Commissioner, all amounts recovered through subrogation.

[(e)**] (F) (1) THIS SUBSECTION APPLIES TO A CARRIER WITH RESPECT TO ANY HEALTH BENEFIT PLAN THAT IS:**

~~(I)~~ A GRANDFATHERED HEALTH PLAN, AS DEFINED IN § 1251 OF THE AFFORDABLE CARE ACT;

~~(II) ISSUED, DELIVERED, OR RENEWED IN THE STATE ON OR BEFORE DECEMBER 31, 2013; AND~~

~~(III) RENEWED IN THE STATE AFTER DECEMBER 31, 2013.~~

[(1)**] (2)** A carrier may offer an administrative discount to a small employer if the small employer elects to purchase, for its employees, an annuity, dental insurance, disability insurance, life insurance, long–term care insurance, vision insurance, or, with the approval of the Commissioner, any other insurance sold by the carrier.

[(2)**] (3)** The administrative discount shall be offered under the same terms and conditions for all qualifying small employers.

[(f)**] (G)** (1) A carrier may adjust the community rate for a health benefit plan **THAT IS A GRANDFATHERED HEALTH PLAN, AS DEFINED IN § 1251 OF THE AFFORDABLE CARE ACT,** for health status only if a small employer has not offered a health benefit plan issued under this subtitle to its employees in the 12 months prior to the initial enrollment of the small employer in the health benefit plan.

(2) (i) Based on the adjustment allowed under paragraph (1) of this subsection, in addition to the adjustments allowed under subsection **[**(c)(1)**] (D)(1)** of this section, a carrier may charge:

1. in the first year of enrollment, a rate that is 10% above or below the community rate;

2. in the second year of enrollment, a rate that is 5% above or below the community rate; and

3. in the third year of enrollment, a rate that is 2% above or below the community rate.

(ii) A carrier may not make any adjustment for health status in the community rate of a health benefit plan issued under this subtitle after the third year of enrollment of a small employer in the health benefit plan.

(3) **[**A**] FOR A HEALTH BENEFIT PLAN THAT IS A GRANDFATHERED HEALTH PLAN, AS DEFINED IN § 1251 OF THE AFFORDABLE CARE ACT, A** carrier may use health statements, in a form approved by the Commissioner, and health screenings to establish an adjustment to the community rate for health status as provided in this subsection.

(4) A carrier may not limit coverage offered by the carrier, or refuse to issue a health benefit plan to any small employer that meets the requirements of this subtitle, based on a health status–related factor.

(5) It is an unfair trade practice for a carrier knowingly to provide coverage to a small employer that discriminates against an employee or applicant for employment, based on the health status of the employee or applicant or a dependent of the employee or applicant, with respect to participation in a health benefit plan sponsored by the small employer.

15–1303.

(a) In addition to any other requirements under this article, a carrier that offers individual health benefit plans in this State shall:

(1) have demonstrated the capacity to administer the individual health benefit plans, including adequate numbers and types of administrative staff;

(2) have a satisfactory grievance procedure and ability to respond to calls, questions, and complaints from enrollees or insureds; and

(3) design policies to help ensure that enrollees or insureds have adequate access to providers of health care.

(B) (1) EXCEPT AS PROVIDED IN THIS SUBSECTION AND § 31–110(F) OF THIS ARTICLE, A CARRIER MAY NOT OFFER INDIVIDUAL HEALTH BENEFIT PLANS ~~IN THE INDIVIDUAL MARKET~~ IN THE STATE UNLESS THE CARRIER ALSO OFFERS QUALIFIED HEALTH PLANS, AS DEFINED IN § 31–101 OF THIS ARTICLE, IN THE INDIVIDUAL EXCHANGE OF THE MARYLAND HEALTH BENEFIT EXCHANGE IN COMPLIANCE WITH THE REQUIREMENTS OF TITLE 31 OF THIS ARTICLE.

(2) A CARRIER ~~THAT REPORTS LESS THAN $10,000,000 IN ANNUAL PREMIUMS WRITTEN FROM ALL HEALTH BENEFIT PLANS OFFERED BY THE CARRIER IN THE INDIVIDUAL MARKET IN THE STATE~~ IS EXEMPT FROM THE REQUIREMENT IN PARAGRAPH (1) OF THIS SUBSECTION IF:

(I) THE REPORTED TOTAL AGGREGATE ANNUAL EARNED PREMIUM FROM ALL INDIVIDUAL HEALTH BENEFIT PLANS IN THE STATE FOR THE CARRIER AND ANY OTHER CARRIERS IN THE SAME INSURANCE HOLDING COMPANY SYSTEM, AS DEFINED IN § 7–101 OF THIS ARTICLE, IS LESS THAN $10,000,000;

~~(I)~~ (II) THE COMMISSIONER DETERMINES THAT THE CARRIER COMPLIES WITH THE PROCEDURES ESTABLISHED ~~BY THE COMMISSIONER FOR SUBMITTING EVIDENCE EACH YEAR THAT THE CARRIER MEETS THE REQUIREMENTS NECESSARY TO QUALIFY FOR THIS EXEMPTION~~ UNDER PARAGRAPH (3) OF THIS SUBSECTION; AND

~~(II)~~ (III) WHEN THE CARRIER CEASES TO MEET THE REQUIREMENTS FOR THE EXEMPTION, THE CARRIER PROVIDES TO THE COMMISSIONER IMMEDIATE NOTICE AND ITS PLAN FOR ~~COMING INTO COMPLIANCE WITH THE REQUIREMENT TO OFFER QUALIFIED HEALTH PLANS IN THE INDIVIDUAL EXCHANGE OF THE MARYLAND HEALTH BENEFIT EXCHANGE~~ COMPLYING WITH THE REQUIREMENT IN PARAGRAPH (1) OF THIS SUBSECTION.

(3) THE COMMISSIONER SHALL ESTABLISH PROCEDURES FOR A CARRIER TO SUBMIT EVIDENCE EACH YEAR THAT THE CARRIER MEETS THE

REQUIREMENTS NECESSARY TO QUALIFY FOR AN EXEMPTION UNDER PARAGRAPH (2) OF THIS SUBSECTION.

~~(3)~~ (4) NOTWITHSTANDING THE EXEMPTION PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, ANY CARRIER THAT OFFERS A CATASTROPHIC PLAN, AS DEFINED BY THE AFFORDABLE CARE ACT, IN THE STATE~~, MUST ALSO~~ ALSO MUST OFFER AT LEAST ONE CATASTROPHIC PLAN IN THE MARYLAND HEALTH BENEFIT EXCHANGE.

~~(4)~~ (5) ~~THE~~ NOTWITHSTANDING THE EXEMPTION PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE COMMISSIONER, IN CONSULTATION WITH THE MARYLAND HEALTH BENEFIT EXCHANGE~~,~~:

(I) MAY ASSESS THE IMPACT OF THE EXEMPTION PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION AND, BASED ON THAT ASSESSMENT, ALTER THE ~~AMOUNT OF ANNUAL PREMIUMS NECESSARY~~ LIMIT ON THE AMOUNT OF ANNUAL PREMIUMS THAT MAY NOT BE EXCEEDED TO QUALIFY FOR THE EXEMPTION; AND

(II) SHALL MAKE ANY CHANGE IN THE EXEMPTION REQUIREMENT BY REGULATION.

[(b)**] (C)** (1) For each calendar quarter, a carrier that offers individual health benefit plans in the State shall submit to the Commissioner a report that includes:

(i) the number of applications submitted to the carrier for individual coverage; and

(ii) the number of declinations issued by the carrier for individual coverage.

(2) The report required under paragraph (1) of this subsection shall be filed with the Commissioner no later than 30 days after the last day of the quarter for which the information is provided.

[(c)**] (D)** (1) If a carrier denies coverage under a medically underwritten health benefit plan to an individual in the nongroup market, the carrier shall provide:

(i) the individual with specific information regarding the availability of coverage under the Maryland Health Insurance Plan established under Title 14, Subtitle 5 of this article; and

(ii) the Maryland Health Insurance Plan with:

1. the name and address of the individual who was denied coverage; and

2. if the individual applied for coverage through an insurance producer, the name and, if available, the address of the insurance producer.

(2) The information provided by a carrier under this subsection shall be provided in a manner and form required by the Commissioner.

SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Insurance

31–101.

(a) In this title the following words have the meanings indicated.

~~**(B) "ACTUARIAL VALUE" MEANS THE RATIO OF PLAN CLAIM COSTS AFTER APPLYING ALL COST SHARING PARAMETERS TO TOTAL CLAIM COSTS PRIOR TO APPLICATION OF COST SHARING PARAMETERS.**~~

[(b)**]** ~~**(C)**~~ ~~"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, as amended by the federal Health Care and Education Reconciliation Act of 2010, and any regulations adopted or guidance issued under the Acts.~~

[(c)**]** ~~**(D)**~~ **(B)** "Board" means the Board of Trustees of the Exchange.

[(d)**]** ~~**(E)**~~ **(C)** "Carrier" means:

(1) an insurer authorized to sell health insurance;

(2) a nonprofit health service plan;

(3) a health maintenance organization;

(4) a dental plan organization; or

(5) any other entity providing a plan of health insurance, health benefits, or health services authorized under this article or the Affordable Care Act.

~~**(F)**~~ **(D)** **"COVERAGE LEVEL" MEANS** ~~**A DESIGNATION THAT A QUALIFIED HEALTH PLAN'S ACTUARIAL VALUE AS DETERMINED BY THE COMMISSIONER ACCOUNTS FOR 60%, 70%, 80%, OR 90% OF TOTAL CLAIM COSTS**~~ **A LEVEL OF COVERAGE, AS DEFINED IN § 1302 OF THE AFFORDABLE**

CARE ACT AND AS DETERMINED IN REGULATIONS ADOPTED BY THE SECRETARY, FOR A QUALIFIED HEALTH PLAN.

~~[~~(e)~~]~~ ~~(G)~~ **(1)** "Exchange" means the Maryland Health Benefit Exchange established as a public corporation under § 31–102 of this title.

(2) "EXCHANGE" INCLUDES:

(I) THE INDIVIDUAL EXCHANGE; AND

(II) THE SMALL BUSINESS HEALTH OPTIONS PROGRAM (SHOP EXCHANGE).

~~[~~(f)~~]~~ ~~(H)~~ "Fund" means the Maryland Health Benefit Exchange Fund established under § 31–107 of this subtitle.

~~[~~(g)~~]~~ ~~(I)~~ (1) "Health benefit plan" means a policy, contract, certificate, or agreement offered, issued, or delivered by a carrier to an individual or small employer in the State to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(2) "Health benefit plan" does not include:

(i) coverage only for accident or disability insurance or any combination of accident and disability insurance;

(ii) coverage issued as a supplement to liability insurance;

(iii) liability insurance, including general liability insurance and automobile liability insurance;

(iv) workers' compensation or similar insurance;

(v) automobile medical payment insurance;

(vi) credit–only insurance;

(vii) coverage for on–site medical clinics; or

(viii) other similar insurance coverage, specified in federal regulations issued pursuant to the federal Health Insurance Portability and Accountability Act, under which benefits for health care services are secondary or incidental to other insurance benefits.

(3) "Health benefit plan" does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance, or are otherwise not an integral part of the plan:

(i) limited scope dental or vision benefits;

(ii) benefits for long–term care, nursing home care, home health care, community–based care, or any combination of these benefits; or

(iii) such other similar limited benefits as are specified in federal regulations issued pursuant to the federal Health Insurance Portability and Accountability Act.

(4) "Health benefit plan" does not include the following benefits if the benefits are provided under a separate policy, certificate, or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether the benefits are provided under any group health plan maintained by the same plan sponsor:

(i) coverage only for a specified disease or illness; or

(ii) hospital indemnity or other fixed indemnity insurance.

(5) "Health benefit plan" does not include the following if offered as a separate policy, certificate, or contract of insurance:

(i) Medicare supplemental insurance (as defined under § 1882(g)(1) of the Social Security Act);

(ii) coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)); or

(iii) similar supplemental coverage provided to coverage under a group health plan.

~~(J)~~ (H) "INDIVIDUAL EXCHANGE" MEANS THE DIVISION OF THE EXCHANGE THAT SERVES THE INDIVIDUAL HEALTH INSURANCE MARKET.

~~(K)~~ (I) "INDIVIDUAL EXCHANGE NAVIGATOR" MEANS AN INDIVIDUAL WHO:

(1) HOLDS AN INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION; AND

(2) ~~PERFORMS THE FUNCTIONS UNDER § 31–113(C)~~ PROVIDES THE SERVICES DESCRIBED IN § 31–113(D)(1) OF THIS TITLE FOR AN INDIVIDUAL EXCHANGE NAVIGATOR ENTITY.

(J) "INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION" MEANS A CERTIFICATE ISSUED BY THE INDIVIDUAL EXCHANGE THAT AUTHORIZES AN INDIVIDUAL TO ACT AS AN INDIVIDUAL EXCHANGE NAVIGATOR.

~~(I)~~ (K) "INDIVIDUAL EXCHANGE NAVIGATOR ENTITY" MEANS A COMMUNITY–BASED ORGANIZATION OR OTHER ENTITY ~~ENGAGED~~ OR A PARTNERSHIP OF ENTITIES THAT:

(1) IS AUTHORIZED BY THE INDIVIDUAL EXCHANGE ~~WHICH~~ UNDER § 31–113(F) OF THIS TITLE; AND

(2) EMPLOYS OR ENGAGES ~~CERTIFIED~~ INDIVIDUAL EXCHANGE NAVIGATORS TO ~~PERFORM THE FUNCTIONS IN § 31–113(C)~~ PROVIDE THE SERVICES DESCRIBED IN § 31–113(D)(1) OF THIS TITLE.

(L) "INDIVIDUAL EXCHANGE NAVIGATOR ENTITY AUTHORIZATION" MEANS A GRANT OF AUTHORITY FROM THE INDIVIDUAL EXCHANGE TO AN INDIVIDUAL EXCHANGE NAVIGATOR ENTITY UNDER § 31–113(F) OF THIS TITLE.

~~(M) "INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION" MEANS A CERTIFICATE ISSUED BY THE INDIVIDUAL EXCHANGE THAT AUTHORIZES AN INDIVIDUAL TO ACT AS AN INDIVIDUAL EXCHANGE NAVIGATOR.~~

~~(N)~~ (M) "INSURANCE PRODUCER AUTHORIZATION" MEANS A PERMIT ISSUED BY THE SHOP EXCHANGE OR INDIVIDUAL EXCHANGE TO ALLOW AN INSURANCE PRODUCER TO SELL QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS IN THE SHOP EXCHANGE OR INDIVIDUAL EXCHANGE.

[(h)**]** **~~(O)~~ (N)** "Managed care organization" has the meaning stated in § 15–101 of the Health – General Article.

~~(P)~~ (O) "MARYLAND HEALTH CARE REFORM COORDINATING COUNCIL" MEANS THE JOINT EXECUTIVE–LEGISLATIVE COUNCIL ESTABLISHED AND EXPANDED BY EXECUTIVE ORDERS 01.01.2010.07 AND 01.01.2011.10.

[(i)**]** **~~(Q)~~ (P)** "Qualified dental plan" means a **DENTAL** plan certified by the Exchange that provides limited scope dental benefits, as described in ~~§ 31–108(b)~~ **§ 31–108(B)(2)** of this title.

[(j)**]** ~~**(R)**~~ **(Q)** "Qualified employer" means a small employer that elects to make its full–time employees eligible for one or more qualified health plans offered through the SHOP Exchange and, at the option of the employer, some or all of its part–time employees, provided that the employer:

(1) has its principal place of business in the State and elects to provide coverage through the SHOP Exchange to all of its eligible employees, wherever employed; or

(2) elects to provide coverage through the SHOP Exchange to all of its eligible employees who are principally employed in the State.

[(k)**]** ~~**(S)**~~ **(R)** "Qualified health plan" means a health benefit plan that has been certified by the Exchange to meet the criteria for certification described in § 1311(c) of the Affordable Care Act and **[**§ 31–109**]** **§ 31–115** of this title.

[(l)**]** ~~**(T)**~~ **(S)** "Qualified individual" means an individual, including a minor, who at the time of enrollment:

(1) is seeking to enroll in a qualified health plan offered to individuals through the Exchange;

(2) resides in the State;

(3) is not incarcerated, other than incarceration pending disposition of charges; and

(4) is, and reasonably is expected to be for the entire period for which enrollment is sought, a citizen or national of the United States or an alien lawfully present in the United States.

(T) "QUALIFIED PLAN" MEANS A:

(1) QUALIFIED HEALTH PLAN;

(2) QUALIFIED DENTAL PLAN; AND

(3) QUALIFIED VISION PLAN.

(U) "QUALIFIED VISION PLAN" MEANS A VISION PLAN CERTIFIED BY THE EXCHANGE THAT PROVIDES LIMITED SCOPE VISION BENEFITS, AS DESCRIBED IN § 31–108(B)(3) OF THIS TITLE.

[(m)**]** ~~**(U)**~~ **(V)** "Secretary" means the Secretary of the federal Department of Health and Human Services.

[(n)**]** ~~(V)~~ **(W)** "SHOP Exchange" means the small business health options program authorized under ~~§ 31–108(b)(12)~~ **§ 31–108(B)(13)** of this title.

~~(W)~~ **(X)** **"SHOP EXCHANGE NAVIGATOR" MEANS AN INDIVIDUAL ENGAGED BY THE SHOP EXCHANGE AND AUTHORIZED BY THE COMMISSIONER TO ~~PERFORM THE FUNCTIONS SET FORTH~~ PROVIDE THE SERVICES DESCRIBED IN § 31–112(C)(1) OF THIS TITLE.**

~~(X)~~ **(Y)** **"SHOP EXCHANGE NAVIGATOR LICENSE" MEANS A LICENSE ISSUED BY THE COMMISSIONER THAT AUTHORIZES AN INDIVIDUAL TO CARRY OUT THE FUNCTIONS SET FORTH IN § 31–112(C) OF THIS TITLE IN THE SHOP EXCHANGE.**

[(o)**]** ~~(Y)~~ **(Z)** (1) "Small employer" means an employer that, during the preceding calendar year, employed an average of not more than:

(i) 50 employees if the preceding calendar year ended on or before January 1, 2016; and

(ii) 100 employees if the preceding calendar year ended after January 1, 2016.

(2) For purposes of this subsection:

(i) all persons treated as a single employer under § 414(b), (c), (m), or (o) of the Internal Revenue Code shall be treated as a single employer;

(ii) an employer and any predecessor employer shall be treated as a single employer;

(iii) all employees shall be counted, including part–time employees and employees who are not eligible for coverage through the employer;

(iv) if an employer was not in existence throughout the preceding calendar year, the determination of whether the employer is a small employer shall be based on the average number of employees that the employer is reasonably expected to employ on business days in the current calendar year; and

(v) an employer that makes enrollment in qualified health plans available to its employees through the SHOP Exchange, and would cease to be a small employer by reason of an increase in the number of its employees, shall continue to be treated as a small employer for purposes of this title as long as it continuously makes enrollment through the SHOP Exchange available to its employees.

~~(Z)~~ **(AA)** **"STATE BENCHMARK PLAN" MEANS THE HEALTH BENEFIT PLAN DESIGNATED BY THE STATE, UNDER REGULATIONS ADOPTED BY THE**

SECRETARY, TO SERVE AS THE STANDARD FOR THE ESSENTIAL HEALTH BENEFITS TO BE OFFERED BY:

(1) QUALIFIED HEALTH PLANS INSIDE THE EXCHANGE; ~~AND~~

~~(2) HEALTH BENEFIT PLANS OFFERED IN THE INDIVIDUAL AND SMALL GROUP MARKETS OUTSIDE THE EXCHANGE~~

(2) INDIVIDUAL HEALTH BENEFIT PLANS, EXCEPT GRANDFATHERED HEALTH PLANS, AS DEFINED IN § 1251 OF THE AFFORDABLE CARE ACT; AND

(3) HEALTH BENEFIT PLANS OFFERED TO SMALL EMPLOYERS, EXCEPT GRANDFATHERED HEALTH PLANS, AS DEFINED IN § 1251 OF THE AFFORDABLE CARE ACT.

31–102.

(d) Nothing in this title, and no regulation adopted or other action taken by the Exchange under this title, may be construed to:

(1) preempt or supersede:

(i) the authority of the Commissioner to regulate insurance business in the State; or

(ii) the requirements of the Affordable Care Act; **[**or**]**

(2) authorize the Exchange to carry out any function not authorized by the Affordable Care Act**; OR**

(3) AUTHORIZE THE EXCHANGE TO OFFER ANY PRODUCTS OR SERVICES EXCEPT QUALIFIED HEALTH PLANS ~~OR~~, QUALIFIED DENTAL PLANS, AND QUALIFIED VISION PLANS.

31–106.

(c) **(1)** In addition to the powers set forth elsewhere in this title, the Board may:

[(1)**]** **(I)** adopt and alter an official seal;

[(2)**]** **(II)** sue, be sued, plead, and be impleaded;

[(3)**]** **(III)** adopt bylaws, rules, and policies;

[(4)**]** **(IV)** **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION,** adopt regulations to carry out this title:

[(i)**]** **1.** in accordance with Title 10, Subtitle 1 of the State Government Article; and

[(ii)**]** **2.** without conflicting with or preventing application of regulations adopted by the Secretary under Title 1, Subtitle D of the Affordable Care Act;

[(5)**]** **(V)** maintain an office at the place designated by the Board;

[(6)**]** **(VI)** enter into any agreements or contracts and execute the instruments necessary or convenient to manage its own affairs and carry out the purposes of this title;

[(7)**]** **(VII)** apply for and receive grants, contracts, or other public or private funding; and

[(8)**]** **(VIII)** do all things necessary or convenient to carry out the powers granted by this title.

(2) UNLESS WAIVED BY THE CHAIRS OF THE COMMITTEES, AT LEAST 30 DAYS BEFORE SUBMITTING ANY PROPOSED REGULATION TO THE MARYLAND REGISTER FOR PUBLICATION, THE BOARD SHALL SUBMIT THE PROPOSED REGULATION TO THE SENATE FINANCE COMMITTEE AND THE HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE.

(g) To carry out the purposes of this title, the Board shall:

(1) create and consult with advisory committees; **[**and**]**

(2) HAVE AT LEAST TWO STANDING ADVISORY COMMITTEES WHOSE MEMBERS, TO THE EXTENT PRACTICABLE, REFLECT THE GENDER, RACIAL, ETHNIC, AND GEOGRAPHIC DIVERSITY OF THE STATE; AND

[(2)**] (3)** appoint to the advisory committees representatives of:

(i) insurers or health maintenance organizations offering health benefit plans in the State;

(ii) nonprofit health service plans offering health benefit plans in the State;

(iii) licensed health insurance producers and advisers;

(iv) third–party administrators;

(v) health care providers, including:

1. hospitals;

2. long–term care facilities;

3. mental health providers;

4. developmental disability providers;

5. substance abuse treatment providers;

6. Federally Qualified Health Centers;

7. physicians;

8. nurses;

9. experts in services and care coordination for criminal and juvenile justice populations;

10. licensed hospice providers; and

11. other health care professionals;

(vi) managed care organizations;

(vii) employers, including large, small, and minority–owned employers;

(viii) public employee unions, including public employee union members who are caseworkers in local departments of social services with direct knowledge of information technology systems used for Medicaid eligibility determination;

(ix) consumers, including individuals who:

1. reside in lower–income and racial or ethnic minority communities;

2. have chronic diseases or disabilities; or

3. belong to other hard–to–reach or special populations;

(x) individuals with knowledge and expertise in advocacy for consumers described in item (ix) of this item;

(xi) public health researchers and other academic experts with knowledge and background relevant to the functions and goals of the Exchange, including knowledge of the health needs and health disparities among the State's diverse communities; and

(xii) any other stakeholders identified by the Exchange as having knowledge or representing interests relevant to the functions and duties of the Exchange.

31–108.

(a) On or before January 1, 2014, the functions and operations of the Exchange shall include at a minimum all functions required by § 1311(d)(4) of the Affordable Care Act.

(b) On or before January 1, 2014, in compliance with § 1311(d)(4) of the Affordable Care Act, the Exchange shall:

(1) make qualified ~~health plans AND QUALIFIED DENTAL~~ **PLANS** available to qualified individuals and qualified employers;

(2) allow a carrier to offer a qualified dental plan through the Exchange that provides limited scope dental benefits that meet the requirements of § 9832(c)(2)(a) of the Internal Revenue Code, either separately ~~or~~**,** in conjunction with**, OR AS AN ENDORSEMENT TO** a qualified health plan, provided that the qualified health plan provides pediatric dental benefits that meet the requirements of § 1302(b)(1)(j) of the Affordable Care Act;

(3) ALLOW A CARRIER TO OFFER A QUALIFIED VISION PLAN THROUGH THE EXCHANGE THAT PROVIDES LIMITED SCOPE VISION BENEFITS THAT MEET THE REQUIREMENTS OF § 9832(C)(2)(A) OF THE INTERNAL REVENUE CODE, EITHER SEPARATELY, IN CONJUNCTION WITH, OR AS AN ENDORSEMENT TO A QUALIFIED HEALTH PLAN, PROVIDED THAT THE QUALIFIED HEALTH PLAN PROVIDES PEDIATRIC VISION BENEFITS THAT MEET THE REQUIREMENTS OF § 1302(B)(1)(J) OF THE AFFORDABLE CARE ACT;

~~(3)~~ **(4) CONSISTENT WITH THE GUIDELINES DEVELOPED BY THE SECRETARY UNDER § 1311(C) OF THE AFFORDABLE CARE ACT,** implement procedures for the certification, recertification, and decertification of**:**

(I) health benefit plans as qualified health plans ~~**AND;**~~

(II) **DENTAL PLANS AS QUALIFIED DENTAL PLANS**~~, consistent with guidelines developed by the Secretary under § 1311(c) of the Affordable Care Act~~**; AND**

(III) **VISION PLANS AS QUALIFIED VISION PLANS**;

~~(4)~~ **(5)** provide for the operation of a toll–free telephone hotline to respond to requests for assistance;

~~(5)~~ **(6)** provide for initial, annual, and special enrollment periods, in accordance with guidelines adopted by the Secretary under § 1311(c)(6) of the Affordable Care Act;

~~(6)~~ **(7)** maintain a Web site through which enrollees and prospective enrollees of qualified ~~health plans AND QUALIFIED DENTAL~~ **PLANS** may obtain standardized comparative information on qualified health plans ~~and~~**,** qualified dental plans**, AND QUALIFIED VISION PLANS**;

~~(7)~~ **(8)** with respect to each qualified ~~health PLAN AND QUALIFIED DENTAL~~ plan offered through the Exchange:

(i) assign a rating **[**for**]** **TO** each qualified ~~health PLAN AND QUALIFIED DENTAL~~ plan in accordance with the criteria developed by the Secretary under § 1311(c)(3) of the Affordable Care Act and any additional criteria that may be applicable under the laws of the State and regulations adopted by the Exchange under this title; and

(ii) determine each qualified health plan's **[**level of**]** coverage ~~LEVELS~~ **LEVEL** in accordance with regulations adopted by the Secretary under § 1302(d)(2)(a) of the Affordable Care Act and any additional regulations adopted by the Exchange under this title;

~~(8)~~ **(9) (I)** present qualified ~~health PLAN AND QUALIFIED DENTAL~~ plan options offered by the Exchange in a standardized format, including the use of the uniform outline of coverage established under § 2715 of the federal Public Health Service Act; **AND**

(II) TO THE EXTENT NECESSARY, MODIFY THE STANDARDIZED FORMAT TO ACCOMMODATE DIFFERENCES IN QUALIFIED HEALTH PLAN, QUALIFIED DENTAL PLAN, AND QUALIFIED VISION PLAN OPTIONS;

~~(9)~~ **(10)** in accordance with § 1413 of the Affordable Care Act, provide information and make determinations regarding eligibility for the following programs:

(i) the Maryland Medical Assistance Program under Title XIX of the Social Security Act;

(ii) the Maryland Children's Health Program under Title XXI of the Social Security Act; and

(iii) any applicable State or local public health insurance program;

~~(10)~~ **(11)** facilitate the enrollment of any individual who the Exchange determines is eligible for a program described in item ~~(9)~~ **(10)** of this subsection;

~~(11)~~ **(12)** establish and make available by electronic means a calculator to determine the actual cost of coverage of a qualified ~~health plan and a qualified dental~~ plan offered by the Exchange after application of any premium tax credit under § 36b of the Internal Revenue Code and any cost–sharing reduction under § 1402 of the Affordable Care Act;

~~(12)~~ **(13)** **IN ACCORDANCE WITH THIS TITLE,** establish a SHOP Exchange through which qualified employers may access coverage for their employees at specified **[**levels of**]** coverage **LEVELS** and meet standards for the federal qualified employer tax credit;

~~(13)~~ **(14)** implement a certification process for individuals exempt from the individual responsibility requirement and penalty under § 5000a of the Internal Revenue Code on the grounds that:

(i) no affordable qualified health plan that covers the individual is available through the Exchange or the individual's employer; or

(ii) the individual meets other requirements under the Affordable Care Act that make the individual eligible for the exemption;

~~(14)~~ **(15)** implement a process for transfer to the United States Secretary of the Treasury the name and taxpayer identification number of each individual who:

(i) is certified as exempt from the individual responsibility requirement;

(ii) is employed but determined eligible for the premium tax credit on the grounds that:

1. the individual's employer does not provide minimum essential coverage; or

2. the employer's coverage is determined to be unaffordable for the individual or does not provide the requisite minimum actuarial value;

(iii) notifies the Exchange under § 1411(b)(4) of the Affordable Care Act that the individual has changed employers; **[**and**]** **OR**

(iv) ceases coverage under a qualified health plan during the plan year, together with the date coverage ceased;

~~(15)~~ **(16)** provide notice to employers of employees who cease coverage under a qualified health plan during a plan year, together with the date coverage ceased;

~~(16)~~ **(17)** conduct processes required by the Secretary and the United States Secretary of the Treasury to determine eligibility for premium tax credits, reduced cost–sharing, and individual responsibility requirement exemptions;

~~(17)~~ **(18)** establish a Navigator Program in accordance with § 1311(i) of the Affordable Care Act and **[**any requirements established under**]** this title;

~~(18) (i) establish a process, in accordance with § 10108 of the Affordable Care Act, for crediting the amount of free choice vouchers to premiums of qualified health plans and qualified dental plans in which qualified employees are enrolled; and~~

~~(ii) collect the amount credited from the employer offering the qualified health plan;~~

~~(19)~~ **(19)** carry out a plan to provide appropriate assistance for consumers seeking to purchase products through the Exchange, including the implementation of**:**

(I) ~~the **[**Navigator Program**]**~~ **A NAVIGATOR PROGRAM FOR THE SHOP EXCHANGE AND A NAVIGATOR PROGRAM FOR THE INDIVIDUAL EXCHANGE;** and

(II) **THE** toll–free hotline required under item ~~(4)~~ **(5)** of this subsection; and

(20) carry out a public relations and advertising campaign to promote the Exchange.

(c) If ~~the~~ **AN** individual enrolls in another type of minimum essential coverage**,** neither the Exchange nor a carrier offering qualified health plans through

the Exchange may charge ~~an~~ **THE** individual a fee or penalty for termination of coverage on the grounds that:

(1) the individual has become newly eligible for that coverage; or

(2) the individual's employer–sponsored coverage has become affordable under the standards of § 36b(c)(2)(c) of the Internal Revenue Code.

(d) The Exchange, through the advisory committees established under § 31–106(g) of this title or through other means, shall consult with and consider the recommendations of the stakeholders represented on the advisory committees in the exercise of its duties under this title.

(e) The Exchange may not make available:

(1) any health benefit plan that is not a qualified health plan; ~~or~~

(2) any dental plan that is not a qualified dental plan**; OR**

(3) ANY VISION PLAN THAT IS NOT A QUALIFIED VISION PLAN.

31–109.

(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE EXCHANGE MAY ENTER INTO AGREEMENTS OR MEMORANDA OF UNDERSTANDING WITH ANOTHER STATE TO:

(1) DEVELOP JOINT OR RECIPROCAL CERTIFICATION PROCESSES;

(2) DEVELOP CONSISTENCY IN QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS OFFERED ACROSS STATES; AND

(3) COORDINATE RESOURCES FOR ADMINISTRATIVE PROCESSES NECESSARY TO SUPPORT:

(I) CERTIFICATION OF QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS; AND

(II) OTHER FUNCTIONS OF THE EXCHANGE.

(B) ANY INTERSTATE AGREEMENTS OR MEMORANDA OF UNDERSTANDING ENTERED INTO UNDER SUBSECTION (A) OF THIS SECTION SHALL COMPLY WITH AND ADVANCE:

(1) THE PURPOSES AND REQUIREMENTS OF THIS TITLE AND THE AFFORDABLE CARE ACT; AND

(2) THE POLICIES AND REGULATIONS ADOPTED BY THE EXCHANGE UNDER THIS TITLE.

31–110.

(A) IN MAKING QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS AVAILABLE TO INDIVIDUALS AND EMPLOYERS THROUGH CONTRACTS WITH CARRIERS, THE EXCHANGE FIRST SHALL SEEK TO:

(1) ACHIEVE A ROBUST AND STABLE ENROLLMENT IN THE EXCHANGE; AND

(2) DECREASE THE NUMBER OF STATE RESIDENTS WITHOUT HEALTH INSURANCE COVERAGE.

~~(2) USE THE MARKET IMPACT ATTAINED THROUGH A ROBUST AND STABLE ENROLLMENT TO PURSUE KEY OBJECTIVES SUCH AS HIGH QUALITY STANDARDS OF CARE, DELIVERY SYSTEM REFORMS, HEALTH EQUITY, IMPROVED PATIENT EXPERIENCE AND OUTCOMES, AND MEANINGFUL COST CONTROLS WITHIN THE HEALTH CARE SYSTEM.~~

(B) (1) SUBJECT TO SUBSECTION (E) OF THIS SECTION, THE EXCHANGE, WITH THE MARKET IMPACT AND LEVERAGE ATTAINED THROUGH A ROBUST AND STABLE ENROLLMENT, MAY USE ALTERNATIVE CONTRACTING OPTIONS AND ACTIVE PURCHASING STRATEGIES TO INCREASE AFFORDABILITY AND QUALITY OF CARE FOR CONSUMERS AND LOWER COSTS IN THE HEALTH CARE SYSTEM OVERALL.

(2) THE EXCHANGE'S EFFORTS TO INCREASE AFFORDABILITY AND QUALITY OF CARE AND TO LOWER COSTS MAY INCLUDE PURSUING KEY OBJECTIVES SUCH AS HIGHER STANDARDS OF CARE, CONTINUITY OF CARE, DELIVERY SYSTEM REFORMS, HEALTH EQUITY, IMPROVED PATIENT EXPERIENCE AND OUTCOMES, AND MEANINGFUL COST CONTROLS WITHIN THE HEALTH CARE SYSTEM.

~~(B)~~ (C) IN EMPLOYING CONTRACTING STRATEGIES TO IMPLEMENT ~~SUBSECTION (A) OF~~ THIS SECTION, THE EXCHANGE SHALL CONSIDER, ON A CONTINUING BASIS, THE NEED TO BALANCE:

(1) THE IMPORTANCE OF SUFFICIENT ENROLLMENT AND CARRIER PARTICIPATION TO ENSURE THE EXCHANGE'S SUCCESS AND LONG–TERM VIABILITY; AND

(2) ITS ~~PROMOTION OF~~ PROGRESS IN ACHIEVING THE KEY OBJECTIVES STATED IN SUBSECTION ~~(A)(2)~~ (B)(2) OF THIS SECTION.

~~(C)~~ (D) BEGINNING JANUARY 1, 2014, THE EXCHANGE:

(1) SHALL ALLOW ANY QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS THAT MEET THE MINIMUM STANDARDS ESTABLISHED BY THE EXCHANGE UNDER THIS TITLE TO BE OFFERED IN THE EXCHANGE; AND

(2) MAY EXERCISE ITS AUTHORITY UNDER § 31–115(B)(9) OF THIS TITLE TO ESTABLISH MINIMUM STANDARDS FOR QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS IN ADDITION TO THOSE REQUIRED BY THE AFFORDABLE CARE ACT.

~~(D)~~ (E) ~~AFTER DECEMBER 31, 2014,~~ SUBJECT TO SUBSECTIONS (F) AND (G) OF THIS SECTION, BEGINNING JANUARY 1, 2016, IN ADDITION TO ESTABLISHING MINIMUM STANDARDS FOR QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS, THE EXCHANGE MAY EMPLOY ALTERNATIVE CONTRACTING OPTIONS AND ACTIVE PURCHASING STRATEGIES, INCLUDING:

(1) COMPETITIVE BIDDING;

(2) NEGOTIATION WITH CARRIERS TO ACHIEVE OPTIMAL PARTICIPATION AND PLAN OFFERINGS IN THE EXCHANGE; AND

(3) PARTNERING WITH CARRIERS TO PROMOTE CHOICE AND AFFORDABILITY FOR INDIVIDUALS AND SMALL EMPLOYERS AMONG QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS OFFERING HIGH VALUE, PATIENT–CENTERED, TEAM–BASED CARE, VALUE–BASED INSURANCE DESIGN, AND OTHER HIGH QUALITY AND AFFORDABLE OPTIONS.

~~(E) IN EMPLOYING ALTERNATIVE CONTRACTING OPTIONS AND ACTIVE PURCHASING STRATEGIES, THE EXCHANGE SHALL:~~

~~(1) CONTINUALLY ASSESS AND ADJUST FOR THE IMPACT OF THE OPTIONS AND STRATEGIES ON ITS SUSTAINABILITY, THE QUALITY AND AFFORDABILITY OF ITS QUALIFIED HEALTH PLANS AND QUALIFIED DENTAL PLANS, AND THE ACHIEVEMENT OF ITS OTHER KEY OBJECTIVES; AND~~

~~(2) WORK WITH THE COMMISSIONER TO REASSESS, IN LIGHT OF ITS CONTRACTING STRATEGIES, THE PARTICIPATION REQUIREMENTS FOR CARRIERS IN THE INDIVIDUAL AND SMALL GROUP MARKETS OUTSIDE THE EXCHANGE AS SET FORTH IN §§ 15–1204(B) AND 15–1303(B) OF THIS ARTICLE.~~

(F) DURING ANY YEAR IN WHICH THE EXCHANGE EMPLOYS ALTERNATIVE CONTRACTING OPTIONS AND ACTIVE PURCHASING STRATEGIES, THE PARTICIPATION REQUIREMENTS SET FORTH IN §§ 15–1204.1(B) AND 15–1303(B) OF THIS ARTICLE FOR CARRIERS IN THE INDIVIDUAL AND SMALL GROUP MARKETS OUTSIDE THE EXCHANGE SHALL BE SUSPENDED.

(G) BEFORE EMPLOYING AN ALTERNATIVE CONTRACTING OPTION OR ACTIVE PURCHASING STRATEGY, THE EXCHANGE:

(1) ON OR AFTER DECEMBER 1, BUT NOT LATER THAN THE FIRST DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY, SHALL SUBMIT TO THE SENATE FINANCE COMMITTEE AND THE HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE, IN ACCORDANCE WITH § 2–1246 OF THE STATE GOVERNMENT ARTICLE, A PLAN FOR THE USE OF THE ALTERNATIVE CONTRACTING OPTION OR ACTIVE PURCHASING STRATEGY, INCLUDING AN ANALYSIS OF:

(I) THE OBJECTIVES TO BE ACHIEVED THROUGH USE OF THE ALTERNATIVE CONTRACTING OPTION OR ACTIVE PURCHASING STRATEGY; AND

(II) THE IMPACT ON THE INSURANCE MARKETS INSIDE AND OUTSIDE THE EXCHANGE AND ON CONSUMERS; AND

(2) SHALL ALLOW THE COMMITTEES TO HAVE 90 DAYS FOR REVIEW AND COMMENT.

31–111.

(A) THE SHOP EXCHANGE:

(1) SHALL BE A SEPARATE INSURANCE MARKET WITHIN THE EXCHANGE FOR SMALL EMPLOYERS; AND

(2) MAY NOT BE MERGED WITH THE INDIVIDUAL MARKET OF THE INDIVIDUAL EXCHANGE.

(B) THE SHOP EXCHANGE SHALL BE DESIGNED TO BALANCE:

(1) THE VIABILITY OF THE SHOP EXCHANGE AS AN ALTERNATIVE FOR QUALIFIED EMPLOYERS AND THEIR EMPLOYEES WHO HAVE NOT BEEN ABLE HISTORICALLY TO ACCESS AND AFFORD INSURANCE IN THE SMALL GROUP MARKET;

(2) THE NEED FOR STABILITY AND PREDICTABILITY IN EMPLOYERS' HEALTH INSURANCE COSTS INCURRED ON BEHALF OF THEIR EMPLOYEES; ~~AND~~

(3) THE DESIRABILITY OF PROVIDING EMPLOYEES WITH A MEANINGFUL CHOICE AMONG HIGH–QUALITY AND AFFORDABLE HEALTH BENEFIT PLANS; AND

(4) THE NEED TO FACILITATE CONTINUITY OF CARE FOR EMPLOYEES WHO CHANGE EMPLOYERS OR HEALTH BENEFIT PLANS.

(C) THE SHOP EXCHANGE SHALL ALLOW QUALIFIED EMPLOYERS TO:

(1) AS REQUIRED BY REGULATIONS ADOPTED BY THE SECRETARY UNDER THE AFFORDABLE CARE ACT, DESIGNATE A COVERAGE LEVEL WITHIN WHICH THEIR EMPLOYEES MAY CHOOSE ANY QUALIFIED HEALTH PLAN; OR

(2) DESIGNATE A CARRIER OR AN INSURANCE HOLDING COMPANY SYSTEM, AS DEFINED IN § 7–101 OF THIS ARTICLE, AND A MENU OF QUALIFIED HEALTH PLANS OFFERED BY THE CARRIER OR THE INSURANCE HOLDING COMPANY SYSTEM IN THE SHOP EXCHANGE FROM WHICH THEIR EMPLOYEES MAY CHOOSE.

(D) IN ADDITION TO THE OPTIONS SET FORTH IN SUBSECTION (C) OF THIS SECTION, THE SHOP EXCHANGE ALSO MAY ALLOW QUALIFIED EMPLOYERS TO DESIGNATE ONE OR MORE QUALIFIED DENTAL PLANS AND QUALIFIED VISION PLANS TO BE MADE AVAILABLE TO THEIR EMPLOYEES.

~~(D)~~ (E) ON OR AFTER JANUARY 1, 2016, IN ORDER TO CONTINUE TO PROMOTE THE SHOP EXCHANGE'S PRINCIPLES OF ACCESSIBILITY, CHOICE, AFFORDABILITY, AND SUSTAINABILITY, AND AS IT OBTAINS MORE DATA ON ADVERSE SELECTION, COST, ENROLLMENT, AND OTHER FACTORS, THE SHOP EXCHANGE:

(1) MAY REASSESS AND MODIFY THE MANNER IN WHICH THE SHOP EXCHANGE ALLOWS QUALIFIED EMPLOYERS TO OFFER, AND THEIR EMPLOYEES TO CHOOSE, QUALIFIED HEALTH PLANS AND COVERAGE LEVELS; ~~AND~~

(2) IN REASSESSING EMPLOYER AND EMPLOYEE CHOICE, MAY CONSIDER OPTIONS WHICH WOULD PROMOTE THE ADDITIONAL OBJECTIVE OF INCREASING THE PORTABILITY OF EMPLOYEES' HEALTH INSURANCE AS EMPLOYEES MOVE FROM EMPLOYER TO EMPLOYER OR TRANSITION IN AND OUT OF EMPLOYMENT; AND

(3) SHALL IMPLEMENT ANY MODIFICATION OF OFFERINGS AND CHOICE THROUGH REGULATIONS ADOPTED BY THE SHOP EXCHANGE.

31–112.

(A) THERE IS A NAVIGATOR PROGRAM FOR THE SHOP EXCHANGE.

(B) THE NAVIGATOR PROGRAM FOR THE SHOP EXCHANGE SHALL:

~~(1)~~ FOCUS OUTREACH EFFORTS AND PROVIDE HEALTH INSURANCE ENROLLMENT AND ELIGIBILITY SERVICES TO SMALL EMPLOYERS THAT DO NOT OFFER HEALTH INSURANCE TO THEIR EMPLOYEES~~; AND~~

~~(2) RELY ON THE STATE'S INSURANCE PRODUCER COMMUNITY TO CONTINUE TO PROVIDE WIDESPREAD AND COMPREHENSIVE ENROLLMENT AND CONSUMER ASSISTANCE SERVICES TO SMALL EMPLOYERS BOTH INSIDE AND OUTSIDE THE SHOP EXCHANGE~~.

(C) (1) TO ~~ACHIEVE THESE OBJECTIVES~~ CARRY OUT ITS PURPOSE AND IN COMPLIANCE WITH THE AFFORDABLE CARE ACT, ~~A SHOP EXCHANGE NAVIGATOR, WITH RESPECT ONLY TO QUALIFIED HEALTH PLANS AND QUALIFIED DENTAL PLANS OFFERED IN THE SHOP EXCHANGE, MAY~~ THE SHOP EXCHANGE NAVIGATOR PROGRAM, WITH RESPECT ONLY TO QUALIFIED PLANS OFFERED IN THE SHOP EXCHANGE, SHALL PROVIDE COMPREHENSIVE CONSUMER ASSISTANCE SERVICES, INCLUDING:

(I) ~~CONDUCT~~ CONDUCTING EDUCATION AND OUTREACH TO SMALL EMPLOYERS;

(II) ~~DISTRIBUTE~~ DISTRIBUTING INFORMATION ABOUT THE SHOP EXCHANGE, INCLUDING INFORMATION ABOUT:

1. OPTIONS WITH RESPECT TO EMPLOYER AND EMPLOYEE CHOICE;

2. PROCEDURES FOR ENROLLING IN QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS; AND

3. THE AVAILABILITY OF APPLICABLE TAX CREDITS;

~~(III) SELL QUALIFIED HEALTH PLANS AND QUALIFIED DENTAL PLANS OFFERED IN THE SHOP EXCHANGE;~~

~~(IV)~~ **(III)** ~~FACILITATE~~ **FACILITATING:**

1. QUALIFIED ~~HEALTH PLAN AND QUALIFIED DENTAL~~ PLAN SELECTION, BASED ON THE NEEDS OF THE EMPLOYEE;

2. APPLICATION PROCESSES~~,~~;

3. ENROLLMENT~~,~~;

4. RENEWALS~~,~~; AND

5. DISENROLLMENT;

~~(V)~~ **(IV)** ~~CONDUCT~~ **CONDUCTING** ~~TAX CREDIT~~ **ELIGIBILITY DETERMINATIONS AND REDETERMINATIONS FOR TAX CREDITS;**

~~(VI)~~ **(V)** ~~PROVIDE~~ **PROVIDING REFERRALS TO APPROPRIATE AGENCIES ~~FOR~~, INCLUDING THE ATTORNEY GENERAL'S HEALTH EDUCATION AND ADVOCACY UNIT AND THE ADMINISTRATION, FOR APPLICANTS AND ENROLLEES WITH GRIEVANCES, COMPLAINTS, ~~APPEALS,~~ OR QUESTIONS;**

~~(VII)~~ **(VI)** ~~PROVIDE~~ **PROVIDING ALL INFORMATION AND SERVICES IN A MANNER THAT IS CULTURALLY AND LINGUISTICALLY APPROPRIATE AND ENSURES ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES; AND**

~~(VIII)~~ **(VII)** ~~PROVIDE~~ **PROVIDING ONGOING SUPPORT WITH RESPECT TO THE FUNCTIONS SET FORTH IN THIS SECTION, INCLUDING ELIGIBILITY~~,~~ AND ENROLLMENT~~, RENEWAL,~~ AND DISENROLLMENT IN AND RENEWAL OF QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS OFFERED IN THE SHOP EXCHANGE.**

~~(2) A SHOP EXCHANGE NAVIGATOR MAY NOT:~~

~~(I) PROVIDE ANY INFORMATION OR SERVICES RELATED TO HEALTH BENEFIT PLANS OR OTHER PRODUCTS NOT OFFERED IN THE SHOP EXCHANGE; OR~~

~~(II) SEEK TO REPLACE ANY HEALTH BENEFIT PLAN ALREADY OFFERED BY A SMALL EMPLOYER UNLESS THE SMALL EMPLOYER IS ELIGIBLE FOR A FEDERAL TAX CREDIT AVAILABLE ONLY THROUGH THE SHOP EXCHANGE.~~

~~(3)~~ (2) A SHOP EXCHANGE NAVIGATOR:

(I) SHALL HOLD A SHOP EXCHANGE NAVIGATOR LICENSE ISSUED UNDER SUBSECTION (D) OF THIS SECTION;

(II) MAY NOT BE REQUIRED TO HOLD AN INSURANCE PRODUCER LICENSE;

(III) SHALL BE ENGAGED BY AND RECEIVE COMPENSATION ONLY THROUGH THE SHOP EXCHANGE;

(IV) ~~SHALL REFER ANY INQUIRIES ABOUT INFORMATION OR SERVICES RELATED TO HEALTH BENEFIT PLANS OR OTHER PRODUCTS NOT OFFERED IN THE SHOP EXCHANGE TO LICENSED INSURANCE PRODUCERS;~~ MAY NOT RECEIVE COMPENSATION FROM OR OTHERWISE BE AFFILIATED WITH A CARRIER, AN INSURANCE PRODUCER, A THIRD–PARTY ADMINISTRATOR, OR ANY OTHER PERSON CONNECTED TO THE INSURANCE INDUSTRY; AND

(V) SHALL COMPLETE AND COMPLY WITH ANY ONGOING REQUIREMENTS OF THE TRAINING PROGRAM ESTABLISHED UNDER SUBSECTION ~~(F)~~ (H) OF THIS SECTION~~; AND~~

~~(VI) SHALL RECEIVE COMPENSATION ONLY THROUGH THE SHOP EXCHANGE AND NOT FROM A CARRIER OR AN INSURANCE PRODUCER~~.

(3) WITH RESPECT TO THE INSURANCE MARKET OUTSIDE THE EXCHANGE, A SHOP EXCHANGE NAVIGATOR:

(I) MAY NOT PROVIDE ANY INFORMATION OR SERVICES RELATED TO HEALTH BENEFIT PLANS OR OTHER PRODUCTS NOT OFFERED IN THE EXCHANGE, EXCEPT FOR GENERAL INFORMATION ABOUT THE INSURANCE MARKET OUTSIDE THE EXCHANGE, WHICH SHALL BE LIMITED TO THE INFORMATION PROVIDED IN A CONSUMER EDUCATION DOCUMENT DEVELOPED BY THE EXCHANGE AND THE COMMISSIONER;

(II) SHALL REFER ANY INQUIRIES ABOUT HEALTH BENEFIT PLANS OR OTHER PRODUCTS NOT OFFERED IN THE EXCHANGE TO:

1. ANY RESOURCES THAT MAY BE MAINTAINED BY THE EXCHANGE; OR

2. CARRIERS AND LICENSED INSURANCE PRODUCERS;

(III) MAY NOT SEEK TO REPLACE ANY HEALTH BENEFIT PLAN ALREADY OFFERED BY A SMALL EMPLOYER UNLESS THE SMALL EMPLOYER IS ELIGIBLE FOR A FEDERAL TAX CREDIT AVAILABLE ONLY THROUGH THE SHOP EXCHANGE; AND

(IV) SHALL REFER TO THE INDIVIDUAL EXCHANGE NAVIGATOR PROGRAM ANY INQUIRIES ABOUT INFORMATION OR SERVICES RELATED TO:

1. QUALIFIED PLANS OFFERED IN THE INDIVIDUAL EXCHANGE; OR

2. THE MARYLAND MEDICAL ASSISTANCE PROGRAM AND THE MARYLAND CHILDREN'S HEALTH PROGRAM.

(D) (1) THE COMMISSIONER SHALL ISSUE A SHOP EXCHANGE NAVIGATOR LICENSE TO EACH APPLICANT WHO MEETS THE REQUIREMENTS OF THIS SUBSECTION.

(2) TO QUALIFY FOR A SHOP EXCHANGE NAVIGATOR LICENSE, AN APPLICANT:

(I) SHALL BE OF GOOD CHARACTER AND TRUSTWORTHY;

(II) SHALL BE AT LEAST 18 YEARS OLD;

(III) SHALL PASS A WRITTEN EXAMINATION GIVEN BY THE COMMISSIONER UNDER THIS SUBSECTION; AND

(IV) MAY NOT HAVE COMMITTED ANY ACT THAT THE COMMISSIONER FINDS WOULD WARRANT ~~DENIAL~~ SUSPENSION OR REVOCATION OF A LICENSE UNDER SUBSECTION (E) OF THIS SECTION.

(3) THE COMMISSIONER SHALL ADOPT REGULATIONS THAT GOVERN:

(I) THE SCOPE, TYPE, CONDUCT, FREQUENCY, AND ASSESSMENT OF THE WRITTEN EXAMINATION REQUIRED FOR A LICENSE;

(II) THE EXPERIENCE REQUIRED FOR AN INDIVIDUAL APPLICANT TO BE ELIGIBLE TO TAKE THE WRITTEN EXAMINATION; AND

(III) THE REINSTATEMENT OF AN EXPIRED LICENSE.

(E) (1) THE COMMISSIONER MAY ~~DENY A LICENSE TO AN APPLICANT FOR A SHOP EXCHANGE NAVIGATOR LICENSE, OR~~ SUSPEND, REVOKE, OR REFUSE TO RENEW OR REINSTATE A SHOP EXCHANGE NAVIGATOR LICENSE AFTER NOTICE AND OPPORTUNITY FOR A HEARING UNDER §§ 2–210 THROUGH 2–214 OF THIS ARTICLE, IF THE ~~APPLICANT OR~~ LICENSEE:

(I) HAS WILLFULLY VIOLATED THIS ARTICLE OR ANY REGULATION ADOPTED UNDER THIS ARTICLE;

(II) HAS ~~MADE A MATERIAL MISSTATEMENT~~ INTENTIONALLY MISREPRESENTED OR CONCEALED A MATERIAL FACT IN THE APPLICATION FOR THE LICENSE;

(III) HAS OBTAINED THE LICENSE BY MISREPRESENTATION, CONCEALMENT, OR OTHER FRAUD;

~~(III)~~ (IV) HAS ENGAGED IN FRAUDULENT OR DISHONEST PRACTICES IN CONDUCTING ACTIVITIES UNDER THE LICENSE;

~~(IV)~~ (V) HAS MISAPPROPRIATED, CONVERTED, OR UNLAWFULLY WITHHELD MONEY IN CONDUCTING ACTIVITIES UNDER THE LICENSE;

(VI) HAS FAILED OR REFUSED TO PAY OVER ON DEMAND MONEY THAT BELONGS TO A PERSON ENTITLED TO THE MONEY;

~~(V)~~ (VII) HAS WILLFULLY AND MATERIALLY MISREPRESENTED THE PROVISIONS OF A QUALIFIED ~~HEALTH PLAN OR QUALIFIED DENTAL~~ PLAN;

~~(VI)~~ (VIII) HAS BEEN CONVICTED OF A FELONY, A CRIME OF MORAL TURPITUDE, OR ANY CRIMINAL OFFENSE INVOLVING DISHONESTY OR BREACH OF TRUST; ~~OR~~

(IX) HAS FAILED AN EXAMINATION REQUIRED BY THIS ARTICLE OR REGULATIONS ADOPTED UNDER THIS ARTICLE;

(X) HAS FORGED ANOTHER'S NAME ON AN APPLICATION FOR A QUALIFIED PLAN OR ON ANY OTHER DOCUMENT IN CONDUCTING ACTIVITIES UNDER THE LICENSE;

(XI) HAS OTHERWISE SHOWN A LACK OF TRUSTWORTHINESS OR COMPETENCE TO ACT AS A SHOP EXCHANGE NAVIGATOR; OR

~~(VII)~~ (XII) HAS WILLFULLY FAILED TO COMPLY WITH OR VIOLATED A PROPER ORDER OR SUBPOENA OF THE COMMISSIONER.

(2) INSTEAD OF OR IN ADDITION TO SUSPENDING OR REVOKING A LICENSE, THE COMMISSIONER MAY:

(I) IMPOSE A PENALTY OF NOT LESS THAN $100 BUT NOT EXCEEDING $500 FOR EACH VIOLATION OF THIS ARTICLE; AND

(II) REQUIRE THAT RESTITUTION BE MADE TO ANY PERSON WHO HAS SUFFERED FINANCIAL INJURY BECAUSE OF A VIOLATION OF THIS ARTICLE.

(3) IF THE COMMISSIONER SUSPENDS A SHOP EXCHANGE NAVIGATOR LICENSE, THE COMMISSIONER MAY REQUIRE THE INDIVIDUAL TO PASS AN EXAMINATION AND FILE A NEW APPLICATION BEFORE THE SUSPENSION IS LIFTED.

(4) THE PENALTIES AVAILABLE TO THE COMMISSIONER UNDER THIS SUBSECTION SHALL BE IN ADDITION TO ANY CRIMINAL OR CIVIL PENALTIES IMPOSED FOR FRAUD OR OTHER MISCONDUCT UNDER ANY OTHER STATE OR FEDERAL LAW.

(5) THE COMMISSIONER SHALL NOTIFY THE SHOP EXCHANGE OF ANY DECISION AFFECTING THE LICENSE OF A SHOP EXCHANGE NAVIGATOR OR ANY SANCTION IMPOSED ON ~~THE~~ A SHOP EXCHANGE NAVIGATOR UNDER THIS SUBSECTION.

(6) THE COMMISSIONER, IN THE COMMISSIONER'S ROLE AS A MEMBER OF THE BOARD, MAY NOT PARTICIPATE IN ANY MATTER THAT INVOLVES THE SHOP EXCHANGE'S NAVIGATOR PROGRAM IF, IN THE COMMISSIONER'S JUDGMENT, THE COMMISSIONER'S PARTICIPATION MIGHT CREATE A CONFLICT OF INTEREST WITH RESPECT TO THE COMMISSIONER'S REGULATORY AUTHORITY OVER THE SHOP EXCHANGE'S NAVIGATOR PROGRAM.

(7) A CARRIER IS NOT RESPONSIBLE FOR THE ACTIVITIES AND CONDUCT OF A SHOP EXCHANGE NAVIGATOR.

(F) (1) THE SHOP EXCHANGE SHALL ESTABLISH AND ADMINISTER AN INSURANCE PRODUCER AUTHORIZATION PROGRAM.

(2) UNDER THE PROGRAM, THE SHOP EXCHANGE SHALL:

(I) PROVIDE AN AUTHORIZATION TO SELL QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS TO A LICENSED INSURANCE PRODUCER WHO MEETS THE REQUIREMENTS IN SUBSECTION (G) OF THIS SECTION; AND

(II) REQUIRE RENEWAL OF AN AUTHORIZATION EVERY 2 YEARS.

(3) (I) SUBJECT TO THE CONTESTED CASE HEARING PROVISIONS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE, THE SHOP EXCHANGE MAY ~~DENY,~~ SUSPEND, REVOKE, OR REFUSE TO RENEW AN AUTHORIZATION FOR GOOD CAUSE, WHICH SHALL INCLUDE A FINDING THAT THE INSURANCE PRODUCER HOLDING THE AUTHORIZATION HAS:

~~1. MADE A MATERIAL MISSTATEMENT IN THE APPLICATION FOR THE AUTHORIZATION;~~

~~2. ENGAGED IN FRAUDULENT OR DISHONEST PRACTICES IN CONDUCTING OF ACTIVITIES UNDER THE AUTHORIZATION;~~

~~3. MATERIALLY MISREPRESENTED THE PROVISIONS OF A QUALIFIED HEALTH PLAN OR QUALIFIED DENTAL PLAN; OR~~

~~4.~~ COMMITTED ANY ACT ~~IN VIOLATION OF~~ DESCRIBED IN SUBSECTION ~~(E)~~ (E)(1) OF THIS ~~SUBSECTION~~ SECTION WITH RESPECT TO THE AUTHORIZATION.

(II) THE SHOP EXCHANGE SHALL NOTIFY THE COMMISSIONER OF ANY DECISION AFFECTING THE STATUS OF AN INSURANCE PRODUCER'S AUTHORIZATION.

(4) THE SHOP EXCHANGE, IN CONSULTATION WITH THE COMMISSIONER, SHALL ADOPT REGULATIONS TO CARRY OUT THIS SUBSECTION.

(G) (1) SUBJECT TO THE REQUIREMENTS IN PARAGRAPH (2) OF THIS SUBSECTION, AN INSURANCE PRODUCER WHO IS LICENSED IN THE STATE AND

AUTHORIZED BY THE COMMISSIONER TO SELL, SOLICIT, OR NEGOTIATE HEALTH INSURANCE MAY SELL ANY QUALIFIED ~~HEALTH PLAN OR QUALIFIED DENTAL~~ PLAN OFFERED IN THE SHOP EXCHANGE WITHOUT BEING SEPARATELY LICENSED AS A SHOP EXCHANGE NAVIGATOR.

(2) TO SELL QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS IN THE SHOP EXCHANGE, AN INSURANCE PRODUCER SHALL:

(I) REGISTER AND APPLY FOR AN AUTHORIZATION FROM THE SHOP EXCHANGE; ~~AND~~

(II) COMPLETE AND COMPLY WITH ANY ONGOING REQUIREMENTS OF THE TRAINING PROGRAM ESTABLISHED UNDER SUBSECTION (H) OF THIS SECTION; AND

(III) IN PROVIDING ASSISTANCE TO A SMALL EMPLOYER SEEKING INFORMATION ABOUT OFFERING HEALTH INSURANCE, INFORM THE SMALL EMPLOYER OF:

1. ALL QUALIFIED HEALTH PLANS AVAILABLE TO EMPLOYEES IN THE SHOP EXCHANGE; AND

2. ALL OPTIONS AVAILABLE TO THE SMALL EMPLOYER IN THE SHOP EXCHANGE FOR OFFERING QUALIFIED HEALTH PLANS TO EMPLOYEES.

(3) AN INSURANCE PRODUCER:

(I) MAY NOT BE COMPENSATED BY THE SHOP EXCHANGE FOR THE SALE OF A QUALIFIED ~~HEALTH PLAN OR QUALIFIED DENTAL~~ PLAN OFFERED IN THE SHOP EXCHANGE; AND

(II) SHALL BE COMPENSATED DIRECTLY BY A CARRIER.

(H) (1) THE SHOP EXCHANGE SHALL DEVELOP, IMPLEMENT, AND, AS APPROPRIATE, UPDATE TRAINING PROGRAMS FOR:

(I) SHOP EXCHANGE NAVIGATORS; AND

(II) LICENSED INSURANCE PRODUCERS WHO SEEK AUTHORIZATION TO SELL QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS IN THE SHOP EXCHANGE.

(2) THE TRAINING PROGRAMS SHALL:

(I) IMPART THE SKILLS AND EXPERTISE NECESSARY TO PERFORM FUNCTIONS SPECIFIC TO THE SHOP EXCHANGE, SUCH AS MAKING TAX CREDIT ELIGIBILITY DETERMINATIONS; AND

(II) ENABLE THE SHOP EXCHANGE'S NAVIGATOR PROGRAM TO PROVIDE ROBUST PROTECTION OF CONSUMERS AND ADHERENCE TO HIGH QUALITY ASSURANCE STANDARDS.

31–113.

(A) (1) THERE IS A NAVIGATOR PROGRAM FOR THE INDIVIDUAL EXCHANGE.

(2) THE NAVIGATOR PROGRAM FOR THE INDIVIDUAL EXCHANGE SHALL BE:

(I) ADMINISTERED BY THE INDIVIDUAL EXCHANGE; AND

(II) REGULATED BY THE COMMISSIONER.

(3) IN ADMINISTERING THE NAVIGATOR PROGRAM, THE INDIVIDUAL EXCHANGE SHALL CONSULT WITH THE COMMISSIONER AND THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE TO ENSURE CONSISTENCY AND COMPLIANCE WITH ALL LAWS, REGULATIONS, AND POLICIES GOVERNING:

(I) THE SALE, SOLICITATION, AND NEGOTIATION OF HEALTH INSURANCE; AND

(II) THE MARYLAND MEDICAL ASSISTANCE PROGRAM AND THE MARYLAND CHILDREN'S HEALTH PROGRAM.

(4) IN REGULATING THE NAVIGATOR PROGRAM, THE COMMISSIONER SHALL ENTER INTO ONE OR MORE MEMORANDA OF UNDERSTANDING WITH THE EXCHANGE AND THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE TO FACILITATE ENFORCEMENT OF THIS SECTION.

(5) THE COMMISSIONER MAY REQUIRE THE INDIVIDUAL EXCHANGE TO:

(I) MAKE AVAILABLE TO THE COMMISSIONER ALL RECORDS, DOCUMENTS, DATA, AND OTHER INFORMATION RELATING TO THE NAVIGATOR PROGRAM, INCLUDING THE AUTHORIZATION OF INDIVIDUAL

EXCHANGE NAVIGATOR ENTITIES AND THE CERTIFICATION OF INDIVIDUAL EXCHANGE NAVIGATORS; AND

(II) SUBMIT A CORRECTIVE PLAN TO TAKE APPROPRIATE ACTION TO ADDRESS ANY PROBLEMS OR DEFICIENCIES IDENTIFIED BY THE COMMISSIONER IN THE INDIVIDUAL EXCHANGE NAVIGATOR ENTITY AUTHORIZATION PROCESS OR THE INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION PROCESS.

(6) THE COMMISSIONER, IN THE COMMISSIONER'S ROLE AS A MEMBER OF THE BOARD, MAY NOT PARTICIPATE IN ANY MATTER THAT INVOLVES THE INDIVIDUAL EXCHANGE'S NAVIGATOR PROGRAM IF, IN THE COMMISSIONER'S JUDGMENT, THE COMMISSIONER'S PARTICIPATION MIGHT CREATE A CONFLICT OF INTEREST WITH RESPECT TO THE COMMISSIONER'S REGULATORY AUTHORITY OVER THE INDIVIDUAL EXCHANGE'S NAVIGATOR PROGRAM.

(B) THE NAVIGATOR PROGRAM FOR THE INDIVIDUAL EXCHANGE SHALL:

(1) FOCUS OUTREACH EFFORTS AND ~~PROVIDE ENROLLMENT AND ELIGIBILITY SERVICES TO~~ SERVICES ON INDIVIDUALS WITHOUT HEALTH INSURANCE COVERAGE;

(2) USE~~, AS~~ INDIVIDUAL EXCHANGE NAVIGATOR ENTITIES~~, COMMUNITY–BASED ORGANIZATIONS AND OTHER ENTITIES~~ THAT:

(I) ~~ARE FAMILIAR~~ HAVE EXPERTISE IN WORKING WITH VULNERABLE AND HARD–TO–REACH POPULATIONS; AND

(II) CONDUCT OUTREACH AND PROVIDE ENROLLMENT SUPPORT FOR THESE POPULATIONS; AND

(3) ENABLE THE INDIVIDUAL EXCHANGE TO:

(I) COMPLY WITH THE AFFORDABLE CARE ACT BY PROVIDING SEAMLESS ENTRY INTO THE MARYLAND MEDICAL ASSISTANCE PROGRAM, THE MARYLAND CHILDREN'S HEALTH PROGRAM, ~~QUALIFIED HEALTH PLANS,~~ AND QUALIFIED ~~DENTAL~~ PLANS;

(II) ASSIST INDIVIDUALS WHO TRANSITION BETWEEN THE ~~PROGRAM PLANS~~ TYPES OF COVERAGE DESCRIBED IN ITEM (I) OF THIS ITEM OR HAVE LAPSED ENROLLMENT; AND

(III) MEET CONSUMER NEEDS AND DEMANDS FOR HEALTH INSURANCE COVERAGE WHILE MAINTAINING HIGH STANDARDS OF QUALITY ASSURANCE AND CONSUMER PROTECTION.

(C) TO ~~ACHIEVE THESE OBJECTIVES~~ CARRY OUT ITS PURPOSES AND IN COMPLIANCE WITH THE AFFORDABLE CARE ACT, ~~AN~~ THE INDIVIDUAL EXCHANGE NAVIGATOR PROGRAM, WITH RESPECT ONLY TO THE MARYLAND MEDICAL ASSISTANCE PROGRAM, THE MARYLAND CHILDREN'S HEALTH PROGRAM, AND QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS OFFERED IN THE EXCHANGE, ~~MAY~~ SHALL PROVIDE COMPREHENSIVE CONSUMER ASSISTANCE SERVICES, INCLUDING:

(1) ~~CONDUCT~~ CONDUCTING EDUCATION AND OUTREACH TO INDIVIDUALS;

(2) ~~DISTRIBUTE~~ DISTRIBUTING INFORMATION ABOUT:

(I) THE INDIVIDUAL EXCHANGE, INCLUDING ELIGIBILITY REQUIREMENTS FOR APPLICABLE FEDERAL PREMIUM SUBSIDIES AND COST–SHARING ASSISTANCE;

(II) ELIGIBILITY REQUIREMENTS FOR THE MARYLAND MEDICAL ASSISTANCE PROGRAM AND THE MARYLAND CHILDREN'S HEALTH PROGRAM; AND

(III) PROCEDURES FOR ENROLLING IN THE MARYLAND MEDICAL ASSISTANCE PROGRAM, THE MARYLAND CHILDREN'S HEALTH PROGRAM, OR QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS OFFERED IN THE INDIVIDUAL EXCHANGE;

(3) ~~FACILITATE QUALIFIED HEALTH PLAN AND QUALIFIED DENTAL PLAN SELECTION, APPLICATION PROCESSES, ENROLLMENT, RENEWALS, AND DISENROLLMENT~~ WITH RESPECT TO QUALIFIED PLANS, FACILITATING:

(I) PLAN SELECTION, BASED ON THE NEEDS OF THE INDIVIDUAL SEEKING TO ENROLL;

(II) ASSESSMENT OF TAX IMPLICATIONS AND PREMIUM AND COST–SHARING REQUIREMENTS; AND

(III) APPLICATION, ENROLLMENT, RENEWAL, AND DISENROLLMENT PROCESSES;

(4) ~~FACILITATE~~ FACILITATING ELIGIBILITY DETERMINATIONS FOR THE MARYLAND MEDICAL ASSISTANCE PROGRAM AND THE MARYLAND CHILDREN'S HEALTH PROGRAM, SELECTION OF MANAGED CARE ORGANIZATIONS, AND APPLICATION, ENROLLMENT, AND DISENROLLMENT PROCESSES~~, ENROLLMENT, AND ~~DISENROLLMENT~~;

(5) ~~CONDUCT~~ CONDUCTING ELIGIBILITY DETERMINATIONS AND REDETERMINATIONS FOR PREMIUM SUBSIDIES AND COST–SHARING ASSISTANCE;

(6) ~~PROVIDE~~ PROVIDING REFERRALS TO APPROPRIATE AGENCIES ~~FOR~~, INCLUDING THE ATTORNEY GENERAL'S HEALTH EDUCATION AND ADVOCACY UNIT AND THE ADMINISTRATION, FOR APPLICANTS AND ENROLLEES WITH GRIEVANCES, COMPLAINTS, QUESTIONS, OR THE NEED FOR OTHER SOCIAL SERVICES;

(7) ~~PROVIDE~~ PROVIDING ALL INFORMATION AND SERVICES IN A MANNER THAT IS CULTURALLY AND LINGUISTICALLY APPROPRIATE AND ENSURES ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES; AND

(8) ~~PROVIDE~~ PROVIDING ONGOING SUPPORT WITH RESPECT TO ISSUES RELATING TO ELIGIBILITY, ENROLLMENT, RENEWAL, AND DISENROLLMENT IN THE MARYLAND MEDICAL ASSISTANCE PROGRAM, THE MARYLAND CHILDREN'S HEALTH PROGRAM, AND QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS OFFERED IN THE INDIVIDUAL EXCHANGE.

(D) (1) THE CONSUMER ASSISTANCE SERVICES DESCRIBED IN SUBSECTION (C) OF THIS SECTION THAT MUST BE PROVIDED BY AN INDIVIDUAL EXCHANGE NAVIGATOR ARE THOSE SERVICES THAT INVOLVE THE SALE, SOLICITATION, AND NEGOTIATION OF QUALIFIED PLANS OFFERED IN THE INDIVIDUAL EXCHANGE, INCLUDING:

(I) EXAMINING OR OFFERING TO EXAMINE A QUALIFIED PLAN FOR THE PURPOSE OF GIVING, OR OFFERING TO GIVE, ADVICE OR INFORMATION ABOUT THE TERMS, CONDITIONS, BENEFITS, COVERAGE, OR PREMIUM OF A QUALIFIED PLAN;

(II) FACILITATING:

1. QUALIFIED PLAN SELECTION;

2. THE APPLICATION OF PREMIUM TAX SUBSIDIES TO SELECTED QUALIFIED HEALTH PLANS;

3. PLAN APPLICATION, ENROLLMENT, RENEWAL, AND DISENROLLMENT PROCESSES; AND

(III) PROVIDING ONGOING SUPPORT WITH RESPECT TO ISSUES RELATING TO QUALIFIED PLAN ENROLLMENT, APPLICATION OF PREMIUM TAX SUBSIDIES, RENEWAL, AND DISENROLLMENT.

(2) THE CONSUMER ASSISTANCE SERVICES DESCRIBED IN SUBSECTION (C) OF THIS SECTION THAT DO NOT HAVE TO BE PROVIDED BY AN INDIVIDUAL EXCHANGE NAVIGATOR ARE:

(I) CONDUCTING GENERAL EDUCATION AND OUTREACH;

(II) FACILITATING ELIGIBILITY DETERMINATIONS AND REDETERMINATIONS FOR PREMIUM TAX SUBSIDIES, THE MARYLAND MEDICAL ASSISTANCE PROGRAM, AND THE MARYLAND CHILDREN'S HEALTH PROGRAM; AND

(III) FACILITATING AND PROVIDING ONGOING SUPPORT WITH RESPECT TO THE SELECTION OF MANAGED CARE ORGANIZATIONS, APPLICATION PROCESSES, ENROLLMENT, AND DISENROLLMENT FOR THE MARYLAND MEDICAL ASSISTANCE PROGRAM AND THE MARYLAND CHILDREN'S HEALTH PROGRAM.

(E) (1) THE EXCHANGE MAY AUTHORIZE AN INDIVIDUAL EXCHANGE NAVIGATOR ENTITY TO PROVIDE CONSUMER ASSISTANCE SERVICES THAT:

(I) ARE REQUIRED TO BE PROVIDED BY AN INDIVIDUAL EXCHANGE NAVIGATOR; OR

(II) SUBJECT TO PARAGRAPH (2)(III) OF THIS SUBSECTION, RESULT IN A CONSUMER'S ENROLLMENT IN THE MARYLAND MEDICAL ASSISTANCE PROGRAM OR THE MARYLAND CHILDREN'S HEALTH PROGRAM.

(2) THE EXCHANGE:

(I) MAY LIMIT THE AUTHORIZATION OF AN INDIVIDUAL EXCHANGE NAVIGATOR ENTITY TO THE PROVISION OF A SUBSET OF SERVICES, DEPENDING ON THE NEEDS OF THE INDIVIDUAL EXCHANGE NAVIGATOR PROGRAM AND THE CAPACITY OF THE INDIVIDUAL EXCHANGE NAVIGATOR ENTITY, PROVIDED THAT THE NAVIGATOR PROGRAM OVERALL PROVIDES THE TOTALITY OF SERVICES REQUIRED BY THE AFFORDABLE CARE ACT AND THIS SUBTITLE;

(II) PURSUANT TO CONTRACTUAL AGREEMENT, MAY REQUIRE AN INDIVIDUAL EXCHANGE NAVIGATOR ENTITY TO PROVIDE EDUCATION, OUTREACH, AND OTHER CONSUMER ASSISTANCE SERVICES IN ADDITION TO THE SERVICES PROVIDED UNDER THE INDIVIDUAL EXCHANGE NAVIGATOR ENTITY'S AUTHORIZATION IN ORDER TO ACHIEVE ALL OF THE OBJECTIVES OF THE NAVIGATOR PROGRAM; AND

(III) MAY NOT AUTHORIZE AN INDIVIDUAL EXCHANGE NAVIGATOR ENTITY TO PROVIDE SERVICES THAT RESULT IN A CONSUMER'S ENROLLMENT IN THE MARYLAND MEDICAL ASSISTANCE PROGRAM OR THE MARYLAND CHILDREN'S HEALTH PROGRAM WITHOUT THE APPROVAL OF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

(F) AN INDIVIDUAL EXCHANGE NAVIGATOR ENTITY:

(1) SHALL OBTAIN AUTHORIZATION FROM THE INDIVIDUAL EXCHANGE TO PROVIDE SERVICES THAT:

(I) ARE REQUIRED TO BE PROVIDED BY AN INDIVIDUAL EXCHANGE NAVIGATOR; OR

(II) RESULT IN A CONSUMER'S ENROLLMENT IN THE MARYLAND MEDICAL ASSISTANCE PROGRAM OR THE MARYLAND CHILDREN'S HEALTH PROGRAM;

(2) MAY PROVIDE:

(I) THOSE SERVICES THAT ARE WITHIN THE SCOPE OF THE INDIVIDUAL EXCHANGE NAVIGATOR ENTITY'S AUTHORIZATION; AND

(II) ANY OTHER CONSUMER ASSISTANCE SERVICES THAT:

1. ARE NOT REQUIRED TO BE PROVIDED BY AN INDIVIDUAL EXCHANGE NAVIGATOR; OR

2. DO NOT REQUIRE AUTHORIZATION UNDER THIS SUBSECTION;

(3) TO THE EXTENT THE SCOPE OF ITS AUTHORIZATION INCLUDES SERVICES THAT MUST BE PROVIDED BY AN INDIVIDUAL EXCHANGE NAVIGATOR, SHALL PROVIDE THOSE SERVICES ONLY THROUGH INDIVIDUAL EXCHANGE NAVIGATORS;

(4) IN ADDITION TO THE SERVICES IT MAY PROVIDE UNDER ITS AUTHORIZATION, MAY EMPLOY OR ENGAGE OTHER INDIVIDUALS TO CONDUCT:

(I) CONSUMER EDUCATION AND OUTREACH; AND

(II) DETERMINATIONS OF ELIGIBILITY FOR PREMIUM SUBSIDIES AND COST–SHARING ASSISTANCE, THE MARYLAND MEDICAL ASSISTANCE PROGRAM, AND THE MARYLAND CHILDREN'S HEALTH PROGRAM;

(5) MAY EMPLOY OR ENGAGE INDIVIDUALS TO PERFORM ACTIVITIES THAT:

(I) ARE EXECUTIVE, ADMINISTRATIVE, MANAGERIAL, OR CLERICAL; AND

(II) RELATE ONLY INDIRECTLY TO SERVICES THAT MUST BE PROVIDED BY AN INDIVIDUAL EXCHANGE NAVIGATOR OR RESULT IN A CONSUMER'S ENROLLMENT IN THE MARYLAND MEDICAL ASSISTANCE PROGRAM OR THE MARYLAND CHILDREN'S HEALTH PROGRAM;

(6) SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS, REGULATIONS, AND POLICIES GOVERNING THE MARYLAND MEDICAL ASSISTANCE PROGRAM AND THE MARYLAND CHILDREN'S HEALTH PROGRAM;

(7) MAY NOT RECEIVE ANY COMPENSATION, DIRECTLY OR INDIRECTLY:

(I) FROM A CARRIER, AN INSURANCE PRODUCER, OR A THIRD–PARTY ADMINISTRATOR IN CONNECTION WITH THE ENROLLMENT OF A QUALIFIED INDIVIDUAL IN A QUALIFIED HEALTH PLAN; OR

(II) FROM ANY MANAGED CARE ORGANIZATION THAT PARTICIPATES IN THE MARYLAND MEDICAL ASSISTANCE PROGRAM IN CONNECTION WITH THE ENROLLMENT OF AN INDIVIDUAL IN THE MARYLAND MEDICAL ASSISTANCE PROGRAM OR THE MARYLAND CHILDREN'S HEALTH PROGRAM; AND

(8) WITH RESPECT TO THE INSURANCE MARKET OUTSIDE THE EXCHANGE:

(I) MAY NOT PROVIDE ANY INFORMATION OR SERVICES RELATED TO HEALTH BENEFIT PLANS OR OTHER PRODUCTS NOT OFFERED IN THE EXCHANGE, EXCEPT FOR GENERAL INFORMATION ABOUT THE INSURANCE MARKET OUTSIDE THE EXCHANGE, WHICH SHALL BE LIMITED TO THE

INFORMATION PROVIDED IN A CONSUMER EDUCATION DOCUMENT DEVELOPED BY THE EXCHANGE AND THE COMMISSIONER;

(II) SHALL REFER ANY INQUIRIES ABOUT HEALTH BENEFIT PLANS OR OTHER PRODUCTS NOT OFFERED IN THE EXCHANGE TO:

1. ANY RESOURCES THAT MAY BE MAINTAINED BY THE EXCHANGE; OR

2. CARRIERS AND LICENSED INSURANCE PRODUCERS; AND

(III) ON CONTACT WITH AN INDIVIDUAL WHO ACKNOWLEDGES HAVING EXISTING HEALTH INSURANCE COVERAGE OBTAINED THROUGH AN INSURANCE PRODUCER, SHALL REFER THE INDIVIDUAL BACK TO THE INSURANCE PRODUCER FOR INFORMATION AND SERVICES UNLESS:

1. THE INDIVIDUAL IS ELIGIBLE FOR BUT HAS NOT OBTAINED A FEDERAL PREMIUM SUBSIDY AND COST–SHARING ASSISTANCE AVAILABLE ONLY THROUGH THE INDIVIDUAL EXCHANGE;

2. THE INSURANCE PRODUCER IS NOT AUTHORIZED TO SELL QUALIFIED PLANS IN THE INDIVIDUAL EXCHANGE; OR

3. THE INDIVIDUAL WOULD PREFER NOT TO SEEK FURTHER ASSISTANCE FROM THE INDIVIDUAL'S INSURANCE PRODUCER.

(G) (1) THE COMMISSIONER MAY SUSPEND OR REVOKE AN INDIVIDUAL EXCHANGE NAVIGATOR ENTITY AUTHORIZATION AFTER NOTICE AND OPPORTUNITY FOR A HEARING UNDER §§ 2–210 THROUGH 2–214 OF THIS ARTICLE IF THE INDIVIDUAL EXCHANGE NAVIGATOR ENTITY:

(I) HAS WILLFULLY VIOLATED THIS ARTICLE OR ANY REGULATION ADOPTED UNDER THIS ARTICLE;

(II) HAS ENGAGED IN FRAUDULENT OR DISHONEST PRACTICES IN CONDUCTING ACTIVITIES UNDER THE INDIVIDUAL EXCHANGE NAVIGATOR ENTITY AUTHORIZATION;

(III) HAS HAD ANY PROFESSIONAL LICENSE OR CERTIFICATION SUSPENDED OR REVOKED FOR A FRAUDULENT OR DISHONEST PRACTICE;

(IV) HAS BEEN CONVICTED OF A FELONY, A CRIME OF MORAL TURPITUDE, OR ANY CRIMINAL OFFENSE INVOLVING DISHONESTY OR BREACH OF TRUST; OR

(V) HAS WILLFULLY FAILED TO COMPLY WITH OR VIOLATED A PROPER ORDER OR SUBPOENA OF THE COMMISSIONER.

(2) INSTEAD OF OR IN addition TO SUSPENDING OR REVOKING AN INDIVIDUAL EXCHANGE NAVIGATOR ENTITY AUTHORIZATION, THE COMMISSIONER MAY:

(I) IMPOSE A PENALTY OF NOT LESS THAN $100 BUT NOT EXCEEDING $500 FOR EACH VIOLATION OF THIS ARTICLE; AND

(II) REQUIRE THAT RESTITUTION BE MADE TO ANY PERSON WHO HAS SUFFERED FINANCIAL INJURY BECAUSE OF THE INDIVIDUAL EXCHANGE NAVIGATOR ENTITY'S VIOLATION OF THIS ARTICLE.

(3) THE PENALTIES AVAILABLE TO THE COMMISSIONER UNDER THIS SUBSECTION SHALL BE IN ADDITION TO ANY CRIMINAL OR CIVIL PENALTIES IMPOSED FOR FRAUD OR OTHER MISCONDUCT UNDER ANY OTHER STATE OR FEDERAL LAW.

(4) THE COMMISSIONER SHALL NOTIFY THE INDIVIDUAL EXCHANGE OF ANY DECISION AFFECTING THE AUTHORIZATION OF AN INDIVIDUAL EXCHANGE NAVIGATOR ENTITY OR ANY SANCTION IMPOSED ON AN INDIVIDUAL EXCHANGE NAVIGATOR ENTITY UNDER THIS SUBSECTION.

(5) A CARRIER IS NOT RESPONSIBLE FOR THE ACTIVITIES AND CONDUCT OF INDIVIDUAL EXCHANGE NAVIGATOR ENTITIES.

(H) AN INDIVIDUAL EXCHANGE NAVIGATOR:

(1) SHALL HOLD AN INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION ISSUED UNDER SUBSECTION ~~(F)~~ (J) OF THIS SECTION;

(2) MAY PROVIDE CONSUMER ASSISTANCE SERVICES THAT ARE REQUIRED TO BE PROVIDED BY AN INDIVIDUAL EXCHANGE NAVIGATOR UNDER SUBSECTION (D)(1) OF THIS SECTION;

~~(2)~~ (3) MAY NOT BE REQUIRED TO HOLD AN INSURANCE PRODUCER OR ADVISER LICENSE;

~~(3)~~ (4) SHALL BE EMPLOYED OR ENGAGED BY AN INDIVIDUAL EXCHANGE NAVIGATOR ENTITY;

~~(4)~~ (5) SHALL RECEIVE COMPENSATION ONLY THROUGH THE INDIVIDUAL EXCHANGE OR AN INDIVIDUAL EXCHANGE NAVIGATOR ENTITY AND NOT FROM A CARRIER OR AN INSURANCE PRODUCER;

~~(5) MAY NOT PROVIDE ANY INFORMATION OR SERVICES RELATED TO HEALTH BENEFIT PLANS OR OTHER PRODUCTS NOT OFFERED IN THE INDIVIDUAL EXCHANGE;~~

~~(6) SHALL REFER ANY INQUIRIES ABOUT HEALTH BENEFIT PLANS AND OTHER PRODUCTS NOT OFFERED IN THE INDIVIDUAL EXCHANGE TO LICENSED INSURANCE PRODUCERS;~~

~~(7) ON CONTACT WITH AN INDIVIDUAL WHO HAS EXISTING HEALTH INSURANCE COVERAGE OBTAINED THROUGH AN INSURANCE PRODUCER, SHALL REFER THE INDIVIDUAL BACK TO THE INSURANCE PRODUCER FOR INFORMATION AND SERVICES UNLESS:~~

~~(I) THE INDIVIDUAL IS ELIGIBLE FOR FEDERAL PREMIUM SUBSIDIES AVAILABLE ONLY IN THE INDIVIDUAL EXCHANGE; AND~~

~~(II) THE INSURANCE PRODUCER IS NOT AUTHORIZED TO SELL QUALIFIED HEALTH PLANS AND QUALIFIED DENTAL PLANS IN THE INDIVIDUAL EXCHANGE; AND~~

(6) MAY NOT RECEIVE ANY COMPENSATION, DIRECTLY OR INDIRECTLY:

(I) FROM A CARRIER, AN INSURANCE PRODUCER, OR A THIRD–PARTY ADMINISTRATOR IN CONNECTION WITH THE ENROLLMENT OF A QUALIFIED INDIVIDUAL IN A QUALIFIED HEALTH PLAN; OR

(II) FROM A MANAGED CARE ORGANIZATION THAT PARTICIPATES IN THE MARYLAND MEDICAL ASSISTANCE PROGRAM IN CONNECTION WITH THE ENROLLMENT OF AN INDIVIDUAL IN THE MARYLAND MEDICAL ASSISTANCE PROGRAM OR THE MARYLAND CHILDREN'S HEALTH PROGRAM;

(7) WITH RESPECT TO THE INSURANCE MARKET OUTSIDE THE EXCHANGE, IS SUBJECT TO THE SAME REQUIREMENTS APPLICABLE TO INDIVIDUAL EXCHANGE NAVIGATOR ENTITIES AS SET FORTH IN SUBSECTION (F)(8) OF THIS SECTION; AND

(8) SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS ~~AND~~, REGULATIONS, AND POLICIES GOVERNING THE MARYLAND MEDICAL ASSISTANCE PROGRAM AND THE MARYLAND CHILDREN'S HEALTH PROGRAM.

~~(E)~~ ~~(1)~~ (I) THE EXCHANGE:

~~(I)~~ (1) SHALL ESTABLISH AND ADMINISTER AN INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION ~~PROGRAM~~ PROCESS;

~~(II) IN CONSULTATION WITH THE COMMISSIONER, THE MARYLAND MEDICAL ASSISTANCE PROGRAM, AND THE MARYLAND CHILDREN'S HEALTH PROGRAM, SHALL ADOPT REGULATIONS TO IMPLEMENT THIS SUBSECTION; AND~~

~~(III) MAY IMPLEMENT THE INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION PROGRAM WITH THE ASSISTANCE OF THE COMMISSIONER, THE MARYLAND MEDICAL ASSISTANCE PROGRAM, AND THE MARYLAND CHILDREN'S HEALTH PROGRAM, IN ACCORDANCE WITH ONE OR MORE MEMORANDA OF UNDERSTANDING.~~

(2) IN CONSULTATION WITH THE COMMISSIONER AND THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, SHALL ADOPT REGULATIONS TO IMPLEMENT THIS SUBSECTION; AND

(3) MAY IMPLEMENT THE INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION PROCESS WITH THE ASSISTANCE OF THE COMMISSIONER AND THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, IN ACCORDANCE WITH ONE OR MORE MEMORANDA OF UNDERSTANDING.

~~(2) THE COMMISSIONER MAY REQUIRE THAT THE INDIVIDUAL EXCHANGE:~~

~~(I) MAKE AVAILABLE TO THE COMMISSIONER ALL RECORDS, DOCUMENTS, DATA, AND OTHER INFORMATION RELATING TO THE CERTIFICATION PROGRAM AND THE CERTIFICATION OF INDIVIDUAL EXCHANGE NAVIGATORS; AND~~

~~(II) SUBMIT A CORRECTIVE PLAN TO TAKE APPROPRIATE ACTION TO ADDRESS ANY PROBLEMS OR DEFICIENCIES IN THE CERTIFICATION PROGRAM THAT THE COMMISSIONER IDENTIFIES.~~

~~(3) A CERTIFICATION SHALL BE RENEWED EVERY 2 YEARS.~~

~~(F)~~ (J) (1) THE EXCHANGE SHALL ISSUE AN INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION TO EACH APPLICANT WHO MEETS THE REQUIREMENTS OF THIS SUBSECTION.

(2) TO QUALIFY FOR AN INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION, AN APPLICANT:

(I) SHALL BE OF GOOD CHARACTER AND TRUSTWORTHY;

(II) SHALL BE AT LEAST 18 YEARS OLD;

(III) SHALL COMPLETE, AND COMPLY WITH ANY ONGOING REQUIREMENTS OF, THE TRAINING PROGRAM ESTABLISHED UNDER SUBSECTION ~~(G)~~ (K) OF THIS SECTION; AND

(IV) SHALL COMPLY WITH ALL APPLICABLE REQUIREMENTS OF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

(3) A CERTIFICATION SHALL EXPIRE 2 YEARS AFTER THE DATE IT IS ISSUED UNLESS IT IS RENEWED.

~~(G) (1) THE EXCHANGE, WITH THE APPROVAL OF THE COMMISSIONER AND IN CONSULTATION WITH THE MARYLAND MEDICAL ASSISTANCE PROGRAM AND THE MARYLAND CHILDREN'S HEALTH PROGRAM, SHALL DEVELOP, IMPLEMENT, AND, AS APPROPRIATE, UPDATE A TRAINING PROGRAM FOR THE CERTIFICATION OF INDIVIDUAL EXCHANGE NAVIGATORS.~~

(K) (1) THE EXCHANGE, WITH THE APPROVAL OF THE COMMISSIONER AND IN CONSULTATION WITH THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE AND STAKEHOLDERS, SHALL DEVELOP, IMPLEMENT, AND, AS APPROPRIATE, UPDATE A TRAINING PROGRAM FOR THE CERTIFICATION OF INDIVIDUAL EXCHANGE NAVIGATORS.

(2) THE TRAINING PROGRAM SHALL:

(I) ~~AFFORD~~ PROVIDE INDIVIDUAL EXCHANGE NAVIGATORS WITH THE FULL RANGE OF SKILLS, KNOWLEDGE, AND EXPERTISE NECESSARY TO MEET THE CONSUMER ASSISTANCE, ELIGIBILITY, ENROLLMENT, RENEWAL, AND DISENROLLMENT NEEDS OF INDIVIDUALS:

1. ELIGIBLE FOR THE MARYLAND MEDICAL ASSISTANCE PROGRAM AND THE MARYLAND CHILDREN'S HEALTH PROGRAM; OR

2. SEEKING QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS OFFERED IN THE INDIVIDUAL EXCHANGE;

(II) ENABLE THE NAVIGATOR PROGRAM FOR THE INDIVIDUAL EXCHANGE TO PROVIDE ROBUST PROTECTION OF CONSUMERS AND ADHERENCE TO HIGH QUALITY ASSURANCE STANDARDS; AND

(III) ENABLE THE INDIVIDUAL EXCHANGE TO ENSURE THAT, WITH RESPECT TO INDIVIDUAL EXCHANGE NAVIGATORS WHO OFFER ANY FORM OF ASSISTANCE TO INDIVIDUALS REGARDING THE MARYLAND MEDICAL ASSISTANCE PROGRAM OR THE MARYLAND CHILDREN'S HEALTH PROGRAM, THE INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION PROGRAM SHALL COMPLY WITH ALL REQUIREMENTS OF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

~~(3) NOTWITHSTANDING THE REQUIREMENTS OF THE TRAINING PROGRAM, INDIVIDUAL EXCHANGE NAVIGATORS AND INDIVIDUAL EXCHANGE NAVIGATOR ENTITIES:~~

~~(I) ARE NOT REQUIRED TO PROVIDE THE FULL SCOPE OF SERVICES AND FUNCTIONS SET FORTH IN THIS SECTION; AND~~

~~(II) MAY BE ENGAGED TO PROVIDE A SUBSET OF THE SERVICES AND FUNCTIONS AS LONG AS THE INDIVIDUAL EXCHANGE NAVIGATOR PROGRAM OVERALL PROVIDES THE TOTALITY OF SERVICES AND FUNCTIONS REQUIRED.~~

~~(4)~~ (3) THE INDIVIDUAL EXCHANGE, IN CONSULTATION WITH THE ~~COMMISSIONER, THE MARYLAND MEDICAL ASSISTANCE PROGRAM, AND THE MARYLAND CHILDREN'S HEALTH PROGRAM~~ THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE AND WITH THE APPROVAL OF THE COMMISSIONER, SHALL ADOPT REGULATIONS THAT GOVERN:

(I) THE SCOPE, TYPE, CONDUCT, FREQUENCY, AND ASSESSMENT OF THE TRAINING REQUIRED FOR ~~A~~ AN INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION;

(II) THE EXPERIENCE REQUIREMENTS, IF ANY, FOR AN INDIVIDUAL APPLICANT TO BE ELIGIBLE TO PARTICIPATE IN THE TRAINING PROGRAM; AND

(III) THE REINSTATEMENT OF AN EXPIRED ~~CERTIFICATE OR THE REACTIVATION OF A CERTIFICATE RENDERED INACTIVE BECAUSE THE CERTIFIED INDIVIDUAL EXCHANGE NAVIGATOR TERMINATED ENGAGEMENT~~

~~WITH AN INDIVIDUAL EXCHANGE NAVIGATOR ENTITY~~ INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION OR THE REACTIVATION OF AN INACTIVE INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION.

~~(H)~~ (L) (1) THE COMMISSIONER MAY SUSPEND OR REVOKE AN INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION AFTER NOTICE AND OPPORTUNITY FOR A HEARING UNDER §§ 2–210 THROUGH 2–214 OF THIS ARTICLE IF THE ~~APPLICANT OR~~ CERTIFIED INDIVIDUAL EXCHANGE NAVIGATOR:

(I) HAS WILLFULLY VIOLATED~~:~~

~~1.~~ THIS ARTICLE OR ANY REGULATION ADOPTED UNDER THIS ARTICLE; ~~OR~~

~~2. ANY STATE OR FEDERAL LAW OR REGULATION GOVERNING THE MARYLAND MEDICAL ASSISTANCE PROGRAM OR THE MARYLAND CHILDREN'S HEALTH PROGRAM;~~

~~(II) HAS MADE A MATERIAL MISSTATEMENT IN THE APPLICATION FOR THE CERTIFICATION;~~

~~(III) HAS ENGAGED IN FRAUDULENT OR DISHONEST PRACTICES;~~

~~(IV) HAS MISAPPROPRIATED, CONVERTED, OR UNLAWFULLY WITHHELD MONEY;~~

~~(V) HAS MATERIALLY MISREPRESENTED THE PROVISIONS OF A QUALIFIED HEALTH PLAN OR QUALIFIED DENTAL PLAN;~~

~~(VI) HAS BEEN CONVICTED OF A FELONY, A CRIME OF MORAL TURPITUDE, OR ANY CRIMINAL OFFENSE INVOLVING DISHONESTY OR BREACH OF TRUST; OR~~

~~(VII) HAS FAILED TO COMPLY WITH OR VIOLATED A PROPER ORDER OF THE COMMISSIONER~~

(II) HAS INTENTIONALLY MISREPRESENTED OR CONCEALED A MATERIAL FACT IN THE APPLICATION FOR THE INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION;

(III) HAS OBTAINED THE INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION BY MISREPRESENTATION, CONCEALMENT, OR OTHER FRAUD;

(IV) HAS ENGAGED IN FRAUDULENT OR DISHONEST PRACTICES IN CONDUCTING ACTIVITIES UNDER THE INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION;

(V) HAS MISAPPROPRIATED, CONVERTED, OR UNLAWFULLY WITHHELD MONEY IN CONDUCTING ACTIVITIES UNDER THE INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION;

(VI) HAS FAILED OR REFUSED TO PAY OVER ON DEMAND MONEY THAT BELONGS TO A PERSON ENTITLED TO THE MONEY;

(VII) HAS WILLFULLY AND MATERIALLY MISREPRESENTED THE PROVISIONS OF A QUALIFIED PLAN;

(VIII) HAS BEEN CONVICTED OF A FELONY, A CRIME OF MORAL TURPITUDE, OR ANY CRIMINAL OFFENSE INVOLVING DISHONESTY OR BREACH OF TRUST;

(IX) HAS FAILED AN EXAMINATION REQUIRED BY THIS ARTICLE OR REGULATIONS ADOPTED UNDER THIS ARTICLE;

(X) HAS FORGED ANOTHER'S NAME ON AN APPLICATION FOR A QUALIFIED PLAN OR ON ANY OTHER DOCUMENT IN CONDUCTING ACTIVITIES UNDER THE INDIVIDUAL EXCHANGE NAVIGATOR CERTIFICATION;

(XI) HAS OTHERWISE SHOWN A LACK OF TRUSTWORTHINESS OR COMPETENCE TO ACT AS AN INDIVIDUAL EXCHANGE NAVIGATOR; OR

(XII) HAS WILLFULLY FAILED TO COMPLY WITH OR VIOLATED A PROPER ORDER OR SUBPOENA OF THE COMMISSIONER.

(2) INSTEAD OF OR IN ADDITION TO SUSPENDING OR REVOKING A CERTIFICATION, THE COMMISSIONER MAY:

(I) IMPOSE A PENALTY OF NOT LESS THAN $100 BUT NOT EXCEEDING $500 FOR EACH VIOLATION OF THIS ARTICLE; AND

(II) REQUIRE THAT RESTITUTION BE MADE TO ANY PERSON WHO HAS SUFFERED FINANCIAL INJURY BECAUSE OF A VIOLATION OF THIS ARTICLE.

(3) THE PENALTIES AVAILABLE TO THE COMMISSIONER UNDER THIS SUBSECTION SHALL BE IN ADDITION TO ANY CRIMINAL OR CIVIL

PENALTIES IMPOSED FOR FRAUD OR OTHER MISCONDUCT UNDER ANY OTHER STATE OR FEDERAL LAW.

(4) THE COMMISSIONER SHALL NOTIFY THE INDIVIDUAL EXCHANGE AND THE INDIVIDUAL EXCHANGE NAVIGATOR ENTITY FOR WHICH THE INDIVIDUAL EXCHANGE NAVIGATOR WORKS OF ANY DECISION AFFECTING THE CERTIFICATION OF AN INDIVIDUAL EXCHANGE NAVIGATOR OR ANY SANCTION IMPOSED ON AN INDIVIDUAL EXCHANGE NAVIGATOR UNDER THIS SUBSECTION.

(5) A CARRIER IS NOT RESPONSIBLE FOR THE ACTIVITIES AND CONDUCT OF INDIVIDUAL EXCHANGE NAVIGATORS.

~~(I)~~ (M) (1) THE EXCHANGE SHALL ESTABLISH AND ADMINISTER AN INSURANCE PRODUCER AUTHORIZATION ~~PROGRAM~~ PROCESS FOR THE INDIVIDUAL EXCHANGE.

(2) UNDER THE ~~PROGRAM~~ PROCESS, THE EXCHANGE SHALL:

(I) PROVIDE AN AUTHORIZATION TO SELL QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS TO A LICENSED INSURANCE PRODUCER WHO MEETS THE REQUIREMENTS IN SUBSECTION ~~(J)~~ (N) OF THIS SECTION; AND

(II) REQUIRE RENEWAL OF AN AUTHORIZATION EVERY 2 YEARS.

(3) (I) SUBJECT TO THE CONTESTED CASE HEARING PROVISIONS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE, THE EXCHANGE MAY ~~DENY,~~ SUSPEND, REVOKE, OR REFUSE TO RENEW AN AUTHORIZATION FOR GOOD CAUSE, WHICH SHALL INCLUDE A FINDING THAT THE INSURANCE PRODUCER HOLDING THE AUTHORIZATION HAS:

~~1. MADE A MATERIAL MISSTATEMENT IN THE APPLICATION FOR THE AUTHORIZATION;~~

~~2. ENGAGED IN FRAUDULENT OR DISHONEST PRACTICES IN CONDUCTING ACTIVITIES UNDER THE AUTHORIZATION;~~

~~3. MATERIALLY MISREPRESENTED THE PROVISIONS OF A QUALIFIED HEALTH PLAN OR QUALIFIED DENTAL PLAN; OR~~

~~4.~~ COMMITTED ANY ACT ~~IN VIOLATION OF~~ DESCRIBED IN SUBSECTION ~~(H)~~ (M)(1) OF THIS SECTION WITH RESPECT TO THE AUTHORIZATION.

(II) THE INDIVIDUAL EXCHANGE SHALL NOTIFY THE COMMISSIONER OF ANY DECISION AFFECTING THE STATUS OF AN INSURANCE PRODUCER'S AUTHORIZATION.

(4) THE INDIVIDUAL EXCHANGE, ~~IN CONSULTATION~~ WITH THE APPROVAL OF THE COMMISSIONER, SHALL ADOPT REGULATIONS TO CARRY OUT THIS SUBSECTION.

~~(J)~~ (N) (1) SUBJECT TO THE REQUIREMENTS IN PARAGRAPH (2) OF THIS SUBSECTION, AN INSURANCE PRODUCER WHO IS LICENSED IN THE STATE AND AUTHORIZED BY THE COMMISSIONER TO SELL, SOLICIT, OR NEGOTIATE HEALTH INSURANCE MAY SELL ANY QUALIFIED ~~HEALTH PLAN OR QUALIFIED DENTAL~~ PLAN OFFERED IN THE INDIVIDUAL EXCHANGE WITHOUT BEING SEPARATELY ~~LICENSED~~ CERTIFIED AS AN INDIVIDUAL EXCHANGE NAVIGATOR.

(2) TO SELL QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS IN THE INDIVIDUAL EXCHANGE, AN INSURANCE PRODUCER SHALL:

(I) REGISTER AND APPLY FOR AN AUTHORIZATION FROM THE EXCHANGE;

(II) COMPLETE AND COMPLY WITH ANY ONGOING REQUIREMENTS OF THE TRAINING PROGRAM ESTABLISHED UNDER SUBSECTION ~~(K)~~ (O) OF THIS SECTION; AND

(III) REFER INDIVIDUALS SEEKING INSURANCE WHO MAY BE ELIGIBLE FOR THE MARYLAND MEDICAL ASSISTANCE PROGRAM OR THE MARYLAND CHILDREN'S HEALTH PROGRAM TO THE NAVIGATOR PROGRAM FOR THE INDIVIDUAL EXCHANGE.

(3) AN INSURANCE PRODUCER:

(I) MAY NOT BE COMPENSATED BY THE INDIVIDUAL EXCHANGE FOR THE SALE OF A QUALIFIED ~~HEALTH PLAN OR A QUALIFIED DENTAL~~ PLAN OFFERED IN THE INDIVIDUAL EXCHANGE; AND

(II) SHALL BE COMPENSATED DIRECTLY BY A CARRIER.

~~(K)~~ (O) (1) THE EXCHANGE SHALL DEVELOP, IMPLEMENT, AND, AS APPROPRIATE, UPDATE A TRAINING PROGRAM FOR INSURANCE PRODUCERS

WHO SELL QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS IN THE INDIVIDUAL EXCHANGE.

(2) THE TRAINING PROGRAM SHALL:

(I) IMPART THE SKILLS AND EXPERTISE NECESSARY TO PERFORM FUNCTIONS SPECIFIC TO THE INDIVIDUAL EXCHANGE, SUCH AS MAKING PREMIUM ASSISTANCE ELIGIBILITY DETERMINATIONS;

(II) ENABLE THE EXCHANGE TO PROVIDE ROBUST PROTECTION OF CONSUMERS AND ADHERENCE TO HIGH QUALITY ASSURANCE STANDARDS; AND

(III) BE APPROVED BY THE COMMISSIONER.

(P) NOTHING IN THIS SECTION SHALL PROHIBIT A COMMUNITY–BASED ORGANIZATION OR A UNIT OF STATE OR LOCAL GOVERNMENT FROM PROVIDING THE CONSUMER ASSISTANCE SERVICES DESCRIBED IN SUBSECTION (C) OF THIS SECTION THAT ARE NOT REQUIRED TO BE PROVIDED BY AN INDIVIDUAL EXCHANGE NAVIGATOR, IF THE ENTITY PROVIDING THE SERVICES AND ITS EMPLOYEES DO NOT:

(1) RECEIVE ANY COMPENSATION, DIRECTLY OR INDIRECTLY, FROM A CARRIER, AN INSURANCE PRODUCER, OR A THIRD–PARTY ADMINISTRATOR IN CONNECTION WITH THE ENROLLMENT OF A QUALIFIED INDIVIDUAL IN A QUALIFIED HEALTH PLAN;

(2) RECEIVE ANY COMPENSATION, DIRECTLY OR INDIRECTLY, FROM A MANAGED CARE ORGANIZATION THAT PARTICIPATES IN THE MARYLAND MEDICAL ASSISTANCE PROGRAM OR THE MARYLAND CHILDREN'S HEALTH PROGRAM; AND

(3) IDENTIFY THEMSELVES TO THE PUBLIC AS AN INDIVIDUAL EXCHANGE NAVIGATOR ENTITIES OR INDIVIDUAL EXCHANGE NAVIGATORS.

31–114.

(A) NOTHING IN THIS TITLE REQUIRES THE MARYLAND MEDICAL ASSISTANCE PROGRAM OR THE MARYLAND CHILDREN'S HEALTH PROGRAM TO PROVIDE ANY SPECIFIC FINANCIAL SUPPORT TO THE INDIVIDUAL EXCHANGE FOR THE SERVICES PROVIDED BY AN INDIVIDUAL EXCHANGE NAVIGATOR OR AN INDIVIDUAL EXCHANGE NAVIGATOR ENTITY.

(B) THE FINANCING ARRANGEMENTS BETWEEN THE INDIVIDUAL EXCHANGE, THE MARYLAND MEDICAL ASSISTANCE PROGRAM, AND THE MARYLAND CHILDREN'S HEALTH PROGRAM SHALL BE GOVERNED BY A MEMORANDUM OF AGREEMENT BETWEEN THE EXCHANGE AND THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

[31–109.**] 31–115.**

(a) The Exchange shall certify**:**

(1) health benefit plans as qualified health plans**; ~~AND~~**

(2) DENTAL PLANS AS QUALIFIED DENTAL PLANS, WHICH MAY BE OFFERED BY CARRIERS AS:

(I) STAND–ALONE DENTAL PLANS; OR

(II) DENTAL PLANS ~~BUNDLED WITH~~ SOLD IN CONJUNCTION WITH OR AS AN ENDORSEMENT TO QUALIFIED HEALTH PLANS; AND

(3) VISION PLANS AS QUALIFIED VISION PLANS, WHICH MAY BE OFFERED BY CARRIERS AS:

(I) STAND–ALONE VISION PLANS; OR

(II) VISION PLANS SOLD IN CONJUNCTION WITH OR AS AN ENDORSEMENT TO QUALIFIED HEALTH PLANS.

(b) To be certified as a qualified health plan, a health benefit plan shall:

(1) except as provided in subsection (c) of this section, provide the essential **HEALTH** benefits **[**package**]** required under § 1302(a) of the Affordable Care Act **AND § 31–116 OF THIS TITLE**;

(2) obtain prior approval of premium rates and contract language from the Commissioner;

(3) except as provided in subsection (d) of this section, provide at least a bronze level of coverage, as defined in the Affordable Care Act and determined by the Exchange under § 31–108(b)(7)(ii) of this title;

(4) (i) ensure that its cost–sharing requirements do not exceed the limits established under § 1302(c)(1) of the Affordable Care Act; and

(ii) if the health benefit plan is offered through the SHOP Exchange, ensure that the health benefit plan's deductible does not exceed the limits established under § 1302(c)(2) of the Affordable Care Act;

(5) be offered by a carrier that:

(i) is licensed and in good standing to offer health insurance coverage in the State;

(ii) if the carrier participates in the **INDIVIDUAL** Exchange's individual market, offers at least one qualified health plan at the silver level and one at the gold level in the individual market outside the Exchange;

(iii) if the carrier participates in the SHOP Exchange, offers at least one qualified health plan at the silver level and one at the gold level in the small group market outside the SHOP Exchange;

(iv) charges the same premium rate for each qualified health plan regardless of whether the qualified health plan is offered through the Exchange, through an insurance producer outside the Exchange, or directly from a carrier;

(v) does not charge any cancellation fees or penalties in violation of § 31–108(c) of this title; and

(vi) complies with the regulations adopted by the Secretary under § 1311(d) of the Affordable Care Act and by the Exchange under § 31–106(c)(4) of this title;

(6) meet the requirements for certification established under the regulations adopted by:

(i) the Secretary under § 1311(c)(1) of the Affordable Care Act, including minimum standards for marketing practices, network adequacy, essential community providers in underserved areas, accreditation, quality improvement, uniform enrollment forms and descriptions of coverage, and information on quality measures for health plan performance; and

(ii) the Exchange under § 31–106(c)(4) of this title;

(7) be in the interest of qualified individuals and qualified employers, as determined by the Exchange;

(8) provide any other benefits as may be required by the Commissioner under any applicable State law or regulation; and

(9) meet any other requirements established by the Exchange under this title**, INCLUDING:**

(I) TRANSITION OF CARE LANGUAGE IN CONTRACTS AS DETERMINED APPROPRIATE BY THE EXCHANGE TO ENSURE CARE CONTINUITY AND REDUCE DUPLICATION AND COSTS OF CARE; ~~AND~~

(II) CRITERIA THAT ENCOURAGE AND SUPPORT QUALIFIED ~~HEALTH PLANS AND QUALIFIED DENTAL~~ PLANS IN FACILITATING CROSS–BORDER ENROLLMENT; AND

(III) DEMONSTRATING COMPLIANCE WITH THE FEDERAL MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT OF 2008.

(c) **(1)** A qualified health plan is not required to provide essential benefits that duplicate the minimum benefits of qualified dental plans, as provided in subsection ~~(g)~~ **(H)** of this section, if:

~~(1)~~ **(I)** the Exchange has determined that at least one qualified dental plan is available to supplement the qualified health plan's coverage; and

~~(2)~~ **(II)** at the time the carrier offers the qualified health plan, the carrier discloses in a form approved by the Exchange that:

~~(i)~~ **1.** the plan does not provide the full range of essential pediatric **DENTAL** benefits; and

~~(ii)~~ **2.** qualified dental plans providing these and other dental benefits also not provided by the qualified health plan are offered through the Exchange.

(2) THE EXCHANGE MAY DETERMINE WHETHER A CARRIER MAY ELECT TO INCLUDE NONESSENTIAL ORAL AND DENTAL BENEFITS IN A QUALIFIED HEALTH PLAN.

(D) (1) A QUALIFIED HEALTH PLAN IS NOT REQUIRED TO PROVIDE ESSENTIAL BENEFITS THAT DUPLICATE THE MINIMUM BENEFITS OF QUALIFIED VISION PLANS, AS PROVIDED IN SUBSECTION (I) OF THIS SECTION, IF:

(I) THE EXCHANGE HAS DETERMINED THAT AT LEAST ONE QUALIFIED VISION PLAN IS AVAILABLE TO SUPPLEMENT THE QUALIFIED HEALTH PLAN'S COVERAGE; AND

(II) AT THE TIME THE CARRIER OFFERS THE QUALIFIED HEALTH PLAN, THE CARRIER DISCLOSES IN A FORM APPROVED BY THE EXCHANGE THAT:

1. THE PLAN DOES NOT PROVIDE THE FULL RANGE OF ESSENTIAL PEDIATRIC VISION BENEFITS; AND

2. QUALIFIED VISION PLANS PROVIDING THESE AND OTHER VISION BENEFITS ALSO NOT PROVIDED BY THE QUALIFIED HEALTH PLAN ARE OFFERED THROUGH THE EXCHANGE.

(2) THE EXCHANGE MAY DETERMINE WHETHER A CARRIER MAY ELECT TO INCLUDE NONESSENTIAL VISION BENEFITS IN A QUALIFIED HEALTH PLAN.

~~(d)~~ **(E)** A qualified health plan is not required to provide at least a bronze level of coverage under subsection (b)(3) of this section if the qualified health plan:

(1) meets the requirements and is certified as a qualified catastrophic plan as provided under the Affordable Care Act; and

(2) will be offered only to individuals eligible for catastrophic coverage.

~~(e)~~ **(F)** A health benefit plan may not be denied certification:

(1) solely on the grounds that the health benefit plan is a fee–for–service plan;

(2) through the imposition of premium price controls by the Exchange; or

(3) solely on the grounds that the health benefit plan provides treatments necessary to prevent patients' deaths in circumstances the Exchange determines are inappropriate or too costly.

~~(f)~~ **(G)** In addition to other rate filing requirements that may be applicable under this article, each carrier seeking certification of a health benefit plan shall:

(1) (i) submit to the Exchange **[**a justification for**]NOTICE OF** any premium increase before implementation of the increase; and

(ii) post the increase on the carrier's Web site;

(2) submit to the Exchange, the Secretary, and the Commissioner, and make available to the public, in plain language as required under § 1311(e)(3)(b) of the Affordable Care Act, accurate and timely disclosure of:

(i) claims payment policies and practices;

(ii) financial disclosures;

(iii) data on enrollment, disenrollment, number of claims denied, and rating practices;

(iv) information on cost–sharing and payments with respect to out–of–network coverage;

(v) information on enrollee and participant rights under Title I of the Affordable Care Act; and

(vi) any other information as determined appropriate by the Secretary and the Exchange; and

(3) make available information about costs an individual would incur under the individual's health benefit plan for services provided by a participating health care provider, including cost–sharing requirements such as deductibles, co–payments, and coinsurance, in a manner determined by the Exchange.

~~(g)~~ **(H)** (1) Except as provided in paragraphs ~~(2), (3), [and]~~ (4)~~, AND (5)~~ **(2) THROUGH (5)** of this subsection, the requirements applicable to qualified health plans under this title also shall apply to qualified dental plans **TO THE EXTENT RELEVANT, WHETHER OFFERED IN CONJUNCTION WITH OR AS AN ENDORSEMENT TO QUALIFIED HEALTH PLANS OR AS STAND–ALONE DENTAL PLANS**.

(2) A carrier offering a qualified dental plan shall be licensed to offer dental coverage but need not be licensed to offer other health benefits.

(3) A qualified dental plan shall:

(i) be limited to dental and oral health benefits, without substantial duplication of other benefits typically offered by health benefit plans without dental coverage; and

(ii) include at a minimum:

1. the essential pediatric dental benefits required by the Secretary under § 1302(b)(1)(j) of the Affordable Care Act; and

2. other dental benefits required by the Secretary or the Exchange.

(4) **(I)** ~~Carriers jointly may offer a comprehensive plan through the Exchange in which dental benefits are provided by a carrier through a qualified dental plan and other benefits are provided by a carrier through a qualified health plan, provided that the plans are priced separately and made available for purchase~~

~~separately at the same price as when offered jointly~~ **THE EXCHANGE MAY DETERMINE:**

1. THE MANNER IN WHICH CARRIERS MUST DISCLOSE THE PRICE OF ORAL AND DENTAL BENEFITS AND, TO THE EXTENT RELEVANT, MEDICAL BENEFITS, WHEN OFFERED:

A. TO THE EXTENT PERMITTED BY THE EXCHANGE, IN A QUALIFIED HEALTH PLAN;

B. IN CONJUNCTION WITH OR AS AN ENDORSEMENT TO A QUALIFIED HEALTH PLAN; OR

C. AS A STAND–ALONE PLAN; AND

2. WHEN A CARRIER OFFERS A QUALIFIED DENTAL PLAN IN CONJUNCTION WITH A QUALIFIED HEALTH PLAN, WHETHER THE CARRIER ALSO MUST MAKE THE QUALIFIED HEALTH PLAN, THE QUALIFIED DENTAL PLAN, OR BOTH QUALIFIED PLANS AVAILABLE ON A STAND–ALONE BASIS.

(II) IN DETERMINING THE MANNER IN WHICH CARRIERS MUST OFFER AND DISCLOSE THE PRICE OF MEDICAL, ORAL, AND DENTAL BENEFITS UNDER THIS PARAGRAPH, THE EXCHANGE SHALL BALANCE THE OBJECTIVES OF TRANSPARENCY AND AFFORDABILITY FOR CONSUMERS.

(5) THE EXCHANGE MAY:

(I) EXEMPT QUALIFIED DENTAL PLANS FROM A REQUIREMENT APPLICABLE TO QUALIFIED HEALTH PLANS UNDER THIS TITLE TO THE EXTENT THE EXCHANGE DETERMINES THE REQUIREMENT IS NOT RELEVANT TO QUALIFIED DENTAL PLANS; AND

(II) ESTABLISH ADDITIONAL REQUIREMENTS FOR QUALIFIED DENTAL PLANS IN CONJUNCTION WITH ITS ESTABLISHMENT OF ADDITIONAL REQUIREMENTS FOR QUALIFIED HEALTH PLANS UNDER SUBSECTION (B)(9) OF THIS SECTION.

(I) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) THROUGH (5) OF THIS SUBSECTION, THE REQUIREMENTS APPLICABLE TO QUALIFIED HEALTH PLANS UNDER THIS TITLE ALSO SHALL APPLY TO QUALIFIED VISION PLANS TO THE EXTENT RELEVANT, WHETHER OFFERED IN CONJUNCTION WITH OR AS AN ENDORSEMENT TO QUALIFIED HEALTH PLANS OR AS STAND–ALONE VISION PLANS.

(2) A CARRIER OFFERING A QUALIFIED VISION PLAN SHALL BE LICENSED TO OFFER VISION COVERAGE BUT NEED NOT BE LICENSED TO OFFER OTHER HEALTH BENEFITS.

(3) A QUALIFIED VISION PLAN SHALL:

(I) BE LIMITED TO VISION AND EYE HEALTH BENEFITS, WITHOUT SUBSTANTIAL DUPLICATION OF OTHER BENEFITS TYPICALLY OFFERED BY HEALTH BENEFIT PLANS WITHOUT VISION COVERAGE; AND

(II) INCLUDE AT A MINIMUM:

1. THE ESSENTIAL PEDIATRIC VISION BENEFITS REQUIRED BY THE SECRETARY UNDER § 1302(B)(1)(J) OF THE AFFORDABLE CARE ACT; AND

2. OTHER VISION BENEFITS REQUIRED BY THE SECRETARY OR THE EXCHANGE.

(4) (I) THE EXCHANGE MAY DETERMINE:

1. THE MANNER IN WHICH CARRIERS MUST DISCLOSE THE PRICE OF VISION BENEFITS AND, TO THE EXTENT RELEVANT, MEDICAL BENEFITS, WHEN OFFERED:

A. TO THE EXTENT PERMITTED BY THE EXCHANGE, IN A QUALIFIED HEALTH PLAN;

B. IN CONJUNCTION WITH OR AS AN ENDORSEMENT TO A QUALIFIED HEALTH PLAN; OR

C. AS A STAND–ALONE PLAN; AND

2. WHEN A CARRIER OFFERS A QUALIFIED VISION PLAN IN CONJUNCTION WITH A QUALIFIED HEALTH PLAN, WHETHER THE CARRIER ALSO MUST MAKE THE QUALIFIED HEALTH PLAN, THE QUALIFIED VISION PLAN, OR BOTH QUALIFIED PLANS AVAILABLE ON A STAND–ALONE BASIS.

(II) IN DETERMINING THE MANNER IN WHICH CARRIERS MUST OFFER AND DISCLOSE THE PRICE OF MEDICAL AND VISION BENEFITS UNDER THIS PARAGRAPH, THE EXCHANGE SHALL BALANCE THE OBJECTIVES OF TRANSPARENCY AND AFFORDABILITY FOR CONSUMERS.

(5) THE EXCHANGE MAY:

(I) EXEMPT QUALIFIED VISION PLANS FROM A REQUIREMENT APPLICABLE TO QUALIFIED HEALTH PLANS UNDER THIS TITLE TO THE EXTENT THE EXCHANGE DETERMINES THE REQUIREMENT IS NOT RELEVANT TO QUALIFIED VISION PLANS; AND

(II) ESTABLISH ADDITIONAL REQUIREMENTS FOR QUALIFIED VISION PLANS IN CONJUNCTION WITH ITS ESTABLISHMENT OF ADDITIONAL REQUIREMENTS FOR QUALIFIED HEALTH PLANS UNDER SUBSECTION (B)(9) OF THIS SECTION.

(J) A MANAGED CARE ORGANIZATION MAY NOT BE REQUIRED TO OFFER A QUALIFIED PLAN IN THE EXCHANGE.

31–116.

(A) THE ESSENTIAL HEALTH BENEFITS REQUIRED UNDER § 1302(A) OF THE AFFORDABLE CARE ACT:

(1) SHALL BE THE BENEFITS IN THE STATE BENCHMARK PLAN, SELECTED IN ACCORDANCE WITH THIS SECTION; AND

(2) NOTWITHSTANDING ANY OTHER ~~PROVISION OF~~ BENEFITS MANDATED BY STATE LAW, SHALL BE THE BENEFITS REQUIRED IN:

(I) ALL INDIVIDUAL HEALTH BENEFIT PLANS AND HEALTH BENEFIT PLANS OFFERED TO SMALL EMPLOYERS, EXCEPT FOR GRANDFATHERED HEALTH PLANS, AS DEFINED IN THE AFFORDABLE CARE ACT, OFFERED ~~IN THE INDIVIDUAL AND SMALL GROUP MARKET~~ OUTSIDE THE EXCHANGE; AND

(II) SUBJECT TO § 31–115(C) AND (D) OF THIS TITLE, ALL QUALIFIED HEALTH PLANS OFFERED IN THE EXCHANGE.

(B) IN SELECTING THE STATE BENCHMARK PLAN, THE STATE SEEKS TO:

(1) BALANCE COMPREHENSIVENESS OF BENEFITS WITH PLAN AFFORDABILITY TO PROMOTE OPTIMAL ACCESS TO CARE FOR ALL RESIDENTS OF THE STATE;

(2) ACCOMMODATE TO THE EXTENT PRACTICABLE THE DIVERSE HEALTH NEEDS ACROSS THE DIVERSE POPULATIONS WITHIN THE STATE; AND

(3) ENSURE THE BENEFIT OF INPUT FROM THE STAKEHOLDERS AND THE PUBLIC.

(C) (1) THE STATE BENCHMARK PLAN SHALL BE SELECTED BY THE MARYLAND HEALTH CARE REFORM COORDINATING COUNCIL THROUGH AN OPEN, TRANSPARENT, AND INCLUSIVE PROCESS.

(2) ANY ACTION OF THE COUNCIL MAY BE TAKEN ONLY BY THE AFFIRMATIVE VOTE OF AT LEAST NINE MEMBERS OF THE MARYLAND HEALTH CARE REFORM COORDINATING COUNCIL.

(3) IN SELECTING THE STATE BENCHMARK PLAN, THE MARYLAND HEALTH CARE REFORM COORDINATING COUNCIL MAY EXCLUDE:

(I) A HEALTH CARE SERVICE, BENEFIT, COVERAGE, OR REIMBURSEMENT FOR COVERED HEALTH CARE SERVICES THAT IS REQUIRED UNDER THIS ARTICLE OR THE HEALTH – GENERAL ARTICLE TO BE PROVIDED OR OFFERED IN A HEALTH BENEFIT PLAN THAT IS ISSUED OR DELIVERED IN THE STATE BY A CARRIER; OR

(II) REIMBURSEMENT REQUIRED BY STATUTE, BY A HEALTH BENEFIT PLAN FOR A SERVICE WHEN THAT SERVICE IS PERFORMED BY A HEALTH CARE PROVIDER WHO IS LICENSED UNDER THE HEALTH OCCUPATIONS ARTICLE AND WHOSE SCOPE OF PRACTICE INCLUDES THAT SERVICE.

~~(4)~~ (D) IN SELECTING THE STATE BENCHMARK PLAN, THE MARYLAND HEALTH CARE REFORM COORDINATING COUNCIL SHALL:

~~(I)~~ (1) OBTAIN GUIDANCE NECESSARY TO:

~~1.~~ (I) DETERMINE THE 10 HEALTH BENEFIT PLANS DEEMED ELIGIBLE BY THE SECRETARY TO BE THE STATE BENCHMARK PLAN; AND

~~2.~~ (II) CONDUCT A COMPARATIVE ANALYSIS OF THE BENEFITS OF EACH PLAN; ~~AND~~

~~(II)~~ (2) SOLICIT THE INPUT OF STAKEHOLDERS IN THE STATE, INCLUDING MEMBERS OF THE GENERAL ASSEMBLY AND MEMBERS OF THE PUBLIC, BY:

~~1.~~ (I) APPOINTING AND CONSULTING WITH AN ADVISORY GROUP MADE UP OF A DIVERSE AND REPRESENTATIVE CROSS–SECTION OF STAKEHOLDERS, INCLUDING:

1. INDIVIDUALS WITH KNOWLEDGE OF AND EXPERTISE IN ADVOCATING FOR CONSUMERS REPRESENTING LOWER INCOME, RACIAL, ETHNIC, OR OTHER MINORITIES, INDIVIDUALS WITH CHRONIC DISEASES AND OTHER DISABILITIES, AND VULNERABLE POPULATIONS;

2. PUBLIC HEALTH RESEARCHERS AND OTHER ACADEMIC EXPERTS WITH RELEVANT KNOWLEDGE AND BACKGROUND, INCLUDING KNOWLEDGE AND BACKGROUND RELATING TO DISPARITIES AND THE HEALTH NEEDS OF DIVERSE POPULATIONS; AND

3. CARRIERS, HEALTH CARE PROVIDERS, AND OTHER INDUSTRY REPRESENTATIVES WITH KNOWLEDGE AND EXPERTISE RELEVANT TO HEALTH PLAN BENEFITS AND DESIGN;

(II) TO THE EXTENT PRACTICABLE, APPOINTING INDIVIDUALS TO THE ADVISORY GROUP WHO REFLECT THE GENDER, RACIAL, ETHNIC, AND GEOGRAPHIC DIVERSITY OF THE STATE; AND

~~2.~~ (III) ESTABLISHING A MECHANISM FOR MEMBERS OF THE GENERAL ASSEMBLY AND MEMBERS OF THE PUBLIC TO:

1. BE KEPT INFORMED BY ELECTRONIC MAIL; AND

2. PROVIDE COMMENT; AND

(3) SELECT A PLAN THAT COMPLIES WITH ALL REQUIREMENTS OF THIS TITLE AND THE AFFORDABLE CARE ACT, THE FEDERAL MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT OF 2008, AND ANY OTHER FEDERAL LAWS, REGULATIONS, POLICIES, OR GUIDANCE APPLICABLE TO STATE BENCHMARK PLANS AND ESSENTIAL HEALTH BENEFITS.

~~(5)~~ (E) ON OR BEFORE SEPTEMBER 30, 2012, THE MARYLAND HEALTH CARE REFORM COORDINATING COUNCIL SHALL SELECT THE STATE BENCHMARK PLAN FOR COVERAGE BEGINNING JANUARY 1, 2014.

31–117.

(A) THE EXCHANGE, WITH THE APPROVAL OF THE COMMISSIONER, SHALL IMPLEMENT OR OVERSEE THE IMPLEMENTATION OF THE

STATE–SPECIFIC REQUIREMENTS OF §§ 1341 AND 1343 OF THE AFFORDABLE CARE ACT RELATING TO TRANSITIONAL REINSURANCE AND RISK ADJUSTMENT.

(B) THE EXCHANGE MAY NOT ASSUME RESPONSIBILITY FOR THE PROGRAM CORRIDORS FOR HEALTH BENEFIT PLANS IN THE INDIVIDUAL EXCHANGE AND THE SHOP EXCHANGE ESTABLISHED UNDER § 1342 OF THE AFFORDABLE CARE ACT.

(C) (1) IN COMPLIANCE WITH § 1341 OF THE AFFORDABLE CARE ACT, THE EXCHANGE, IN CONSULTATION WITH THE MARYLAND HEALTH CARE COMMISSION AND WITH THE APPROVAL OF THE COMMISSIONER, SHALL OPERATE OR OVERSEE THE OPERATION OF A TRANSITIONAL REINSURANCE PROGRAM IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE SECRETARY FOR COVERAGE YEARS 2014 THROUGH 2016.

(2) AS REQUIRED BY THE AFFORDABLE CARE ACT AND REGULATIONS ADOPTED BY THE SECRETARY, THE TRANSITIONAL REINSURANCE PROGRAM SHALL BE DESIGNED TO PROTECT CARRIERS THAT OFFER INDIVIDUAL HEALTH BENEFIT PLANS INSIDE AND OUTSIDE THE EXCHANGE AGAINST EXCESSIVE HEALTH CARE EXPENSES INCURRED BY HIGH–RISK INDIVIDUALS.

(D) (1) IN COMPLIANCE WITH § 1343 OF THE AFFORDABLE CARE ACT, THE EXCHANGE, WITH THE APPROVAL OF THE COMMISSIONER, SHALL OPERATE OR OVERSEE THE OPERATION OF A RISK ADJUSTMENT PROGRAM DESIGNED TO:

(I) REDUCE THE INCENTIVE FOR CARRIERS TO MANAGE THEIR RISK BY SEEKING TO ENROLL INDIVIDUALS WITH A LOWER THAN AVERAGE HEALTH RISK;

(II) INCREASE THE INCENTIVE FOR CARRIERS TO ENHANCE THE QUALITY AND COST–EFFECTIVENESS OF THEIR ENROLLEES' HEALTH CARE SERVICES; AND

(III) REQUIRE APPROPRIATE ADJUSTMENTS AMONG ALL HEALTH BENEFIT PLANS IN THE INDIVIDUAL AND SMALL GROUP MARKETS INSIDE AND OUTSIDE THE EXCHANGE TO COMPENSATE FOR THE ENROLLMENT OF HIGH–RISK INDIVIDUALS.

(2) BEGINNING IN 2014, THE EXCHANGE, WITH THE APPROVAL OF THE ~~SECRETARY~~ COMMISSIONER, SHALL STRONGLY CONSIDER USING THE FEDERAL MODEL ADOPTED BY THE SECRETARY IN THE OPERATION OF THE STATE'S RISK ADJUSTMENT PROGRAM.

[31–111.**] 31–119.**

(a) The Exchange shall be administered in a manner designed to:

(1) prevent discrimination;

(2) streamline enrollment and other processes to minimize expenses and achieve maximum efficiency;

(3) prevent waste, fraud, and abuse; and

(4) promote financial integrity.

(B) (1) THE EXCHANGE SHALL ESTABLISH A FULL–SCALE FRAUD, WASTE, AND ABUSE DETECTION AND PREVENTION PROGRAM DESIGNED TO:

(I) ENSURE THE EXCHANGE'S COMPLIANCE WITH FEDERAL AND STATE LAWS FOR THE DETECTION AND PREVENTION OF FRAUD, WASTE, AND ABUSE, INCLUDING WHISTLEBLOWER AND CONFIDENTIALITY PROTECTIONS AND FEDERAL ANTI–KICKBACK PROHIBITIONS; AND

(II) PROMOTE TRANSPARENCY, CREDIBILITY, AND TRUST ON THE PART OF THE PUBLIC IN THE INTEGRITY OF ITS OPERATIONS.

(2) THE FRAUD, WASTE, AND ABUSE DETECTION AND PREVENTION PROGRAM SHALL:

(I) ESTABLISH A FRAMEWORK FOR INTERNAL CONTROLS;

(II) IDENTIFY CONTROL CYCLES;

(III) CONDUCT RISK ASSESSMENTS;

(IV) DOCUMENT PROCESSES; AND

(V) IMPLEMENT CONTROLS.

(3) THE EXCHANGE:

(I) SHALL, IN ACCORDANCE WITH § 2–1246 OF THE STATE GOVERNMENT ARTICLE, SUBMIT ITS PLAN FOR THE FRAUD, WASTE, AND ABUSE DETECTION AND PREVENTION PROGRAM TO THE SENATE FINANCE COMMITTEE AND THE HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE; AND

(II) SHALL ALLOW THE COMMITTEES 60 DAYS FOR REVIEW AND COMMENT BEFORE ESTABLISHING THE PROGRAM.

[(b)**] (C)** The Exchange shall keep an accurate accounting of all its activities, expenditures, and receipts.

[(c)**] (D)** (1) On or before December 1 of each year, the Board shall forward to the Secretary, the Governor, and, in accordance with § 2–1246 of the State Government Article, the General Assembly, a report on the activities, expenditures, and receipts of the Exchange.

(2) The report shall:

(i) be in the standardized format required by the Secretary;

(ii) include data regarding:

1. health plan participation, ratings, coverage, price, quality improvement measures, and benefits;

2. consumer choice, participation, and satisfaction information to the extent the information is available;

3. financial integrity, fee assessments, and status of the Fund; and

4. any other appropriate metrics related to the operation of the Exchange that may be used to evaluate Exchange performance, assure transparency, and facilitate research and analysis; **[**and**]**

(iii) include data to identify disparities related to gender, race, ethnicity, geographic location, language, disability, or other attributes of special populations**; AND**

(IV) INCLUDE INFORMATION ON ITS FRAUD, WASTE, AND ABUSE DETECTION AND PREVENTION PROGRAM.

[(d)**] (E)** The Board shall cooperate fully with any investigation into the affairs of the Exchange, including making available for examination the records of the Exchange, conducted by:

(1) the Secretary under the Secretary's authority under the Affordable Care Act; and

(2) the Commissioner under the Commissioner's authority to regulate the sale and purchase of insurance in the State.

SECTION ~~3.~~ 4. AND BE IT FURTHER ENACTED, That, on or before December 1, 2015, the Maryland Health Benefit Exchange, in consultation with the Maryland Insurance Administration, shall conduct a study and report its findings and recommendations to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly, on:

(1) (i) whether the State should develop a ~~Maryland–specific~~ risk adjustment program as an alternative to the federal or Maryland–specific model selected under Title 31 of the Insurance Article that would provide more effective protection ~~than the federal model~~ against adverse risk selection that could threaten the viability of the Maryland Health Benefit Exchange and the affordability of its plan offerings; and

~~(2)~~ (ii) if so, how the ~~Maryland~~ alternative risk adjustment program should be designed and when it should be implemented;

(2) whether strategies should be implemented to mitigate the impact of the inclusion in the individual market of individuals enrolled in the Maryland Health Insurance Plan; and

(3) whether the State should develop a Maryland–specific reinsurance program to ensure the affordability of premiums in the individual market.

SECTION ~~4.~~ 5. AND BE IT FURTHER ENACTED, That:

(a) There is joint legislative and executive committee that consists of the following members:

(1) the chair of the Maryland Health Benefit Exchange and two additional members of its Board to be selected by the chair;

(2) the Maryland Insurance Commissioner;

(3) the Secretary of Budget and Management;

(4) the chair of the Health Services Cost Review Commission or the chair's designee;

(5) the chair of the Maryland Health Care Commission or the chair's designee;

(6) two members of the Senate, appointed by the President of the Senate; ~~and~~

(7) two members of the House of Delegates, appointed by the Speaker of the House; and

(8) the Attorney General, or the Attorney General's designee.

(b) On or before December 1, 2012, the joint legislative and executive committee, in consultation with the Maryland Health Benefit Exchange, its Financing and Sustainability Advisory Committee established under § 31–106(c)(6) of the Insurance Article, and other stakeholders, shall conduct a study and report its findings and recommendations to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly, on the financing mechanisms which should be used to enable the Exchange to be self–sustaining by 2015. The study and report shall:

(1) (i) build on the recommendations of the 2011 Report and Recommendations of Maryland Health Benefit Exchange and the 2011 report of the Finance and Sustainability Advisory Committee of the Exchange; and

(ii) in assessing total funds needed to sustain the Exchange and to minimize duplication of functions and costs, consider the expertise of and functions already performed by the Department of Health and Mental Hygiene, the Maryland Health Care Commission, the Maryland Insurance Administration, and the Health Services Cost Review Commission;

(2) examine a combination of funding mechanisms for the Exchange with the goal of developing an approach that will:

(i) ensure a stable revenue stream;

(ii) allow the Exchange to adjust revenue levels to accommodate fluctuations in enrollment and other factors affecting its fixed and variable costs; and

(iii) rely on:

1. a consistent, broad–based assessment that can be adjusted to scale in order to reduce the Exchange's vulnerability to enrollment fluctuations; and

2. additional funding from transaction fees;

(3) consider existing broad–based financing of health programs such as the Maryland Health Care Commission's assessments on health care industry sectors;

(4) taking into account all of the ramifications of and funding available under the Affordable Care Act and changes in the State's health care delivery system, consider the impact of any funding mechanism on health insurance premiums and the State's Medicare waiver;

~~(4)~~ (5) consider whether an assessment or transaction fee cap, formula, or other mechanism should be used to align the revenues and expenditures of the Exchange; and

~~(5)~~ (6) develop recommendations on the specific mechanisms that should be used to finance the Exchange for consideration by the General Assembly during the 2013 session.

SECTION ~~5.~~ 6. AND BE IT FURTHER ENACTED, That, on or before December 1, 2015, the Maryland Health Benefit Exchange, in consultation with its advisory committees established under § 31–106(c)(6) of the Insurance Article, and with other stakeholders, shall conduct a study and report its findings and recommendations to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly, on whether the Exchange should remain an independent public body or should become a nongovernmental, nonprofit entity.

SECTION ~~6.~~ 7. AND BE IT FURTHER ENACTED, That, on or before December 1, 2016, the Maryland Health Benefit Exchange, in consultation with its advisory committees established under § 31–106(c)(6) of the Insurance Article, and with other stakeholders, shall conduct a study and report its findings and recommendations to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly, on whether to continue to maintain separate small group and individual markets or to merge the two markets.

SECTION ~~7.~~ 8. AND BE IT FURTHER ENACTED, That, on or before December 1, 2012, the Maryland Health Benefit Exchange, in consultation with the Maryland Insurance Commissioner, the Department of Health and Mental Hygiene, its advisory committees established under § 31–106(c)(6) of the Insurance Article, and with other stakeholders, shall conduct a study, including a cost benefit analysis, and report its findings and recommendations to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly, of the establishment of requirements for continuity of care in the State's health insurance markets, including:

(1) the Maryland Medical Assistance Program and the Maryland Children's Health Program; and

(2) health benefit plans offered in the individual and small group markets, both inside and outside the Maryland Health Benefit Exchange.

SECTION ~~8.~~ 9. AND BE IT FURTHER ENACTED, That the requirements of § 31–116(a)(2)(i) of the Insurance Article, as enacted by Section 2 of this Act, shall be subject to any clarification regarding essential pediatric benefits that may be provided by the U.S. Department of Health and Human Services.

SECTION ~~9.~~ 10. AND BE IT FURTHER ENACTED, That, with respect to the preparation and certification of qualified plans to be offered through the Maryland Health Benefit Exchange in 2014, pending adoption of regulations under Title 31 of

the Insurance Article, and after receiving comment from the Joint Committee on Administrative, Executive, and Legislative Review, the Senate Finance Committee, the House Health and Government Operations Committee, carriers, and the public, the Board of Trustees of the Exchange may adopt interim policies, if necessary, to:

(1) comply with federal law and regulations; and

(2) allow carriers offering qualified plans in the Exchange in 2014 sufficient time to design and develop qualified plans and file rates with the Maryland Insurance Administration.

SECTION 11. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect January 1, 2014.

SECTION ~~8.~~ ~~10.~~ 12. AND BE IT FURTHER ENACTED, That, except as provided in Section 11 of this Act, this Act shall take effect June 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 153

(House Bill 1369)

AN ACT concerning

Office of Minority Affairs – Duties of Special Secretary – Minority Business Enterprises

FOR the purpose of expanding the duties of the Special Secretary of the Office of Minority Affairs to include the promotion and coordination of certain training and participation in certain plans, programs, and operations concerning minority business enterprises; and generally relating to the duties of the Special Secretary of the Office of Minority Affairs.

BY repealing and reenacting, with amendments,
Article – State Government
Section 9–305
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – State Government

9–305.

(a) This section applies to the following minority business enterprises:

(1) a publicly owned business if 1 or more minority persons own at least 51% of the stock of the business; or

(2) any other business if 1 or more minority persons own at least 50% of the business.

(b) Subject to the limitations of any law that governs the activities of other units of the Executive Branch of the State government, the Special Secretary shall:

(1) carry out each State or federal program that is created to promote the growth of or participation in minority business enterprises;

(2) PROMOTE AND COORDINATE TRAINING REGARDING THE REQUIREMENTS OF THE MINORITY BUSINESS ENTERPRISE PROGRAM;

[(2)**] (3)** promote **[**and**],** coordinate**, AND PARTICIPATE IN** the plans, programs, and operations of the State government that promote or otherwise affect the establishment, preservation, and strengthening of minority business enterprises;

[(3)**] (4)** promote activities and the use of the resources of the State government, local governments, and private entities for the growth of minority business enterprises;

[(4)**] (5)** coordinate the effort of private entities and public agencies to develop minority business enterprises;

[(5)**] (6)** establish a system to develop, collect, summarize, and give out information that would help a person to:

(i) establish a minority business enterprise;

(ii) operate a minority business enterprise successfully; or

(iii) promote the establishment and successful operation of minority business enterprises; and

[(6)**] (7)** subject to the limitations of law and the availability of funds:

(i) provide technical and managerial assistance to minority business enterprises;

(ii) provide the managerial and organizational framework for private entities and units of the State government to plan and carry out joint undertakings that relate to minority business enterprises; and

(iii) pay, wholly or partly, the costs of a pilot or demonstration project that is intended to overcome the special problems of minority business enterprises.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 154

(House Bill 1370)

AN ACT concerning

Procurement – Minority Business Participation

FOR the purpose of establishing certain legislative findings; replacing a certain numerical percentage goal with a biennial process by which the State's overall minority business enterprise participation goal shall be established, based on certain factors, and adopted by regulation; requiring the Special Secretary of Minority Affairs, in consultation with the Secretary of Transportation and the Attorney General, to establish certain guidelines biennially for units to follow while determining whether to set certain subgoals for certain minority groups; requiring the Special Secretary of Minority Affairs, in establishing the guidelines, to provide for public participation by consulting with certain persons; requiring the Special Secretary of Minority Affairs to adopt certain regulations; clarifying the factors to be used by certain units in evaluating each contract to determine the appropriate minority business enterprise participation goals for the contract; requiring certain units to monitor and collect certain data and institute corrective actions relating to contractor compliance; prohibiting the use of quotas and certain goal setting processes; requiring the Special Secretary of Minority Affairs, in consultation with the Secretary of Transportation and the Attorney General, to establish through regulation certain procedures related to participation of minority business enterprises as prime contractors; establishing circumstances under which a minority business enterprise participation schedule may not be amended; clarifying that minority business enterprise participation schedules are part of certain contracts; prohibiting a contractor from terminating certified minority business enterprises under certain circumstances; requiring that certain bidders or offerors complete certain documents; requiring that certain

documents completed by bidders or offerors be made part of certain contracts; requiring that all contracts relating to minority business enterprise participation contain certain provisions; continuing until a certain date the provisions of the State Procurement Law relating to procurement from minority businesses; requiring the certification agency, in consultation with the General Assembly and the Office of the Attorney General, to initiate a certain study of the Minority Business Enterprise Program for certain purposes; authorizing the Board of Public Works to adopt certain regulations; requiring the final report of the study to be submitted to the Legislative Policy Committee before a certain date; making the provisions of this Act severable; defining certain terms; and generally relating to minority business participation in State procurement.

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 14–301, 14–302, 14–303, and 14–309
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY adding to
Article – State Finance and Procurement
Section 14–301.1
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – State Finance and Procurement

14–301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Certification" means the determination that a legal entity is a minority business enterprise for the purposes of this subtitle.

(c) "Certification agency" means the agency designated by the Board of Public Works under § 14–303(b) of this subtitle to certify and decertify minority business enterprises.

(d) "Certified minority business enterprise" means a minority business enterprise that holds a certification.

(e) "Economically disadvantaged individual" means a socially disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(f) (1) "Minority business enterprise" means any legal entity, except a joint venture, that is:

(i) organized to engage in commercial transactions;

(ii) at least 51% owned and controlled by 1 or more individuals who are socially and economically disadvantaged; and

(iii) managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it.

(2) "Minority business enterprise" includes a not for profit entity organized to promote the interests of physically or mentally disabled individuals.

(G) "MINORITY BUSINESS ENTERPRISE PARTICIPATION SCHEDULE" MEANS A SCHEDULE INCLUDED IN THE SUBMISSION OF A BID OR OFFER THAT IDENTIFIES:

(1) THE CERTIFIED MINORITY BUSINESS ENTERPRISES THAT A BIDDER OR OFFEROR AGREES TO USE IN THE PERFORMANCE OF THE CONTRACT; AND

(2) THE PERCENTAGE OF CONTRACT VALUE ATTRIBUTED TO EACH CERTIFIED MINORITY BUSINESS ENTERPRISE.

[(g)**] (H)** (1) Subject to paragraphs (2) and (3) of this subsection, "personal net worth" means the net value of the assets of an individual remaining after total liabilities are deducted.

(2) "Personal net worth" includes the individual's share of assets held jointly or as community property with the individual's spouse.

(3) "Personal net worth" does not include:

(i) the individual's ownership interest in the applicant or a certified minority business enterprise;

(ii) the individual's equity in his or her primary place of residence; or

(iii) up to $500,000 of the cash value of any qualified retirement savings plans or individual retirement accounts.

[(h)**] (I)** "Race–neutral measure" means a method that is or can be used to assist all small businesses.

[(i)**] (J)** (1) Subject to paragraphs (2) and (3) of this subsection, **AND IN ACCORDANCE WITH THE STATE'S MOST RECENT DISPARITY STUDY,** "socially and economically disadvantaged individual" means a citizen or lawfully admitted permanent resident of the United States who is:

(i) in any of the following minority groups:

1. African American – an individual having origins in any of the black racial groups of Africa;

2. American Indian/Native American – an individual having origins in any of the original peoples of North America and who is a documented member of a North American tribe, band, or otherwise has a special relationship with the United States or a state through treaty, agreement, or some other form of recognition. This includes an individual who claims to be an American Indian/Native American and who is regarded as such by the American Indian/Native American community of which the individual claims to be a part, but does not include an individual of Eskimo or Aleutian origin;

3. Asian – an individual having origins in the Far East, Southeast Asia, or the Indian subcontinent, and who is regarded as such by the community of which the person claims to be a part;

4. Hispanic – an individual of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race, and who is regarded as such by the community of which the person claims to be a part;

5. physically or mentally disabled – **NOTWITHSTANDING THE STATE'S MOST RECENT DISPARITY STUDY,** an individual who has an impairment that substantially limits one or more major life activities, who is regarded generally by the community as having such a disability, and whose disability has substantially limited his or her ability to engage in competitive business; or

6. women – a woman, regardless of race or ethnicity; or

(ii) otherwise found by the certification agency to be a socially and economically disadvantaged individual.

(2) There is a rebuttable presumption that an individual who is a member of a minority group under paragraph (1)(i) of this subsection is socially and economically disadvantaged.

(3) An individual whose personal net worth exceeds $1,500,000, as adjusted annually for inflation according to the Consumer Price Index, may not be found to be economically disadvantaged.

[(j)**] (K)** "Socially disadvantaged individual" means an individual who has been subjected to racial or ethnic prejudice or cultural bias within American society because of membership in a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the control of the individual.

14–301.1.

THE GENERAL ASSEMBLY FINDS THE FOLLOWING:

(1) THE STATE OF MARYLAND WISHES TO PROVIDE ALL OF ITS CITIZENS WITH EQUAL ACCESS TO BUSINESS FORMATION AND BUSINESS GROWTH OPPORTUNITIES;

(2) THE ELIMINATION OF DISCRIMINATION AGAINST MINORITY– AND WOMEN–OWNED BUSINESSES IS OF PARAMOUNT IMPORTANCE TO THE FUTURE WELFARE OF THE STATE;

(3) THE GENERAL ASSEMBLY HAS RECEIVED AND CAREFULLY REVIEWED THE DISPARITY STUDY ENTITLED "THE STATE OF MINORITY– AND WOMEN–OWNED BUSINESS ENTERPRISE: EVIDENCE FROM MARYLAND" COMMISSIONED BY THE GENERAL ASSEMBLY AND PUBLISHED ON FEBRUARY 17, 2011 (THE STUDY), AND FINDS THAT THE STUDY PROVIDES A STRONG BASIS IN EVIDENCE DEMONSTRATING PERSISTENT DISCRIMINATION AGAINST MINORITY– AND WOMEN–OWNED BUSINESSES;

(4) BASED ON ITS REVIEW OF THE STUDY, THE GENERAL ASSEMBLY FINDS THAT:

(I) THERE ARE SUBSTANTIAL AND STATISTICALLY SIGNIFICANT ADVERSE DISPARITIES BETWEEN THE AVAILABILITY AND UTILIZATION OF MINORITIES AND WOMEN IN THE PRIVATE SECTOR IN THE SAME GEOGRAPHIC MARKETS AND INDUSTRY CATEGORIES IN WHICH THE STATE DOES BUSINESS;

(II) THE STATE WOULD BECOME A PASSIVE PARTICIPANT IN PRIVATE SECTOR RACIAL AND GENDER DISCRIMINATION IF IT CEASED OR CURTAILED ITS REMEDIAL EFFORTS, INCLUDING THE OPERATION OF THE MINORITY BUSINESS ENTERPRISE PROGRAM;

(III) THERE ARE SUBSTANTIAL AND STATISTICALLY SIGNIFICANT ADVERSE DISPARITIES FOR ALL RACIAL AND ETHNIC GROUPS AND NONMINORITY WOMEN COMBINED IN ALL MAJOR CONTRACTING CATEGORIES IN STATE PROCUREMENT;

(IV) THERE ARE SUBSTANTIAL AND STATISTICALLY SIGNIFICANT ADVERSE DISPARITIES FOR ALL INDIVIDUAL RACIAL AND ETHNIC GROUPS AND FOR NONMINORITY WOMEN IN MOST MAJOR INDUSTRY CATEGORIES IN STATE PROCUREMENT;

(V) THERE IS AMPLE EVIDENCE THAT DISCRIMINATION IN THE PRIVATE SECTOR HAS DEPRESSED FIRM FORMATION AND FIRM GROWTH AMONG MINORITY AND NONMINORITY WOMEN ENTREPRENEURS; AND

(VI) THERE IS POWERFUL AND PERSUASIVE QUALITATIVE AND ANECDOTAL EVIDENCE OF DISCRIMINATION AGAINST MINORITY AND NONMINORITY WOMEN BUSINESS OWNERS IN BOTH THE PUBLIC AND PRIVATE SECTORS;

(5) AS A RESULT OF ONGOING DISCRIMINATION AND THE PRESENT DAY EFFECTS OF PAST DISCRIMINATION, MINORITY– AND WOMEN–OWNED BUSINESSES COMBINED CONTINUE TO BE VERY SIGNIFICANTLY UNDERUTILIZED RELATIVE TO THEIR AVAILABILITY TO PERFORM WORK IN THE SECTORS IN WHICH THE STATE DOES BUSINESS;

(6) MINORITY PRIME CONTRACTORS ALSO ARE SUBJECT TO DISCRIMINATION AND CONFRONT ESPECIALLY DAUNTING BARRIERS IN ATTEMPTING TO COMPETE WITH VERY LARGE AND LONG–ESTABLISHED NONMINORITY COMPANIES;

(7) DESPITE THE FACT THAT THE STATE HAS EMPLOYED, AND CONTINUES TO EMPLOY, NUMEROUS AND ROBUST RACE–NEUTRAL REMEDIES, INCLUDING AGGRESSIVE OUTREACH AND ADVERTISING, TRAINING AND EDUCATION, SMALL BUSINESS PROGRAMS, EFFORTS TO IMPROVE ACCESS TO CAPITAL, AND OTHER EFFORTS, THERE IS A STRONG BASIS IN EVIDENCE THAT DISCRIMINATION PERSISTS EVEN IN PUBLIC SECTOR PROCUREMENT WHERE THESE EFFORTS HAVE BEEN EMPLOYED;

(8) THIS SUBTITLE ENSURES THAT RACE–NEUTRAL EFFORTS WILL BE USED TO THE MAXIMUM EXTENT FEASIBLE AND THAT RACE–CONSCIOUS MEASURES WILL BE USED ONLY WHERE NECESSARY TO ELIMINATE DISCRIMINATION THAT WAS NOT ALLEVIATED BY RACE–NEUTRAL EFFORTS;

(9) THIS SUBTITLE CONTINUES AND ENHANCES EFFORTS TO ENSURE THAT THE STATE LIMITS THE BURDEN ON NONMINORITY BUSINESSES AS MUCH AS POSSIBLE BY ENSURING THAT ALL GOALS ARE DEVELOPED USING THE BEST AVAILABLE DATA AND THAT WAIVERS ARE AVAILABLE WHENEVER CONTRACTORS MAKE GOOD FAITH EFFORTS; AND

(10) STATE EFFORTS TO SUPPORT THE DEVELOPMENT OF COMPETITIVELY VIABLE MINORITY– AND WOMEN–OWNED BUSINESS ENTERPRISES WILL ASSIST IN REDUCING DISCRIMINATION AND CREATING JOBS FOR ALL CITIZENS OF MARYLAND.

14–302.

(a) (1) (i) Except for leases of real property, each unit shall structure procurement procedures, consistent with the purposes of this subtitle, to try to achieve an overall **PERCENTAGE** goal **[**of 25%**]** of the unit's total dollar value of procurement contracts being made directly or indirectly to certified minority business enterprises.

(II) 1. THE OVERALL PERCENTAGE GOAL SHALL BE ESTABLISHED ON A BIENNIAL BASIS BY THE SPECIAL SECRETARY OF MINORITY AFFAIRS, IN CONSULTATION WITH THE SECRETARY OF TRANSPORTATION AND THE ATTORNEY GENERAL.

2. DURING ANY YEAR IN WHICH THERE IS A DELAY IN ESTABLISHING THE OVERALL GOAL, THE PREVIOUS YEAR'S GOAL WILL APPLY.

[(ii)**] (III) 1.** In consultation with the **[**State Department**]** **SECRETARY** of Transportation and the **[**Office of the**]** Attorney General, the **[**Governor's Office**]** **SPECIAL SECRETARY** of Minority Affairs shall establish guidelines **ON A BIENNIAL BASIS** for each unit to consider while determining whether to set subgoals for the minority groups listed in **[**§ 14–301(i)(1)(i)1, 2, 3, 4,**]** **§ 14–301(J)(1)(I)1, 2, 3, 4,** and 6 of this subtitle.

2. DURING ANY YEAR IN WHICH THERE IS A DELAY IN ESTABLISHING THE SUBGOAL GUIDELINES, THE PREVIOUS YEAR'S SUBGOAL GUIDELINES WILL APPLY.

(IV) 1. THE SPECIAL SECRETARY OF MINORITY AFFAIRS, IN CONSULTATION WITH THE SECRETARY OF TRANSPORTATION AND THE ATTORNEY GENERAL, SHALL ESTABLISH GOALS AND SUBGOAL GUIDELINES THAT, TO THE MAXIMUM EXTENT FEASIBLE, APPROXIMATE THE LEVEL OF MINORITY BUSINESS ENTERPRISE PARTICIPATION THAT WOULD BE EXPECTED IN THE ABSENCE OF DISCRIMINATION.

2. IN ESTABLISHING OVERALL GOALS AND SUBGOAL GUIDELINES, THE SPECIAL SECRETARY OF MINORITY AFFAIRS SHALL PROVIDE FOR PUBLIC PARTICIPATION BY CONSULTING WITH MINORITY, WOMEN'S, AND GENERAL CONTRACTOR GROUPS, COMMUNITY ORGANIZATIONS, AND OTHER OFFICIALS OR ORGANIZATIONS THAT COULD BE EXPECTED TO HAVE INFORMATION CONCERNING:

A. THE AVAILABILITY OF MINORITY– AND WOMEN– OWNED BUSINESSES;

B. THE EFFECTS OF DISCRIMINATION ON OPPORTUNITIES FOR MINORITY– AND WOMEN– OWNED BUSINESSES; AND

C. THE STATE'S OPERATION OF THE MINORITY BUSINESS ENTERPRISE PROGRAM.

(V) IN ESTABLISHING OVERALL GOALS, THE FACTORS TO BE CONSIDERED SHALL INCLUDE:

1. THE RELATIVE AVAILABILITY OF MINORITY– AND WOMEN–OWNED BUSINESSES TO PARTICIPATE IN STATE PROCUREMENT AS DEMONSTRATED BY THE STATE'S MOST RECENT DISPARITY STUDY;

2. PAST PARTICIPATION OF MINORITY BUSINESS ENTERPRISES IN STATE PROCUREMENT, EXCEPT FOR PROCUREMENT RELATED TO LEASES OF REAL PROPERTY; AND

3. OTHER FACTORS THAT CONTRIBUTE TO CONSTITUTIONAL GOAL SETTING.

(VI) NOTWITHSTANDING § 12–101 OF THIS ARTICLE, THE SPECIAL SECRETARY OF MINORITY AFFAIRS SHALL ADOPT REGULATIONS IN ACCORDANCE WITH TITLE 10, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE SETTING FORTH THE STATE'S OVERALL GOAL.

(2) Each unit shall:

(i) consider the practical severability of **ALL** contracts **AND, IN ACCORDANCE WITH § 11–201 OF THIS ARTICLE, MAY NOT BUNDLE CONTRACTS**; **[**and**]**

(ii) implement a program that will enable the unit to evaluate each contract to determine the appropriate minority business enterprise participation goals**, IF ANY,** for the contract based**[**, in part,**]** on:

1. the potential subcontract opportunities available in the prime procurement contract;

2. the availability of certified minority business enterprises to respond competitively to the potential subcontract opportunities; **[**and**]**

3. the guidelines established under paragraph (1)(ii) of this subsection**; AND**

4. OTHER FACTORS THAT CONTRIBUTE TO CONSTITUTIONAL GOAL SETTING;

(III) MONITOR AND COLLECT DATA WITH RESPECT TO PRIME CONTRACTOR COMPLIANCE WITH CONTRACT GOALS; AND

(IV) INSTITUTE CORRECTIVE ACTION WHEN PRIME CONTRACTORS DO NOT MAKE GOOD–FAITH EFFORTS TO COMPLY WITH CONTRACT GOALS.

(3) UNITS MAY NOT USE QUOTAS OR ANY PROJECT GOAL–SETTING PROCESS THAT:

(I) SOLELY RELIES ON THE STATE'S OVERALL NUMERICAL GOAL, OR ANY OTHER JURISDICTION'S OVERALL NUMERICAL GOAL; OR

(II) FAILS TO INCORPORATE THE ANALYSIS OUTLINED IN PARAGRAPH (2)(II) OF THIS SUBSECTION.

[(3)**] (4)** (i) A woman who is also a member of an ethnic or racial minority group may be certified in that category in addition to the gender category.

(ii) For purposes of achieving the goals in this subsection, a certified minority business enterprise may participate in a procurement contract and be counted as a woman–owned business, or as a business owned by a member of an ethnic or racial group, but not both, if the business has been certified in both categories.

[(4)**] (5)** Each unit shall meet the maximum feasible portion of the **[**goals**] STATE'S OVERALL GOAL** established in accordance with this subsection by using race–neutral measures to facilitate minority business enterprise participation in the procurement process.

[(5)**] (6)** If a unit establishes minority business enterprise participation goals for a contract, a contractor, including a contractor that is a certified minority business enterprise, shall:

(i) identify specific work categories appropriate for subcontracting;

(ii) at least 10 days before bid opening, solicit minority business enterprises, through written notice that:

1. describes the categories of work under item (i) of this paragraph; and

2. provides information regarding the type of work being solicited and specific instructions on how to submit a bid;

(iii) attempt to make personal contact with the firms in item (ii) of this paragraph;

(iv) offer to provide reasonable assistance to minority business enterprises to fulfill bonding requirements or to obtain a waiver of those requirements;

(v) in order to publicize contracting opportunities to minority business enterprises, attend prebid or preproposal meetings or other meetings scheduled by the unit; and

(vi) upon acceptance of a bid or proposal, provide the unit with a list of minority businesses with whom the contractor negotiated, including price quotes from minority and nonminority firms.

(7) THE SPECIAL SECRETARY OF MINORITY AFFAIRS SHALL:

(I) IN CONSULTATION WITH THE SECRETARY OF TRANSPORTATION AND THE ATTORNEY GENERAL, ESTABLISH PROCEDURES GOVERNING HOW THE PARTICIPATION OF MINORITY BUSINESS ENTERPRISE PRIME CONTRACTORS IS COUNTED TOWARD CONTRACT GOALS; AND

(II) NOTWITHSTANDING § 12–101 OF THIS ARTICLE, ADOPT REGULATIONS SETTING FORTH THE PROCEDURES ESTABLISHED IN ACCORDANCE WITH THIS PARAGRAPH.

[(6)**] (8)** (i) 1. If a contractor**, INCLUDING A CERTIFIED MINORITY BUSINESS ENTERPRISE,** does not achieve all or a part of the minority business enterprise participation goals on a contract, the unit shall make a finding of whether the contractor has demonstrated that the contractor took all necessary and

reasonable steps to achieve the goals, including compliance with paragraph **[**(5)**] (6)** of this subsection.

2. A waiver of any part of the minority business enterprise goals for a contract shall be granted if a contractor provides a reasonable demonstration of good–faith efforts to achieve the goals.

(ii) If the unit determines that a waiver should be granted in accordance with subparagraph (i) of this paragraph, the unit may not require the contractor to renegotiate any subcontract in order to achieve a different result.

(iii) The head of the unit may waive any of the requirements of this subsection relating to the establishment, use, and waiver of contract goals for a sole source, expedited, or emergency procurement in which the public interest cannot reasonably accommodate use of those requirements.

(iv) 1. Except for waivers granted in accordance with subparagraph (iii) of this paragraph, when a waiver determination is made, the unit shall issue the determination in writing.

2. The head of the unit shall:

A. keep one copy of the waiver determination and the reasons for the determination; and

B. forward one copy of the waiver determination to the Governor's Office of Minority Affairs.

(v) On or before July 31 of each year, each unit shall submit directly to the Board of Public Works and the Governor's Office of Minority Affairs an annual report of waivers requested and waivers granted under this paragraph.

(vi) The report required under subparagraph (v) of this paragraph shall contain the following information on those contracts where the unit considered a contractor's request for waiver of all or a portion of the minority business enterprise goals:

1. the contract titles, numbers, and dates;

2. the number of waiver requests received;

3. the number of waiver requests granted; and

4. any other information specifically requested by the Board.

[(7)**] (9)** (i) **[**In this paragraph, "MBE participation schedule" means a schedule included in the submission of a bid or offer that identifies:

1. the certified minority business enterprises that a bidder or offeror agrees to use in the performance of the contract; and

2. the percentage of contract value attributed to each certified minority business enterprise.

(ii)**]** 1. This paragraph applies to a bidder or offeror after submission of a bid or proposal and before the execution of a contract with an expected degree of minority business enterprise participation.

2. If the bidder or offeror determines that a minority business enterprise identified in the **[**MBE**]** **MINORITY BUSINESS ENTERPRISE** participation schedule has become or will become unavailable or **[**is**]** ineligible to perform the work required under the contract, the bidder or offeror shall notify the unit within 72 hours of making the determination.

[(iii)**] (II)** 1. If a minority business enterprise identified in the **[**MBE**]** **MINORITY BUSINESS ENTERPRISE** participation schedule submitted with a bid or offer has become or will become unavailable or **[**is**]** ineligible to perform the work required under the contract, the bidder or offeror may submit a written request with the unit to amend the **[**MBE**]** **MINORITY BUSINESS ENTERPRISE** participation schedule.

2. The request to amend the **[**MBE**]** **MINORITY BUSINESS ENTERPRISE** participation schedule shall indicate the bidder's or offeror's efforts to substitute another certified minority business enterprise to perform the work that the unavailable or ineligible minority business enterprise would have performed.

[3. Except as provided in subsubparagraph 4 of this subparagraph, an MBE**]**

(III) A MINORITY BUSINESS ENTERPRISE participation schedule may not be amended unless**:**

1. THE BIDDER OR OFFEROR PROVIDES A SATISFACTORY EXPLANATION OF THE REASON FOR INCLUSION OF THE UNAVAILABLE OR INELIGIBLE FIRM ON THE MINORITY BUSINESS ENTERPRISE PARTICIPATION SCHEDULE; AND

2. the amendment is approved by the unit's procurement officer after consulting with the unit's **[**MBE**]** **MINORITY BUSINESS ENTERPRISE** liaison.

(10) (I) THIS PARAGRAPH APPLIES AFTER EXECUTION OF A CONTRACT WITH AN EXPECTED DEGREE OF MINORITY BUSINESS ENTERPRISE PARTICIPATION.

(II) THE MINORITY BUSINESS ENTERPRISE PARTICIPATION SCHEDULE, INCLUDING ANY AMENDMENT, SHALL BE ATTACHED TO AND MADE A PART OF THE EXECUTED CONTRACT.

(III) 1. A CONTRACTOR MAY NOT TERMINATE OR OTHERWISE CANCEL THE CONTRACT OF A CERTIFIED MINORITY BUSINESS ENTERPRISE SUBCONTRACTOR LISTED IN THE MINORITY BUSINESS ENTERPRISE PARTICIPATION SCHEDULE WITHOUT SHOWING GOOD CAUSE AND OBTAINING THE PRIOR WRITTEN CONSENT OF THE MINORITY BUSINESS ENTERPRISE LIAISON AND APPROVAL OF THE HEAD OF THE UNIT.

2. THE UNIT SHALL SEND A COPY OF THE WRITTEN CONSENT OBTAINED UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH TO THE GOVERNOR'S OFFICE OF MINORITY AFFAIRS.

[4.**] (IV) [**An MBE**] A MINORITY BUSINESS ENTERPRISE** participation schedule may not be amended after the date of contract execution unless the request is approved by the head of the unit and the contract is amended.

[(8)**] (11)** If, during the performance of a contract, a certified minority business enterprise contractor or subcontractor becomes ineligible to participate in the Minority Business Enterprise Program because one or more of its owners has a personal net worth that exceeds the amount specified in § 14–301(i)(3) of this subtitle:

(i) that ineligibility alone may not cause the termination of the certified minority business enterprise's contractual relationship for the remainder of the term of the contract; and

(ii) the certified minority business enterprise's participation under the contract shall continue to be counted toward the program and contract goals.

(b) (1) The provisions of §§ 14–301(f) and 14–303 of this subtitle and subsection (a) of this section are inapplicable to the extent that any unit determines the provisions to be in conflict with any applicable federal program requirement.

(2) The determination under this subsection shall be included with the report required under § 14–305 of this subtitle.

14–303.

(a) (1) (i) In accordance with Title 10, Subtitle 1 of the State Government Article, the Board shall adopt regulations consistent with the purposes of this Division II to carry out the requirements of this subtitle.

(ii) The Board shall keep a record of information regarding any waivers requested in accordance with **[**§ 14–302(a)(5)(i)**] § 14–302(A)(8)(I)** of this subtitle and subsection **[**(b)(8)**] (B)(11)** of this section and submit a copy of the record to the General Assembly on or before October 1 of each year, in accordance with § 2–1246 of the State Government Article.

(iii) The Board shall keep a record of the aggregate number and the identity of minority business enterprises that receive certification under the process established by the Board under subsection (b)(1) of this section and submit a copy of the record to the General Assembly on or before October 1 of each year, in accordance with § 2–1246 of the State Government Article.

(2) The regulations shall establish procedures to be followed by units, prospective contractors, and successful bidders or offerors to maximize notice to, and the opportunity to participate in the procurement process by, a broad range of minority business enterprises.

(b) These regulations shall include:

(1) provisions:

(i) designating one State agency to certify and decertify minority business enterprises for all units through a single process that meets applicable federal requirements, including provisions that promote and facilitate the submission of some or all of the certification application through an electronic process;

(ii) for the purpose of certification under this subtitle, that promote and facilitate certification of minority business enterprises that have received certification from the U.S. Small Business Administration or a county that uses a certification process substantially similar to the process established in accordance with item (i) of this item;

(iii) requiring the agency designated to certify minority business enterprises to complete the agency's review of an application for certification and notify the applicant of the agency's decision within 90 days of receipt of a complete application that includes all of the information necessary for the agency to make a decision; and

(iv) authorizing the agency designated to certify minority business enterprises to extend the notification requirement established under item (iii)

of this item once, for no more than an additional 60 days, if the agency provides the applicant with a written notice and explanation;

(2) a requirement that the solicitation document accompanying each solicitation set forth the expected degree of minority business enterprise participation based, in part, on the factors set forth in § 14–302(a)(2)(ii) of this subtitle;

(3) A REQUIREMENT THAT BIDDERS OR OFFERORS COMPLETE A DOCUMENT SETTING FORTH THE PERCENTAGE OF THE TOTAL DOLLAR AMOUNT OF THE CONTRACT THAT THE BIDDER OR OFFEROR AGREES WILL BE PERFORMED BY CERTIFIED MINORITY BUSINESS ENTERPRISES;

(4) A REQUIREMENT THAT THE SOLICITATION DOCUMENTS COMPLETED AND SUBMITTED BY THE BIDDER OR OFFEROR IN CONNECTION WITH ITS MINORITY BUSINESS ENTERPRISE PARTICIPATION COMMITMENT MUST BE ATTACHED TO AND MADE A PART OF THE CONTRACT;

(5) A REQUIREMENT THAT ALL CONTRACTS CONTAINING MINORITY BUSINESS ENTERPRISE PARTICIPATION GOALS SHALL CONTAIN A LIQUIDATED DAMAGES PROVISION THAT APPLIES IN THE EVENT THAT THE CONTRACTOR FAILS TO COMPLY IN GOOD FAITH WITH THE PROVISIONS OF THIS SUBTITLE OR THE PERTINENT TERMS OF THE APPLICABLE CONTRACT;

[(3)**] (6)** a requirement that the unit provide a current list of certified minority business enterprises to each prospective contractor;

[(4)**] (7)** provisions to ensure the uniformity of requests for bids on subcontracts;

[(5)**] (8)** provisions relating to the timing of requests for bids on subcontracts and of submission of bids on subcontracts;

[(6)**] (9)** provisions designed to ensure that a fiscal disadvantage to the State does not result from an inadequate response by minority business enterprises to a request for bids;

[(7)**] (10)** provisions relating to joint ventures, under which a bidder may count toward meeting its minority business enterprise participation goal, the minority business enterprise portion of the joint venture;

[(8)**] (11)** consistent with **[**§ 14–302(a)(5)**] § 14–302(A)(8)** of this subtitle, provisions relating to any circumstances under which a unit may waive obligations of the contractor relating to minority business enterprise participation;

[(9)**] (12)** provisions requiring a monthly submission to the unit by minority business enterprises acknowledging all payments received in the preceding 30 days under a contract governed by this subtitle;

[(10)**] (13)** a requirement that a unit shall verify and maintain data concerning payments received by minority business enterprises, including a requirement that, upon completion of a project, the unit shall compare the total dollar value actually received by minority business enterprises with the amount of contract dollars initially awarded, and an explanation of any discrepancies therein;

[(11)**] (14)** a requirement that a unit verify that minority business enterprises listed in a successful bid are actually participating to the extent listed in the project for which the bid was submitted;

[(12)**] (15)** provisions establishing a graduation program based on the financial viability of the minority business enterprise, using annual gross receipts or other economic indicators as may be determined by the Board;

[(13)**] (16)** a requirement that a bid or proposal based on a solicitation with an expected degree of minority business enterprise participation identify the specific commitment of certified minority business enterprises at the time of submission;

[(14)**] (17)** provisions promoting and providing for the counting and reporting of certified minority business enterprises as prime contractors;

[(15)**] (18)** provisions establishing standards to require a minority business enterprise to perform a commercially useful function on a contract;

[(16)**] (19)** a requirement that each unit work with the Governor's Office of Minority Affairs to designate certain procurements as being excluded from the requirements of § 14–302(a) of this subtitle; and

[(17)**] (20)** other provisions that the Board considers necessary or appropriate to encourage participation by minority business enterprises and to protect the integrity of the procurement process.

(c) The regulations adopted under this section shall specify that a unit may not allow a business to participate as if it were a certified minority business enterprise if the business's certification is pending.

14–309.

The provisions of §§ 14–301 through 14–305 of this subtitle, and any regulations adopted under those sections, shall be of no effect and may not be enforced after July 1, **[**2012**] 2016**.

SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency, in consultation with the General Assembly and the Office of the Attorney General, shall initiate a study of the Minority Business Enterprise Program to evaluate the Program's continued compliance with the requirements of the Croson decision and any subsequent federal or constitutional requirements. In preparation for the study, the Board of Public Works may adopt regulations authorizing a unit of State government to require bidders and offerors to submit information necessary for the conduct of the study. The Board of Public Works may designate that certain information received in accordance with regulations adopted under this section shall be confidential. Notwithstanding that certain information may be designated by the Board of Public Works as confidential, the Certification Agency may provide the information to any person that is under contract with the Certification Agency to assist in conducting the study. The study shall also evaluate race–neutral programs and other methods that can be used to address the needs of minority businesses. The final report on the study shall be submitted to the Legislative Policy Committee of the General Assembly, in accordance with § 2–1246 of the State Government Article, before September 30, 2015, so that the General Assembly may review the report before the 2016 Session.

SECTION 3. AND BE IT FURTHER ENACTED, That having considered the evidence of discrimination against minority– and women–owned businesses included in the study entitled "The State of Minority– and Women–Owned Business Enterprise: Evidence from Maryland" published on February 17, 2011 (the Study), and other evidence generally available to the General Assembly, it is the intent of the General Assembly to eliminate discrimination against minority– and women–owned businesses doing business in Maryland contracting markets in a manner that:

(1) complies with the United States and Maryland Constitutions;

(2) is effective and narrowly tailored to achieve the goal of eliminating business discrimination based on race and gender in Maryland contracting markets;

(3) makes full and effective use of race–neutral measures;

(4) is focused on operating an effective Minority Business Enterprise Program targeted at eliminating the discrimination thoroughly documented in the Study;

(5) to the maximum extent feasible under federal constitutional law, provides for flexibility in the operations of the Program and the use of aspirational numerical targets or goals;

(6) prohibits the use of rigid and inflexible quotas;

(7) ensures that any use of numerical targets in overall State goals and in contract goals includes the use of good–faith waivers and is narrowly tailored to

reflect the best available evidence of the actual, relative availability of minority business enterprises in Maryland contracting markets;

(8) to the maximum extent feasible, limits and ameliorates burdens on nonminority business enterprises resulting from the operation of the Program;

(9) ensures that the beneficiaries of the Program are drawn from those groups that have suffered discrimination in Maryland contracting markets; and

(10) promotes the development of competitively viable minority– and women–owned businesses.

SECTION 4. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 155

(House Bill 1373)

AN ACT concerning

Real Property – Foreclosed Property Registry

FOR the purpose of requiring the Department of Labor, Licensing, and Regulation to establish and maintain a Foreclosed Property Registry for certain property; requiring certain foreclosure purchasers to register certain residential property and to pay certain fees under certain circumstances; authorizing ~~the Department~~ *a local jurisdiction to enact a local law* to impose a certain civil penalty for a certain violation of this Act; imposing certain limits on access to the Foreclosed Property Registry; establishing that certain fees are nonrefundable; authorizing a local ~~government~~ *jurisdiction* that takes certain actions related to a residential property on the Registry to ~~charge~~ *collect* the cost associated with the action as ~~part of~~ *a charge on* the residential property's property tax ~~assessment~~ *bill*; *requiring a local jurisdiction to give certain advance written notice before taking certain actions;* establishing the Foreclosed Property Registry Fund; providing for the purpose and composition of the Fund;

requiring the State Treasurer to invest money in the Fund; providing that earnings from the Fund shall be credited to the Fund; exempting the Fund from a certain provision of law requiring interest on State money in special funds to accrue to the General Fund of the State; repealing a certain provision of law authorizing a county or municipal corporation to enact a certain local law relating to notice of a foreclosure on residential property; establishing that only the State may enact a certain law; *establishing that a certain provision does not restrict or otherwise affect the ability of a unit of government to require a certain notice or registration to be filed for a certain purpose;* requiring the Department to report certain information to the General Assembly on or before a certain date; *establishing that this Act is not intended to repeal a certain local law;* and generally relating to the Foreclosed Property Registry.

BY repealing
Article – Real Property
Section 14–126(c)
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

BY adding to
Article – Real Property
Section 14–126.1
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 6–226(a)(2)(ii)62. and 63.
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY adding to
Article – State Finance and Procurement
Section 6–226(a)(2)(ii)64.
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Real Property

14–126.

[(c) (1) In this subsection, "residential property" has the meaning stated in § 7–105.1 of this article.

(2) A county or municipal corporation may enact a local law requiring that notice be given to a county or municipal agency or official when an order to docket or a complaint to foreclose a mortgage or deed of trust is filed on residential property located within the county or municipal corporation.

(3) A local law enacted under this subsection shall require that within five days after filing an order to docket or a complaint to foreclose a mortgage or deed of trust on residential property, the person authorized to make the sale shall give notice of the filing to the county or municipal agency or official designated by the local law.

(4) The notice required under paragraph (3) of this subsection shall include:

(i) The street address of the residential property subject to the foreclosure action;

(ii) The names and addresses, if known, of all owners of the residential property subject to the foreclosure action; and

(iii) The name, address, and telephone number of the person authorized to make the sale.**]**

14–126.1.

(A) (1) IN THIS SECTION, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION.

(3) "FORECLOSED PROPERTY REGISTRY" MEANS THE FORECLOSED PROPERTY REGISTRY ESTABLISHED BY THE DEPARTMENT UNDER SUBSECTION (B) OF THIS SECTION.

(4) "FORECLOSURE PURCHASER" MEANS THE PERSON IDENTIFIED AS THE PURCHASER ON THE REPORT OF SALE REQUIRED BY MARYLAND RULE 14–305 FOR A FORECLOSURE SALE OF RESIDENTIAL PROPERTY.

(5) "FUND" MEANS THE FORECLOSED PROPERTY REGISTRY FUND ESTABLISHED BY THE DEPARTMENT UNDER SUBSECTION ~~(H)~~ (I) OF THIS SECTION.

(6) "LOCAL JURISDICTION" MEANS:

(I) A COUNTY; OR

(II) A MUNICIPAL CORPORATION.

(7) "RESIDENTIAL PROPERTY" MEANS REAL PROPERTY IMPROVED BY FOUR OR FEWER DWELLING UNITS THAT ARE DESIGNED PRINCIPALLY AND ARE INTENDED FOR HUMAN HABITATION.

(B) THE DEPARTMENT SHALL ESTABLISH AND MAINTAIN AN INTERNET–BASED FORECLOSED PROPERTY REGISTRY FOR INFORMATION RELATING TO FORECLOSURE SALES OF RESIDENTIAL PROPERTY.

(C) AT THE TIME OF ~~THE~~ *A* FORECLOSURE SALE OF RESIDENTIAL PROPERTY, THE PERSON RESPONSIBLE FOR CONDUCTING THE FORECLOSURE SHALL OBTAIN FROM THE FORECLOSURE PURCHASER A WRITTEN ACKNOWLEDGMENT OF THE REQUIREMENTS OF THIS SECTION.

(D) (1) WITHIN 30 DAYS AFTER A FORECLOSURE SALE OF RESIDENTIAL PROPERTY, A FORECLOSURE PURCHASER SHALL SUBMIT AN INITIAL REGISTRATION TO THE FORECLOSED PROPERTY REGISTRY.

(2) THE INITIAL REGISTRATION SHALL:

(I) BE IN THE FORM THE DEPARTMENT REQUIRES; AND

(II) CONTAIN THE FOLLOWING INFORMATION:

1. THE NAME, TELEPHONE NUMBER, AND ADDRESS OF THE FORECLOSURE PURCHASER;

2. THE STREET ADDRESS OF THE PROPERTY THAT IS THE SUBJECT OF THE FORECLOSURE SALE;

3. THE DATE OF *THE* FORECLOSURE SALE;

~~4. THE SALE PRICE OF THE PROPERTY;~~

~~5.~~ 4. WHETHER THE PROPERTY IS A SINGLE–FAMILY OR MULTIFAMILY PROPERTY;

~~6.~~ 5. THE NAME AND ADDRESS OF THE PERSON, INCLUDING A SUBSTITUTE PURCHASER, WHO ~~CAN~~ *IS AUTHORIZED TO* ACCEPT LEGAL SERVICE FOR THE FORECLOSURE PURCHASER;

~~7.~~ 6. TO THE BEST OF THE FORECLOSURE PURCHASER'S KNOWLEDGE AT THE TIME OF REGISTRATION:

A. WHETHER THE RESIDENTIAL PROPERTY IS VACANT; AND

B. THE NAME, TELEPHONE NUMBER, AND STREET ADDRESS OF THE PERSON WHO IS RESPONSIBLE FOR THE MAINTENANCE OF THE PROPERTY; AND

8. WHETHER THE FORECLOSURE PURCHASER HAS POSSESSION OF THE PROPERTY.

(3) WITHIN 30 DAYS AFTER ~~THE~~ *A* DEED ~~HAS BEEN RECORDED FOR A FORECLOSURE SALE OF~~ *TRANSFERRING TITLE TO THE* RESIDENTIAL PROPERTY *HAS BEEN RECORDED* ~~OR TITLE HAS TRANSFERRED IN ACCORDANCE WITH A DEED IN LIEU OF FORECLOSURE~~, THE FORECLOSURE PURCHASER SHALL SUBMIT A FINAL REGISTRATION TO THE FORECLOSED PROPERTY REGISTRY.

(4) THE FINAL REGISTRATION SHALL:

(I) BE IN THE FORM THE DEPARTMENT REQUIRES; AND

(II) CONTAIN THE FOLLOWING INFORMATION AS OF THE DATE OF FINAL REGISTRATION:

1. THE NAME, TELEPHONE NUMBER, AND ADDRESS OF THE OWNER ON THE DEED;

2. THE DATE OF THE RATIFICATION OF THE SALE; AND

3. THE DATE THE DEED WAS RECORDED.

(E) (1) THE FILING FEES FOR REGISTERING A RESIDENTIAL PROPERTY ARE:

(I) $50 FOR AN INITIAL REGISTRATION FILED WITHIN THE TIME PERIOD REQUIRED UNDER SUBSECTION (D)(1) OF THIS SECTION; AND

(II) $100 FOR AN INITIAL REGISTRATION FILED AFTER THE TIME PERIOD REQUIRED UNDER SUBSECTION (D)(1) OF THIS SECTION.

(2) THERE IS NO FEE FOR A FINAL REGISTRATION.

(3) A FILING FEE PAID UNDER PARAGRAPH (1) OF THIS SUBSECTION IS NONREFUNDABLE.

~~(3)~~ (4) ~~A LOCAL JURISDICTION~~ ~~THE DEPARTMENT~~ *A LOCAL JURISDICTION* MAY ~~ENACT A LOCAL LAW THAT IMPOSES A FINE FOR VIOLATING THIS SECTION~~ ~~IMPOSE~~ *ENACT A LOCAL LAW THAT IMPOSES* A CIVIL PENALTY FOR FAILURE TO REGISTER UNDER THIS SECTION IN AN AMOUNT NOT EXCEEDING $1,000.

(F) *(1)* ~~A~~ *SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A* LOCAL ~~GOVERNMENT~~ *JURISDICTION* THAT, IN ACCORDANCE WITH ANY APPLICABLE BUILDING CODE OR LOCAL ORDINANCE, ABATES A NUISANCE ON A RESIDENTIAL PROPERTY REGISTERED UNDER THIS SECTION OR TAKES ACTION TO MAINTAIN A RESIDENTIAL PROPERTY REGISTERED UNDER THIS SECTION MAY ~~CHARGE~~ *COLLECT* THE COST ASSOCIATED WITH THE ABATEMENT OR OTHER ACTION AS ~~PART OF~~ *A CHARGE INCLUDED ON* THE RESIDENTIAL PROPERTY'S PROPERTY TAX ~~ASSESSMENT~~ *BILL.*

(2) (I) THE COST ASSOCIATED WITH AN ABATEMENT OR OTHER ACTION TAKEN UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY NOT BE INCLUDED AS A CHARGE ON THE RESIDENTIAL PROPERTY'S PROPERTY TAX BILL UNLESS THE LOCAL JURISDICTION PROVIDES ADVANCE WRITTEN NOTICE IN ACCORDANCE WITH SUBPARAGRAPH (II) OF THIS PARAGRAPH TO:

1. THE PERSON IDENTIFIED IN THE REGISTRY WHO IS AUTHORIZED TO ACCEPT LEGAL SERVICE FOR THE FORECLOSURE PURCHASER; AND

2. THE PERSON IDENTIFIED IN THE REGISTRY WHO IS RESPONSIBLE FOR THE MAINTENANCE OF THE PROPERTY.

(II) THE NOTICE DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL:

1. DESCRIBE THE INTENDED ABATEMENT OR OTHER ACTION THE LOCAL JURISDICTION INTENDS TO TAKE; AND

2. BE PROVIDED:

A. IN ACCORDANCE WITH THE NOTICE PROVISIONS OF THE APPLICABLE BUILDING CODE OR LOCAL ORDINANCE; OR

B. IF THE APPLICABLE BUILDING CODE OR LOCAL ORDINANCE DOES NOT PROVIDE FOR NOTICE, AT LEAST 30 DAYS BEFORE THE LOCAL JURISDICTION ABATES THE NUISANCE OR TAKES ACTION TO MAINTAIN THE PROPERTY.

~~(F)~~ (G) **(1) THE FORECLOSED PROPERTY REGISTRY:**

(I) IS NOT A PUBLIC RECORD AS DEFINED BY § 10–611 OF THE STATE GOVERNMENT ARTICLE; AND

(II) IS NOT SUBJECT TO TITLE 10, SUBTITLE 6 OF THE STATE GOVERNMENT ARTICLE.

(2) THE DEPARTMENT MAY AUTHORIZE ACCESS TO THE FORECLOSED PROPERTY REGISTRY ONLY TO LOCAL JURISDICTIONS, THEIR AGENCIES, AND REPRESENTATIVES AND STATE AGENCIES.

(3) NOTWITHSTANDING PARAGRAPHS (1) AND (2) OF THIS SUBSECTION, THE DEPARTMENT OR A LOCAL JURISDICTION MAY PROVIDE ~~LIMITED CONTACT~~ INFORMATION FOR A SPECIFIC PROPERTY IN THE FORECLOSED PROPERTY REGISTRY TO:

(I) A PERSON WHO OWNS PROPERTY ON THE SAME BLOCK; OR

(II) A HOMEOWNERS ASSOCIATION OR CONDOMINIUM IN WHICH THE PROPERTY IS LOCATED.

~~(G)~~ (H) **REVENUE COLLECTED FROM THE FILING FEES REQUIRED UNDER SUBSECTION (E)(1) OF THIS SECTION SHALL BE DISTRIBUTED TO THE FUND.**

~~(H)~~ (I) **(1) THERE IS A FORECLOSED PROPERTY REGISTRY FUND IN THE DEPARTMENT.**

(2) THE PURPOSE OF THE FUND IS TO SUPPORT THE DEVELOPMENT, ADMINISTRATION, AND MAINTENANCE OF THE FORECLOSED PROPERTY REGISTRY ESTABLISHED UNDER THIS SECTION.

(3) THE DEPARTMENT SHALL ADMINISTER THE FUND.

(4) (I) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7–302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(II) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

(5) THE FUND CONSISTS OF:

(I) REVENUE DISTRIBUTED TO THE FUND UNDER SUBSECTION ~~(G)~~ (H) OF THIS SECTION;

(II) INVESTMENT EARNINGS OF THE FUND;

(III) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND; AND

(IV) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE BENEFIT OF THE FUND.

(6) (I) THE STATE TREASURER SHALL INVEST THE MONEY OF THE FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

(II) ANY INVESTMENT EARNINGS OF THE FUND SHALL BE PAID INTO THE FUND.

(J) *(1)* ~~ONLY~~ *EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, ONLY* THE STATE MAY ENACT A LAW REQUIRING A NOTICE TO BE FILED WITH A UNIT OF GOVERNMENT ~~RELATING~~ TO *REGISTER* RESIDENTIAL PROPERTIES THAT ARE SUBJECT TO FORECLOSURE.

(2) THIS SUBSECTION DOES NOT RESTRICT OR OTHERWISE AFFECT THE ABILITY OF A UNIT OF GOVERNMENT TO REQUIRE A REGISTRATION OR NOTICE TO BE FILED FOR A PURPOSE OTHER THAN ONE RELATING TO FORECLOSURE, EVEN IF A PROPERTY TO BE IDENTIFIED IN THE REGISTRATION OR NOTICE IS SUBJECT TO FORECLOSURE.

Article – State Finance and Procurement

6–226.

(a) (2) (ii) The provisions of subparagraph (i) of this paragraph do not apply to the following funds:

62. Veterans Trust Fund; **[**and**]**

63. Transportation Trust Fund**; AND**

64. FORECLOSED PROPERTY REGISTRY FUND.

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before ~~December 1, 2012~~ *January 1, 2013*, the Department of Labor, Licensing, and Regulation shall report to the General Assembly, in accordance with § 2–1246 of the State Government Article, on the status of the Foreclosed Property Registry and the Foreclosed Property Registry Fund established under this Act, including the number of properties registered, the cost of maintaining the Foreclosed Property Registry, the Fund balance, whether the registration fees need to be altered to reflect the costs of maintaining the Foreclosed Property Registry, and the Department's assessment of the effectiveness of the Registry.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act is not intended to repeal any local law that was enacted under Chapter 149 of the Acts of the General Assembly of 2009 and that is in effect on the effective date of this Act.

SECTION ~~2.~~ ~~3.~~ *4.* AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 156

(House Bill 1374)

AN ACT concerning

Real Property – Foreclosures and Mediation

FOR the purpose of establishing a certain prefile mediation process between a secured party and a mortgagor or grantor before the commencement of a certain foreclosure action under certain circumstances; providing that a certain mortgagor or grantor is not entitled to participate in a certain postfile mediation except under certain circumstances; establishing certain procedures and notices for participation in a certain prefile mediation; altering certain procedures relating to foreclosure and postfile mediation; providing that ~~certain vacant properties are not subject to~~ certain provisions of law applicable to foreclosures and certain mediation processes *do not apply to certain foreclosure actions on certain property* if a certain certificate is issued under certain circumstances; ~~authorizing~~ *requiring* a county or municipal corporation to issue to a secured party a certificate of vacancy or certificate of ~~substantial repair~~ property unfit for human habitation for certain residential properties under certain

circumstances; authorizing a record owner or occupant of residential property to challenge a certain ~~determination of vacancy~~ *certificate* under certain circumstances; *authorizing a county or municipal corporation to charge a certain fee to issue a certain certificate;* requiring and authorizing the Commissioner of Financial Regulation to adopt certain regulations; defining certain terms; making conforming changes; allowing a subtraction modification under the Maryland income tax for income resulting from a foreclosure settlement negotiated by the Attorney General; providing for the validity, under certain circumstances, of a certain order to docket or complaint to foreclose served on a mortgagor or grantor before the effective date of certain regulations; requiring the Commissioner of Financial Regulation to develop a certain description of a certain procedure and a certain form to be served under a certain provision of law; *providing for the application of certain provisions of this Act;* and generally relating to mortgage foreclosures and mediation.

BY repealing and reenacting, with amendments,
Article – Real Property
Section 7–105.1
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

BY adding to
Article – Real Property
Section 7–105.11
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, without amendments,
Article – Tax – General
Section 10–208(a)
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

BY adding to
Article – Tax – General
Section 10–208(r)
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Real Property

7–105.1.

(a) (1) In this section the following words have the meanings indicated.

(2) "Final loss mitigation affidavit" means an affidavit that:

(i) Is made by a person authorized to act on behalf of a secured party of a mortgage or deed of trust on owner–occupied residential property that is the subject of a foreclosure action;

(ii) Certifies the completion of the final determination of loss mitigation analysis in connection with the mortgage or deed of trust; and

(iii) If denied, provides an explanation for the denial of a loan modification or other loss mitigation.

(3) "Foreclosure mediation" means a conference at which the parties in a foreclosure action, their attorneys, additional representatives of the parties, or a combination of those persons appear before an impartial individual to discuss the positions of the parties in an attempt to reach agreement on a loss mitigation program for the mortgagor or grantor.

(4) "Housing counseling services" means assistance provided to mortgagors or grantors by nonprofit and governmental entities that are identified on a list maintained by the Department of Housing and Community Development.

(5) "Loss mitigation analysis" means an evaluation of the facts and circumstances of a loan secured by owner–occupied residential property to determine:

(i) Whether a mortgagor or grantor qualifies for a loan modification; and

(ii) If there will be no loan modification, whether any other loss mitigation program may be made available to the mortgagor or grantor.

(6) "Loss mitigation program" means an option in connection with a loan secured by owner–occupied residential property that:

(i) Avoids foreclosure through loan modification or other changes to existing loan terms that are intended to allow the mortgagor or grantor to stay in the property;

(ii) Avoids foreclosure through a short sale, deed in lieu of foreclosure, or other alternative that is intended to simplify the mortgagor's or grantor's relinquishment of ownership of the property; or

(iii) Lessens the harmful impact of foreclosure on the mortgagor or grantor.

(7) "Owner–occupied residential property" means residential property in which at least one unit is occupied by an individual who:

(i) Has an ownership interest in the property; and

(ii) Uses the property as the individual's primary residence.

(8) "POSTFILE MEDIATION" MEANS FORECLOSURE MEDIATION THAT OCCURS IN ACCORDANCE WITH SUBSECTION (J) OF THIS SECTION AFTER THE DATE ON WHICH THE ORDER TO DOCKET OR COMPLAINT TO FORECLOSE IS FILED.

(9) "PREFILE MEDIATION" MEANS FORECLOSURE MEDIATION THAT OCCURS IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION BEFORE THE DATE ON WHICH THE ORDER TO DOCKET OR COMPLAINT TO FORECLOSE IS FILED.

[(8)**] (10)** "Preliminary loss mitigation affidavit" means an affidavit that:

(i) Is made by a person authorized to act on behalf of a secured party of a mortgage or deed of trust on owner–occupied residential property that is the subject of a foreclosure action;

(ii) Certifies the status of an incomplete loss mitigation analysis in connection with the mortgage or deed of trust; and

(iii) Includes reasons why the loss mitigation analysis is incomplete.

[(9)**] (11)** "Residential property" means real property improved by four or fewer single family dwelling units that are designed principally and are intended for human habitation.

(b) (1) Except as provided in paragraph (2) of this subsection, an action to foreclose a mortgage or deed of trust on residential property may not be filed until the later of:

(i) 90 days after a default in a condition on which the mortgage or deed of trust provides that a sale may be made; or

(ii) 45 days after the notice of intent to foreclose required under subsection (c) of this section is sent.

(2) (i) The secured party may petition the circuit court for leave to immediately commence an action to foreclose the mortgage or deed of trust if:

1. The loan secured by the mortgage or deed of trust was obtained by fraud or deception;

2. No payments have ever been made on the loan secured by the mortgage or deed of trust;

3. The property subject to the mortgage or deed of trust has been destroyed; or

4. The default occurred after the stay has been lifted in a bankruptcy proceeding.

(ii) The court may rule on the petition with or without a hearing.

(iii) If the petition is granted, the action may be filed at any time after a default in a condition on which the mortgage or deed of trust provides that a sale may be made and the secured party need not send the written notice of intent to foreclose required under subsection (c) of this section.

(c) (1) Except as provided in subsection (b)(2)(iii) of this section, at least 45 days before the filing of an action to foreclose a mortgage or deed of trust on residential property, the secured party shall send a written notice of intent to foreclose to the mortgagor or grantor and the record owner.

(2) The notice of intent to foreclose shall be sent:

(i) By certified mail, postage prepaid, return receipt requested, bearing a postmark from the United States Postal Service; and

(ii) By first–class mail.

(3) A copy of the notice of intent to foreclose shall be sent to the Commissioner of Financial Regulation.

(4) The notice of intent to foreclose shall:

(i) Be in the form that the Commissioner of Financial Regulation prescribes by regulation; and

(ii) Contain:

1. The name and telephone number of:

A. The secured party;

B. The mortgage servicer, if applicable; and

C. An agent of the secured party who is authorized to modify the terms of the mortgage loan;

2. The name and license number of the Maryland mortgage lender and mortgage originator, if applicable;

3. The amount required to cure the default and reinstate the loan, including all past due payments, penalties, and fees;

4. A statement recommending that the mortgagor or grantor seek housing counseling services;

5. The telephone number and the Internet address of nonprofit and government resources available to assist mortgagors and grantors facing foreclosure, as identified by the Commissioner of Financial Regulation;

6. An explanation of the Maryland foreclosure process and time line, as prescribed by the Commissioner of Financial Regulation; and

7. Any other information that the Commissioner of Financial Regulation requires by regulation.

(5) For an owner–occupied residential property, the notice of intent to foreclose shall be accompanied by:

(i) A loss mitigation application:

1. For loss mitigation programs that are applicable to the loan secured by the mortgage or deed of trust that is the subject of the foreclosure action; or

2. If the secured party does not have its own loss mitigation application, in the form prescribed by the Commissioner of Financial Regulation;

(ii) Instructions for completing the loss mitigation application and a telephone number to call to confirm receipt of the application;

(iii) A description of the eligibility requirements for the loss mitigation programs offered by the secured party that may be applicable to the loan secured by the mortgage or deed of trust that is the subject of the foreclosure action; **[**and**]**

(iv) An envelope addressed to the person responsible for conducting loss mitigation analysis on behalf of the secured party for the loan secured by the mortgage or deed of trust that is the subject of the foreclosure action**;**

(V) IF THE SECURED PARTY OFFERS PREFILE MEDIATION, A NOTICE IN THE FORM THAT THE COMMISSIONER OF FINANCIAL REGULATION PRESCRIBES BY REGULATION THAT STATES THAT:

1. THE SECURED PARTY OFFERS PREFILE MEDIATION;

2. THE MORTGAGOR OR GRANTOR MAY ELECT TO PARTICIPATE IN PREFILE MEDIATION;

3. THE MORTGAGOR OR GRANTOR WILL NOT BE ENTITLED TO POSTFILE MEDIATION IF THE MORTGAGOR OR GRANTOR PARTICIPATES IN PREFILE MEDIATION, EXCEPT AS OTHERWISE PROVIDED IN A PREFILE MEDIATION AGREEMENT;

4. THE MORTGAGOR OR GRANTOR IS REQUIRED TO PARTICIPATE IN HOUSING COUNSELING SERVICES AS A PRECONDITION TO PREFILE MEDIATION; AND

5. A FEE WILL BE CHARGED FOR THE PREFILE MEDIATION AND THE AMOUNT OF THE FEE; AND

(VI) IF THE SECURED PARTY OFFERS PREFILE MEDIATION, AN APPLICATION TO PARTICIPATE IN PREFILE MEDIATION AND INSTRUCTIONS TO COMPLETE AND SUBMIT THE APPLICATION, ALL IN THE FORM THAT THE COMMISSIONER OF FINANCIAL REGULATION PRESCRIBES BY REGULATION.

(6) For a property that is not an owner–occupied residential property, the notice of intent to foreclose shall be accompanied by:

(i) A written notice of the determination that the property is not owner–occupied residential property; and

(ii) A telephone number to call to contest that determination.

(D) (1) FOR OWNER–OCCUPIED RESIDENTIAL PROPERTY, A SECURED PARTY MAY OFFER TO PARTICIPATE IN PREFILE MEDIATION WITH A MORTGAGOR OR GRANTOR TO WHOM THE SECURED PARTY HAS DELIVERED A NOTICE OF INTENT TO FORECLOSE.

(2) IF OFFERED BY A SECURED PARTY, A MORTGAGOR OR GRANTOR MAY ELECT TO PARTICIPATE IN PREFILE MEDIATION.

(3) IF A MORTGAGOR OR GRANTOR ELECTS TO PARTICIPATE IN PREFILE MEDIATION, THE MORTGAGOR OR GRANTOR SHALL NOTIFY THE SECURED PARTY BY SUBMITTING THE APPLICATION DESCRIBED IN SUBSECTION (C)(5)(VI) OF THIS SECTION NOT MORE THAN 25 DAYS AFTER THE DATE ON WHICH THE NOTICE OF INTENT TO FORECLOSE IS MAILED BY THE SECURED PARTY.

(4) (I) AS A PRECONDITION TO PREFILE MEDIATION, A MORTGAGOR OR GRANTOR SHALL PARTICIPATE IN HOUSING COUNSELING SERVICES.

(II) THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT SHALL PRESCRIBE THE TIMING AND FORM OF CERTIFICATION OF PARTICIPATION IN HOUSING COUNSELING SERVICES.

(5) IF A MORTGAGOR OR GRANTOR SUBMITS AN APPLICATION TO PARTICIPATE IN PREFILE MEDIATION TO THE SECURED PARTY IN ACCORDANCE WITH PARAGRAPH (3) OF THIS SUBSECTION, THE SECURED PARTY SHALL NOTIFY THE OFFICE OF ADMINISTRATIVE HEARINGS NOT MORE THAN 5 BUSINESS DAYS AFTER THE DATE ON WHICH THE SECURED PARTY RECEIVES THE APPLICATION.

(6) THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL:

(I) SCHEDULE A PREFILE MEDIATION SESSION NOT MORE THAN 60 DAYS AFTER THE DAY ON WHICH IT RECEIVES NOTICE BY A SECURED PARTY OF AN ELECTION TO PARTICIPATE IN PREFILE MEDIATION; AND

(II) NOTIFY THE PARTIES AND THEIR ATTORNEYS, IF ANY, OF THE DATE OF THE PREFILE MEDIATION SESSION.

(7) BY REGULATION, THE COMMISSIONER OF FINANCIAL REGULATION SHALL:

(I) ESTABLISH THE FEE FOR PREFILE MEDIATION; AND

(II) PRESCRIBE THE FORM AND CONTENT OF THE NOTICE ABOUT PREFILE MEDIATION, THE APPLICATION TO PARTICIPATE IN PREFILE MEDIATION, AND INSTRUCTIONS TO COMPLETE THE APPLICATION.

(8) (I) NOTWITHSTANDING SUBSECTION (B)(1) OF THIS SECTION, IF THE SECURED PARTY AND GRANTOR OR MORTGAGOR ELECT TO PARTICIPATE IN PREFILE MEDIATION, AN ORDER TO DOCKET OR COMPLAINT TO FORECLOSE MAY NOT BE FILED UNTIL THE COMPLETION OF PREFILE MEDIATION IN ACCORDANCE WITH THIS SECTION.

(II) THE DATE THAT PREFILE MEDIATION IS COMPLETED IS THE DATE THAT THE OFFICE OF ADMINISTRATIVE HEARINGS ISSUES THE REPORT DESCRIBING THE RESULTS OF THE PREFILE MEDIATION.

(9) THE FEE FOR PREFILE MEDIATION COLLECTED UNDER THIS SUBSECTION SHALL BE DISTRIBUTED TO THE HOUSING COUNSELING AND FORECLOSURE MEDIATION FUND ESTABLISHED UNDER § 4–507 OF THE HOUSING AND COMMUNITY DEVELOPMENT ARTICLE.

(10) BY REGULATION, THE COMMISSIONER OF FINANCIAL REGULATION SHALL ESTABLISH A MEDIATION CHECKLIST THAT DESCRIBES THE MATTERS THAT SHALL BE REVIEWED AND CONSIDERED IN A PREFILE MEDIATION.

(11) (I) AT THE COMMENCEMENT OF A PREFILE MEDIATION SESSION, EACH PARTY SHALL REVIEW THE MEDIATION CHECKLIST.

(II) THE MEDIATOR SHALL MARK EACH ITEM ON THE MEDIATION CHECKLIST AS THE ITEM IS ADDRESSED AT THE PREFILE MEDIATION SESSION.

(III) AT THE CONCLUSION OF A PREFILE MEDIATION SESSION, EACH PARTY SHALL SIGN THE MEDIATION CHECKLIST.

(12) IF THE PREFILE MEDIATION RESULTS IN AN AGREEMENT, THE PARTIES SHALL EXECUTE A PREFILE MEDIATION AGREEMENT.

(13) IN ADDITION TO DESCRIBING THE TERMS OF THE AGREEMENT AMONG THE PARTIES, THE PREFILE MEDIATION AGREEMENT SHALL, IN 14 POINT, BOLD FONT:

(I) DESIGNATE THE PERSON AND ADDRESS TO WHOM THE MORTGAGOR OR GRANTOR MAY PROVIDE NOTICE OF A CHANGE OF FINANCIAL CIRCUMSTANCES; AND

(II) STATE THAT THE MORTGAGOR OR GRANTOR IS NOT ENTITLED TO POSTFILE MEDIATION UNLESS OTHERWISE AGREED BY THE PARTIES.

(14) THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL DRAFT THE PREFILE MEDIATION AGREEMENT AND PROVIDE A COPY OF THE EXECUTED AGREEMENT TO THE PARTIES AND THEIR ATTORNEYS, IF ANY.

(15) THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL PROVIDE A REPORT OF RESULTS OF MEDIATION TO THE PARTIES AND THEIR ATTORNEYS, IF ANY.

(16) IF A MORTGAGOR OR GRANTOR NOTIFIES THE PERSON DESIGNATED UNDER PARAGRAPH (13) OF THIS SUBSECTION OF A CHANGE OF FINANCIAL CIRCUMSTANCES, THE DESIGNEE SHALL:

(I) DETERMINE WHETHER THE CHANGE OF FINANCIAL CIRCUMSTANCES SHALL ALTER THE MEDIATION AGREEMENT OR OUTCOME OF THE PREFILE MEDIATION; AND

(II) NOTIFY THE MORTGAGOR OR GRANTOR OF THE DETERMINATION BY FIRST–CLASS MAIL BEFORE ANY ADDITIONAL ACTION IS TAKEN WITH RESPECT TO FORECLOSURE.

(17) (I) THE PARTIES TO THE PREFILE MEDIATION AGREEMENT MAY EXECUTE AN AMENDED PREFILE MEDIATION AGREEMENT BASED ON A MATERIAL CHANGE OF FINANCIAL CIRCUMSTANCES OF THE MORTGAGOR OR GRANTOR.

(II) THE SECURED PARTY SHALL PROVIDE A COPY OF THE EXECUTED AMENDED AGREEMENT TO THE MORTGAGOR OR GRANTOR.

(18) TO THE EXTENT THAT A NOTICE OF INTENT TO FORECLOSE COMPLIES WITH THIS SECTION AND OTHERWISE IS VALID UNDER THE LAW, A NOTICE OF INTENT TO FORECLOSE ISSUED WITH RESPECT TO A PROPERTY THAT HAS BEEN THE SUBJECT OF PREFILE MEDIATION CONTINUES TO BE VALID FOR 1 YEAR AFTER THE DATE ON WHICH THE INITIAL PREFILE MEDIATION AGREEMENT IS EXECUTED BY THE PARTIES.

(19) NOTHING IN THIS SUBSECTION SHALL PROHIBIT A SECURED PARTY AND MORTGAGOR OR GRANTOR FROM ENGAGING IN LOSS MITIGATION BY OTHER MEANS.

[(d)**] (E)** An order to docket or a complaint to foreclose a mortgage or deed of trust on residential property shall:

(1) Include:

(i) If applicable, the license number of:

1. The mortgage originator; and

2. The mortgage lender; and

(ii) An affidavit stating:

1. The date on which the default occurred and the nature of the default; and

2. If applicable, that:

A. A notice of intent to foreclose was sent to the mortgagor or grantor in accordance with subsection (c) of this section and the date on which the notice was sent; and

B. At the time the notice of intent to foreclose was sent, the contents of the notice of intent to foreclose were accurate; and

(2) Be accompanied by:

(i) The original or a certified copy of the mortgage or deed of trust;

(ii) A statement of the debt remaining due and payable supported by an affidavit of the plaintiff or the secured party or the agent or attorney of the plaintiff or secured party;

(iii) A copy of the debt instrument accompanied by an affidavit certifying ownership of the debt instrument;

(iv) If applicable, the original or a certified copy of the assignment of the mortgage for purposes of foreclosure or the deed of appointment of a substitute trustee;

(v) If any defendant is an individual, an affidavit that is in compliance with § 521 of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501 et seq.;

(vi) If applicable, a copy of the notice of intent to foreclose;

(VII) IF THE SECURED PARTY AND MORTGAGOR OR GRANTOR HAVE ELECTED TO PARTICIPATE IN PREFILE MEDIATION, THE REPORT OF THE PREFILE MEDIATION ISSUED BY THE OFFICE OF ADMINISTRATIVE HEARINGS;

(VIII) IF THE SECURED PARTY AND THE MORTGAGOR OR GRANTOR HAVE NOT ELECTED TO PARTICIPATE IN PREFILE MEDIATION, A STATEMENT THAT THE PARTIES HAVE NOT ELECTED TO PARTICIPATE IN PREFILE MEDIATION;

[(vii)**] (IX)** In addition to any other filing fees required by law, a filing fee in the amount of $300; and

[(viii)**] (X)** 1. If the loss mitigation analysis has been completed subject to subsection **[**(e)**] (G)** of this section, a final loss mitigation affidavit in the form prescribed by regulation adopted by the Commissioner of Financial Regulation; and

2. If the loss mitigation analysis has not been completed, a preliminary loss mitigation affidavit in the form prescribed by regulation adopted by the Commissioner of Financial Regulation.

[(d–1)**] (F)** Notwithstanding any other law, the court may not accept a lost note affidavit in lieu of a copy of the debt instrument required under subsection **[**(d)(2)(iii)**] (E)(2)(III)** of this section, unless the affidavit:

(1) Identifies the owner of the debt instrument and states from whom and the date on which the owner acquired ownership;

(2) States why a copy of the debt instrument cannot be produced; and

(3) Describes the good faith efforts made to produce a copy of the debt instrument.

[(e)**] (G)** Only for purposes of a final loss mitigation affidavit that is filed with an order to docket or complaint to foreclose, a loss mitigation analysis is not considered complete if the reason for the denial or determination of ineligibility is due to the inability of the secured party to:

(1) Establish communication with the mortgagor or grantor; or

(2) Obtain all documentation and information necessary to conduct the loss mitigation analysis.

[(f)**] (H)** (1) A copy of the order to docket or complaint to foreclose on residential property and all other papers filed with it in the form and sequence as prescribed by regulations adopted by the Commissioner of Financial Regulation, accompanied by the documents required under paragraphs (2), (3), and (4) of this subsection, shall be served on the mortgagor or grantor by:

(i) Personal delivery of the papers to the mortgagor or grantor; or

(ii) Leaving the papers with a resident of suitable age and discretion at the mortgagor's or grantor's dwelling house or usual place of abode.

(2) The service of documents under paragraph (1) of this subsection shall be accompanied by a separate, clearly marked notice, in the form prescribed by regulation adopted by the Commissioner of Financial Regulation, that states:

(i) The significance of the order to docket or a complaint to foreclose; **[**and**]**

(ii) The options for the mortgagor or grantor to take, including housing counseling **SERVICES** and financial assistance resources the mortgagor or grantor may consult**; AND**

(III) IN THE CASE OF A MORTGAGOR OR GRANTOR WHO HAS PARTICIPATED IN PREFILE MEDIATION, THAT THE MORTGAGOR OR GRANTOR IS NOT ENTITLED TO POSTFILE MEDIATION EXCEPT AS OTHERWISE PROVIDED IN THE PREFILE MEDIATION AGREEMENT.

(3) If the order to docket or complaint to foreclose is accompanied by a preliminary loss mitigation affidavit, the service of documents under paragraph (1) of this subsection shall be accompanied by a loss mitigation application form and any other supporting documents as prescribed by regulation adopted by the Commissioner of Financial Regulation.

(4) **(I) [**If**]** **EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, IF** the order to docket or complaint to foreclose is accompanied by a final loss mitigation affidavit and concerns owner–occupied residential property, the service of documents under paragraph (1) of this subsection shall be accompanied by a request for **[**foreclosure**]** **POSTFILE** mediation form and any other supporting documents as prescribed by regulation adopted by the Commissioner of Financial Regulation.

(II) THE ORDER TO DOCKET OR COMPLAINT TO FORECLOSE MAY EXCLUDE THE REQUEST FOR A POSTFILE MEDIATION FORM IF:

1. THE MORTGAGOR OR GRANTOR HAS PARTICIPATED IN PREFILE MEDIATION AND THE PREFILE MEDIATION AGREEMENT DOES NOT GIVE THE MORTGAGOR OR GRANTOR THE RIGHT TO PARTICIPATE IN POSTFILE MEDIATION; OR

2. THE PROPERTY SUBJECT TO THE MORTGAGE OR DEED OF TRUST IS NOT OWNER–OCCUPIED.

(5) If at least two good faith efforts to serve the mortgagor or grantor under paragraph (1) of this subsection on different days have not succeeded, the plaintiff may effect service by:

(i) Filing an affidavit with the court describing the good faith efforts to serve the mortgagor or grantor; and

(ii) 1. Mailing a copy of all the documents required to be served under paragraph (1) of this subsection by certified mail, return receipt requested, and first–class mail to the mortgagor's or grantor's last known address and, if different, to the address of the residential property subject to the mortgage or deed of trust; and

2. Posting a copy of all the documents required to be served under paragraph (1) of this subsection in a conspicuous place on the residential property subject to the mortgage or deed of trust.

(6) The individual making service of documents under this subsection shall file proof of service with the court in accordance with the Maryland Rules.

[(g)**] (I)** (1) If the order to docket or complaint to foreclose is accompanied by a preliminary loss mitigation affidavit, the secured party, at least 30 days before the date of a foreclosure sale, shall:

(i) File with the court a final loss mitigation affidavit in the form prescribed by regulation adopted by the Commissioner of Financial Regulation; and

(ii) Send to the mortgagor or grantor by first class and by certified mail:

1. A copy of the final loss mitigation affidavit; and

2. A request for **[**foreclosure**]** **POSTFILE** mediation form and supporting documents as provided under subsection **[**(f)(4)**] (H)(4)** of this section.

(2) A final loss mitigation affidavit shall be filed under this subsection no earlier than 28 days after the order to docket or complaint to foreclose is served on the mortgagor or grantor.

[(h)**] (J)** (1) (i) **THIS PARAGRAPH APPLIES TO A MORTGAGOR OR GRANTOR WHO:**

1. HAS NOT PARTICIPATED IN PREFILE MEDIATION; OR

2. HAS PARTICIPATED IN PREFILE MEDIATION THAT RESULTED IN A PREFILE MEDIATION AGREEMENT THAT GIVES THE MORTGAGOR OR GRANTOR THE RIGHT TO PARTICIPATE IN POSTFILE MEDIATION.

(II) In a foreclosure action on owner–occupied residential property, the mortgagor or grantor may file with the court a completed request for **[**foreclosure**]** **POST–FILE** mediation not later than:

1. If the final loss mitigation affidavit was delivered along with service of the copy of the order to docket or complaint to foreclose under subsection **[**(f)**]** **(H)** of this section, 25 days after that service on the mortgagor or grantor; or

2. If the final loss mitigation affidavit was mailed as provided in subsection **[**(g)**]** **(I)** of this section, 25 days after the mailing of the final loss mitigation affidavit.

[(ii)**]** **(III)** 1. A request for **[**foreclosure**]** **POSTFILE** mediation shall be accompanied by a filing fee of $50.

2. The court may reduce or waive the filing fee under subsubparagraph 1 of this subparagraph if the mortgagor or grantor is eligible for a reduction or waiver under the Maryland Legal Services guidelines.

[(iii)**]** **(IV)** The mortgagor or grantor shall mail a copy of the request for **[**foreclosure**]** **POSTFILE** mediation to the secured party's foreclosure attorney.

(2) (i) The secured party may file a motion to strike the request for **[**foreclosure**]** **POSTFILE** mediation in accordance with the Maryland Rules.

(ii) The motion to strike must be accompanied by an affidavit that sets forth the reasons why **[**foreclosure**]** **POSTFILE** mediation is not appropriate.

(iii) The secured party shall mail a copy of the motion to strike and the accompanying affidavit to the mortgagor or grantor.

(iv) There is a presumption that a mortgagor or grantor is entitled to **[**foreclosure**]** **POSTFILE** mediation **WITH RESPECT TO OWNER–OCCUPIED RESIDENTIAL PROPERTY** unless **[**good**]:**

1. GOOD cause is shown why **[**foreclosure**]** **POSTFILE** mediation is not appropriate**; OR**

2. THE MORTGAGOR OR GRANTOR PARTICIPATED IN PREFILE MEDIATION AND THE PREFILE MEDIATION AGREEMENT DOES NOT GIVE THE MORTGAGOR OR GRANTOR THE RIGHT TO PARTICIPATE IN POSTFILE MEDIATION.

(3) (i) The mortgagor or grantor may file a response to the motion to strike within 15 days.

(ii) The mortgagor or grantor shall mail a copy of the response to the foreclosure attorney.

(iii) If the court grants the motion to strike, the court shall instruct the Office of Administrative Hearings to cancel any scheduled **POSTFILE** mediation.

[(i)**] (K)** (1) Within 5 days after receipt of a request for **[**foreclosure**]** **POSTFILE** mediation, the court shall transmit the request to the Office of Administrative Hearings for scheduling.

(2) (i) Within 60 days after transmittal of the request for foreclosure mediation, the Office of Administrative Hearings shall conduct a foreclosure mediation.

(ii) For good cause, the Office of Administrative Hearings may extend the time for completing the foreclosure mediation for a period not exceeding 30 days or, if all parties agree, for a longer period of time.

(3) The Office of Administrative Hearings shall send notice of the scheduled foreclosure mediation to the foreclosure attorney, the secured party, and the mortgagor or grantor.

(4) The notice from the Office of Administrative Hearings shall:

(i) Include instructions regarding the documents and information, as required by regulations adopted by the Commissioner of Financial Regulation, that must be provided by each party to the other party and to the mediator; and

(ii) Require the information and documents to be provided no later than 20 days before the scheduled date of the foreclosure mediation.

[(j)**] (L)** (1) **(I) BY REGULATION, THE COMMISSIONER OF FINANCIAL REGULATION SHALL ESTABLISH A MEDIATION CHECKLIST THAT**

DESCRIBES THE MATTERS THAT SHALL BE REVIEWED AND CONSIDERED IN A POSTFILE MEDIATION.

(II) AT THE COMMENCEMENT OF A POSTFILE MEDIATION SESSION, EACH PARTY SHALL REVIEW THE MEDIATION CHECKLIST.

(III) THE MEDIATOR SHALL MARK EACH ITEM ON THE MEDIATION CHECKLIST AS THE ITEM IS ADDRESSED AT THE POSTFILE MEDIATION SESSION.

(IV) AT THE CONCLUSION OF A POSTFILE MEDIATION SESSION, EACH PARTY SHALL SIGN THE MEDIATION CHECKLIST.

(2) At a foreclosure mediation:

(i) The mortgagor or grantor shall be present;

(ii) The mortgagor or grantor may be accompanied by a housing counselor and may have legal representation;

(iii) The secured party, or a representative of the secured party, shall be present; and

(iv) Any representative of the secured party must have the authority to settle the matter or be able to readily contact a person with authority to settle the matter.

[(2)**] (3)** At the foreclosure mediation, the parties and the mediator shall address loss mitigation programs that may be applicable to the loan secured by the mortgage or deed of trust that is the subject of the foreclosure action.

[(3)**] (4)** The Office of Administrative Hearings shall file a report with the court that states the outcome of the request for foreclosure mediation within the earlier of:

(i) 7 days after a foreclosure mediation is held; or

(ii) The end of the 60–day mediation period specified in subsection **[**(i)(2)**] (K)(2)** of this section, plus any extension granted by the Office of Administrative Hearings.

[(4)**] (5)** Except for a request for postponement or a failure to appear, the rules of procedure for contested cases of the Office of Administrative Hearings do not govern a foreclosure mediation conducted by the Office.

[(k)**] (M)** (1) If the parties do not reach an agreement at the **[**foreclosure**]** **POSTFILE** mediation, or the 60–day mediation period expires without an extension granted by the Office of Administrative Hearings, the foreclosure attorney may schedule the foreclosure sale.

(2) (i) **[**Subject**]** **IN THE CASE OF POSTFILE MEDIATION, SUBJECT** to subparagraphs (ii), (iii), and (iv) of this paragraph, the mortgagor or grantor may file a motion to stay the foreclosure sale.

(ii) A motion to stay under this paragraph shall be filed within 15 days after:

1. The date the **[**foreclosure**]** **POSTFILE** mediation is held; or

2. If no **[**foreclosure**]** **POSTFILE** mediation is held, the date the Office of Administrative Hearings files its report with the court.

(iii) A motion to stay under this paragraph must allege specific reasons why loss mitigation should have been granted.

(3) Nothing in this subtitle precludes the mortgagor or grantor from pursuing any other remedy or legal defense available to the mortgagor or grantor.

[(l)**] (N)** A foreclosure sale of residential property may not occur until:

(1) If the residential property is not owner–occupied residential property, at least 45 days after service of process is made under subsection **[**(f)**] (H)** of this section;

(2) If the residential property is owner–occupied residential property and foreclosure mediation is not held, the later of:

(i) At least 45 days after service of process that includes a final loss mitigation affidavit made under subsection **[**(f)**] (H)** of this section; or

(ii) At least 30 days after a final loss mitigation affidavit is mailed under subsection **[**(g)**] (I)** of this section; and

(3) If the residential property is owner–occupied residential property and **[**foreclosure**]** **POSTFILE** mediation is requested, at least 15 days after:

(i) The date the **[**foreclosure**]** **POSTFILE** mediation is held; or

(ii) If no **[**foreclosure**]** **POSTFILE** mediation is held, the date the Office of Administrative Hearings files its report with the court.

[(m)**] (O)** Notice of the time, place, and terms of a foreclosure sale shall be published in a newspaper of general circulation in the county where the action is pending at least once a week for 3 successive weeks, the first publication to be not less than 15 days before the sale and the last publication to be not more than 1 week before the sale.

[(n)**] (P)** (1) The mortgagor or grantor of residential property has the right to cure the default by paying all past due payments, penalties, and fees and reinstate the loan at any time up to 1 business day before the foreclosure sale occurs.

(2) The secured party or an authorized agent of the secured party shall, on request, provide to the mortgagor or grantor or the mortgagor's or grantor's attorney within a reasonable time the amount necessary to cure the default and reinstate the loan and instructions for delivering the payment.

[(o)**] (Q)** An action for failure to comply with the provisions of this section shall be brought within 3 years after the date of the order ratifying the sale.

[(p)**] (R)** Revenue collected from the filing fees required under subsections **[**(d)(2)(vii)**] (E)(2)(IX)** and **[**(h)(1)(ii)**] (J)(1)(III)** of this section shall be distributed to the Housing Counseling and Foreclosure Mediation Fund established under § 4–507 of the Housing and Community Development Article.

(S) THE COMMISSIONER OF FINANCIAL REGULATION MAY ADOPT ADDITIONAL REGULATIONS NECESSARY TO CARRY OUT THE REQUIREMENTS OF THIS SECTION.

7–105.11.

~~**(A) IN THIS SECTION, "VACANT PROPERTY" MEANS A PROPERTY THAT IS:**~~

~~**(1) UNOCCUPIED; AND**~~

~~**(2) UNFIT FOR HUMAN HABITATION, AS DETERMINED BY THE UNIT OF A COUNTY OR MUNICIPAL CORPORATION THAT MANAGES RESIDENTIAL PROPERTY MAINTENANCE AND ENFORCES THE HOUSING CODE FOR THAT JURISDICTION.**~~

~~**(B) A SECURED PARTY MAY APPLY TO A COUNTY OR MUNICIPAL CORPORATION FOR A CERTIFICATE OF VACANCY OR CERTIFICATE OF SUBSTANTIAL REPAIR FOR A RESIDENTIAL PROPERTY IF:**~~

~~(1) THE RESIDENTIAL PROPERTY IS LOCATED IN THE COUNTY OR MUNICIPAL CORPORATION;~~

~~(2) THE COUNTY OR MUNICIPAL CORPORATION HAS ESTABLISHED PROCEDURES GOVERNING THE ISSUANCE OF A CERTIFICATE OF VACANCY OR CERTIFICATE OF SUBSTANTIAL REPAIR UNDER THIS SECTION; AND~~

~~(3) A DEFAULT HAS OCCURRED WITH RESPECT TO THE MORTGAGE OR DEED OF TRUST ON THE RESIDENTIAL PROPERTY.~~

~~(C) THE COUNTY OR MUNICIPAL CORPORATION SHALL ISSUE TO A SECURED PARTY A CERTIFICATE OF VACANCY OR A CERTIFICATE OF SUBSTANTIAL REPAIR FOR A RESIDENTIAL PROPERTY IF THE COUNTY OR MUNICIPAL CORPORATION DETERMINES, IN ACCORDANCE WITH ANY PROVISIONS OF THE LOCAL HOUSING CODE, THAT THE PROPERTY IS A VACANT PROPERTY.~~

~~(D) A CERTIFICATE OF VACANCY OR A CERTIFICATE OF SUBSTANTIAL REPAIR IS VALID AT THE TIME OF FILING AN ORDER TO DOCKET OR COMPLAINT TO FORECLOSE IF THE CERTIFICATE WAS ISSUED WITHIN 60 DAYS PRIOR TO THE TIME OF FILING.~~

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "CERTIFICATE OF PROPERTY UNFIT FOR HUMAN HABITATION" MEANS:

(I) IN BALTIMORE CITY, A CERTIFICATE OF SUBSTANTIAL REPAIR; OR

(II) A CERTIFICATE FOR RESIDENTIAL PROPERTY ISSUED BY A UNIT OF A COUNTY OR MUNICIPAL CORPORATION INDICATING THAT THE COUNTY OR MUNICIPAL CORPORATION HAS DETERMINED THAT THE RESIDENTIAL PROPERTY IS UNFIT FOR HUMAN HABITATION.

(3) "CERTIFICATE OF VACANCY" MEANS A CERTIFICATE FOR A RESIDENTIAL PROPERTY ISSUED BY A UNIT OF A COUNTY OR MUNICIPAL CORPORATION INDICATING THAT THE RESIDENTIAL PROPERTY IS VACANT.

(B) ***THIS SECTION APPLIES ONLY TO A COUNTY OR MUNICIPAL CORPORATION THAT ISSUES A CERTIFICATE OF VACANCY OR A CERTIFICATE OF PROPERTY UNFIT FOR HUMAN HABITATION.***

(C) ~~A~~ *IF A MORTGAGE OR DEED OF TRUST ON RESIDENTIAL PROPERTY IS IN DEFAULT, A* PERSON WITH A SECURED INTEREST IN *THE* RESIDENTIAL PROPERTY ~~THAT IS IN DEFAULT ON A MORTGAGE OR DEED OF TRUST~~ MAY REQUEST THAT A COUNTY OR MUNICIPAL CORPORATION ISSUE A CERTIFICATE OF VACANCY OR A CERTIFICATE OF PROPERTY UNFIT FOR HUMAN HABITATION.

~~(C)~~ *(D)* (1) THE COUNTY OR MUNICIPAL CORPORATION SHALL ISSUE TO A SECURED PARTY A CERTIFICATE OF VACANCY FOR A RESIDENTIAL PROPERTY IF THE COUNTY OR MUNICIPAL CORPORATION DETERMINES THAT THE RESIDENTIAL PROPERTY IS VACANT.

(2) THE COUNTY OR MUNICIPAL CORPORATION SHALL ISSUE TO A SECURED PARTY A CERTIFICATE OF PROPERTY UNFIT FOR HUMAN HABITATION FOR A RESIDENTIAL PROPERTY IF THE COUNTY OR MUNICIPAL CORPORATION DETERMINES IN ACCORDANCE WITH REQUIREMENTS OF LOCAL, COUNTY, OR STATE HOUSING CODES, THAT THE RESIDENTIAL PROPERTY IS UNFIT FOR HUMAN HABITATION.

(3) A CERTIFICATE OF VACANCY OR CERTIFICATE OF PROPERTY UNFIT FOR HUMAN HABITATION ISSUED UNDER THIS SUBSECTION IS VALID FOR 60 DAYS AFTER THE DATE THE CERTIFICATE IS ISSUED.

(4) A COUNTY OR MUNICIPAL CORPORATION MAY CHARGE A FEE NOT EXCEEDING $100 TO A SECURED PARTY TO ISSUE A CERTIFICATE OF VACANCY OR A CERTIFICATE OF PROPERTY UNFIT FOR HUMAN HABITATION.

~~(E)~~ ~~(D)~~ *(E)* EXCEPT AS PROVIDED IN SUBSECTION ~~(F)~~ ~~(E)~~ *(F)* OF THIS SECTION, IF A CERTIFICATE OF VACANCY OR CERTIFICATE OF ~~SUBSTANTIAL REPAIR~~ PROPERTY UNFIT FOR HUMAN HABITATION IS VALID AT THE TIME OF FILING AN ORDER TO DOCKET OR COMPLAINT TO FORECLOSE, § 7–105.1 OF THIS SUBTITLE DOES NOT APPLY TO AN ACTION TO FORECLOSE A MORTGAGE OR DEED OF TRUST ON THE PROPERTY FOR WHICH THE CERTIFICATE WAS ISSUED.

~~(F)~~ ~~(E)~~ *(F)* (1) THE RECORD OWNER OR OCCUPANT OF A PROPERTY MAY CHALLENGE THE CERTIFICATE OF VACANCY ~~AND A DETERMINATION THAT THE PROPERTY IS A VACANT~~ *OR CERTIFICATE OF PROPERTY UNFIT FOR HUMAN HABITATION* ~~PROPERTY MADE UNDER SUBSECTION (C) OF THIS SECTION BY FILING A FORM WITH THE COURT AS PROVIDED IN THIS SUBSECTION.~~ UNDER THIS SECTION BY NOTIFYING THE CIRCUIT COURT OF THE CHALLENGE.

~~(2) THE COMMISSIONER OF FINANCIAL REGULATION SHALL PRESCRIBE BY REGULATION THE FORM AND MANNER IN WHICH A RECORD OWNER OR OCCUPANT MAY CHALLENGE A DETERMINATION THAT A PROPERTY IS A VACANT PROPERTY.~~

~~(3) THE SECURED PARTY SHALL PROVIDE TO THE RECORD OWNER AND OCCUPANT A COPY OF THE FORM REQUIRED BY REGULATION AT THE TIME OF FILING THE ORDER TO DOCKET OR COMPLAINT TO FORECLOSE.~~

(2) A SECURED PARTY FILING *AN ORDER TO DOCKET OR COMPLAINT TO FORECLOSE BASED ON* A CERTIFICATE OF VACANCY OR A CERTIFICATE OF PROPERTY UNFIT FOR HUMAN HABITATION UNDER THIS SECTION SHALL ~~INCLUDE WITH THE DOCUMENTS SERVED UNDER § 7–105.1(H)(1) OF THIS SUBTITLE~~ *SERVE THE FORECLOSURE DOCUMENTS IN ACCORDANCE WITH § 7–105.1(H)(1) OF THIS SUBTITLE ALONG WITH* A DESCRIPTION OF THE PROCEDURE TO CHALLENGE THE CERTIFICATE AND THE FORM TO BE USED TO MAKE THE CHALLENGE.

(3) IF A CHALLENGE UNDER PARAGRAPH (1) OF THIS SUBSECTION IS UPHELD, THE SECURED PARTY SHALL COMPLY WITH THE REQUIREMENTS OF § 7–105.1 OF THIS SUBTITLE.

~~(G)~~ ~~(F)~~ *(G)* A COUNTY OR MUNICIPAL CORPORATION MAY ESTABLISH PROCEDURES GOVERNING THE ISSUANCE OF A CERTIFICATE OF VACANCY OR CERTIFICATE OF ~~SUBSTANTIAL REPAIR~~ PROPERTY UNFIT FOR HUMAN HABITATION UNDER THIS SECTION.

Article – Tax – General

10–208.

(a) In addition to the modification under § 10–207 of this subtitle, the amounts under this section are subtracted from the federal adjusted gross income of a resident to determine Maryland adjusted gross income.

(R) THE SUBTRACTION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES ANY PAYMENT TO AN INDIVIDUAL MADE AS A RESULT OF A FORECLOSURE SETTLEMENT NEGOTIATED BY THE ATTORNEY GENERAL.

SECTION 2. AND BE IT FURTHER ENACTED, That an order to docket or complaint to foreclose served on a mortgagor or grantor before the effective date of regulations adopted by the Commissioner of Financial Regulation under Section 1 of this Act is in compliance with Maryland law if the order or complaint complies with § 7–105.1 of the Real Property Article as it existed immediately before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That the Commissioner of Financial Regulation shall develop the description of the procedure to challenge a certificate of vacancy or certificate of property unfit for human habitation and the form

to be used to make the challenge that are required to be served under ~~§ 7–105.11(e)(2)~~ *§ 7–105.11(f)(2)*, as enacted by this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That § 10–208(r) of the Tax – General Article, as enacted by Section 1 of this Act, shall take effect July 1, 2012, and shall be applicable to all taxable years beginning after December 31, 2011.

SECTION ~~3.~~ ~~4.~~ *5.* AND BE IT FURTHER ENACTED, That*, except as provided in Section 4 of this Act,* this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 157

(Senate Bill 14)

AN ACT concerning

State Board of Morticians and Funeral Directors – Examinations of Applicants and Licensees

FOR the purpose of ~~requiring~~ *authorizing* the State Board of Morticians and Funeral Directors to require certain applicants or licensees to submit to a mental or physical examination under certain circumstances; ~~providing that certain applicants or licensees are deemed to have consented to submit to a certain examination and to have waived a certain claim of privilege under certain circumstances;~~ providing that a certain report ~~or testimony~~ of a certain health care practitioner is confidential, except under certain circumstances; ~~providing that the failure or refusal of a certain applicant or licensee to submit to a certain examination is prima facie evidence of the inability to practice mortuary science or funeral direction competently, unless the Board makes a certain finding;~~ requiring certain applicants or ~~licensees~~ the Board to pay the reasonable cost of certain examinations ~~under certain circumstances; requiring the Board to pay the reasonable cost of certain examinations for certain licensees~~; and generally relating to the authority of the State Board of Morticians and Funeral Directors to require examinations.

BY adding to
Article – Health Occupations
Section 7–208 *and 7–319(h)*
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health Occupations

7–208.

~~(A) IF, WHILE REVIEWING AN APPLICATION FOR LICENSURE, INVESTIGATING AN ALLEGATION~~ WHEN INVESTIGATING AN ALLEGATION BROUGHT AGAINST ~~AN APPLICANT OR A LICENSEE UNDER THIS TITLE, OR INSPECTING A FACILITY OF A LICENSEE, THE BOARD FINDS REASONABLE EVIDENCE INDICATING THAT THE APPLICANT OR LICENSEE CANNOT PRACTICE MORTUARY SCIENCE OR FUNERAL DIRECTION COMPETENTLY, THE BOARD SHALL REQUIRE THE APPLICANT OR LICENSEE TO SUBMIT TO A MENTAL OR PHYSICAL EXAMINATION BY A HEALTH CARE PRACTITIONER DESIGNATED BY THE BOARD.~~

~~(B) IN RETURN FOR THE PRIVILEGE TO PRACTICE MORTUARY SCIENCE OR FUNERAL DIRECTION IN THE STATE, AN APPLICANT OR A LICENSEE IS DEEMED TO HAVE:~~

~~(1) CONSENTED TO SUBMIT TO AN EXAMINATION UNDER THIS SECTION, IF REQUESTED BY THE BOARD IN WRITING; AND~~

~~(2) WAIVED ANY CLAIM OF PRIVILEGE AS TO THE EXAMINATION REPORT OR TESTIMONY REGARDING THE REPORT.~~

(A) THE BOARD MAY REQUIRE AN APPLICANT OR LICENSEE TO SUBMIT TO A MENTAL OR PHYSICAL EXAMINATION BY A HEALTH CARE PRACTITIONER DESIGNATED BY THE BOARD, IF:

(1) WHEN INVESTIGATING AN ALLEGATION BROUGHT AGAINST AN APPLICANT OR LICENSEE UNDER THIS TITLE, THE BOARD FINDS REASONABLE EVIDENCE INDICATING THAT THE APPLICANT OR LICENSEE CANNOT PRACTICE MORTUARY SCIENCE OR FUNERAL DIRECTION COMPETENTLY;

(2) THE BOARD:

(I) MAKES A WRITTEN REQUEST FOR THE APPLICANT OR LICENSEE TO SUBMIT TO THE EXAMINATION;

(II) PROVIDES THE APPLICANT OR LICENSEE WITH A LIST OF THREE HEALTH CARE PRACTITIONERS FROM WHICH THE APPLICANT MAY CHOOSE A HEALTH CARE PRACTITIONER TO CONDUCT THE EXAMINATION; AND

(III) PAYS THE COST OF THE EXAMINATION IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION; AND

(3) THE APPLICANT OR LICENSEE:

(I) CONSENTS TO SUBMIT TO THE EXAMINATION; AND

(II) WAIVES ANY CLAIM OR PRIVILEGE AS TO THE EXAMINATION REPORT.

~~(C)~~ *(B)* ~~A REPORT OR TESTIMONY REGARDING A REPORT~~ AN ~~EXAMINATION~~ *EVALUATION* REPORT OF A HEALTH CARE PRACTITIONER DESIGNATED BY THE BOARD IS CONFIDENTIAL EXCEPT AS TO CONTESTED CASE PROCEEDINGS AS DEFINED BY THE ADMINISTRATIVE PROCEDURE ACT.

~~(D) THE UNREASONABLE FAILURE OR REFUSAL OF AN APPLICANT OR A LICENSEE TO SUBMIT TO AN EXAMINATION REQUIRED UNDER THIS SECTION IS PRIMA FACIE EVIDENCE OF THE APPLICANT'S OR LICENSEE'S INABILITY TO PRACTICE MORTUARY SCIENCE OR FUNERAL DIRECTION COMPETENTLY, UNLESS THE BOARD FINDS THAT THE FAILURE OR REFUSAL WAS BEYOND THE CONTROL OF THE APPLICANT OR LICENSEE.~~

~~(E)~~ *(C)* (1) *(I)* ~~AN~~ SUBJECT TO ~~PARAGRAPH (2) OF THIS SUBSECTION~~ *SUBPARAGRAPH (II) OF THIS PARAGRAPH*, AN APPLICANT ~~OR A LICENSEE~~ WHO DOES NOT HOLD A VALID LICENSE WITH THE BOARD SHALL PAY THE REASONABLE COST OF ANY EXAMINATION MADE UNDER THIS SECTION.

~~(2)~~ *(II)* IF AN APPLICANT IS DEEMED COMPETENT TO PRACTICE MORTUARY SCIENCE OR FUNERAL DIRECTION AS A RESULT OF THE ~~EXAMINATION~~ *EVALUATION* ~~REPORT~~, THE BOARD SHALL REIMBURSE THE APPLICANT FOR THE REASONABLE COST OF THE ~~EXAMINATION~~ *EVALUATION* THAT WAS PERFORMED.

~~(F)~~ *(2)* THE BOARD SHALL PAY THE REASONABLE COST OF AN EXAMINATION MADE UNDER THIS SECTION FOR A LICENSEE OF THE BOARD.

7–319.

(H) IF THE BOARD ORDERS THE SUSPENSION OF A LICENSE IN ACCORDANCE WITH § 10–226(C)(2) OF THE STATE GOVERNMENT ARTICLE, THE BOARD SHALL NOTIFY THE LICENSEE OF THE SUSPENSION WITHIN 48 HOURS AFTER THE BOARD MAKES THE DETERMINATION TO ORDER THE SUSPENSION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 158

(House Bill 70)

AN ACT concerning

State Board of Morticians and Funeral Directors – Examinations of Applicants and Licensees

FOR the purpose of ~~requiring~~ authorizing the State Board of Morticians and Funeral Directors to require certain applicants or licensees to submit to a mental or physical examination under certain circumstances; ~~providing that certain applicants or licensees are deemed to have consented to submit to a certain examination and to have waived a certain claim of privilege under certain circumstances;~~ providing that a certain report ~~or testimony~~ of a certain health care practitioner is confidential, except under certain circumstances; ~~providing that the failure or refusal of a certain applicant or licensee to submit to a certain examination is prima facie evidence of the inability to practice mortuary science or funeral direction competently, unless the Board makes a certain finding;~~ requiring certain applicants or ~~licensees~~ the Board to pay the reasonable cost of certain examinations; and generally relating to the authority of the State Board of Morticians and Funeral Directors to require examinations.

BY adding to
Article – Health Occupations
Section 7–208 and 7–319(h)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health Occupations

7–208.

~~(A) IF, WHILE REVIEWING AN APPLICATION FOR LICENSURE, INVESTIGATING AN ALLEGATION BROUGHT AGAINST A LICENSEE UNDER THIS TITLE, OR INSPECTING A FACILITY OF A LICENSEE, THE BOARD FINDS~~

~~REASONABLE EVIDENCE INDICATING THAT THE APPLICANT OR LICENSEE CANNOT PRACTICE MORTUARY SCIENCE OR FUNERAL DIRECTION COMPETENTLY, THE BOARD SHALL REQUIRE THE APPLICANT OR LICENSEE TO SUBMIT TO A MENTAL OR PHYSICAL EXAMINATION BY A HEALTH CARE PRACTITIONER DESIGNATED BY THE BOARD.~~

~~(B) IN RETURN FOR THE PRIVILEGE TO PRACTICE MORTUARY SCIENCE OR FUNERAL DIRECTION IN THE STATE, AN APPLICANT OR A LICENSEE IS DEEMED TO HAVE:~~

~~(1) CONSENTED TO SUBMIT TO AN EXAMINATION UNDER THIS SECTION, IF REQUESTED BY THE BOARD IN WRITING; AND~~

~~(2) WAIVED ANY CLAIM OF PRIVILEGE AS TO THE EXAMINATION REPORT OR TESTIMONY REGARDING THE REPORT.~~

(A) THE BOARD MAY REQUIRE AN APPLICANT OR LICENSEE TO SUBMIT TO A MENTAL OR PHYSICAL EXAMINATION BY A HEALTH CARE PRACTITIONER DESIGNATED BY THE BOARD, IF:

(1) WHEN INVESTIGATING AN ALLEGATION BROUGHT AGAINST AN APPLICANT OR LICENSEE UNDER THIS TITLE, THE BOARD FINDS REASONABLE EVIDENCE INDICATING THAT THE APPLICANT OR LICENSEE CANNOT PRACTICE MORTUARY SCIENCE OR FUNERAL DIRECTION COMPETENTLY;

(2) THE BOARD:

(I) MAKES A WRITTEN REQUEST FOR THE APPLICANT OR LICENSEE TO SUBMIT TO THE EXAMINATION;

(II) PROVIDES THE APPLICANT OR LICENSEE WITH A LIST OF THREE HEALTH CARE PRACTITIONERS FROM WHICH THE APPLICANT MAY CHOOSE A HEALTH CARE PRACTITIONER TO CONDUCT THE EXAMINATION; AND

(III) PAYS THE COST OF THE EXAMINATION IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION; AND

(3) THE APPLICANT OR LICENSEE:

(I) CONSENTS TO SUBMIT TO THE EXAMINATION; AND

(II) WAIVES ANY CLAIM OR PRIVILEGE AS TO THE EXAMINATION REPORT.

~~(C)~~ (B) ~~A REPORT OR TESTIMONY REGARDING A REPORT~~ AN EVALUATION REPORT OF A HEALTH CARE PRACTITIONER DESIGNATED BY THE BOARD IS CONFIDENTIAL EXCEPT AS TO CONTESTED CASE PROCEEDINGS AS DEFINED BY THE ADMINISTRATIVE PROCEDURE ACT.

~~(D) THE UNREASONABLE FAILURE OR REFUSAL OF AN APPLICANT OR A LICENSEE TO SUBMIT TO AN EXAMINATION REQUIRED UNDER THIS SECTION IS PRIMA FACIE EVIDENCE OF THE APPLICANT'S OR LICENSEE'S INABILITY TO PRACTICE MORTUARY SCIENCE OR FUNERAL DIRECTION COMPETENTLY, UNLESS THE BOARD FINDS THAT THE FAILURE OR REFUSAL WAS BEYOND THE CONTROL OF THE APPLICANT OR LICENSEE.~~

~~(E)~~ (C) (1) (I) ~~AN~~ SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, AN APPLICANT ~~OR A LICENSEE~~ WHO DOES NOT HOLD A VALID LICENSE WITH THE BOARD SHALL PAY THE REASONABLE COST OF ANY EXAMINATION MADE UNDER THIS SECTION.

(II) IF THE APPLICANT IS DEEMED COMPETENT TO PRACTICE MORTUARY SCIENCE OR FUNERAL DIRECTION AS A RESULT OF THE EVALUATION, THE BOARD SHALL REIMBURSE THE APPLICANT FOR THE REASONABLE COST OF THE EVALUATION THAT WAS PERFORMED.

(2) THE BOARD SHALL PAY THE REASONABLE COST OF AN EXAMINATION MADE UNDER THIS SECTION FOR A LICENSEE OF THE BOARD.

7–319.

(H) IF THE BOARD ORDERS THE SUSPENSION OF A LICENSE IN ACCORDANCE WITH § 10–226(C)(2) OF THE STATE GOVERNMENT ARTICLE, THE BOARD SHALL NOTIFY THE LICENSEE OF THE SUSPENSION WITHIN 48 HOURS AFTER THE BOARD MAKES THE DETERMINATION TO ORDER THE SUSPENSION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 159

(Senate Bill 16)

AN ACT concerning

Jury Service – Employers – Prohibited Acts

FOR the purpose of prohibiting an employer from requiring an individual to work during a certain time period on a day in which ~~an~~ the individual ~~spends more than a certain number of hours performing~~ is expected to perform jury service or acts related to jury service *or on a day after the individual performs jury service or acts related to jury service*; prohibiting an employer from depriving an individual of employment or coercing, intimidating, or threatening to discharge an individual for exercising a certain right to refrain from work for performing jury service or acts relating to jury service; and generally relating to jury service.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 8–501
Annotated Code of Maryland
(2006 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

8–501.

(a) An employer may not deprive an individual of employment or coerce, intimidate, or threaten to discharge an individual because the individual **[**loses**]:**

(1) LOSES employment time in responding to a summons under this title or attending, or being in proximity to, a circuit court for jury service under this title**; OR**

(2) EXERCISES A RIGHT TO REFRAIN FROM WORK UNDER SUBSECTION (B) OF THIS SECTION.

~~**(B) AN EMPLOYER MAY NOT REQUIRE AN INDIVIDUAL TO WORK ON A DAY IN WHICH AN INDIVIDUAL SPENDS MORE THAN 3 HOURS IN RESPONDING TO A SUMMONS UNDER THIS TITLE OR ATTENDING, OR BEING IN PROXIMITY TO, A CIRCUIT COURT FOR JURY SERVICE UNDER THIS TITLE.**~~

(B) AN EMPLOYER MAY NOT REQUIRE AN INDIVIDUAL ~~**TO WORK BETWEEN 12:00 A.M. AND 11:59 P.M. ON A DAY IN WHICH THE INDIVIDUAL IS EXPECTED TO RESPOND TO A SUMMONS UNDER THIS TITLE OR ATTEND, OR BE IN PROXIMITY TO, A CIRCUIT COURT FOR JURY SERVICE UNDER THIS TITLE**~~ *WHO*

IS SUMMONED AND APPEARS FOR JURY SERVICE FOR 4 OR MORE HOURS, INCLUDING TRAVELING TIME, TO WORK AN EMPLOYMENT SHIFT THAT BEGINS:

(1) ON OR AFTER 5 P.M. ON THE DAY OF THE INDIVIDUAL'S APPEARANCE FOR JURY SERVICE; OR

(2) BEFORE 3 A.M. ON THE DAY FOLLOWING THE INDIVIDUAL'S APPEARANCE FOR JURY SERVICE.

[(b)**] (C)** A person who violates any provision of this section is subject to a fine not exceeding $1,000.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 160

(Senate Bill 18)

AN ACT concerning

Task Force on Military Service Members, Veterans, and the Courts

FOR the purpose of creating a Task Force on Military Service Members, Veterans, and the Courts; providing for the composition, chair, and staffing of the Task Force; providing that a member of the Task Force may not receive compensation but may be reimbursed for certain expenses; requiring the Task Force to study the military service–related mental health issues and substance abuse problems that may apply or arise in certain court cases and to consider recommending the establishment of a special court for eligible defendants who are veterans or members of the armed services on active duty who appear to suffer from certain problems related to military service; requiring the Task Force to make certain recommendations; requiring the Task Force to report certain findings and recommendations to the Governor, Chief Judge of the Court of Appeals, and the General Assembly; providing for the termination of this Act; and generally relating to the Task Force on Military Service Members, Veterans, and the Courts.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That:

(a) There is a Task Force on Military Service Members, Veterans, and the Courts.

(b) The Task Force consists of the following members:

(1) one member of the Senate of Maryland, appointed by the President of the Senate;

(2) three members of the House of Delegates, appointed by the Speaker of the House;

(3) two members of the Judiciary, appointed by the Chief Judge of the Court of Appeals;

(4) the Attorney General of Maryland, or the Attorney General's designee;

(5) the Secretary of Veterans Affairs, or the Secretary's designee;

(6) the Secretary of Health and Mental Hygiene, or the Secretary's designee;

(7) the Secretary of Public Safety and Correctional Services, or the Secretary's designee;

(8) the Executive Director of the Office of Problem Solving Courts; and

(9) three veterans or members of the United States armed forces, appointed by the Governor.

(c) The Governor shall designate the chair of the Task Force.

(d) The Department of Veterans Affairs and the Administrative Office of the Courts shall jointly provide staff for the Task Force.

(e) A member of the Task Force:

(1) may not receive compensation as a member of the Task Force; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(f) The Task Force shall:

(1) study military service–related mental health issues and substance abuse problems of veterans and members of the armed services on deployment that may appear in civil, family, and criminal cases;

(2) study ways the courts may address the incidence of violence, drug use and addiction, alcohol use and addiction, mental health conditions, and crimes committed by some veterans and members of the armed services on active duty, particularly as these problems manifest themselves in cases filed in court; and

(3) make recommendations regarding the establishment of a special court for eligible defendants who are military members or veterans and who appear to suffer from mental illness, alcohol or drug abuse, or post–traumatic stress syndrome, any of which appear to be related to military service and the readjustment to civilian life which is necessary after combat service.

(g) On or before December 1, 2013, the Task Force shall report its findings and recommendations to the Governor and the Chief Judge of the Maryland Court of Appeals and, in accordance with § 2–1246 of the State Government Article, the General Assembly.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012. It shall remain effective for a period of 1 year and 9 months and, at the end of June 30, 2014, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

Approved by the Governor, May 2, 2012.

Chapter 161

(House Bill 252)

AN ACT concerning

Task Force on Military Service Members, Veterans, and the Courts

FOR the purpose of creating a Task Force on Military Service Members, Veterans, and the Courts; providing for the composition, chair, and staffing of the Task Force; providing that a member of the Task Force may not receive compensation but may be reimbursed for certain expenses; requiring the Task Force to study the military service–related mental health issues and substance abuse problems that may apply or arise in certain court cases and to consider recommending the establishment of a special court for eligible defendants who are veterans or members of the armed services on active duty who appear to suffer from certain problems related to military service; requiring the Task Force to make certain recommendations; requiring the Task Force to report certain findings and recommendations to the Governor, Chief Judge of the Court of Appeals, and the General Assembly; providing for the termination of this Act; and generally

relating to the Task Force on Military Service Members, Veterans, and the Courts.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That:

(a) There is a Task Force on Military Service Members, Veterans, and the Courts.

(b) The Task Force consists of the following members:

(1) one member of the Senate of Maryland, appointed by the President of the Senate;

(2) three members of the House of Delegates, appointed by the Speaker of the House;

(3) two members of the Judiciary, appointed by the Chief Judge of the Court of Appeals;

(4) the Attorney General of Maryland, or the Attorney General's designee;

(5) the Secretary of Veterans Affairs, or the Secretary's designee;

(6) the Secretary of Health and Mental Hygiene, or the Secretary's designee;

(7) the Secretary of Public Safety and Correctional Services, or the Secretary's designee;

(8) the Executive Director of the Office of Problem Solving Courts; and

(9) three veterans or members of the United States armed forces, appointed by the Governor.

(c) The Governor shall designate the chair of the Task Force.

(d) The Department of Veterans Affairs and the Administrative Office of the Courts shall jointly provide staff for the Task Force.

(e) A member of the Task Force:

(1) may not receive compensation as a member of the Task Force; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(f) The Task Force shall:

(1) study military service–related mental health issues and substance abuse problems of veterans and members of the armed services on deployment that may appear in civil, family, and criminal cases;

(2) study ways the courts may address the incidence of violence, drug use and addiction, alcohol use and addiction, mental health conditions, and crimes committed by some veterans and members of the armed services on active duty, particularly as these problems manifest themselves in cases filed in court; and

(3) make recommendations regarding the establishment of a special court for eligible defendants who are military members or veterans and who appear to suffer from mental illness, alcohol or drug abuse, or post–traumatic stress syndrome, any of which appear to be related to military service and the readjustment to civilian life which is necessary after combat service.

(g) On or before December 1, 2013, the Task Force shall report its findings and recommendations to the Governor and the Chief Judge of the Maryland Court of Appeals and, in accordance with § 2–1246 of the State Government Article, the General Assembly.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012. It shall remain effective for a period of 1 year and 9 months and, at the end of June 30, 2014, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

Approved by the Governor, May 2, 2012.

Chapter 162

(Senate Bill 32)

AN ACT concerning

Anne Arundel County – Property Tax Payment Deferral – Eligibility

FOR the purpose of authorizing the governing body of Anne Arundel County to provide, by law, a certain payment deferral of the county property tax for certain residential real property; requiring the governing body of Anne Arundel County under certain circumstances to specify the duration and certain amounts, restrictions, and income eligibility requirements for the payment deferral; requiring the payment of certain deferred property taxes under certain circumstances; requiring the governing body of Anne Arundel County under

certain circumstances to provide certain information in a taxpayer's annual property tax bill; requiring that a payment deferral be authorized by a certain written agreement to be recorded in certain land records; providing for a certain lien attachment under certain circumstances; providing for the application of this Act; and generally relating to property tax deferrals in Anne Arundel County for certain residential real property.

BY adding to
Article – Tax – Property
Section 10–204.6
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Tax – Property

10–204.6.

(A) NOTWITHSTANDING SUBTITLE 1 OF THIS TITLE, THE GOVERNING BODY OF ANNE ARUNDEL COUNTY MAY AUTHORIZE, BY LAW, A PAYMENT DEFERRAL OF THE COUNTY PROPERTY TAX FOR RESIDENTIAL REAL PROPERTY OCCUPIED AS THE PRINCIPAL RESIDENCE OF THE OWNER, THE PROVISIONS OF WHICH SHALL COMPLY WITH THE PROVISIONS OF SUBSECTIONS (B) THROUGH (H) OF THIS SECTION.

(B) AN OWNER IS ELIGIBLE FOR A PAYMENT DEFERRAL UNDER SUBSECTION (A) OF THIS SECTION IF THE OWNER OR AT LEAST ONE OF THE OWNERS:

(1) HAS RESIDED IN THE DWELLING FOR A PERIOD OF AT LEAST 5 CONSECUTIVE YEARS;

(2) (I) IS AT LEAST 62 YEARS OF AGE;

(II) HAS BEEN FOUND PERMANENTLY AND TOTALLY DISABLED AND HAS QUALIFIED FOR BENEFITS UNDER:

1. THE SOCIAL SECURITY ACT;

2. THE RAILROAD RETIREMENT ACT;

3. ANY FEDERAL ACT FOR MEMBERS OF THE UNITED STATES ARMED FORCES; OR

4. ANY FEDERAL RETIREMENT SYSTEM; OR

(III) HAS BEEN FOUND PERMANENTLY AND TOTALLY DISABLED BY A COUNTY HEALTH OFFICER OR THE BALTIMORE CITY COMMISSIONER OF HEALTH; AND

(3) MEETS THE INCOME ELIGIBILITY REQUIREMENTS DETERMINED UNDER SUBSECTION (C) OF THIS SECTION.

(C) IF THE GOVERNING BODY OF ANNE ARUNDEL COUNTY AUTHORIZES A PAYMENT DEFERRAL UNDER THIS SECTION, THE GOVERNING BODY SHALL SPECIFY:

(1) THE AMOUNT OF THE TAX THAT MAY BE DEFERRED, NOT EXCEEDING THE INCREASE IN THE COUNTY PROPERTY TAX FROM THE DATE THE TAXPAYER ELECTS TO DEFER THE PAYMENT OF THE TAX;

(2) THE DURATION OF THE PAYMENT DEFERRAL UNDER SUBSECTION (A) OF THIS SECTION;

(3) RESTRICTIONS ON THE AMOUNT OF THE REAL PROPERTY ELIGIBLE FOR A PAYMENT DEFERRAL, EXCEPT THAT THE AMOUNT OF ELIGIBLE PROPERTY MAY NOT BE LESS THAN THE DWELLING AND CURTILAGE, AS DETERMINED BY THE SUPERVISOR;

(4) THE RATE OF INTEREST TO BE PAID ON THE COUNTY PROPERTY TAX PAYMENT FROM THE DUE DATE WITHOUT A DEFERRAL UNTIL THE DATE THAT THE COUNTY PROPERTY TAX IS PAID;

(5) THAT ANY MORTGAGEE OR BENEFICIARY UNDER A DEED OF TRUST BE ENTITLED TO RECEIVE NOTICE OF THE DEFERRAL AND OF THE AMOUNT OF TAX TO BE DEFERRED; AND

(6) THE LEVEL OF INCOME TO DETERMINE ELIGIBILITY FOR THE PAYMENT DEFERRAL.

(D) THE COUNTY PROPERTY TAX THAT IS DEFERRED UNDER THIS SECTION AND ANY INTEREST SPECIFIED IN SUBSECTION (C)(4) OF THIS SECTION ARE DUE:

(1) WHEN THE DEFERRAL ENDS AS SPECIFIED IN SUBSECTION (C)(2) OF THIS SUBSECTION;

(2) WHEN THE ELIGIBLE OWNER DIES; OR

(3) IMMEDIATELY ON TRANSFER OF OWNERSHIP OF THE PROPERTY FOR WHICH THE PROPERTY TAX HAS BEEN DEFERRED.

(E) THE GOVERNING BODY OF ANNE ARUNDEL COUNTY SHALL SPECIFY THE CUMULATIVE AMOUNT OF THE DEFERRAL AND RELATED INTEREST IN THE TAXPAYER'S ANNUAL PROPERTY TAX BILL.

(F) (1) A LIEN SHALL ATTACH TO THE PROPERTY IN THE AMOUNT OF ALL DEFERRED TAXES AND INTEREST.

(2) THE LIEN SHALL REMAIN ATTACHED UNTIL THE DEFERRED TAXES AND INTEREST ARE PAID.

(G) (1) THE GOVERNING BODY OF ANNE ARUNDEL COUNTY SHALL AUTHORIZE THE DEFERRAL BY WRITTEN AGREEMENT.

(2) THE AGREEMENT SHALL REFLECT THE TERMS AND CONDITIONS OF THE DEFERRAL, INCLUDING NOTICE OF THE LIEN.

(3) THE AGREEMENT SHALL BE RECORDED IN THE LAND RECORDS OF THE COUNTY.

(H) PENALTIES MAY NOT BE CHARGED DURING THE PERIOD OF THE DEFERRAL ON ANY TAX PAYMENTS DEFERRED UNDER THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2012, and shall be applicable to all taxable years beginning after June 30, 2012.

Approved by the Governor, May 2, 2012.

Chapter 163

(House Bill 59)

AN ACT concerning

Anne Arundel County – Property Tax Payment Deferral – Eligibility

FOR the purpose of authorizing the governing body of Anne Arundel County to provide, by law, a certain payment deferral of the county property tax for certain residential real property; requiring the governing body of Anne Arundel County under certain circumstances to specify the duration and certain amounts, restrictions, and income eligibility requirements for the payment deferral; requiring the payment of certain deferred property taxes under certain circumstances; requiring the governing body of Anne Arundel County under certain circumstances to provide certain information in a taxpayer's annual property tax bill; requiring that a payment deferral be authorized by a certain written agreement to be recorded in certain land records; providing for a certain lien attachment under certain circumstances; providing for the application of this Act; and generally relating to property tax deferrals in Anne Arundel County for certain residential real property.

BY adding to
Article – Tax – Property
Section 10–204.6
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Tax – Property

10–204.6.

(A) NOTWITHSTANDING SUBTITLE 1 OF THIS TITLE, THE GOVERNING BODY OF ANNE ARUNDEL COUNTY MAY AUTHORIZE, BY LAW, A PAYMENT DEFERRAL OF THE COUNTY PROPERTY TAX FOR RESIDENTIAL REAL PROPERTY OCCUPIED AS THE PRINCIPAL RESIDENCE OF THE OWNER, THE PROVISIONS OF WHICH SHALL COMPLY WITH THE PROVISIONS OF SUBSECTIONS (B) THROUGH (H) OF THIS SECTION.

(B) AN OWNER IS ELIGIBLE FOR A PAYMENT DEFERRAL UNDER SUBSECTION (A) OF THIS SECTION IF THE OWNER OR AT LEAST ONE OF THE OWNERS:

(1) HAS RESIDED IN THE DWELLING FOR A PERIOD OF AT LEAST 5 CONSECUTIVE YEARS;

(2) (I) IS AT LEAST 62 YEARS OF AGE;

(II) HAS BEEN FOUND PERMANENTLY AND TOTALLY DISABLED AND HAS QUALIFIED FOR BENEFITS UNDER:

1. THE SOCIAL SECURITY ACT;

2. THE RAILROAD RETIREMENT ACT;

3. ANY FEDERAL ACT FOR MEMBERS OF THE UNITED STATES ARMED FORCES; OR

4. ANY FEDERAL RETIREMENT SYSTEM; OR

(III) HAS BEEN FOUND PERMANENTLY AND TOTALLY DISABLED BY A COUNTY HEALTH OFFICER OR THE BALTIMORE CITY COMMISSIONER OF HEALTH; AND

(3) MEETS THE INCOME ELIGIBILITY REQUIREMENTS DETERMINED UNDER SUBSECTION (C) OF THIS SECTION.

(C) IF THE GOVERNING BODY OF ANNE ARUNDEL COUNTY AUTHORIZES A PAYMENT DEFERRAL UNDER THIS SECTION, THE GOVERNING BODY SHALL SPECIFY:

(1) THE AMOUNT OF THE TAX THAT MAY BE DEFERRED, NOT EXCEEDING THE INCREASE IN THE COUNTY PROPERTY TAX FROM THE DATE THE TAXPAYER ELECTS TO DEFER THE PAYMENT OF THE TAX;

(2) THE DURATION OF THE PAYMENT DEFERRAL UNDER SUBSECTION (A) OF THIS SECTION;

(3) RESTRICTIONS ON THE AMOUNT OF THE REAL PROPERTY ELIGIBLE FOR A PAYMENT DEFERRAL, EXCEPT THAT THE AMOUNT OF ELIGIBLE PROPERTY MAY NOT BE LESS THAN THE DWELLING AND CURTILAGE, AS DETERMINED BY THE SUPERVISOR;

(4) THE RATE OF INTEREST TO BE PAID ON THE COUNTY PROPERTY TAX PAYMENT FROM THE DUE DATE WITHOUT A DEFERRAL UNTIL THE DATE THAT THE COUNTY PROPERTY TAX IS PAID;

(5) THAT ANY MORTGAGEE OR BENEFICIARY UNDER A DEED OF TRUST BE ENTITLED TO RECEIVE NOTICE OF THE DEFERRAL AND OF THE AMOUNT OF TAX TO BE DEFERRED; AND

(6) THE LEVEL OF INCOME TO DETERMINE ELIGIBILITY FOR THE PAYMENT DEFERRAL.

(D) THE COUNTY PROPERTY TAX THAT IS DEFERRED UNDER THIS SECTION AND ANY INTEREST SPECIFIED IN SUBSECTION (C)(4) OF THIS SECTION ARE DUE:

(1) WHEN THE DEFERRAL ENDS AS SPECIFIED IN SUBSECTION (C)(2) OF THIS SUBSECTION;

(2) WHEN THE ELIGIBLE OWNER DIES; OR

(3) IMMEDIATELY ON TRANSFER OF OWNERSHIP OF THE PROPERTY FOR WHICH THE PROPERTY TAX HAS BEEN DEFERRED.

(E) THE GOVERNING BODY OF ANNE ARUNDEL COUNTY SHALL SPECIFY THE CUMULATIVE AMOUNT OF THE DEFERRAL AND RELATED INTEREST IN THE TAXPAYER'S ANNUAL PROPERTY TAX BILL.

(F) (1) A LIEN SHALL ATTACH TO THE PROPERTY IN THE AMOUNT OF ALL DEFERRED TAXES AND INTEREST.

(2) THE LIEN SHALL REMAIN ATTACHED UNTIL THE DEFERRED TAXES AND INTEREST ARE PAID.

(G) (1) THE GOVERNING BODY OF ANNE ARUNDEL COUNTY SHALL AUTHORIZE THE DEFERRAL BY WRITTEN AGREEMENT.

(2) THE AGREEMENT SHALL REFLECT THE TERMS AND CONDITIONS OF THE DEFERRAL, INCLUDING NOTICE OF THE LIEN.

(3) THE AGREEMENT SHALL BE RECORDED IN THE LAND RECORDS OF THE COUNTY.

(H) PENALTIES MAY NOT BE CHARGED DURING THE PERIOD OF THE DEFERRAL ON ANY TAX PAYMENTS DEFERRED UNDER THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2012, and shall be applicable to all taxable years beginning after June 30, 2012.

Approved by the Governor, May 2, 2012.

Chapter 164

(Senate Bill 33)

AN ACT concerning

Dorchester County – Alcoholic Beverages Licenses – Beer, Wine and Liquor Licenses – Clubs

FOR the purpose of updating certain obsolete language by authorizing a certain organization to obtain a certain license from the County Council of Dorchester County under certain circumstances; updating certain obsolete language by requiring the County Council of Dorchester County to pay a certain alcoholic beverages license fee to the mayor and city council of a city or town under certain circumstances; requiring the County Council of Dorchester County to pay a certain alcoholic beverages license fee to the Finance Department of Dorchester County under certain circumstances; and generally relating to the distribution of Class C beer, wine and liquor license fees paid by organizations in Dorchester County.

BY repealing and reenacting, without amendments,
Article 2B – Alcoholic Beverages
Section 6–301(a)
Annotated Code of Maryland
(2011 Replacement Volume)

BY repealing and reenacting, with amendments,
Article 2B – Alcoholic Beverages
Section 6–301(k)
Annotated Code of Maryland
(2011 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article 2B – Alcoholic Beverages

6–301.

(a) (1) Except as provided in subsection (n) of this section, a Class C beer, wine and liquor license shall be issued by the license issuing authority of the county in which the place of business is located. It authorizes the holder to keep for sale and sell all alcoholic beverages at retail at any club, at the place described in the license, for consumption on the premises only.

(2) The annual fee for the license shall be paid to the local collecting agent before the license is issued, for distribution as provided.

(3) In this section, "board" means the board of commissioners for the jurisdiction to which the subsection applies.

(k) (1) This subsection applies only in Dorchester County.

(2) The annual license fee is $1,000.

(3) A license may be obtained by any bona fide yacht club and golf and country club that:

(i) Has been incorporated for a period of not less than 5 years prior to the time of making application for the license;

(ii) Has a bona fide membership of not less than 250 persons and dues of not less than $10 per year per adult member;

(iii) Has facilities for preparing and serving food on the premises to members and their guests when accompanied by such members; and

(iv) Owns or operates a clubhouse located on premises principally used for no other purpose and not directly or indirectly owned or operated as a public business.

(4) A license may be obtained by any local unit of a nationwide bona fide nonprofit organization or club composed solely of members who served in the armed forces of the United States in any war in which the United States has engaged and:

(i) Has held a charter from a national veterans' organization for a period of not less than 5 years prior to the time of making application for the license;

(ii) Has a bona fide membership of not less than 50 persons and dues of not less than $5 per year per person;

(iii) Operates solely for the use of its own members and their guests when accompanied by such members; and

(iv) Meets in a clubhouse principally used for no other purpose.

(5) A license may be obtained by any lodge or chapter of any bona fide nonprofit and nationwide fraternal organization composed of members duly elected and initiated in accordance with the rites and customs of the fraternal organization which:

(i) Has been in existence and operating in Dorchester County for a period of not less than 5 years prior to the time of making application for the license;

(ii) Has a bona fide membership of not less than 125 persons and dues of not less than $5 per annum per member;

(iii) Owns or operates a home or clubhouse principally for the use of its members and their guests when accompanied by such members; and

(iv) Is not directly or indirectly owned or operated as a public business.

(6) A license may be obtained by Sailwinds Park, Inc., a nonprofit organization. The license may be obtained and renewed so long as no individual or group of individuals derive any personal profits from the operation of the Park.

(7) Upon payment of the license fee, any organization specified by this subsection may obtain a license from the County ~~Commissioners~~ **COUNCIL**.

(8) If the organization specified by this subsection is located within the corporate limits of any city or town, the County **[**Commissioners**]** **COUNCIL** shall pay the license fee to the mayor and city council of that city or town. Otherwise, they shall pay the fee to the **[**treasurer**]** **FINANCE DEPARTMENT** of Dorchester County.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 165

(Senate Bill 41)

AN ACT concerning

Caroline County, Dorchester County, *and* Talbot County~~, and Wicomico County~~ – Prospective Employees and Volunteers – Criminal History Records Check

FOR the purpose of authorizing a certain officer in Caroline County, Dorchester County, *or* Talbot County~~, or Wicomico County~~ to request from the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services a State and national criminal history records check for a prospective county employee or volunteer; requiring that a certain

officer submit certain sets of fingerprints and fees to the Central Repository as part of the application for a criminal history records check; requiring the Central Repository to forward to the prospective employee or volunteer and a certain officer the prospective employee's or volunteer's criminal history record information under certain circumstances; establishing that information obtained from the Central Repository under this Act is confidential, may not be redisseminated, and may be used only for certain purposes; authorizing the subjects of a criminal history records check under this Act to contest the contents of a certain printed statement issued by the Central Repository; requiring the governing bodies of Caroline County, Dorchester County, *and* Talbot County~~, and Wicomico County~~ to adopt guidelines to carry out this Act; defining a certain term; and generally relating to criminal history records checks.

BY renumbering
Article – Criminal Procedure
Section 10–236
to be Section 10–234.1
Annotated Code of Maryland
(2008 Replacement Volume and 2011 Supplement)

BY adding to
Article – Criminal Procedure
Section 10–231.2, 10–232.1, *and* 10–234.2~~, and 10–236~~
Annotated Code of Maryland
(2008 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 10–236 of Article – Criminal Procedure of the Annotated Code of Maryland be renumbered to be Section(s) 10–234.1.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Criminal Procedure

10–231.2.

(A) IN THIS SECTION, "CENTRAL REPOSITORY" MEANS THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

(B) THE DIRECTOR OF HUMAN RESOURCES OF CAROLINE COUNTY MAY REQUEST FROM THE CENTRAL REPOSITORY A STATE AND NATIONAL CRIMINAL HISTORY RECORDS CHECK FOR A PROSPECTIVE EMPLOYEE OR VOLUNTEER OF CAROLINE COUNTY.

(C) (1) AS PART OF THE APPLICATION FOR A CRIMINAL HISTORY RECORDS CHECK, THE DIRECTOR OF HUMAN RESOURCES FOR CAROLINE COUNTY SHALL SUBMIT TO THE CENTRAL REPOSITORY:

(I) TWO COMPLETE SETS OF THE PROSPECTIVE EMPLOYEE'S OR VOLUNTEER'S LEGIBLE FINGERPRINTS TAKEN ON FORMS APPROVED BY THE DIRECTOR OF THE CENTRAL REPOSITORY AND THE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION;

(II) THE FEE AUTHORIZED UNDER § 10–221(B)(7) OF THIS SUBTITLE FOR ACCESS TO MARYLAND CRIMINAL HISTORY RECORDS; AND

(III) THE MANDATORY PROCESSING FEE REQUIRED BY THE FEDERAL BUREAU OF INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY RECORDS CHECK.

(2) IN ACCORDANCE WITH §§ 10–201 THROUGH 10–250 OF THIS SUBTITLE, THE CENTRAL REPOSITORY SHALL FORWARD TO THE PROSPECTIVE EMPLOYEE OR VOLUNTEER AND THE DIRECTOR OF HUMAN RESOURCES OF CAROLINE COUNTY THE PROSPECTIVE EMPLOYEE'S OR VOLUNTEER'S CRIMINAL HISTORY RECORD INFORMATION.

(3) INFORMATION OBTAINED FROM THE CENTRAL REPOSITORY UNDER THIS SECTION:

(I) IS CONFIDENTIAL AND MAY NOT BE REDISSEMINATED; AND

(II) MAY BE USED ONLY FOR A PERSONNEL–RELATED PURPOSE CONCERNING A PROSPECTIVE EMPLOYEE OR VOLUNTEER FOR THE COUNTY AS AUTHORIZED BY THIS SECTION.

(4) THE SUBJECT OF A CRIMINAL HISTORY RECORDS CHECK UNDER THIS SECTION MAY CONTEST THE CONTENTS OF THE PRINTED STATEMENT ISSUED BY THE CENTRAL REPOSITORY AS PROVIDED IN § 10–223 OF THIS SUBTITLE.

(D) THE GOVERNING BODY OF CAROLINE COUNTY SHALL ADOPT GUIDELINES TO CARRY OUT THIS SECTION.

10–232.1.

(A) IN THIS SECTION, "CENTRAL REPOSITORY" MEANS THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

(B) THE DIRECTOR OF HUMAN RESOURCES OF DORCHESTER COUNTY MAY REQUEST FROM THE CENTRAL REPOSITORY A STATE AND NATIONAL CRIMINAL HISTORY RECORDS CHECK FOR A PROSPECTIVE EMPLOYEE OR VOLUNTEER OF DORCHESTER COUNTY.

(C) (1) AS PART OF THE APPLICATION FOR A CRIMINAL HISTORY RECORDS CHECK, THE DIRECTOR OF HUMAN RESOURCES OF DORCHESTER COUNTY SHALL SUBMIT TO THE CENTRAL REPOSITORY:

(I) TWO COMPLETE SETS OF THE PROSPECTIVE EMPLOYEE'S OR VOLUNTEER'S LEGIBLE FINGERPRINTS TAKEN ON FORMS APPROVED BY THE DIRECTOR OF THE CENTRAL REPOSITORY AND THE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION;

(II) THE FEE AUTHORIZED UNDER § 10–221(B)(7) OF THIS SUBTITLE FOR ACCESS TO MARYLAND CRIMINAL HISTORY RECORDS; AND

(III) THE MANDATORY PROCESSING FEE REQUIRED BY THE FEDERAL BUREAU OF INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY RECORDS CHECK.

(2) IN ACCORDANCE WITH §§ 10–201 THROUGH 10–250 OF THIS SUBTITLE, THE CENTRAL REPOSITORY SHALL FORWARD TO THE PROSPECTIVE EMPLOYEE OR VOLUNTEER AND THE DIRECTOR OF HUMAN RESOURCES THE PROSPECTIVE EMPLOYEE'S OR VOLUNTEER'S CRIMINAL HISTORY RECORD INFORMATION.

(3) INFORMATION OBTAINED FROM THE CENTRAL REPOSITORY UNDER THIS SECTION:

(I) IS CONFIDENTIAL AND MAY NOT BE REDISSEMINATED; AND

(II) MAY BE USED ONLY FOR A PERSONNEL–RELATED PURPOSE CONCERNING A PROSPECTIVE EMPLOYEE OR VOLUNTEER OF THE COUNTY AS AUTHORIZED BY THIS SECTION.

(4) THE SUBJECT OF A CRIMINAL HISTORY RECORDS CHECK UNDER THIS SECTION MAY CONTEST THE CONTENTS OF THE PRINTED

STATEMENT ISSUED BY THE CENTRAL REPOSITORY AS PROVIDED IN § 10–223 OF THIS SUBTITLE.

(D) THE GOVERNING BODY OF DORCHESTER COUNTY SHALL ADOPT GUIDELINES TO CARRY OUT THIS SECTION.

10–234.2.

(A) IN THIS SECTION, "CENTRAL REPOSITORY" MEANS THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

(B) THE DIRECTOR OF ADMINISTRATIVE SERVICES OF TALBOT COUNTY MAY REQUEST FROM THE CENTRAL REPOSITORY A STATE AND NATIONAL CRIMINAL HISTORY RECORDS CHECK FOR A PROSPECTIVE EMPLOYEE OR VOLUNTEER OF TALBOT COUNTY.

(C) (1) AS PART OF THE APPLICATION FOR A CRIMINAL HISTORY RECORDS CHECK, THE DIRECTOR OF ADMINISTRATIVE SERVICES SHALL SUBMIT TO THE CENTRAL REPOSITORY:

(I) TWO COMPLETE SETS OF THE PROSPECTIVE EMPLOYEE'S OR VOLUNTEER'S LEGIBLE FINGERPRINTS TAKEN ON FORMS APPROVED BY THE DIRECTOR OF THE CENTRAL REPOSITORY AND THE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION;

(II) THE FEE AUTHORIZED UNDER § 10–221(B)(7) OF THIS SUBTITLE FOR ACCESS TO MARYLAND CRIMINAL HISTORY RECORDS; AND

(III) THE MANDATORY PROCESSING FEE REQUIRED BY THE FEDERAL BUREAU OF INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY RECORDS CHECK.

(2) IN ACCORDANCE WITH §§ 10–201 THROUGH 10–250 OF THIS SUBTITLE, THE CENTRAL REPOSITORY SHALL FORWARD TO THE PROSPECTIVE EMPLOYEE OR VOLUNTEER AND THE DIRECTOR OF ADMINISTRATIVE SERVICES OF TALBOT COUNTY THE PROSPECTIVE EMPLOYEE'S OR VOLUNTEER'S CRIMINAL HISTORY RECORD INFORMATION.

(3) INFORMATION OBTAINED FROM THE CENTRAL REPOSITORY UNDER THIS SECTION:

(I) IS CONFIDENTIAL AND MAY NOT BE REDISSEMINATED; AND

(II) MAY BE USED ONLY FOR A PERSONNEL–RELATED PURPOSE CONCERNING A PROSPECTIVE EMPLOYEE OF OR VOLUNTEER FOR THE COUNTY AS AUTHORIZED BY THIS SECTION.

(4) THE SUBJECT OF A CRIMINAL HISTORY RECORDS CHECK UNDER THIS SECTION MAY CONTEST THE CONTENTS OF THE PRINTED STATEMENT ISSUED BY THE CENTRAL REPOSITORY AS PROVIDED IN § 10–223 OF THIS SUBTITLE.

(D) THE GOVERNING BODY OF TALBOT COUNTY SHALL ADOPT GUIDELINES TO CARRY OUT THIS SECTION.

~~**10–236.**~~

~~**(A) IN THIS SECTION, "CENTRAL REPOSITORY" MEANS THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.**~~

~~**(B) THE DIRECTOR OF HUMAN RESOURCES OF WICOMICO COUNTY MAY REQUEST FROM THE CENTRAL REPOSITORY A STATE AND NATIONAL CRIMINAL HISTORY RECORDS CHECK FOR A PROSPECTIVE EMPLOYEE OR VOLUNTEER OF WICOMICO COUNTY.**~~

~~**(C) (1) AS PART OF THE APPLICATION FOR A CRIMINAL HISTORY RECORDS CHECK, THE DIRECTOR OF HUMAN RESOURCES OF WICOMICO COUNTY SHALL SUBMIT TO THE CENTRAL REPOSITORY:**~~

~~**(I) TWO COMPLETE SETS OF THE PROSPECTIVE EMPLOYEE'S OR VOLUNTEER'S LEGIBLE FINGERPRINTS TAKEN ON FORMS APPROVED BY THE DIRECTOR OF THE CENTRAL REPOSITORY AND THE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION;**~~

~~**(II) THE FEE AUTHORIZED UNDER § 10–221(B)(7) OF THIS SUBTITLE FOR ACCESS TO MARYLAND CRIMINAL HISTORY RECORDS; AND**~~

~~**(III) THE MANDATORY PROCESSING FEE REQUIRED BY THE FEDERAL BUREAU OF INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY RECORDS CHECK.**~~

~~**(2) IN ACCORDANCE WITH §§ 10–201 THROUGH 10–250 OF THIS SUBTITLE, THE CENTRAL REPOSITORY SHALL FORWARD TO THE PROSPECTIVE EMPLOYEE OR VOLUNTEER AND THE DIRECTOR OF HUMAN RESOURCES OF**~~

~~WICOMICO COUNTY THE PROSPECTIVE EMPLOYEE'S OR VOLUNTEER'S CRIMINAL HISTORY RECORD INFORMATION.~~

~~(3) INFORMATION OBTAINED FROM THE CENTRAL REPOSITORY UNDER THIS SECTION:~~

~~(I) IS CONFIDENTIAL AND MAY NOT BE REDISSEMINATED; AND~~

~~(II) MAY BE USED ONLY FOR A PERSONNEL RELATED PURPOSE CONCERNING A PROSPECTIVE EMPLOYEE OF OR VOLUNTEER FOR THE COUNTY AS AUTHORIZED BY THIS SECTION.~~

~~(4) THE SUBJECT OF A CRIMINAL HISTORY RECORDS CHECK UNDER THIS SECTION MAY CONTEST THE CONTENTS OF THE PRINTED STATEMENT ISSUED BY THE CENTRAL REPOSITORY AS PROVIDED IN § 10–223 OF THIS SUBTITLE.~~

~~(D) THE GOVERNING BODY OF WICOMICO COUNTY SHALL ADOPT GUIDELINES TO CARRY OUT THIS SECTION.~~

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 166

(Senate Bill 47)

AN ACT concerning

Maryland Consolidated Capital Bond Loans of 2002 and 2009 – Montgomery County – MacDonald Knolls Center

FOR the purpose of amending the Maryland Consolidated Capital Bond Loans of 2002 and 2009 to extend the deadline for the Board of Directors of CHI Centers, Inc. to present evidence that a matching fund will be provided for a certain grant; requiring that the Board of Public Works expend or encumber the proceeds of the loans by June 1, 2014; making this Act an emergency measure; and generally relating to amending the Maryland Consolidated Capital Bond Loans of 2002 and 2009.

BY repealing and reenacting, with amendments,
Chapter 290 of the Acts of the General Assembly of 2002, as amended by Chapter 707 of the Acts of the General Assembly of 2009
Section 1(3) Item ZA00(OO)

BY repealing and reenacting, with amendments,
Chapter 485 of the Acts of the General Assembly of 2009
Section 1(3) Item ZA02(AI)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Chapter 290 of the Acts of 2002, as amended by Chapter 707 of the Acts of 2009

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That:

(3) ZA00 MISCELLANEOUS GRANT PROGRAMS

(OO)	MacDonald Knolls Center. Provide a grant to the Board of Directors of CHI Centers, Inc. for the construction, reconstruction, repair, renovation, and capital equipping of the MacDonald Knolls Center, located in Silver Spring. The proceeds of the loan must be encumbered by the Board of Public Works or expended for the purposes provided in this Act no later than June 1, **[**2011**]** **2014** (Montgomery County)	175,000

Chapter 485 of the Acts of 2009

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That:

(3) ZA02 HOUSE OF DELEGATES LEGISLATIVE INITIATIVES

(AI) MacDonald Knolls Center. Provide a grant equal to the lesser of (i) $100,000 or (ii) the amount of the matching fund provided, to the Board of Directors of CHI Centers, Inc. for the repair, renovation, reconstruction, and capital equipping of the MacDonald Knolls Center, located in Silver Spring. **NOTWITHSTANDING SECTION 1(5) OF THIS ACT, THE GRANTEE HAS UNTIL JUNE 1, 2013, TO PRESENT EVIDENCE THAT A MATCHING FUND WILL BE PROVIDED. NOTWITHSTANDING SECTION 1(7) OF THIS ACT, THE PROCEEDS OF THE LOAN MUST BE EXPENDED OR ENCUMBERED BY THE BOARD OF PUBLIC WORKS FOR THE PURPOSES PROVIDED IN THIS ACT NO LATER THAN JUNE 1, 2014** (Montgomery County) 100,000

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three–fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved by the Governor, May 2, 2012.

Chapter 167

(Senate Bill 49)

AN ACT concerning

Horse Racing – Maryland–Bred Race Fund – Administration

FOR the purpose of authorizing the Maryland Racing Commission to allocate a portion of the Maryland–Bred Race Fund for horses conceived, but not necessarily foaled, in Maryland; altering the amount of the Fund the Commission may allocate for certain horse races; requiring the Commission to set the amount of certain breeder awards for races in the State and outside the State; making a technical change; and generally relating to horse racing and the Maryland–Bred Race Fund.

BY repealing and reenacting, without amendments,
Article – Business Regulation
Section 11–529
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Business Regulation
Section 11–535(d) and 11–539(a)
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Business Regulation

11–529.

(a) In this part the following words have the meanings indicated.

(b) "Advisory Committee" means the Maryland–Bred Race Fund Advisory Committee.

(c) "Fund" means the Maryland–Bred Race Fund.

(d) "Fund Race" means a race funded by the Maryland–Bred Race Fund.

11–535.

(d) On recommendation of the Advisory Committee, the Commission may allocate **[**not more than 5%**]** **A PORTION** of the Fund to races that are restricted to horses conceived, but not necessarily foaled, in **[**the State**]** **MARYLAND**.

11–539.

(a) On recommendation of the Advisory Committee, the Commission shall set:

(1) the number of Fund Races;

(2) the amount of each purse;

(3) the date of each Fund Race;

(4) the location of each Fund Race held outside the State;

(5) the distance of each Fund Race;

(6) each breeder's award**, INCLUDING AWARDS FOR RACES IN THE STATE AND OUTSIDE THE STATE**; and

(7) any other condition needed to carry out the purpose of **[**a**]** **THE** Fund **[**Race**]**.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 168

(Senate Bill 52)

AN ACT concerning

State Employees' Retirement and Pension Systems – Eligible Employees – St. Mary's Nursing Center, Inc.

FOR the purpose of authorizing certain employees of the St. Mary's Nursing Center, Inc. to continue to participate in the State employees' retirement and pension systems; updating the name of the St. Mary's County Nursing Home in a certain list of governmental units eligible for participation in the employees' systems; and generally relating to the participation of certain St. Mary's Nursing Center, Inc. employees in the State employees' retirement and pension systems.

BY repealing and reenacting, with amendments,
Article – State Personnel and Pensions
Section 31–102(2)(xvii)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY adding to
Article – State Personnel and Pensions
Section 31–106.2
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – State Personnel and Pensions

31–102.

Subject to § 22–202(b) of this article, the governmental units that are eligible to participate in the employees' systems are:

(2) the following governmental units:

(xvii) **[**the St. Mary's County Nursing Home**]** **SUBJECT TO § 31–106.2 OF THIS SUBTITLE, THE ST. MARY'S NURSING CENTER, INC.**;

31–106.2.

THE ONLY EMPLOYEES OF THE ST. MARY'S NURSING CENTER, INC. WHO ARE ELIGIBLE TO PARTICIPATE IN THE EMPLOYEES' SYSTEMS UNDER THIS SUBTITLE ARE THOSE EMPLOYEES WHO WERE MEMBERS OF THE EMPLOYEES' RETIREMENT SYSTEM OR THE EMPLOYEES' PENSION SYSTEM AS EMPLOYEES OF THE ST. MARY'S COUNTY NURSING HOME ON JANUARY 17, 1996.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 169

(Senate Bill 70)

AN ACT concerning

Family Law – Permanency Planning and Guardianship Review Hearings – Court Procedures

FOR the purpose of establishing certain methods by which the juvenile court, in certain permanency planning and guardianship review hearings, may satisfy the requirement that the court consult on the record with the child under certain circumstances; <u>specifying the purpose of the consultation;</u> and generally relating to permanency planning and guardianship review hearings.

BY repealing and reenacting, without amendments,
Article – Courts and Judicial Proceedings
Section 3–823(b), (c), and (h)(1)
Annotated Code of Maryland
(2006 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings

Section 3–823(k)
Annotated Code of Maryland
(2006 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, without amendments,
Article – Family Law
Section 5–326(a)(1) and (2)
Annotated Code of Maryland
(2006 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Family Law
Section 5–326(c)
Annotated Code of Maryland
(2006 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

3–823.

(b) (1) The court shall hold a permanency planning hearing to determine the permanency plan for a child:

(i) No later than 11 months after a child committed under § 3–819 of this subtitle or continued in a voluntary placement under § 3–819.1(b) of this subtitle enters an out–of–home placement; or

(ii) Within 30 days after the court finds that reasonable efforts to reunify a child with the child's parent or guardian are not required based on a finding that a circumstance enumerated in § 3–812 of this subtitle has occurred.

(2) For purposes of this section, a child shall be considered to have entered an out–of–home placement 30 days after the child is placed into an out–of–home placement.

(3) If all parties agree, a permanency planning hearing may be held on the same day as the reasonable efforts hearing.

(c) (1) On the written request of a party or on its own motion, the court may schedule a hearing at any earlier time to determine a permanency plan or to review the implementation of a permanency plan for any child committed under § 3–819 of this subtitle.

(2) A written request for review shall state the reason for the request and each issue to be raised.

(h) (1) (i) Except as provided in subparagraphs (ii) and (iii) of this paragraph, the court shall conduct a hearing to review the permanency plan at least every 6 months until commitment is rescinded or a voluntary placement is terminated.

(ii) The court shall conduct a review hearing every 12 months after the court determines that the child shall be continued in out–of–home placement with a specific caregiver who agrees to care for the child on a permanent basis.

(iii) 1. Unless the court finds good cause, a case shall be terminated after the court grants custody and guardianship of the child to a relative or other individual.

2. If the court finds good cause not to terminate a case, the court shall conduct a review hearing every 12 months until the case is terminated.

3. The court may not conclude a review hearing under subsubparagraph 2 of this subparagraph unless the court has seen the child in person.

(k) **(1)** At least every 12 months at a hearing under this section, the court shall consult on the record with the child in an age–appropriate manner **TO OBTAIN THE CHILD'S VIEWS ON PERMANENCY**.

(2) (I) IF, AFTER A HEARING OR WITH THE AGREEMENT OF ALL PARTIES, THE COURT DETERMINES THAT THE CHILD IS MEDICALLY FRAGILE AND THAT IT IS DETRIMENTAL TO THE CHILD'S PHYSICAL OR MENTAL HEALTH TO BE TRANSPORTED TO THE COURTHOUSE, THE COURT MAY, SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH:

1. VISIT THE CHILD AT THE CHILD'S PLACEMENT AND USE APPROPRIATE TECHNOLOGY TO DOCUMENT THE CONSULTATION FOR THE RECORD; OR

2. ~~SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH, USE~~ USE VIDEO CONFERENCING TO CONSULT WITH THE CHILD ON THE RECORD DURING THE HEARING.

(II) IF THE COURT VISITS THE CHILD AT THE CHILD'S PLACEMENT UNDER SUBPARAGRAPH (I)1 OF THIS PARAGRAPH OR USES VIDEO CONFERENCING UNDER SUBPARAGRAPH (I)2 OF THIS PARAGRAPH, THE COURT SHALL GIVE EACH PARTY NOTICE AND AN OPPORTUNITY TO ATTEND THE VISIT OR THE VIDEO CONFERENCING, UNLESS THE COURT DETERMINES THAT IT IS

NOT IN THE BEST INTEREST OF THE CHILD FOR A PARTY TO ATTEND THE VISIT OR THE VIDEO CONFERENCING.

(3) SUBJECT TO THE PROVISIONS OF PARAGRAPH (2)(II) OF THIS SUBSECTION, IF THE CHILD'S PLACEMENT IS OUTSIDE THE STATE AND, AFTER A HEARING OR WITH THE AGREEMENT OF ALL PARTIES, THE COURT DETERMINES THAT IT IS NOT IN THE BEST INTEREST OF THE CHILD TO BE TRANSPORTED TO THE COURT, THE COURT MAY USE VIDEO CONFERENCING TO CONSULT WITH THE CHILD ON THE RECORD DURING THE HEARING.

Article – Family Law

5–326.

(a) (1) A juvenile court shall hold:

(i) an initial guardianship review hearing as scheduled under § 5–324(b)(1)(vi) of this subtitle to establish a permanency plan for the child; and

(ii) at least once each year after the initial guardianship review hearing until the juvenile court's jurisdiction terminates, a guardianship review hearing.

(2) At each guardianship review hearing, a juvenile court shall determine whether:

(i) the child's current circumstances and placement are in the child's best interests;

(ii) the permanency plan that is in effect is in the child's best interests; and

(iii) reasonable efforts have been made to finalize the permanency plan that is in effect.

(c) **(1)** At least every 12 months at a hearing under this section, the court shall consult on the record with the child in an age–appropriate manner **TO OBTAIN THE CHILD'S VIEWS ON PERMANENCY**.

(2) (I) IF, AFTER A HEARING OR WITH THE AGREEMENT OF ALL PARTIES, THE COURT DETERMINES THAT THE CHILD IS MEDICALLY FRAGILE AND THAT IT IS DETRIMENTAL TO THE CHILD'S PHYSICAL OR MENTAL HEALTH TO BE TRANSPORTED TO THE COURTHOUSE, THE COURT MAY, SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH:

1. VISIT THE CHILD AT THE CHILD'S PLACEMENT AND USE APPROPRIATE TECHNOLOGY TO DOCUMENT THE CONSULTATION FOR THE RECORD; OR

2. ~~SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH,~~ USE VIDEO CONFERENCING TO CONSULT WITH THE CHILD ON THE RECORD DURING THE HEARING.

(II) IF THE COURT VISITS THE CHILD AT THE CHILD'S PLACEMENT UNDER SUBPARAGRAPH (I)1 OF THIS PARAGRAPH OR USES VIDEO CONFERENCING UNDER SUBPARAGRAPH (I)2 OF THIS PARAGRAPH, THE COURT SHALL GIVE EACH PARTY NOTICE AND AN OPPORTUNITY TO ATTEND THE VISIT OR THE VIDEO CONFERENCING, UNLESS THE COURT DETERMINES THAT IT IS NOT IN THE BEST INTEREST OF THE CHILD FOR A PARTY TO ATTEND THE VISIT OR THE VIDEO CONFERENCING.

(3) SUBJECT TO THE PROVISIONS OF PARAGRAPH (2)(II) OF THIS SUBSECTION, IF THE CHILD'S PLACEMENT IS OUTSIDE THE STATE AND, AFTER A HEARING OR WITH THE AGREEMENT OF ALL PARTIES, THE COURT DETERMINES THAT IT IS NOT IN THE BEST INTEREST OF THE CHILD TO BE TRANSPORTED TO THE COURT, THE COURT MAY USE VIDEO CONFERENCING TO CONSULT WITH THE CHILD ON THE RECORD DURING THE HEARING.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 170

(Senate Bill 72)

AN ACT concerning

Medical and Dental Treatment – ~~Youth – Registered Nurses and Physician Assistants~~ Consent by Minors and Protections for Licensed Health Care Practitioners

FOR the purpose of providing that a minor has the same capacity as an adult to consent to ~~medical~~ dental treatment if ~~a registered nurse or physician assistant makes a certain determination~~ the minor is married or is the parent of a child; providing that a minor has the same capacity as an adult to consent to medical or dental treatment if the minor is living separate and apart from the minor's

parent, parents, or guardian and is self–supporting; providing that a ~~registered nurse, physician assistant, or an individual under the direction of a registered nurse or physician assistant~~ licensed health care practitioner who treats a minor is not liable for civil damages or subject to certain penalties under certain circumstances; authorizing a ~~registered nurse or physician assistant~~ licensed health care practitioner to give certain information to certain individuals; ~~authorizing a registered nurse or physician assistant to advise or direct certain medical staff to give certain information to certain individuals;~~ and generally relating to medical or dental treatment of minors.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 20–102(a), (e), and (f)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General

20–102.

(a) A minor has the same capacity as an adult to consent to medical **OR DENTAL** treatment if the minor:

(1) Is married; ~~or~~

(2) Is the parent of a child**; OR**

(3) (I) IS LIVING SEPARATE AND APART FROM THE MINOR'S PARENT, PARENTS, OR GUARDIAN, WHETHER WITH OR WITHOUT CONSENT OF THE MINOR'S PARENT, PARENTS, OR GUARDIAN; AND

(II) IS SELF–SUPPORTING, REGARDLESS OF THE SOURCE OF THE MINOR'S INCOME.

~~(b) A minor has the same capacity as an adult to consent to medical treatment if, in the judgment of the attending physician, **REGISTERED NURSE, OR PHYSICIAN ASSISTANT,** the life or health of the minor would be affected adversely by delaying treatment to obtain the consent of another individual.~~

~~(c) A minor has the same capacity as an adult to consent to:~~

~~(1) Treatment for or advice about drug abuse;~~

~~(2) Treatment for or advice about alcoholism;~~

~~(3) Treatment for or advice about venereal disease;~~

~~(4) Treatment for or advice about pregnancy;~~

~~(5) Treatment for or advice about contraception other than sterilization;~~

~~(6) Physical examination and treatment of injuries from an alleged rape or sexual offense;~~

~~(7) Physical examination to obtain evidence of an alleged rape or sexual offense; and~~

~~(8) Initial medical screening and physical examination on and after admission of the minor into a detention center.~~

~~(c–1) The capacity of a minor to consent to treatment for drug abuse or alcoholism under subsection (c)(1) or (2) of this section does not include the capacity to refuse treatment for drug abuse or alcoholism in an inpatient alcohol or drug abuse treatment program certified under Title 8 of this article for which a parent or guardian has given consent.~~

~~(d) A minor has the same capacity as an adult to consent to psychological treatment as specified under subsection (c)(1) and (2) of this section if, in the judgment of the attending physician or a psychologist, the life or health of the minor would be affected adversely by delaying treatment to obtain the consent of another individual.~~

(e) A ~~physician, psychologist, **REGISTERED NURSE, PHYSICIAN ASSISTANT,** or an individual under the direction of a physician **[**or**]**, psychologist, **REGISTERED NURSE, OR PHYSICIAN ASSISTANT**~~ **LICENSED HEALTH CARE PRACTITIONER** who treats a minor is not liable for civil damages or subject to any criminal or disciplinary penalty solely because the minor did not have capacity to consent under this section.

(f) Without the consent of or over the express objection of a minor, ~~the attending physician, psychologist, **REGISTERED NURSE, PHYSICIAN ASSISTANT,** or, on advice or direction of the attending physician **[**or**]**, psychologist**, REGISTERED NURSE, OR PHYSICIAN ASSISTANT**, a member of the medical staff of a hospital or public clinic~~ **A LICENSED HEALTH CARE PRACTITIONER** may, but need not, give a parent, guardian, or custodian of the minor or the spouse of the parent information about treatment needed by the minor or provided to the minor under this section, except information about an abortion.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 171

(Senate Bill 77)

AN ACT concerning

Life Insurance and Annuities – Unfair Claim Settlement Practices – Failure to ~~Cross–Check~~ Search Death Master File

FOR the purpose of requiring an insurer that issues ~~or~~, delivers, or renews a policy of life insurance or an annuity contract in the State to perform a ~~cross–check~~ comparison of the insurer's in–force life insurance policies, annuity contracts, and retained asset accounts against a certain death master file to identify any death benefit payments that may be due as a result of the death of an insured, annuitant, or account holder; requiring the insurer to perform the ~~cross–check~~ comparison at certain intervals and in a certain manner; requiring the insurer to take certain actions, within a certain time period, if the ~~cross–check~~ comparison results in a ~~potential~~ certain match with an insured, annuitant, or account holder; providing that an insurer is not required to perform the comparison for a group life insurance policy unless the insurer provides certain services to the policy holder; authorizing an insurer to disclose certain information to certain persons under certain circumstances; prohibiting the insurer from charging certain persons for any fees or costs incurred by the insurer in connection with complying with certain provisions of this Act; authorizing the Maryland Insurance Commissioner to adopt certain regulations; providing that the failure of the insurer to comply with ~~any provision~~ certain provisions of this Act ~~or any regulation adopted under this Act~~ is an unfair claim settlement practice under certain provisions of law; defining ~~a~~ certain ~~term~~ terms; providing for the application of this Act; *providing for a delayed effective date;* and generally relating to the payment of death benefits under life insurance policies, annuity contracts, and retained asset accounts.

BY adding to
Article – Insurance
Section 16–118
Annotated Code of Maryland
(2011 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – Insurance

Section 27–303
Annotated Code of Maryland
(2011 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Insurance

16–118.

(A) (1) ~~IN THIS SECTION, "DEATH MASTER FILE" MEANS:~~ IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "CREDIT LIFE INSURANCE" HAS THE MEANING STATED IN § 13–101 OF THIS ARTICLE.

(3) "DEATH MASTER FILE" MEANS:

~~(1)~~ (I) THE SOCIAL SECURITY ADMINISTRATION'S DEATH MASTER FILE; OR

~~(2)~~ (II) ANY OTHER DATABASE OR SERVICE THAT IS AT LEAST AS COMPREHENSIVE AS THE SOCIAL SECURITY ADMINISTRATION'S DEATH MASTER FILE FOR DETERMINING THAT AN INDIVIDUAL REPORTEDLY HAS DIED.

(4) "DEATH MASTER FILE MATCH" MEANS A MATCH, RESULTING FROM A SEARCH OF A DEATH MASTER FILE, OF A SOCIAL SECURITY NUMBER OR A NAME AND DATE OF BIRTH OF AN INDIVIDUAL ON THE DEATH MASTER FILE WITH THE SOCIAL SECURITY NUMBER OR THE NAME AND DATE OF BIRTH OF AN INSURED, ANNUITANT, OR RETAINED ASSET ACCOUNT HOLDER.

(5) "PRE–NEED INSURANCE CONTRACT" MEANS A LIFE INSURANCE POLICY OR CERTIFICATE, ANNUITY CONTRACT, OR OTHER INSURANCE CONTRACT THAT, BY ASSIGNMENT OR OTHERWISE, HAS AS A PURPOSE THE FUNDING OF AN AGREEMENT RELATING TO THE PURCHASE OR PROVISION OF SPECIFIC FUNERAL OR CEMETERY MERCHANDISE OR SERVICES TO BE PROVIDED AT THE TIME OF DEATH OF AN INDIVIDUAL.

(6) "RETAINED ASSET ACCOUNT" HAS THE MEANING STATED IN § 16–117(A) OF THIS ARTICLE.

(B) THIS SECTION DOES NOT APPLY TO:

(1) AN ANNUITY CONTRACT THAT:

(I) IS USED TO FUND AN EMPLOYMENT–BASED RETIREMENT PLAN OR PROGRAM; AND

(II) DOES NOT REQUIRE THE INSURER UNDER THE ANNUITY CONTRACT TO PAY DEATH BENEFITS TO THE BENEFICIARIES OF SPECIFIC PLAN OR PROGRAM PARTICIPANTS;

(2) A POLICY OR CERTIFICATE OF LIFE INSURANCE THAT PROVIDES A DEATH BENEFIT UNDER:

(I) AN EMPLOYEE BENEFIT PLAN SUBJECT TO THE FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974; OR

(II) ANY FEDERAL EMPLOYEE BENEFIT PROGRAM;

(3) A PRE–NEED INSURANCE CONTRACT;

(4) A POLICY OR CERTIFICATE OF CREDIT LIFE INSURANCE; OR

(5) A POLICY OR CERTIFICATE OF ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE.

~~(B)~~ (C) (1) AN INSURER THAT ISSUES ~~OR~~, DELIVERS, OR RENEWS A POLICY OF LIFE INSURANCE OR AN ANNUITY CONTRACT IN THE STATE SHALL PERFORM A ~~CROSS–CHECK~~ COMPARISON OF THE INSURER'S IN–FORCE LIFE INSURANCE POLICIES, ANNUITY CONTRACTS, AND RETAINED ASSET ACCOUNTS AGAINST THE LATEST VERSION OF A DEATH MASTER FILE TO IDENTIFY ANY DEATH BENEFIT PAYMENTS THAT MAY BE DUE UNDER THE POLICIES, CONTRACTS, OR RETAINED ASSET ACCOUNTS AS A RESULT OF THE DEATH OF AN INSURED, ANNUITANT, OR RETAINED ASSET ACCOUNT HOLDER.

(2) AN INSURER SHALL PERFORM THE ~~CROSS–CHECK~~ COMPARISON REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION:

(I) AT REGULAR INTERVALS, ON AT LEAST A ~~QUARTERLY~~ SEMIANNUAL BASIS; AND

(II) IN GOOD FAITH, USING CRITERIA REASONABLY DESIGNED TO IDENTIFY INDIVIDUALS WHOSE DEATH WOULD REQUIRE THE PAYMENT OF BENEFITS BY THE INSURER UNDER A LIFE INSURANCE POLICY, ANNUITY CONTRACT, OR RETAINED ASSET ACCOUNT.

(3) FOR A GROUP LIFE INSURANCE POLICY, AN INSURER IS NOT REQUIRED TO PERFORM THE COMPARISON REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION UNLESS THE INSURER PROVIDES FULL RECORD–KEEPING SERVICES TO THE GROUP LIFE INSURANCE POLICY HOLDER.

~~(C)~~ (D) (1) IF A ~~CROSS–CHECK~~ COMPARISON PERFORMED BY AN INSURER UNDER SUBSECTION ~~(B)~~ (C) OF THIS SECTION RESULTS IN A ~~POTENTIAL~~ DEATH MASTER FILE MATCH WITH AN INSURED, ANNUITANT, OR RETAINED ASSET ACCOUNT HOLDER, THE INSURER, WITHIN 90 DAYS AFTER THE ~~CROSS–CHECK~~ COMPARISON WAS PERFORMED, SHALL:

(I) CONDUCT A GOOD FAITH EFFORT TO CONFIRM THE DEATH OF THE INSURED, ANNUITANT, OR RETAINED ASSET ACCOUNT HOLDER USING OTHER AVAILABLE RECORDS AND INFORMATION;

(II) DETERMINE WHETHER BENEFITS ARE DUE UNDER THE APPLICABLE LIFE INSURANCE POLICY, ANNUITY CONTRACT, OR RETAINED ASSET ACCOUNT; AND

(III) IF BENEFITS ARE DUE UNDER THE POLICY, CONTRACT, OR RETAINED ASSET ACCOUNT:

1. USE GOOD FAITH EFFORTS TO LOCATE THE BENEFICIARY; AND

2. PROVIDE TO THE BENEFICIARY THE APPROPRIATE CLAIMS FORMS AND INSTRUCTIONS NECESSARY TO MAKE A CLAIM.

(2) AN INSURER SHALL DOCUMENT THE GOOD FAITH EFFORTS MADE TO:

(I) CONFIRM THE DEATH OF AN INSURED, ANNUITANT, OR RETAINED ASSET ACCOUNT HOLDER UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION; AND

(II) LOCATE A BENEFICIARY UNDER PARAGRAPH (1)(III)1 OF THIS SUBSECTION.

(3) TO THE EXTENT PERMITTED BY LAW, AN INSURER MAY DISCLOSE THE MINIMUM NECESSARY PERSONAL INFORMATION ABOUT AN INSURED, AN ANNUITANT, A RETAINED ASSET ACCOUNT HOLDER, OR A BENEFICIARY TO A PERSON THAT THE INSURER REASONABLY BELIEVES MAY BE

ABLE TO ASSIST THE INSURER IN LOCATING A BENEFICIARY AS REQUIRED UNDER PARAGRAPH (1)(III)1 OF THIS SUBSECTION.

~~(D)~~ (E) AN INSURER MAY NOT CHARGE AN INSURED, AN ANNUITANT, ~~AN~~ A RETAINED ASSET ACCOUNT HOLDER, A BENEFICIARY, OR ANY OTHER PERSON FOR ANY FEES OR COSTS INCURRED BY THE INSURER IN CONNECTION WITH COMPLYING WITH SUBSECTIONS ~~(B) AND (C)~~ (C) AND (D) OF THIS SECTION.

~~(E)~~ (F) THE COMMISSIONER MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION~~, INCLUDING REGULATIONS THAT:~~

~~(1) SPECIFY THE CRITERIA AN INSURER MUST USE TO PERFORM THE CROSS–CHECK OF A DEATH MASTER FILE REQUIRED UNDER SUBSECTION (B) OF THIS SECTION;~~

~~(2) SPECIFY WHAT CONSTITUTES GOOD FAITH EFFORTS FOR PURPOSES OF SUBSECTIONS (B)(2)(II) AND (C)(1)(I) AND (III)1 OF THIS SECTION AND THE MANNER IN WHICH THOSE EFFORTS MUST BE DOCUMENTED BY AN INSURER;~~

~~(3) SPECIFY THE INFORMATION ABOUT BENEFICIARIES UNDER LIFE INSURANCE POLICIES, ANNUITY CONTRACTS, AND RETAINED ASSET ACCOUNTS THAT AN INSURER MUST OBTAIN AND MAINTAIN IN ITS RECORDS TO FACILITATE THE IDENTIFICATION OF AND PAYMENT OF BENEFITS TO THE BENEFICIARIES; AND~~

~~(4) ESTABLISH RECORD KEEPING AND REPORTING REQUIREMENTS TO DETERMINE COMPLIANCE OF INSURERS WITH THIS SECTION.~~

~~(F) THE FAILURE OF AN INSURER TO COMPLY WITH ANY PROVISION OF THIS SECTION OR ANY REGULATION ADOPTED UNDER THIS SECTION IS AN UNFAIR CLAIM SETTLEMENT PRACTICE UNDER TITLE 27, SUBTITLE 3 OF THIS ARTICLE~~.

27–303.

It is an unfair claim settlement practice and a violation of this subtitle for an insurer or nonprofit health service plan to:

(1) misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue;

(2) refuse to pay a claim for an arbitrary or capricious reason based on all available information;

(3) attempt to settle a claim based on an application that is altered without notice to, or the knowledge or consent of, the insured;

(4) fail to include with each claim paid to an insured or beneficiary a statement of the coverage under which payment is being made;

(5) fail to settle a claim promptly whenever liability is reasonably clear under one part of a policy, in order to influence settlements under other parts of the policy;

(6) fail to provide promptly on request a reasonable explanation of the basis for a denial of a claim;

(7) fail to meet the requirements of Title 15, Subtitle 10B of this article for preauthorization for a health care service;

(8) fail to comply with the provisions of Title 15, Subtitle 10A of this article; **[**or**]**

(9) fail to act in good faith, as defined under § 27–1001 of this title, in settling a first–party claim under a policy of property and casualty insurance**; OR**

(10) FAIL TO COMPLY WITH THE PROVISIONS OF § 16–118 OF THIS ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, ~~2012~~ *2013*.

Approved by the Governor, May 2, 2012.

Chapter 172

(Senate Bill 88)

AN ACT concerning

Local States of Emergency – Time Period – Extension

FOR the purpose of altering a certain time period that a local state of emergency may continue or be renewed without the consent of the local governing body; and generally relating to declarations of local states of emergency.

BY repealing and reenacting, with amendments,
Article – Public Safety

Section 14–111
Annotated Code of Maryland
(2003 Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Public Safety

14–111.

(a) Only the principal executive officer of a political subdivision may declare a local state of emergency.

(b) (1) Except with the consent of the governing body of the political subdivision, a local state of emergency may not continue or be renewed for longer than **[7] 30** days.

(2) An order or proclamation that declares, continues, or terminates a local state of emergency shall be:

(i) given prompt and general publicity; and

(ii) filed promptly with the chief local records–keeping agency.

(c) Declaration of a local state of emergency:

(1) activates the response and recovery aspects of any applicable local state of emergency plan; and

(2) authorizes the provision of aid and assistance under the applicable plan.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 173

(House Bill 437)

AN ACT concerning

Local States of Emergency – Time Period – Extension

FOR the purpose of altering a certain time period that a local state of emergency may continue or be renewed without the consent of the local governing body; and generally relating to declarations of local states of emergency.

BY repealing and reenacting, with amendments,
Article – Public Safety
Section 14–111
Annotated Code of Maryland
(2003 Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Public Safety

14–111.

(a) Only the principal executive officer of a political subdivision may declare a local state of emergency.

(b) (1) Except with the consent of the governing body of the political subdivision, a local state of emergency may not continue or be renewed for longer than **[7] 30** days.

(2) An order or proclamation that declares, continues, or terminates a local state of emergency shall be:

(i) given prompt and general publicity; and

(ii) filed promptly with the chief local records–keeping agency.

(c) Declaration of a local state of emergency:

(1) activates the response and recovery aspects of any applicable local state of emergency plan; and

(2) authorizes the provision of aid and assistance under the applicable plan.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 174

(Senate Bill 95)

AN ACT concerning

State Board of Social Work Examiners – Sunset Extension and Program Evaluation

FOR the purpose of continuing the State Board of Social Work Examiners in accordance with the provisions of the Maryland Program Evaluation Act (sunset law) by extending to a certain date the termination provisions relating to the statutory and regulatory authority of the board; requiring that an evaluation of the board and the statutes and regulations that relate to the board be performed on or before a certain date; requiring the board to submit a report to certain committees of the General Assembly on or before a certain date; and generally relating to the State Board of Social Work Examiners.

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 19–502
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, without amendments,
Article – State Government
Section 8–403(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 8–403(b)(64)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health Occupations

19–502.

Subject to the evaluation and reestablishment provisions of the Program Evaluation Act, this title and all rules and regulations adopted under this title shall terminate and be of no effect after July 1, **[**2014**]** **2024**.

Article – State Government

8–403.

(a) On or before December 15 of the 2nd year before the evaluation date of a governmental activity or unit, the Legislative Policy Committee, based on a preliminary evaluation, may waive as unnecessary the evaluation required under this section.

(b) Except as otherwise provided in subsection (a) of this section, on or before the evaluation date for the following governmental activities or units, an evaluation shall be made of the following governmental activities or units and the statutes and regulations that relate to the governmental activities or units:

(64) Social Work Examiners, State Board of (§ 19–201 of the Health Occupations Article: July 1, **[**2013**]** **2023**);

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1, 2013, the State Board of Social Work Examiners shall submit a report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee in accordance with § 2–1246 of the State Government Article. The report shall include:

(1) an analysis of licensing trends for the licensed social work associate (LSWA) license and options for increasing the number of individuals seeking that level of licensure;

(2) an update on licensing fees, including a long–term financial plan to ensure a sufficient fund balance; and

(3) an update on the board's disciplinary process, including outreach efforts and efforts to meet Managing for Results goals.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 175

(Senate Bill 111)

AN ACT concerning

Vehicle Laws – Identification Cards and Drivers' Licenses – Period of Validity

FOR the purpose of increasing the maximum period of time during which an identification card issued to an applicant under a certain age may be valid; increasing the maximum period of time during which a driver's license issued to a driver at least a certain age may be valid; making conforming changes; and generally relating to the period of validity for identification cards and drivers' licenses.

BY repealing and reenacting, with amendments,
Article – Transportation
Section 12–301(i) and 16–115(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Transportation

12–301.

(i) (1) Subject to paragraph **[**(3)**]** **(2)** of this subsection, an identification card issued to an applicant **[**under the age of 65**]** expires at the end of a period of not more than **[**5**]** **8** years determined in regulations adopted by the Administration.

(2) **[**Subject to paragraph (3) of this subsection, an identification card issued to an applicant at least 65 years old expires at the end of a period of not more than 8 years determined in regulations adopted by the Administration.

(3)**]** (i) If an applicant has temporary lawful status, the Administration may not issue an identification card to the applicant for a period that extends beyond the expiration date of the applicant's authorized stay in the United States or, if there is no expiration date, for a period longer than 1 year.

(ii) Nothing contained in this paragraph may be construed to allow the issuance of an identification card for a period longer than the period described in **[**paragraphs (1) and (2)**]** **PARAGRAPH (1)** of this subsection.

(iii) The Administration shall indicate on the face and in the machine–readable zone of a temporary identification card issued under this paragraph that the card is a temporary identification card.

[(4)**]** **(3)** An identification card may be renewed on application and payment of the fee required by this section.

16–115.

(a) (1) Subject to paragraph (5) of this subsection, a license issued under this title to a driver at least 21 years old shall expire on the birth date of the licensee at the end of a period of not more than **[**5**]** **8** years determined in regulations adopted by the Administration following the issuance of the license.

(2) Subject to paragraph (5) of this subsection, a license issued under this title to a driver under the age of 21 years shall expire not later than 60 days after the driver's 21st birthday.

(3) A license is renewable on the presentation of an application, the payment of the renewal fee required by § 16–111.1 of this subtitle, and satisfactory completion of the examination required or authorized by subsection (h) of this section:

(i) Within 6 months before its expiration; or

(ii) When a driver qualifies for a corrected license issued under § 16–114.1(c) of this subtitle.

(4) Except as provided in subsection (e) of this section, the Administration may not renew an individual's license for more than one consecutive term without requiring the individual to appear in person at an office of the Administration.

(5) (i) If an applicant has temporary lawful status, the Administration may not issue to the applicant a license to drive for a period that extends beyond the expiration date of the applicant's authorized stay in the United States or, if there is no expiration date, for a period longer than 1 year.

(ii) Nothing contained in this paragraph may be construed to allow the issuance of a temporary license to drive for a period longer than the period described in this subsection.

(iii) The Administration shall indicate on the face and in the machine–readable zone of a temporary license to drive that the license is a temporary license to drive.

(6) A holder of a temporary license to drive who had temporary lawful status at the time of the issuance of the temporary license to drive shall present satisfactory documentary evidence of lawful status if the holder applies for issuance or renewal of any license to drive under this subtitle.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 176

(Senate Bill 114)

AN ACT concerning

Environment – Controlled Hazardous Substance Driver Certification – Elimination

FOR the purpose of repealing a requirement that the Department of the Environment certify certain drivers of controlled hazardous substance vehicles; repealing a requirement that certain drivers of controlled hazardous substance vehicles carry a certain certificate; repealing requirements that certain drivers submit certain evidence and pay a certain fee; altering a certain definition; repealing a certain definition; *requiring the Department to conduct a certain review in consultation with certain officials and to report its findings and recommendations to certain committees of the General Assembly on or before a certain date;* and generally relating to the elimination of controlled hazardous substance driver certificates.

BY repealing and reenacting, with amendments,
Article – Environment
Section 7–201, 7–249, 7–253, and 7–257
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Environment
Section 7–252
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)
(As enacted by Chapter 240 of the Acts of the General Assembly of 1982)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Environment

7–201.

(a) In this subtitle the following words have the meanings indicated.

(b) "Controlled hazardous substance" means:

(1) Any hazardous substance that the Department identifies as a controlled hazardous substance under this subtitle; or

(2) Low–level nuclear waste.

(c) (1) "Controlled hazardous substance facility" means a disposal structure, system, or geographic area, designated by the Department for treatment, storage related to treatment or disposal, or disposal of controlled hazardous substances.

(2) "Controlled hazardous substance facility" includes:

(i) A low–level nuclear waste facility; and

(ii) An operating landfill that, under § 7–232(b) of this subtitle, has a permit equivalent to a facility permit.

(d) "Controlled hazardous substance hauler" means a person who has a hauler certificate issued by the Department to transport controlled hazardous substances.

(e) "Controlled hazardous substance vehicle" means a vehicle that the Department has certified as suitable for use to transport controlled hazardous substances.

(f) "Controlled hazardous substance vehicle driver" means a person **[**whom the Department has certified to**]** **WHO** **[**operate**]** **OPERATES** a controlled hazardous substance vehicle.

(g) "Council" means the Controlled Hazardous Substances Advisory Council.

(h) "Discharge" means:

(1) The addition, introduction, leaking, spilling, or emitting of a pollutant into the waters of this State; or

(2) The placing of a pollutant in a location where the pollutant is likely to pollute.

(i) **[**"Driver certificate" means a certificate issued by the Department for a person to be a controlled hazardous substance vehicle driver.

(j)**]** "Facility permit" means a permit issued by the Department to establish, operate, or maintain a controlled hazardous substance facility.

[(k)**] (J)** "Federal act" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended through January 1, 2003.

[(l)**] (K)** "Hauler certificate" means a certificate issued by the Department that permits a person to be a controlled hazardous substance hauler.

[(m)**] (L)** "Hazardous substance" means any substance:

(1) Defined as a hazardous substance under § 101(14) of the federal act; or

(2) Identified as a controlled hazardous substance by the Department in the Code of Maryland Regulations.

[(n)**] (M)** "Incineration" means thermal treatment or decomposition of a waste heat.

[(o)**] (N)** "Lender" means a person who is:

(1) A holder of a mortgage or deed of trust on a site or a security interest in property located on a site; or

(2) A holder of a mortgage or deed of trust who acquires title through foreclosure or deed in lieu of foreclosure.

[(p)**] (O)** "Low–level nuclear waste" means a substance that:

(1) Contains or is contaminated with radioactive material emitting primarily beta or gamma radiation; and

(2) Is neither transuranic waste nor high–level nuclear waste.

[(q)**] (P)** "Low–level nuclear waste facility" means a controlled hazardous substance facility for low–level nuclear waste.

[(r)**] (Q)** "Low–level nuclear waste facility permit" means a facility permit issued by the Department for a low–level nuclear waste facility.

[(s)**] (R)** "Person" includes the federal government, this State, any county, municipal corporation, or other political subdivision of this State, and any of their units.

[(t)**] (S)** "Release" means the addition, introduction, leaking, spilling, emitting, discharging, escaping, or leaching of any hazardous substance into the environment.

[(u)**] (T)** (1) "Responsible person" means any person who:

(i) Is the owner or operator of a vehicle or a site containing a hazardous substance;

(ii) At the time of disposal of any hazardous substance, was the owner or operator of any site at which the hazardous substance was disposed;

(iii) By contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by such person, by any other party or entity, at any site owned or operated by another party or entity and containing such hazardous substances; or

(iv) Accepts or accepted any hazardous substance for transport to a disposal or treatment facility or any sites selected by the person.

(2) "Responsible person" does not include:

(i) A person who can establish by a preponderance of the evidence that at the time the person acquired an interest in a site containing a hazardous substance the person did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the site; however, any person claiming an exemption from liability under this subparagraph must establish that the person had no reason to know, in accordance with § 101(35)(B) of the federal act, and that the person satisfied the requirements of § 107(b)(3)(a) of the federal act;

(ii) A person who acquired a property containing a hazardous substance by inheritance or bequest at the death of the transferor;

(iii) A person who, without participating in the day–to–day management of a site containing a hazardous substance, holds indicia of ownership in the site or in property located on the site primarily to protect a valid and enforceable lien unless that person directly causes the discharge of a hazardous substance on or from the site;

(iv) A holder of a mortgage or deed of trust on a site containing a hazardous substance or a holder of a security interest in property located on the site who does not participate in the day–to–day management of the site unless that holder directly causes the discharge of a hazardous substance on or from the site;

(v) A fiduciary who has legal title to a site containing a hazardous substance or to property located on the site containing a hazardous substance for purpose of administering an estate or trust of which the site or property located on the site is a part unless the fiduciary:

1. Participates in the day–to–day management of the site or property; or

2. Directly causes the discharge of a hazardous substance on or from the site;

(vi) A holder of a mortgage or deed of trust who acquires title to a site containing a hazardous substance through foreclosure or deed in lieu of foreclosure who:

1. Does not participate in the day–to–day management of the site; and

2. Does not directly cause the discharge of a hazardous substance on or from the site;

(vii) Except in the case of gross negligence or willful misconduct, an owner or operator who is:

1. A state, county, or municipal government;

2. Any other political subdivision of the State; or

3. Any unit of a state, county, or municipal government or any other political subdivision;

(viii) A holder of a mortgage or deed of trust who acquires title to an eligible property as defined in Subtitle 5 of this title subject to a written agreement in accordance with Subtitle 5 of this title provided that the holder complies with the requirements, prohibitions, and conditions of the agreement;

(ix) Subject to paragraph (3) of this subsection, a lender who extends credit for the performance of removal or remedial actions conducted in accordance with requirements imposed under this title who:

1. Has not caused or contributed to a release of hazardous substances; and

2. Previous to extending that credit, is not a responsible person at the site;

(x) Subject to paragraph (3) of this subsection, a lender who takes action to protect or preserve a mortgage or deed of trust on a site or a security interest in property located on a site at which a release or threatened release of a hazardous substance has occurred, by stabilizing, containing, removing, or preventing the release of a hazardous substance in a manner that does not cause or contribute to

a release or significantly increase the threat of release of a hazardous substance at the site if:

1. The lender provides advance written notice of its actions to the Department or in the event of an emergency in which action is required within 2 hours, provides notice by telephone;

2. The lender, previous to taking the action, is not a responsible person for the site; and

3. The action taken does not violate a provision of this article; or

(xi) A person who receives a response action plan approval letter as an inculpable person or the person's successor in title who is also an inculpable person under Subtitle 5 of this title and who does not cause or contribute to new contamination or exacerbate existing contamination as provided in §§ 7–505 and 7–514 of this title.

(3) A lender taking action to protect or preserve a mortgage or deed of trust or security interest in a property located on a site, who causes or contributes to a release of a hazardous substance shall be liable solely for costs incurred as a result of the release which the lender caused or to which the lender contributed unless the lender was a responsible person prior to taking the action.

(4) (i) Paragraph (2)(i) of this subsection does not affect the liability of a previous owner or previous operator of a site containing a hazardous substance if the previous owner or previous operator is a responsible person under paragraph (1)(ii) of this subsection.

(ii) Notwithstanding paragraph (2)(i) of this subsection, a person shall be treated as a responsible person if the person:

1. Obtained actual knowledge of the release or threatened release of a hazardous substance at a site when the person owned the real property; and

2. Transferred ownership of the property after June 30, 1991 without disclosing this knowledge to the transferee.

(iii) Nothing in paragraph (2)(i) of this subsection shall affect the liability under this subtitle of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at a site which is the subject of the action relating to the site if at the time of the act or omission the person knew or had reason to know that the act or omission would cause or contribute to the release or threatened release of a hazardous substance.

(5) Notwithstanding paragraph (2)(ii) of this subsection, a person shall be treated as a responsible person if the person:

(i) Knew or had reason to know of the release or threatened release of a hazardous substance at the site; and

(ii) Transferred ownership of the property after June 30, 1991 without disclosing this knowledge to the transferee.

(6) (i) For purposes of paragraph (2)(iii), (iv), (v), and (vi) of this subsection, "management" means directing or controlling operations, production or treatment of a hazardous substance, storage or disposal of a hazardous substance, or remediation of a hazardous substance release.

(ii) "Management" does not include rendering advice on financial matters, rendering financial assistance, or actions taken to protect or secure the site or property located on the site if the advice, assistance, or actions do not involve the treatment, storage, or disposal of a hazardous substance or remediation of a hazardous substance release.

(7) A person who owns real property is not considered an owner or operator of a vehicle or site containing a hazardous substance under paragraph (1)(i) of this subsection solely by reason of contamination from a contiguous or otherwise similarly situated real property if:

(i) The person does not own the contiguous or otherwise similarly situated real property;

(ii) The person's real property is or may be contaminated by a release or threatened release of a hazardous substance from the contiguous to or otherwise similarly situated real property; and

(iii) The person meets the requirements of Section 107(q) of the federal act and any regulations adopted by the Department implementing or interpreting the requirements of that section.

[(v)**] (U)** (1) "Solid waste" means any:

(i) Abandoned material or substance which is disposed of, burned, or incinerated or accumulated, stored, or treated before or in lieu of being disposed of, burned, or incinerated;

(ii) Material or substance which is recycled or accumulated, stored, or treated before recycling; or

(iii) Material or substance which is considered inherently waste–like.

(2) "Solid waste" does not include:

(i) Domestic sewage that passes through a sewer system to a publicly owned treatment work for treatment;

(ii) Industrial wastewater discharges that are point source discharges permitted under §§ 9–324 through 9–332 of this article;

(iii) Irrigation return flows;

(iv) Materials subjected to in–situ mining techniques which are not removed from the ground as part of the extraction process; or

(v) Material that is excluded by any rule or regulation adopted under this subtitle.

[(w)**] (V)** "Transuranic waste" means waste material that is measured or assumed to contain at least 10 nanocuries or more of transuranic activity per gram of waste.

[(x)**] (W)** "Treatment" means any method, technique, or process, including neutralization, that is designed to change the physical, chemical, or biological character or composition of any controlled hazardous substance so as to neutralize or render the waste nonhazardous, safer for transport, or reduced in volume.

[(y)**] (X)** "Vehicle certificate" means a certificate issued by the Department for a vehicle to be a controlled hazardous substance vehicle.

7–249.

(a) A person may not transport any controlled hazardous substance from any source in this State or to any controlled hazardous substance facility in this State unless:

(1) The person holds a hauler certificate; **AND**

(2) A vehicle certificate has been issued for the transporting vehicle**[**; and

(3) A driver certificate has been issued for the vehicle driver**]**.

(b) This section does not apply to the transportation of any controlled hazardous substance that is:

(1) Used for residential purposes; or

(2) Regulated by the State Department of Agriculture.

[(c) The requirement of a driver certificate in subsection (a) of this section does not apply to persons transporting hazardous waste generated and disposed of on private property, if the hazardous waste is transported over roads maintained by the generator or disposer.**]**

7–252.

(a) Each controlled hazardous substance hauler:

(1) Shall maintain a bond or other security that the Department considers sufficient to indemnify this State for abatement of any pollution that may result from the improper transportation of a controlled hazardous substance;

(2) Shall pay an annual vehicle certificate fee set by the Department but not more than $50;

(3) When transporting any controlled hazardous substance, shall:

(i) Carry the manifest **[**and the driver certificate**]** in the cab of the controlled hazardous substance vehicle; and

(ii) Display prominently the vehicle certificate or affix the vehicle certificate to the outside of the left door of the cab of the controlled hazardous substance vehicle;

(4) May not transport a controlled hazardous substance unless the controlled hazardous substance is labeled properly and in secure containers in accordance with the rules and regulations of the Department that apply to that particular controlled hazardous substance;

(5) On the request of any police officer, shall stop the controlled hazardous substance vehicle and display to the police officer all required documentation and allow inspection and sampling of the controlled hazardous substance to determine if there is a violation of:

(i) The provisions of the vehicle certificate; **OR**

(ii) **[**The provisions of a driver certificate; or

(iii)**]** Any federal or state law;

(6) Except under the supervision of the Department during an emergency, may not remove the controlled hazardous substance from the controlled

hazardous substance vehicle, or treat, store for any period of time, or mix any controlled hazardous substance except in a controlled hazardous substance facility; and

(7) Shall report periodically, on a form required by the Department, the following information about shipments of controlled hazardous substances:

(i) The source of the controlled hazardous substance;

(ii) The nature of the controlled hazardous substance; and

(iii) The disposal destination.

(b) **[**(1) A driver certificate authorizes its holder to operate a vehicle transporting hazardous substances while the certificate is effective.

(2)**]** Each controlled hazardous substance vehicle driver**[**:

(i) Shall submit to the Department evidence that the person has received adequate training in the proper and safe handling of controlled hazardous substances;

(ii) Shall pay an annual driver certificate fee set by the Department but not more than $20; and

(iii) When**], WHEN** transporting any controlled hazardous substance, shall comply with subsection (a)(3), (4), (5), and (6) of this section and all applicable State rules and regulations.

7–253.

If a person who generates a controlled hazardous substance desires to have it transported to a controlled hazardous substance facility, the person:

(1) Except as is otherwise required by federal or State law, shall label the controlled hazardous substance as required by the rules and regulations of the Department;

(2) Shall provide for each controlled hazardous substance vehicle a manifest that describes the controlled hazardous substance, including volume and chemical, physical, and biological characteristics;

(3) Shall require evidence of a hauler certificate**[**, a driver certificate,**]** and a vehicle certificate;

(4) May contract for treatment, storage, or disposal of a controlled hazardous substance only with:

(i) A facility permit holder; or

(ii) A controlled hazardous substance hauler who has a valid contract with a controlled hazardous substance facility for treatment, storage, or disposal of controlled hazardous substances; and

(5) Shall report, from time to time on the form the Department requires, the following information about shipments of controlled hazardous substances:

(i) Source;

(ii) Name of the controlled hazardous substance hauler;

(iii) Destination intended by the controlled hazardous substance hauler at the time of shipment;

(iv) Volume; and

(v) Nature.

7–257.

(a) In accordance with the Administrative Procedure Act and after notice and hearing, the Department may suspend or revoke any facility permit, hauler certificate, **[**driver certificate,**]** or vehicle certificate for violation of any federal or State law, rule, or regulation that relates to controlled hazardous substances.

(b) The Department may revoke any facility permit issued under this subtitle if the Department finds that:

(1) False or inaccurate information was contained in the application;

(2) Conditions or requirements of the facility permit have been or are about to be violated;

(3) Substantial deviation from plans, specifications, or requirements has occurred;

(4) The Department has been refused entry to the premises for the purpose of inspecting to insure compliance with the conditions of the facility permit;

(5) A change in conditions exists that requires temporary or permanent reduction or elimination of any permitted discharge;

(6) Any State or federal water quality standard or effluent limitation has been or is threatened to be violated; or

(7) Any other good cause exists for revoking the permit.

SECTION 2. AND BE IT FURTHER ENACTED, That the Department of the Environment:

(1) shall conduct a review, in consultation with federal and State transportation officials, relating to the efficiency and regulatory consistency of its controlled hazardous substance vehicle certification process; and

(2) on or before December 15, 2012, shall report its findings and recommendations, in accordance with § 2–1246 of the State Government Article, to the Senate Education, Health, and Environmental Affairs Committee and the House Environmental Matters Committee.

SECTION ~~2.~~ *3.* AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 177

(Senate Bill 116)

AN ACT concerning

Vehicle Laws – Weight and Load Requirements – Vehicles Carrying Perishable Products

FOR the purpose of altering the circumstances under which a police officer is required to allow an overweight vehicle carrying perishable products as its only load to proceed to its destination; providing that an overweight vehicle carrying perishable products as its only load shall be allowed to proceed to its destination if it is the first perishable load overweight violation by the ~~motor carrier~~ driver of the vehicle following a certain period of time without a certain violation and the overweight does not exceed a certain amount; making technical and stylistic changes; and generally relating to weight and load requirements for vehicles carrying perishable products.

BY repealing and reenacting, without amendments,
Article – Transportation
Section 11–134.2
Annotated Code of Maryland

(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Transportation
Section 24–111.1
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Transportation

11–134.2.

(a) "Motor carrier" means a common carrier by motor vehicle, a contract carrier by motor vehicle, or a private carrier of persons or property by motor vehicle.

(b) "Motor carrier" includes a motor carrier's owners, agents, officers, representatives, and employees.

24–111.1.

(a) Except as otherwise provided in this section, as to any vehicle found to exceed the weight limits permitted under this subtitle, if the overweight does not exceed 5,000 pounds, a police officer may require the driver to unload the excess weight.

(b) Except as otherwise provided in this section, as to any vehicle found to exceed the weight limits permitted under this subtitle, if the overweight exceeds 5,000 pounds, the vehicle may not be moved until the excess weight is unloaded.

(c) Except on interstate highways, if an overweight vehicle bears registration plates issued by this State and is transporting liquid milk in bulk from the producer, the vehicle may be granted a 5 percent tolerance on the applicable registration or statutory gross weight limit. However, a tolerance granted under this subsection may not permit the gross weight of the vehicle to exceed 80,000 pounds.

(d) As to an overweight vehicle carrying an indivisible load:

(1) If it is the first indivisible load overweight violation by the driver of the vehicle, the vehicle may be allowed to proceed, after a permit to do so is obtained from the State Highway Administration; and

(2) If it is a second or subsequent indivisible load overweight violation by the driver of the vehicle, the vehicle shall return with its load to its place of entry or

origin in this State, after a permit to do so is obtained from the State Highway Administration.

(e) As to an overweight vehicle carrying perishable products as its only load**[**:

(1) If it**], THE VEHICLE SHALL BE ALLOWED TO PROCEED TO ITS DESTINATION IF:**

(1) IT is the first perishable load overweight violation **[**during the calendar year by the driver of the vehicle, the vehicle shall be allowed to proceed to its destination**] BY THE ~~MOTOR CARRIER~~ DRIVER OF THE VEHICLE FOLLOWING A PERIOD OF AT LEAST 365 CONSECUTIVE DAYS WITHOUT A PERISHABLE LOAD OVERWEIGHT VIOLATION**; and

(2) **[**If it is a second or subsequent perishable load overweight violation during the calendar year by the driver of the vehicle, the vehicle may not be moved until the excess weight is unloaded**] THE OVERWEIGHT DOES NOT EXCEED 5,000 POUNDS**.

(f) All material or cargo unloaded under this section shall be cared for by the **[**owner**] MOTOR CARRIER** or operator of the vehicle at the risk of the **[**owner**] MOTOR CARRIER** or operator.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 178

(Senate Bill 127)

AN ACT concerning

Natural Resources – Marine Gathering Permit – Establishment

FOR the purpose of prohibiting a person from sponsoring or holding a marine gathering without obtaining a permit from the Department of Natural Resources; requiring an organizer or sponsor of a marine gathering to submit a permit application and pay a certain permit fee to the Department ~~within a certain time period~~; prohibiting the Department from requiring a certain permit application to be submitted within a certain time period; requiring the Department to adopt certain regulations governing marine gathering permits; requiring the Department to issue a certain permit under certain circumstances

and in accordance with certain requirements; authorizing the Department to require certain terms in a certain permit; authorizing the Department to recommend certain actions to a certain applicant for a certain purpose; prohibiting the Department from requiring any additional terms or conditions in a certain permit; requiring the Department to notify the local law enforcement unit of the county in which the marine gathering will occur and certain public safety organizations before issuing a permit; authorizing a police officer to terminate and disband a marine gathering for failure to obtain a certain permit or to comply with the terms of a certain permit; establishing certain civil and criminal penalties for a violation of this Act; defining ~~a~~ certain ~~term~~ terms; and generally relating to the establishment of ~~the~~ a marine gathering permit.

BY adding to
Article – Natural Resources
Section 8–725.7
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Natural Resources

8–725.7.

~~(A) IN THIS SECTION, "MARINE GATHERING":~~

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

~~(1)~~ (2) (I) ~~MEANS~~ "MARINE GATHERING" MEANS AN INTENTIONAL CONGREGATION OF AT LEAST ~~50~~ 100 VESSELS IN THE WATERS OF THE STATE THAT, BY ITS NATURE, CIRCUMSTANCES, OR LOCATION, CREATES EXTRA OR UNUSUAL HAZARDS TO LIFE OR PROPERTY~~; AND~~.

~~(2)~~ (II) ~~DOES~~ "MARINE GATHERING" DOES NOT INCLUDE:

~~(I)~~ 1. A RACE, A REGATTA, A PARADE, AN EXHIBITION, OR OTHER MARINE EVENT FOR WHICH A PERMIT IS REQUIRED BY THE UNITED STATES COAST GUARD;

~~(II)~~ 2. A DOCKING COMPETITION; OR

~~(III)~~ 3. VESSELS DOCKED OR MOORED AT A MARINA.

(3) "PERMIT" MEANS A MARINE GATHERING PERMIT ISSUED IN ACCORDANCE WITH THIS SECTION.

(B) A PERSON MAY NOT SPONSOR OR HOLD A MARINE GATHERING WITHOUT OBTAINING A WRITTEN PERMIT FROM THE DEPARTMENT.

(C) (1) ~~AT LEAST 60 DAYS BEFORE SPONSORING OR HOLDING A MARINE GATHERING ON THE WATERS OF THE STATE, THE~~ THE ORGANIZER OR SPONSOR OF THE MARINE GATHERING SHALL SUBMIT A PERMIT APPLICATION TO THE DEPARTMENT AND PAY AN APPLICATION FEE ESTABLISHED BY THE DEPARTMENT.

(2) THE APPLICATION FEE MAY NOT EXCEED THE COST OF PROCESSING ~~AND ENFORCING~~ THE PERMIT.

(3) THE DEPARTMENT MAY NOT REQUIRE THE APPLICATION TO BE SUBMITTED MORE THAN 45 DAYS BEFORE THE MARINE GATHERING.

(D) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS GOVERNING THE APPLICATION ~~FOR,~~ AND ISSUANCE OF~~, AND TERMS AND CONDITIONS FOR~~ THE PERMIT.

(2) ~~THE TERMS AND CONDITIONS FOR THE PERMIT MAY INCLUDE PROVISIONS GOVERNING:~~

~~(I) THE PLACEMENT OF BUOYS;~~

~~(II) THE PRESENCE OF SECURITY OFFICERS WITH ARREST POWERS;~~

~~(III) A LIMITATION ON THE DURATION OF THE MARINE GATHERING; AND~~

~~(IV) ANY OTHER TERMS AND CONDITIONS CONSIDERED NECESSARY BY THE DEPARTMENT TO ENSURE PUBLIC SAFETY.~~ IF A PERMIT IS NEEDED TO ENSURE PUBLIC SAFETY, THE DEPARTMENT SHALL ISSUE A PERMIT IN ACCORDANCE WITH PARAGRAPHS (3) AND (4) OF THIS SUBSECTION.

(3) THE DEPARTMENT MAY REQUIRE IN THE TERMS OF A PERMIT ONE OR MORE OF THE FOLLOWING REQUIREMENTS:

(I) THE PRESENCE OF SECURITY OFFICERS AT THE MARINE GATHERING;

(II) THE PRESENCE OF RESCUE PERSONNEL OR LIFEGUARDS AT THE MARINE GATHERING;

(III) THE PLACEMENT OF BUOYS AT THE MARINE GATHERING; AND

(IV) LIMITATIONS ON THE DURATION OF THE MARINE GATHERING.

(4) THE DEPARTMENT MAY:

(I) RECOMMEND ADDITIONAL ACTIONS TO AN APPLICANT TO FURTHER SAFEGUARD THE PARTICIPANTS OF THE MARINE GATHERING; BUT

(II) NOT REQUIRE ANY ADDITIONAL TERMS OR CONDITIONS IN A PERMIT BEYOND WHAT MAY BE REQUIRED UNDER PARAGRAPH (3) OF THIS SUBSECTION.

(E) BEFORE ISSUING A MARINE GATHERING PERMIT, THE DEPARTMENT SHALL NOTIFY THE LOCAL LAW ENFORCEMENT UNIT OF THE COUNTY IN WHICH THE MARINE GATHERING WILL OCCUR AND PUBLIC SAFETY ORGANIZATIONS THAT THE DEPARTMENT CONSIDERS NECESSARY.

(F) A POLICE OFFICER MAY TERMINATE AND DISBAND A MARINE GATHERING:

(1) HELD WITHOUT THE NECESSARY PERMIT; OR

(2) IN VIOLATION OF THE TERMS OF A PERMIT.

~~(F)~~ **(G)** **(1)** ~~A PERSON WHO VIOLATES THIS SECTION OR A REGULATION ADOPTED UNDER THIS SECTION IS LIABLE TO THE STATE FOR THE COST OF DISBANDING THE MARINE GATHERING OR IMPLEMENTING THE PERMIT TERMS AND CONDITIONS.~~

~~(2)~~ **A PERSON WHO VIOLATES THIS SECTION OR A REGULATION ADOPTED UNDER THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $1,000.**

~~(3)~~ (2) A PERSON WHO COMMITS A SECOND OR SUBSEQUENT VIOLATION OF THIS SECTION OR A REGULATION ADOPTED UNDER THIS SECTION ~~IS GUILTY~~ IS:

(I) GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO ~~IMPRISONMENT NOT EXCEEDING 6 MONTHS OR~~ A FINE NOT EXCEEDING ~~$2,000 OR BOTH~~ $5,000; AND

(II) LIABLE TO THE STATE FOR THE COST OF DISBANDING THE MARINE GATHERING.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 179

(Senate Bill 128)

AN ACT concerning

Abandoned Land – Certificates of Reservation for Public Use

FOR the purpose of repealing the termination date for certain provisions of the Real Property Article relating to the definition of "abandoned land" and obtaining certificates of reservation of land for public use; and generally relating to certificates of reservation of land for public use and abandoned land.

BY repealing and reenacting, without amendments,
Article – Real Property
Section 13–101
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Chapter 92 of the Acts of the General Assembly of 2007
Section 2

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Real Property

13–101.

(a) In this title the following words have the meanings indicated unless otherwise apparent from context.

(b) "Abandoned land" means land that has boundaries that are located within or contiguous to land owned and managed by the Department of Natural Resources:

(1) For which no property tax payment has been made within 20 years immediately preceding the date of an application for a certificate of reservation for public use by a unit of State government; and

(2) Which has not been actually possessed by a person, under claim of title or otherwise, for a continuous period of 20 years immediately preceding the date of an application for a certificate of reservation for public use by a unit of State government.

(c) "Certificate of reservation" means a certificate issued by the Commissioner at the request of a governmental body upon a determination that vacant land or abandoned land exists and the governmental body wishes to reserve the land for public use.

(d) "Commission" means the Hall of Records Commission.

(e) "Commissioner" means the State Archivist who, while performing the duties and exercising the powers provided in this title, is known as the "Commissioner of Land Patents".

(f) "Expense" includes any charge, cost, deposit, fee, or tax incurred in connection with a land patent proceeding.

(g) "Governmental body" includes any unit of State government, any county or municipal corporation, or any agency or instrumentality of any county or municipal corporation.

(h) (1) "Land" means any area of land in the State, including any two or more areas of land with a common boundary for at least part of their perimeters.

(2) "Land" includes vacant land and abandoned land.

(3) "Land" does not include any area covered by navigable water unless it was included in a patent issued before March 3, 1862.

(i) "Mail" means to deposit in the United States mails, postage prepaid, endorsed "Restricted Delivery — Return Receipt Requested".

(j) "Patent" means:

(1) Any grant confirmed by Article 5 of the Declaration of Rights of the Maryland Constitution;

(2) Any valid grant made under prior law by the State of its interests in any vacant, resurveyed, escheat, or confiscated land; or

(3) Any grant made under this title by the State of its interest in any land.

(k) "Public use" means use by or for the benefit of the public.

(l) "Survey", whether used as a noun or as a verb in any form or tense, means:

(1) The act of surveying any vacant land in order to obtain a patent for the land; or

(2) The act of resurveying any land for which a patent previously was issued in order to obtain a new patent for the land.

(m) "Surveyor" means any professional land surveyor or property line surveyor licensed under the Maryland Professional Land Surveyors Act.

(n) "Vacant land" means land for which a patent never has been issued or for which the applicant believes that a patent never has been issued.

(o) "Verify" means to state in writing, under penalties of perjury, that the matters and facts set forth in the document to which the statement relates are true and complete to the best of the knowledge, information, and belief of the person making the statement.

Chapter 92 of the Acts of 2007

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2007. **[**It shall remain effective for a period of 5 years and, at the end of September 30, 2012, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.**]**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 180

(Senate Bill 129)

AN ACT concerning

Maryland Agricultural Land Preservation Foundation – Easements

FOR the purpose of repealing certain obsolete language relating to agricultural districts and agricultural land preservation easements; requiring certain applicants to include certain information in certain applications; altering certain notice requirements; clarifying the process and requirements for the application, approval, and acquisition of agricultural preservation easements; repealing certain deadlines; authorizing the Maryland Agricultural Land Preservation Foundation to assign certain district agreements to the governing body of a county under certain circumstances; *providing for the effective date of this Act;* making stylistic changes; and generally relating to agricultural land preservation easements purchased by the Maryland Agricultural Land Preservation Foundation.

BY repealing and reenacting, with amendments,
Article – Agriculture
Section 2–509, 2–510, 2–513(b)(8), and 2–513.1(a)
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, without amendments,
Chapter 650 of the Acts of the General Assembly of 2007
Section 2 and 3

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Agriculture

2–509.

(a) (1) The Foundation shall follow the provisions under this section for the easement application process **[**for:

(i) Properties without established districts; and

(ii) Properties entering into a district**]**.

(2) The Foundation shall adopt regulations and procedures for:

(i) **[**Establishment and monitoring of agricultural districts and easements;**]**

[(ii)**]** Evaluation of land **[**to be included within agricultural districts or land to be subject to**]** **FOR WHICH APPLICATION IS MADE TO SELL** an easement; and

[(iii)**]** **(II)** Purchase of easements, including the purchase of easements under an installment purchase agreement.

(b) Regulations and procedures adopted by the Foundation for the **[**establishment and monitoring of agricultural districts and for the**]** purchase of easements shall provide that:

(1) One or more owners of land actively devoted to agricultural use may file **[**a petition**]** **AN APPLICATION** with the county governing body requesting **[**the establishment of an agricultural district or an application for**]** the purchase of an easement by the Foundation on the land owned by the **[**petitioners**]** **APPLICANTS**. The **[**petition**]** **APPLICATION** shall include maps and descriptions of the current use of land **[**in the proposed district or**]** for the proposed easement**, AND ANY OTHER INFORMATION REQUIRED BY THE FOUNDATION TO EVALUATE THE LAND FOR PURCHASE OF AN EASEMENT**.

(2) Upon receipt of **[**a petition to establish an agricultural district or**]** **AN** application to purchase an easement the local governing body shall refer the **[**petition or**]** application and accompanying materials both to the agricultural preservation advisory board and to the county planning and zoning body.

(i) **[**Within 60 days of**]** **AFTER** the referral of **[**a petition or**]** **AN** application, the agricultural preservation advisory board shall advise the county governing body as to whether or not the land **[**in**]** **FOR** the **[**proposed district or**]** proposed easement meets the qualifications established by the Foundation under subsection (d) of this section, and whether or not the advisory board recommends **[**establishment of the district or**]** the purchase of the easement.

(II) IN MAKING ITS RECOMMENDATION, THE COUNTY AGRICULTURAL PRESERVATION ADVISORY BOARD SHALL:

1. TAKE INTO CONSIDERATION CRITERIA AND STANDARDS ESTABLISHED BY THE FOUNDATION UNDER THIS SUBTITLE, CURRENT LOCAL REGULATIONS, LOCAL PATTERNS OF LAND DEVELOPMENT, THE KINDS OF DEVELOPMENT PRESSURES CURRENTLY EXISTING ON THE LAND FOR THE PROPOSED EASEMENT, STATE SMART GROWTH GOALS, AND ANY LOCALLY ESTABLISHED PRIORITIES FOR THE PRESERVATION OF AGRICULTURAL LAND; AND

2. RECOMMEND FOR RANKING ANY APPLICATION THAT QUALIFIES AND MEETS THE PRIORITIES ESTABLISHED BY THE COUNTY GOVERNING BODY FOR THE PRESERVATION OF AGRICULTURAL LAND.

[(ii)**] (III)** **[**Within 60 days of**] AFTER** the referral of **[**a petition or**] AN** application, the county planning and zoning body shall advise the local governing body as to whether or not **[**establishment of the district or**]** the purchase of the easement is compatible with existing and approved county plans and overall county policy, and whether or not the planning and zoning body recommends **[**establishment of the district or**]** the purchase of the easement.

(3) If either the agricultural preservation advisory board or the planning and zoning body recommends approval, the county governing body shall hold a public hearing on the **[**petition or**] APPLICATION** for the proposed easement. Adequate notice of the hearing shall be given to all **[**landowners in the proposed district or**] OWNERS WHOSE LAND WOULD BE ENCUMBERED BY** the proposed easement**[**, and to the Foundation**] AND ALL OWNERS WHOSE LAND IS CONTIGUOUS TO THE LAND FOR THE PROPOSED EASEMENT**.

(4) IN DECIDING WHETHER TO APPROVE THE APPLICATION, THE COUNTY GOVERNING BODY SHALL RECEIVE THE RECOMMENDATION OF THE COUNTY AGRICULTURAL PRESERVATION ADVISORY BOARD ESTABLISHED UNDER § 2–504.1 OF THIS SUBTITLE.

[(4)**] (5)** (i) **[**Within 120 days after**] AFTER** the receipt of the **[**petition or**]** application**[**,**] AND THE RECOMMENDATIONS OF THE AGRICULTURAL PRESERVATION ADVISORY BOARD AND THE COUNTY PLANNING AND ZONING BODY,** the county governing body shall render a decision as to whether or not the **[**petition or**]** application shall be recommended to the Foundation for approval.

(ii) If the county governing body decides to recommend approval of the **[**petition or**]** application, it shall **[**so**]** notify the Foundation and forward to the Foundation**:**

1. [the petition or**] THE** application and all accompanying materials, including the recommendations of the advisory board and county planning and zoning body**;**

2. A RANKING OF ALL APPLICATIONS BASED ON:

A. THE COUNTY GOVERNING BODY'S LOCALLY ESTABLISHED PRIORITIES AS APPROVED BY THE FOUNDATION, WHICH FOR PURPOSES OF ENHANCING COMPETITIVE BIDDING MAY INCLUDE A SYSTEM

THAT RANKS PROPERTIES IN ASCENDING ORDER WITH RESPECT TO THE PROPORTION OBTAINED BY DIVIDING THE ASKING PRICE BY THE VALUE OF THE EASEMENT; AND

B. GUIDELINES ADOPTED BY THE FOUNDATION UNDER SUBSECTION (D) OF THIS SECTION; AND

3. A STATEMENT OF THE TOTAL CURRENT DEVELOPMENT RIGHTS ON THE LAND FOR THE PROPOSED EASEMENT, WHICH SHALL INCLUDE THE TOTAL NUMBER OF DEVELOPMENT RIGHTS THAT HAVE BEEN SUBDIVIDED OR TRANSFERRED.

(iii) If the county governing body recommends denial of the **[**petition**]** **APPLICATION**, it shall **[**so**]** inform the Foundation and the **[**petitioners**]** **APPLICANTS**.

[(5) The Foundation may approve a petition for the establishment of an agricultural district only if:

(i) The land within the proposed district meets the qualifications established under subsection (d) of this section;

(ii) The petition has been approved by the county governing body; and

(iii) The establishment of the district or the purchase of the easement is approved by a majority of the Foundation board of trustees at–large, by the Secretary, and by the State Treasurer.

(6) The Foundation shall render its decision on a petition to establish an agricultural district within 60 days of the receipt of the petition, and shall inform the county governing body and the petitioners of its decision.

(7) (i) If the Foundation approves the petition, the agricultural district shall be established by an ordinance of the county governing body.

(ii) The establishment of the district shall not take effect until all landowners in the proposed district have executed and recorded among the land records an agreement with the Foundation stipulating that for a specified period of time from the establishment of the agricultural district, the landowner agrees to keep his land in agricultural use and has the right to offer to sell an easement for development rights on his land to the Foundation under the provisions of this subtitle.

(iii) In the ordinance that establishes an agricultural district:

1. The county governing body shall establish the length of time required for a district agreement under subparagraph (ii) of this paragraph; and

2. The time period of the district agreement shall be from 3 to 10 years, both inclusive.

(iv) In the event of severe economic hardship the Foundation, with the concurrence of the county governing body, may release the landowner's property from the agricultural district. Any person aggrieved by a decision of the Foundation regarding a determination of severe economic hardship is entitled to judicial review.

(v) Nothing in this section shall preclude the landowner from selling his property.

(8) At any time after the period of time stipulated in the district agreement, a landowner may terminate his property as an agricultural district by notifying the Foundation one year in advance of his intention to do so.

(9) After the establishment of an agricultural district the county governing body or the Foundation may review the use of land within the district.

(10) The Foundation may approve alteration or abolition of a district only if:

(i) The use of land within the district has so changed as to cause land within the district to fail to meet the qualifications established under subsection (d) of this section;

(ii) The alteration or abolition of the district has been recommended by the county governing body; and

(iii) The alteration or abolition is approved by a majority of the Foundation board of trustees at–large, by the Secretary, and by the State Treasurer.**]**

(c) Regulations and procedures adopted by the Foundation for the **[**establishment**]** **PURCHASE** and monitoring of **[**agricultural districts and**]** easements may not require, in Garrett County or Allegany County, a natural gas rights owner or lessee to subordinate its interest to the Foundation's interest if the Foundation determines that exercise of the natural gas rights will not interfere with an agricultural operation conducted on **[**land in the agricultural district or**]** land subject to an easement.

(d) Regulations and criteria developed by the Foundation relating to land which may be **[**included in an agricultural district or subject to**]** **CONSIDERED FOR PURCHASE OF** an easement shall provide that:

(1) Subject to item (2) of this subsection, land shall meet productivity, acreage, and locational criteria determined by the Foundation to be necessary for the continuation of farming;

(2) As long as all other criteria are met, land that is at least 50 acres in size **OR IS CONTIGUOUS TO OTHER PERMANENTLY PRESERVED LAND** shall qualify for **[**inclusion in an agricultural district or**]** **PURCHASE OF AN** easement;

(3) The Foundation shall attempt to preserve the minimum number of acres **[**in a given district**]** which may reasonably be expected to promote the continued availability of agricultural suppliers and markets for agricultural goods;

(4) Land within the boundaries of a 10–year water and sewer service district may be **[**included in an agricultural district or**]** **CONSIDERED FOR PURCHASE OF AN** easement only if that land is outstanding in productivity and is of significant size; **[**and**]**

(5) Land may be **[**included in an agricultural district or**]** **CONSIDERED FOR PURCHASE OF AN** easement only if the county regulations governing the land permit the activities listed under § 2–513(a) of this subtitle**; AND**

(6) LAND BE EVALUATED FOR:

(I) LOCATION IN A PRIORITY PRESERVATION AREA OF THE COUNTY;

(II) SOIL AND OTHER LAND CHARACTERISTICS ASSOCIATED WITH AGRICULTURAL AND SILVICULTURAL PRODUCTIVITY;

(III) AGRICULTURAL AND SILVICULTURAL PRODUCTION AND CONTRIBUTION TO THE AGRICULTURAL AND SILVICULTURAL ECONOMY; AND

(IV) ANY OTHER UNIQUE COUNTY CONSIDERATIONS THAT SUPPORT THE GOALS OF THE PROGRAM.

2–510.

(a) An owner of agricultural land **[**that has an**]** **WHOSE APPLICATION TO SELL AN** easement **HAS BEEN** approved by the county under this subtitle may sell an easement to the Foundation on the contiguous acreage of **[**such**]** **THE** agricultural

land**, SUBJECT TO THE REQUIREMENTS OF THIS SUBTITLE AND REGULATIONS OF THE FOUNDATION**.

(b) In order to be considered by the Foundation, an application to sell shall:

(1) Be received by the board at a time the board determines for the fiscal year in which the application is to be considered;

(2) Include an asking price at which the owner is willing to sell an easement; and

(3) Include a complete description of the **[**subject**]** land **FOR THE PROPOSED EASEMENT**.

(c) **[**(1)**]** The board shall determine the maximum number of applications **THAT IT WILL ACCEPT FROM EACH COUNTY** in each offer cycle.

[(2) Applications received after the maximum number has been reached may be considered in the next available cycle.**]**

(d) Within 30 days after the receipt of an application **FROM THE COUNTY GOVERNING BODY**, the Foundation shall notify the landowner **AND THE COUNTY GOVERNING BODY** of the receipt and sufficiency of the application. If the original application is insufficient, the Foundation shall specify the reason for insufficiency, and the Foundation shall grant an additional 30 days for the landowner to remedy the insufficiency. If the application is made sufficient within 30 days of the notification by the Foundation, the application shall be considered as if it had originally been submitted in a timely and sufficient manner.

(e) **[**(1) (i) Within 30 days after the receipt of an application to sell, the Foundation shall notify the governing body of the county containing the subject land, that an application to sell has been received.

(ii) 1. Within**] IF THE APPLICATION IS SUBMITTED TO THE FOUNDATION PRIOR TO COUNTY APPROVAL, THEN WITHIN** 60 days of the notification **OF SUFFICIENCY OF THE APPLICATION**, the county governing body shall advise the Foundation as to **[**local**] THE COUNTY'S** approval or disapproval of the application. The Foundation shall grant a 30–day extension of this **[**response**] APPROVAL** period if the county governing body applies to the Foundation for an extension and states its reasons for seeking an extension.

[2. Upon local approval of the application, the county governing body shall submit a statement of the total current development rights on the subject land to the Maryland Agricultural Land Preservation Foundation, along

with the application approval notification. The statement shall include the total number of development rights that have been subdivided or transferred.

(2) In deciding whether to approve the application, the county governing body shall:

(i) Receive the recommendation of the county agricultural preservation advisory board established under § 2–504.1 of this subtitle; and

(ii) Rank all applications based on:

1. Its locally established priorities as approved by the Foundation, which, for purposes of enhancing competitive bidding, may include a system that ranks properties in ascending order with respect to the proportion obtained by dividing the asking price by the value of the easement; and

2. Guidelines adopted by the Foundation under paragraph (3) of this subsection.

(3) (i) In consultation with county governing bodies, the Foundation shall adopt guidelines to identify easements for purchase that further the goals of the Maryland Agricultural Land Preservation Program.

(ii) Guidelines adopted under subparagraph (i) of this paragraph shall include consideration of:

1. Location in a priority preservation area of the county;

2. Soil and other land characteristics associated with agricultural productivity;

3. Agricultural production and contribution to the agricultural economy; and

4. Any other unique county considerations that support the goals of the program.

(4) In making its recommendation, the county agricultural preservation advisory board shall:

(i) Take into consideration criteria and standards established by the Foundation under this subtitle, current local regulations, local patterns of land development, the kinds of pressures to develop the subject land, State smart growth goals, and any locally established priorities for the preservation of agricultural land; and

(ii) Recommend for ranking any application that qualifies and meets the priorities established by the county governing body for the preservation of agricultural land.

(5) The county agricultural preservation advisory board shall provide a public hearing concerning any application to sell if such a hearing is requested by a majority of the county agricultural preservation advisory board, or by a majority of the county governing body, or by the applicant.

(6) The board of trustees of the Foundation shall not approve any application to sell which has not been approved by the governing body of the county containing the subject land.**]**

(f) (1) In determining which applications it shall approve for the purchase of the easements offered for sale in each fiscal year under this section, the Foundation:

(i) May approve only those applications in which the subject land meets the criteria and standards established under §§ 2–509 and 2–513 of this subtitle;

(ii) Except as provided in subparagraph (iii) of this paragraph, **[**rank**]** **REVIEW** the applications and submit offers to buy at the beginning of each offer cycle based on the approved priorities established by each eligible county for the preservation of agricultural land; and

(iii) For applications competing on a statewide basis following the initial round of offers, shall rank the applications and submit offers to buy in order of priority, as provided in paragraph (2) of this subsection.

(2) The Foundation shall adopt by regulation a standard priority ranking system for additional offers to buy by which it shall rank each application. The system shall be based on the following criteria as to the easements offered in any one county:

(i) The applications shall be assigned a rank in ascending order with respect to the proportion obtained by dividing the asking price by the State easement value. The resulting rank shall be the sole criterion for establishing the priority for discounted applications that include proportions of 1.0 or lower.

(ii) All additional applications which include proportions greater than 1.0 shall be assigned a numerical value that, in regard to the land for which the easement is offered, reflects:

1. The relative productive capacity of the land;

2. The extent to which the easement acquisition will contribute to the continued availability of agricultural suppliers and markets for agricultural goods; and

3. The priority recommendations of the local governing bodies.

(g) The Foundation may approve general allotted purchases of easements in a county not to exceed in aggregate value the amount allotted for that county under § 2–508(b) of this subtitle for the fiscal year in which such purchases are made, plus any amount of transferred local open space funds designated by the local governing body for general purchases.

(h) The Foundation may approve matching allotted purchases of easements in an eligible county such that the Foundation's share will not exceed in aggregate value the amount allotted for that county under § 2–508(b) of this subtitle for that fiscal year.

(i) Upon approval of a majority of the board members at–large, and upon the recommendation of the State Treasurer and the Secretary, an application to sell shall be approved, and an offer to buy containing the specific terms of the purchase shall be tendered to the landowner. An offer to buy may specify terms, contingencies, and conditions not contained in the original application.

(j) **[**(1) With respect to allotted purchases, the Foundation shall tender any offer to buy containing the specific terms of the purchase on or before January 31 of the fiscal year in which the purchase is to be made.**]**

[(2)**] (1)** With respect to additional offers to buy tendered under § 2–508(c) of this subtitle, the Foundation may not tender such offers earlier than 30 days after the completion of allotted **[**purchases**]** **OFFERS TO BUY** in each offer cycle.

[(3)**] (2)** A landowner has 30 days from the date of any offer to buy in which to accept or reject the offer.

(k) (1) At the time of settlement of the purchase of an easement, the landowner and the Foundation may agree upon and establish a schedule of payment such that the landowner may receive consideration for the easement in a lump sum, in installments over a period of up to 10 years from the date of settlement, or as provided in an installment purchase agreement under paragraph (3) of this subsection. At the time of settlement, the Foundation shall notify in writing each landowner who sells an agricultural easement to the Foundation of the schedule of anticipated ranges of interest rates to be paid on any unpaid balance after the date of settlement.

(2) (i) If a schedule of installments is agreed upon, the Comptroller shall retain in the Maryland Agricultural Land Preservation Fund an amount of money sufficient to pay the landowner according to the schedule.

(ii) The landowner shall receive interest on any unpaid balance remaining after the date of settlement. The State Treasurer shall invest the unpaid balance remaining after the date of settlement in a certificate or certificates of deposit at the maximum interest rate offered by a bank servicing the State or at such other institutions which pay the maximum interest rates payable on time and savings deposits at federally insured commercial banks selected by the Treasurer, to mature in accordance with an agreed upon schedule of installments as provided in this section. Any interest earned on the invested unpaid balance shall be paid with the installment when due, less 1/4 of 1 percent.

(3) (i) The Foundation may pay the landowner according to a schedule, up to a maximum term of 15 years, established in an installment purchase agreement.

(ii) The installment purchase agreement shall:

1. Require that the Foundation make annual equal payments to the landowner of interest on the outstanding balance of the purchase price;

2. Require that the Foundation pay the landowner the remainder of the purchase price at the end of the term;

3. State the total amount of money the Foundation will pay the landowner, the interest rate, and the terms of the agreement; and

4. Require that the easement be recorded within 30 days of settlement.

(l) (1) **[**On or before June 30**]** **AFTER THE FOUNDATION HAS EXPENDED ALLOTTED FUNDS FOR A FISCAL YEAR IN OFFERS TO PURCHASE**, the Foundation shall notify all landowners whose applications had been rejected during that fiscal year. The Foundation shall specify the reasons for that rejection.

(2) A landowner who rejects an offer from the Foundation to purchase an easement on the same land during two consecutive years, for a reason other than insufficient Foundation funds, may not reapply to sell an easement on the same land for the following two consecutive years.

(m) Notwithstanding any other provision of law, for each offer cycle as provided in this section, records relating to a landowner's ranking, asking price, or Foundation offer shall be confidential and not subject to public inspection until after the end of the cycle, as determined by the Foundation.

2–513.

(b) (8) The Foundation may approve a landowner's request to relocate the site of an existing dwelling to another location on a farm subject to an easement **[**or district agreement**]**, provided:

(i) The new location does not interfere with any agricultural use; and

(ii) Subject to the Foundation's approval, the landowner agrees either to demolish the existing dwelling at the current location or permanently convert the existing dwelling at the current location to a use that is nonresidential and integral to the farm operation.

2–513.1.

(a) This section applies only to applications affecting land encumbered by a **[**district agreement or**]** deed of easement created under this subtitle.

Chapter 650 of the Acts of 2007

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) Effective July 1, 2007, districts may not be a requirement for the easement application process to the Maryland Agricultural Land Preservation Foundation; and

(b) Except as provided in Section 3 of this Act, as of June 30, 2012, all districts in the Maryland Agricultural Land Preservation Foundation shall be terminated and a landowner may not be bound to the terms of any Foundation district agreement.

SECTION 3. AND BE IT FURTHER ENACTED, That the following agricultural land preservation districts established under § 2–509 of the Agriculture Article or by a county shall remain in force and may not be terminated:

(a) Any district in which an easement has been transferred to the Foundation; and

(b) Any district established by a county and a landowner for the purpose of providing a property tax credit to the landowner.

SECTION 2. AND BE IT FURTHER ENACTED, That for all district agreements encumbering land on which the Foundation has not purchased an easement as of June 30, 2012, and which otherwise have not terminated as of June 30, 2012, the Foundation may assign those district agreements to the county governing

body for the county in which the land is located by an assignment instrument to be recorded in the land records of that county, if the county governing body is willing to accept an assignment. From the date of the recording of the assignment instrument, a county governing body shall be entitled to enforce the terms of the district agreements it has been assigned, and shall determine whether or not a district agreement may be modified or terminated.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June 30, 2012.

Approved by the Governor, May 2, 2012.

Chapter 181

(Senate Bill 130)

AN ACT concerning

Baltimore City – Nuisance Abatement and Local Code Enforcement – Community Associations

FOR the purpose of altering the definition of "community association" under certain provisions of law relating to the standing of certain community associations in Baltimore City to seek judicial relief for abatement of certain nuisances; altering the definition of "nuisance" to repeal a certain requirement that a local code violation must diminish the value of neighboring property; altering the definition of "local code violation" to correct references to certain provisions of the Baltimore City Code; prohibiting a community association from filing an action if the community association receives certain information from a certain department regarding an active code enforcement plan; repealing a certain requirement that a community association must file a bond with the court before seeking nuisance abatement; repealing a certain provision that a community association may not be construed to have standing to pursue a nuisance action concerning a vacant dwelling that is boarded up, free from trash and debris, and secure against entry; and generally relating to the right of community associations in Baltimore City to seek judicial abatement of certain nuisances.

BY repealing and reenacting, with amendments,
Article – Real Property
Section 14–123
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Real Property

14–123.

(a) (1) In this section the following words have the meanings indicated.

(2) "Community association" means **[**a Maryland nonprofit association, corporation, or other organization that:

(i) Is comprised of at least 25 households or 25% of the households, whichever is less, of a local neighborhood consisting of 40 or more individual households as defined by specific geographic boundaries in the bylaws or charter of the association;

(ii) Requires, as a condition of membership, the voluntary payment of monetary dues at least annually;

(iii) Is operated primarily for the promotion of social welfare and general neighborhood improvement and enhancement;

(iv) Has been in existence for at least 2 years when it files suit under this section;

(v) 1. Is exempt from taxation under § 501(c)(3) or (4) of the Internal Revenue Code; or

2. Has been included for a period of at least 2 years prior to bringing an action under this section in Baltimore City's Community Association Directory published by the Baltimore City Department of Planning; and

(vi) In the case of a Maryland corporation, is in good standing**]:**

(I) A NONPROFIT ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION THAT IS:

1. COMPOSED OF RESIDENTS OF A COMMUNITY WITHIN WHICH A NUISANCE IS LOCATED;

2. OPERATED EXCLUSIVELY FOR THE PROMOTION OF SOCIAL WELFARE AND GENERAL NEIGHBORHOOD IMPROVEMENT AND ENHANCEMENT; AND

3. EXEMPT FROM TAXATION UNDER § 501(C)(3) OR (4) OF THE INTERNAL REVENUE CODE; OR

(II) A NONPROFIT ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION THAT IS:

1. COMPOSED OF RESIDENTS OF A CONTIGUOUS COMMUNITY THAT IS DEFINED BY SPECIFIC GEOGRAPHIC BOUNDARIES, WITHIN WHICH A NUISANCE IS LOCATED; ~~AND~~

2. OPERATED FOR THE PROMOTION OF THE WELFARE, IMPROVEMENT, AND ENHANCEMENT OF THAT COMMUNITY; AND

3. IN GOOD STANDING WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION.

(3) "Local code violation" means a violation under the following provisions of the Baltimore City Code as amended from time to time or under any applicable code relating to the following provisions incorporated by Baltimore City by reference:

~~(i) The Fire Prevention Code under Article 9;~~

~~(ii) Animal control, nuisance and disease prevention, and noise control subheadings of Article 11 (Health);~~

~~(iii) The Housing Code under Article 13;~~

~~(iv) Public nuisance provisions under Article 19;~~

~~(v) Article 23;~~

~~(vi) The Building Code of Baltimore City, Article 32; and~~

~~(vii) The zoning ordinance of Baltimore City, Article 30.~~

(I) NUISANCE CONTROL, WASTE CONTROL, AND NOISE REGULATION TITLES OF THE HEALTH CODE OF BALTIMORE CITY;

(II) THE PUBLIC NUISANCE AND NEIGHBORHOOD NUISANCE PROVISIONS UNDER CITY CODE ARTICLE 19, POLICE ORDINANCES;

(III) CITY CODE ARTICLE 23, SANITATION;

(IV) THE BUILDING, FIRE, AND RELATED CODES OF BALTIMORE CITY; OR

(V) THE ZONING CODE OF BALTIMORE CITY.

(4) "Nuisance" means, within the boundaries of the community represented by the community association, an act or condition knowingly created, performed, or maintained on private property that constitutes a local code violation and that:

(i) Significantly affects other residents of the neighborhood; **AND**

(ii) **[**Diminishes the value of neighboring property; and

(iii)**]** 1. Is injurious to public health, safety, or welfare of neighboring residents; or

2. Obstructs the reasonable use of other property in the neighborhood.

(b) This section only applies to a nuisance located within the boundaries of Baltimore City.

(c) (1) A community association may seek injunctive and other equitable relief in the circuit court for abatement of a nuisance upon showing:

(i) The notice requirements of this subsection have been satisfied; and

(ii) The nuisance has not been abated.

(2) (i) **1.** An action may not be brought under this section until 60 days after the community association sends notice of the violation and of the community association's intent to bring an action under this section by certified mail, return receipt requested, to the appropriate code enforcement agency.

2. IF THE APPROPRIATE CODE ENFORCEMENT AGENCY IS THE BALTIMORE CITY DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, AN ACTION UNDER THIS SECTION MAY NOT BE BROUGHT IF THE DEPARTMENT PROVIDES A WRITTEN RESPONSE TO THE COMMUNITY ASSOCIATION WITHIN 60 DAYS OF RECEIVING THE NOTICE THAT THE PROPERTY IS PART OF AN ACTIVE CODE ENFORCEMENT PLAN.

(ii) An action under this section may not be brought if the appropriate code enforcement agency has filed an action for equitable relief from the nuisance.

(3) (i) An action may not be brought under this section until 60 days after the community association sends notice to the tenant, if any, and the owner of record that a nuisance exists and that legal action may be taken if the nuisance is not abated.

(ii) The notice shall specify:

1. The nature of the alleged nuisance;

2. The date and time of day the nuisance was first discovered;

3. The location on the property where the nuisance is allegedly occurring; and

4. The relief sought in the action.

(iii) 1. The notice shall be provided to the tenant, if any, and the owner of record in the same manner as service of process in a civil in personam action under the Maryland Rules.

2. Adequate and sufficient notice may be given to the tenant, if any, and the owner of record by sending a copy of the notice by regular mail and posting a copy of the notice on the property where the nuisance is allegedly occurring, if notice sent by certified mail is:

A. Returned unclaimed or refused;

B. Designated by the post office to be undeliverable for any other reason; or

C. Signed for by a person other than the addressee.

(iv) In filing a suit under this section, an officer of the community association shall certify to the court:

1. What steps the community association has taken to satisfy the notice requirements under this subsection; and

2. That each condition precedent to the filing of an action under this section has been met.

(4) **[**Relief may not be provided under this section unless the community association files with the court a bond in an amount determined by the court and with a surety approved by the court, conditioned to answer to the adverse party for any costs the party may sustain as a result of the suit, including reasonable attorney fees, if the court finds that the action was filed in bad faith or without substantial justification.

(5)**]** (i) An action may not be brought against an owner of residential rental property unless, prior to the giving of notice under subsection (c)(3)(i) of this section, a notice of violation relating to the nuisance has first been issued by an appropriate code enforcement agency.

(ii) In the case of a nuisance based on a housing or building code violation, other than a recurrent sanitation violation, relief may not be granted under this section unless a violation notice relating to the nuisance has been issued by the Department of Housing and Community Development and remains outstanding after a period of 75 days.

[(6)**] (5)** (i) If a violation notice is an essential element of the action, a copy of the notice signed by an official of the appropriate code enforcement agency shall be prima facie evidence of the facts contained in the notice.

(ii) A notice of abatement issued by the appropriate code enforcement agency in regard to the violation notice shall be prima facie evidence that the plaintiff is not entitled to the relief requested.

[(7)**] (6)** A proceeding under this section shall:

(i) Take precedence on the docket;

(ii) Be heard at the earliest practicable date; and

(iii) Be expedited in every way.

(d) A political subdivision of the State or any agency of a political subdivision may not be subject to any action brought under this section or an action resulting from an action brought under this section against a private property owner.

(e) (1) Subject to paragraph (2) of this subsection, this section may not be construed as to abrogate any equitable or legal right or remedy otherwise available under the law to abate a nuisance.

(2) This section may not be construed as to grant standing for an action:

(i) Challenging any zoning application or approval;

(ii) In which the alleged nuisance consists of:

1. A condition relating to lead paint; **OR**

2. An interior physical defect of a property**[**; or

3. A vacant dwelling that is maintained in a boarded condition, free from trash and debris, and secure against trespassers and weather entry**]**;

(iii) Involving any violation of alcoholic beverages laws under Article 2B of the Code; or

(iv) Involving any matter in which a certificate, license, permit, or registration is required or allowed under the Environment Article.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 182

(Senate Bill 132)

AN ACT concerning

Health Occupations – State Board of Pharmacy – Jurisdiction Over Nonresident Pharmacies

FOR the purpose of ~~specifying the laws or regulations that apply to a nonresident pharmacy if there is a conflict with the provisions of a certain law of this State~~ requiring a nonresident pharmacy to have a pharmacist on staff who is licensed by the State Board of Pharmacy and designated as the pharmacist responsible for providing certain services to certain patients; requiring a nonresident pharmacy to comply with certain ~~laws~~ requirements when dispensing prescription drugs or prescription devices to a patient in this State or otherwise engaging in the practice of pharmacy in this State; requiring that certain toll–free telephone service provided by a nonresident pharmacy facilitate communication between patients in this State and a pharmacist who ~~is licensed in this State; repealing a certain requirement relating to confidentiality of prescription records~~ is required to refer certain patients to a certain pharmacist; altering the scope of disciplinary actions to which a nonresident pharmacy is subject; repealing certain limitations on the authority of the State Board of Pharmacy to impose certain fines or take certain disciplinary action against a

nonresident pharmacy; clarifying the inspection requirements applicable to a pharmacy in this State and a nonresident pharmacy; requiring a nonresident pharmacy to submit a copy of a certain inspection report on application for and renewal of a pharmacy permit in this State; and generally relating to pharmacy permit requirements for nonresident pharmacies.

~~BY repealing~~
~~Article – Health Occupations~~
~~Section 12–403(a)~~
~~Annotated Code of Maryland~~
~~(2009 Replacement Volume and 2011 Supplement)~~

~~BY adding to~~
~~Article – Health Occupations~~
~~Section 12–403(a)~~
~~Annotated Code of Maryland~~
~~(2009 Replacement Volume and 2011 Supplement)~~

BY repealing and reenacting, without amendments,
Article – Health Occupations
Section ~~12–403(d), (e), and (g)~~ 12–403(e) and (g)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section ~~12–403(f)~~ 12–403(d) and (f), 12–409, and 12–604
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health Occupations

12–403.

[~~(a) This section does not require a nonresident pharmacy to violate the laws or regulations of the state in which it is located.~~**]**

~~(A)~~ ~~IF THE LAWS OR REGULATIONS OF THE STATE IN WHICH A NONRESIDENT PHARMACY IS LOCATED CONFLICT WITH THIS SECTION, THE LAWS OR REGULATIONS OF THE STATE IN WHICH THE NONRESIDENT PHARMACY IS LOCATED SHALL APPLY.~~

(d) A nonresident pharmacy shall ~~hold~~**:**

(1) **HOLD** a pharmacy permit issued by the Board**; AND**

(2) **HAVE A PHARMACIST ON STAFF WHO IS:**

(I) **LICENSED BY THE BOARD; AND**

(II) **DESIGNATED AS THE PHARMACIST RESPONSIBLE FOR PROVIDING PHARMACEUTICAL SERVICES TO PATIENTS IN THE STATE**.

(e) (1) In order to obtain a pharmacy permit from the Board, a nonresident pharmacy shall:

(i) Submit an application to the Board on the form that the Board requires;

(ii) Pay to the Board an application fee set by the Board;

(iii) Submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which the nonresident pharmacy is located; and

(iv) On the required permit application, identify the name and current address of an agent located in this State officially designated to accept service of process.

(2) A nonresident pharmacy shall report a change in the name or address of the resident agent in writing to the Board 30 days prior to the change.

(f) **[**A**]** ~~**SUBJECT TO**~~ **NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, A** nonresident pharmacy shall:

(1) Comply with **[**the laws of the state in which it is located**]** ~~**THIS TITLE**~~ **THE REQUIREMENTS OF SUBSECTION (B)(2), (7) THROUGH (12), AND (19) WHEN:**

(I) **DISPENSING PRESCRIPTION DRUGS OR PRESCRIPTION DEVICES TO A PATIENT IN THIS STATE; OR**

(II) **OTHERWISE ENGAGING IN THE PRACTICE OF PHARMACY IN THIS STATE**;

(2) On an annual basis and within 30 days after a change of office, corporate officer, or pharmacist, disclose to the Board the location, names, and titles of all principal corporate officers and all pharmacists who are dispensing prescriptions for drugs or devices to persons in this State;

(3) Comply with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is located and all requests for information made by the Board pursuant to this section;

(4) Maintain at all times a valid, unexpired permit to conduct a pharmacy in compliance with the laws of the state in which it is located;

(5) Maintain its records of prescription drugs or devices dispensed to patients in this State so that the records are readily retrievable;

(6) During its regular hours of operation, but not less than 6 days a week, and for a minimum of 40 hours per week, provide toll–free telephone service to facilitate communication between patients in this State and a pharmacist who**:**

~~**(I) IS LICENSED IN THIS STATE; AND**~~

~~**(II)**~~ **(I) [**has**] HAS** access to the patient's prescription records; **AND**

(II) IS REQUIRED TO REFER PATIENTS IN THE STATE TO THE RESPONSIBLE PHARMACIST LICENSED IN THE STATE, AS APPROPRIATE;

(7) Disclose its toll–free telephone number on a label affixed to each container of drugs or devices~~[~~;

(8) Comply with the laws of this State relating to the confidentiality of prescription records if there are no laws relating to the confidentiality of prescription records in the state in which the nonresident pharmacy is located; and

(9) Comply with the requirements of subsection (b)(17) and (20) of this section~~]~~.

(g) Subject to the hearing provisions of § 12–411 of this subtitle, if a pharmacy or a nonresident pharmacy is operated in violation of this section, the Board may suspend the applicable pharmacy permit until the pharmacy complies with this section.

12–409.

(a) Subject to the hearing provisions of § 12–411 of this subtitle, the Board may suspend or revoke any pharmacy permit, if the pharmacy:

(1) Is conducted so as to endanger the public health or safety;

(2) Violates any of the standards specified in § 12–403 of this subtitle; or

(3) Otherwise is not conducted in accordance with the law.

(b) (1) A nonresident pharmacy is subject to the disciplinary actions stated in this ~~subsection~~ **SUBTITLE**.

(2) The Board may fine a nonresident pharmacy in accordance with § 12–410 of this subtitle or deny, revoke, or suspend the permit of a nonresident pharmacy for any violation of § 12–403(d) through (g) of this subtitle.

[(3) The Board may fine a nonresident pharmacy in accordance with § 12–410 of this subtitle or deny, revoke, or suspend the permit of a nonresident pharmacy for conduct which causes harm or injury to a person in this State only if:

(i) The Board has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located; and

(ii) The regulatory or licensing agency fails to initiate an investigation within 45 days of receipt of the referral.

(4) The Board shall accept as the final disposition the decision of the regulatory or licensing agency in the state where the nonresident pharmacy is located if:

(i) The regulatory or licensing agency in the state where the nonresident pharmacy is located initiates an investigation within 45 days of the referral; and

(ii) All relevant information acquired by the regulatory or licensing agency in the state where the nonresident pharmacy is located is provided to the Board within a reasonable period.**]**

12–604.

(a) The Secretary, the Board, or the agents of either, during business hours, may:

(1) Enter any place where drugs, devices, diagnostics, cosmetics, dentifrices, domestic remedies, or toilet articles are manufactured, packaged, stocked, or offered for sale; and

(2) Inspect the drugs, devices, diagnostics, cosmetics, dentifrices, domestic remedies, and toilet articles there.

(b) **(1) [**Any**] A** pharmacy **IN THIS STATE** issued a permit by the Board and subject to inspection under subsection (a) of this section shall be inspected annually.

(2) A NONRESIDENT PHARMACY:

(I) IS SUBJECT TO INSPECTION UNDER SUBSECTION (A) OF THIS SECTION BY THE SECRETARY, THE BOARD, OR THE AGENTS OF EITHER; AND

(II) ON APPLICATION FOR AND RENEWAL OF A PHARMACY PERMIT IN THIS STATE, SHALL SUBMIT A COPY OF THE MOST RECENT INSPECTION REPORT RESULTING FROM AN INSPECTION CONDUCTED BY THE REGULATORY OR LICENSING AGENCY OF THE STATE IN WHICH THE NONRESIDENT PHARMACY IS LOCATED.

(c) A person may not hinder an inspection conducted under this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 183

(House Bill 334)

AN ACT concerning

Health Occupations – State Board of Pharmacy – Jurisdiction Over Nonresident Pharmacies

FOR the purpose of ~~specifying the laws or regulations that apply to a nonresident pharmacy if there is a conflict with the provisions of a certain law of this State~~ requiring a nonresident pharmacy to have a pharmacist on staff who is licensed by the State Board of Pharmacy and designated as the pharmacist responsible for providing certain services to certain patients; requiring a nonresident pharmacy to comply with certain ~~laws~~ requirements when dispensing prescription drugs or prescription devices to a patient in this State or otherwise engaging in the practice of pharmacy in this State; requiring that certain toll–free telephone service provided by a nonresident pharmacy facilitate communication between patients in this State and a pharmacist who ~~is licensed in this State; repealing a certain requirement relating to confidentiality of prescription records~~ is required to refer certain patients to a certain pharmacist;

altering the scope of disciplinary actions to which a nonresident pharmacy is subject; repealing certain limitations on the authority of the State Board of Pharmacy to impose certain fines or take certain disciplinary action against a nonresident pharmacy; clarifying the inspection requirements applicable to a pharmacy in this State and a nonresident pharmacy; requiring a nonresident pharmacy to submit a copy of a certain inspection report on application for and renewal of a pharmacy permit in this State; and generally relating to pharmacy permit requirements for nonresident pharmacies.

~~BY repealing~~
~~Article – Health Occupations~~
~~Section 12–403(a)~~
~~Annotated Code of Maryland~~
~~(2009 Replacement Volume and 2011 Supplement)~~

~~BY adding to~~
~~Article – Health Occupations~~
~~Section 12–403(a)~~
~~Annotated Code of Maryland~~
~~(2009 Replacement Volume and 2011 Supplement)~~

BY repealing and reenacting, without amendments,
Article – Health Occupations
Section ~~12–403(d), (e), and (g)~~ 12–403(e) and (g)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section ~~12–403(f)~~ 12–403(d) and (f), 12–409, and 12–604
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health Occupations

12–403.

~~**[**(a) This section does not require a nonresident pharmacy to violate the laws or regulations of the state in which it is located.**]**~~

~~**(A) IF THE LAWS OR REGULATIONS OF THE STATE IN WHICH A NONRESIDENT PHARMACY IS LOCATED CONFLICT WITH THIS SECTION, THE**~~

~~LAWS OR REGULATIONS OF THE STATE IN WHICH THE NONRESIDENT PHARMACY IS LOCATED SHALL APPLY.~~

(d) A nonresident pharmacy shall ~~hold~~:

(1) HOLD a pharmacy permit issued by the Board**; AND**

(2) HAVE A PHARMACIST ON STAFF WHO IS:

(I) LICENSED BY THE BOARD; AND

(II) DESIGNATED AS THE PHARMACIST RESPONSIBLE FOR PROVIDING PHARMACEUTICAL SERVICES TO PATIENTS IN THE STATE.

(e) (1) In order to obtain a pharmacy permit from the Board, a nonresident pharmacy shall:

(i) Submit an application to the Board on the form that the Board requires;

(ii) Pay to the Board an application fee set by the Board;

(iii) Submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which the nonresident pharmacy is located; and

(iv) On the required permit application, identify the name and current address of an agent located in this State officially designated to accept service of process.

(2) A nonresident pharmacy shall report a change in the name or address of the resident agent in writing to the Board 30 days prior to the change.

(f) **[**A**]** ~~**SUBJECT TO**~~ **NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, A** nonresident pharmacy shall:

(1) Comply with **[**the laws of the state in which it is located**]** ~~**THIS TITLE**~~ **THE REQUIREMENTS OF SUBSECTION (B)(2), (7) THROUGH (12), AND (19) WHEN:**

(I) DISPENSING PRESCRIPTION DRUGS OR PRESCRIPTION DEVICES TO A PATIENT IN THIS STATE; OR

(II) OTHERWISE ENGAGING IN THE PRACTICE OF PHARMACY IN THIS STATE;

(2) On an annual basis and within 30 days after a change of office, corporate officer, or pharmacist, disclose to the Board the location, names, and titles of all principal corporate officers and all pharmacists who are dispensing prescriptions for drugs or devices to persons in this State;

(3) Comply with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is located and all requests for information made by the Board pursuant to this section;

(4) Maintain at all times a valid, unexpired permit to conduct a pharmacy in compliance with the laws of the state in which it is located;

(5) Maintain its records of prescription drugs or devices dispensed to patients in this State so that the records are readily retrievable;

(6) During its regular hours of operation, but not less than 6 days a week, and for a minimum of 40 hours per week, provide toll–free telephone service to facilitate communication between patients in this State and a pharmacist who**:**

~~**(I) IS LICENSED IN THIS STATE; AND**~~

~~**(II)**~~ **(I) [**has**] HAS** access to the patient's prescription records; **AND**

(II) IS REQUIRED TO REFER PATIENTS IN THE STATE TO THE RESPONSIBLE PHARMACIST LICENSED IN THE STATE, AS APPROPRIATE;

(7) Disclose its toll–free telephone number on a label affixed to each container of drugs or devices~~[~~;

(8) Comply with the laws of this State relating to the confidentiality of prescription records if there are no laws relating to the confidentiality of prescription records in the state in which the nonresident pharmacy is located; and

(9) Comply with the requirements of subsection (b)(17) and (20) of this section~~]~~.

(g) Subject to the hearing provisions of § 12–411 of this subtitle, if a pharmacy or a nonresident pharmacy is operated in violation of this section, the Board may suspend the applicable pharmacy permit until the pharmacy complies with this section.

12–409.

(a) Subject to the hearing provisions of § 12–411 of this subtitle, the Board may suspend or revoke any pharmacy permit, if the pharmacy:

(1) Is conducted so as to endanger the public health or safety;

(2) Violates any of the standards specified in § 12–403 of this subtitle; or

(3) Otherwise is not conducted in accordance with the law.

(b) (1) A nonresident pharmacy is subject to the disciplinary actions stated in this ~~subsection~~ **SUBTITLE**.

(2) The Board may fine a nonresident pharmacy in accordance with § 12–410 of this subtitle or deny, revoke, or suspend the permit of a nonresident pharmacy for any violation of § 12–403(d) through (g) of this subtitle.

[(3) The Board may fine a nonresident pharmacy in accordance with § 12–410 of this subtitle or deny, revoke, or suspend the permit of a nonresident pharmacy for conduct which causes harm or injury to a person in this State only if:

(i) The Board has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located; and

(ii) The regulatory or licensing agency fails to initiate an investigation within 45 days of receipt of the referral.

(4) The Board shall accept as the final disposition the decision of the regulatory or licensing agency in the state where the nonresident pharmacy is located if:

(i) The regulatory or licensing agency in the state where the nonresident pharmacy is located initiates an investigation within 45 days of the referral; and

(ii) All relevant information acquired by the regulatory or licensing agency in the state where the nonresident pharmacy is located is provided to the Board within a reasonable period.**]**

12–604.

(a) The Secretary, the Board, or the agents of either, during business hours, may:

(1) Enter any place where drugs, devices, diagnostics, cosmetics, dentifrices, domestic remedies, or toilet articles are manufactured, packaged, stocked, or offered for sale; and

(2) Inspect the drugs, devices, diagnostics, cosmetics, dentifrices, domestic remedies, and toilet articles there.

(b) **(1)** **[**Any**]** **A** pharmacy **IN THIS STATE** issued a permit by the Board and subject to inspection under subsection (a) of this section shall be inspected annually.

(2) A NONRESIDENT PHARMACY:

(I) IS SUBJECT TO INSPECTION UNDER SUBSECTION (A) OF THIS SECTION BY THE SECRETARY, THE BOARD, OR THE AGENTS OF EITHER; AND

(II) ON APPLICATION FOR AND RENEWAL OF A PHARMACY PERMIT IN THIS STATE, SHALL SUBMIT A COPY OF THE MOST RECENT INSPECTION REPORT RESULTING FROM AN INSPECTION CONDUCTED BY THE REGULATORY OR LICENSING AGENCY OF THE STATE IN WHICH THE NONRESIDENT PHARMACY IS LOCATED.

(c) A person may not hinder an inspection conducted under this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 184

(Senate Bill 134)

AN ACT concerning

State Real Estate Commission – Sunset Extension and Program Evaluation

FOR the purpose of continuing the State Real Estate Commission in accordance with the provisions of the Maryland Program Evaluation Act (sunset law) by extending to a certain date the termination provisions relating to certain statutory and regulatory authority of the Commission; requiring the Commission to include certain information in its annual report to the Secretary of Labor, Licensing, and Regulation; increasing the amount that a person may recover for each claim against the Real Estate Guaranty Fund; increasing the maximum amount of a certain claim made against the Fund for which the Commission may issue a certain order to pay or deny the claim; requiring the

licensee to submit certain notice of the change, certain documentation, and a certain fee to the Commission if the address of the affiliated brokerage of a licensed associate real estate broker or a licensed real estate salesperson changes; increasing a certain fee for collection of a dishonored check; requiring the Commission to submit a certain report on or before a certain date; and generally relating to the State Real Estate Commission.

BY repealing and reenacting, with amendments,
Article – Business Occupations and Professions
Section 17–210, 17–404(b), 17–407(d)(1)(i), 17–520, 17–521(a), and 17–702
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, without amendments,
Article – State Government
Section 8–403(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 8–403(b)(60)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Business Occupations and Professions

17–210.

The Commission shall submit to the Secretary an annual report of the activities of the Commission that includes:

(1) a statement of the total receipts from license fees;

(2) a statement of the total expenditures of the Commission;

(3) the number of real estate broker licenses, associate real estate broker licenses, and real estate salesperson licenses issued in each county;

(4) the number of hearings held;

(5) the number of complaints received;

(6) the number of investigations made;

(7) the number of applications for licenses denied;

(8) the total number of licenses suspended or revoked;

(9) the number of cases resolved within the schedule adopted under § 17–208(b) of this subtitle; **[**and**]**

(10) THE NUMBER OF GUARANTY FUND AWARDS MADE THAT REACH THE STATUTORY CAP AT THE TIME THE AWARD IS MADE, THE CORRESPONDING AMOUNTS CLAIMED BY THE COMPLAINANT IN EACH CASE, AND THE AMOUNT OF DAMAGES THAT WOULD HAVE BEEN REIMBURSABLE TO THE COMPLAINANT IF THE STATUTORY CAP DID NOT EXIST; AND

[(10)**] (11)** any other information that reflects the work of the Commission.

17–404.

(b) The amount recovered for any claim against the Guaranty Fund may not exceed **[**$25,000**] $50,000** for each claim.

17–407.

(d) (1) (i) If a claimant's total claim arising from the conduct of one licensee does not exceed **[**$3,000,**] $5,000,** the Commission may issue a proposed order to either pay the claim in whole or in part or to deny the claim.

17–520.

(a) Within the time set by the Commission, a real estate broker shall submit to the Commission:

(1) written notice of any change in the address of the principal office of the broker on the form that the Commission provides;

(2) the license certificate and pocket card of the broker; and

(3) a fee for issuance of a new license certificate and pocket card of $5.

(b) On receipt of the notice, fee, license certificate, and pocket card, the Commission shall issue a new license certificate and pocket card to the real estate broker for the unexpired period of the broker's license.

(c) Within the time set by the Commission, a real estate broker shall submit to the Commission:

(1) written notice of any change in the address of a branch office of the broker on the form that the Commission provides;

(2) the branch office certificate; and

(3) a fee for the issuance of a new branch office certificate of $5.

(d) On receipt of the notice, fee, and branch office certificate, the Commission shall issue a new branch office certificate to the real estate broker for the unexpired period of the branch office certificate.

(e) If a real estate broker changes the address of the principal office or a branch office of the broker and fails to submit the required notice, the license of the broker shall be suspended automatically until the broker submits the required notice.

(F) IF THE ADDRESS OF THE AFFILIATED BROKERAGE OF A LICENSED ASSOCIATE REAL ESTATE BROKER OR A LICENSED REAL ESTATE SALESPERSON CHANGES, WITHIN THE TIME SET BY THE COMMISSION, THE LICENSEE SHALL SUBMIT TO THE COMMISSION:

(1) WRITTEN OR ELECTRONIC NOTICE OF ANY CHANGE IN THE ADDRESS OF THE BROKERAGE;

(2) THE LICENSE CERTIFICATE AND POCKET CARD OF THE LICENSEE; AND

(3) A FEE FOR THE ISSUANCE OF A NEW LICENSE CERTIFICATE AND POCKET CARD OF $5.

17–521.

(a) If a person tenders a check to the Commission in payment of a fee and the check is dishonored, the person shall pay to the Commission an additional fee for cost of collection of **[**$25**]** **$35** for each dishonored check.

17–702.

Subject to the evaluation and reestablishment provisions of the Maryland Program Evaluation Act, this title and all regulations adopted under this title shall terminate and be of no effect after July 1, **[**2012**]** **2022**.

Article – State Government

8–403.

(a) On or before December 15 of the 2nd year before the evaluation date of a governmental activity or unit, the Legislative Policy Committee, based on a preliminary evaluation, may waive as unnecessary the evaluation required under this section.

(b) Except as otherwise provided in subsection (a) of this section, on or before the evaluation date for the following governmental activities or units, an evaluation shall be made of the following governmental activities or units and the statutes and regulations that relate to the governmental activities or units:

(60) Real Estate Commission, State (§ 17–201 of the Business Occupations and Professions Article: July 1, **[**2011**] 2021**);

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1, 2013, the State Real Estate Commission shall report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee, in accordance with § 2–1246 of the State Government Article, on:

(1) the implementation of recommendations of the Department of Legislative Services contained in the sunset evaluation report dated October 2010;

(2) any types of consumer claims that are not currently eligible for restitution from the Real Estate Guaranty Fund, established under § 17–402 of the Business Occupations and Professions Article, that the Commission believes should be reimbursable under statute;

(3) if the Commission concludes that there is no need to expand the types of claims eligible for restitution, whether the Commission recommends reducing, suspending, or eliminating the Real Estate Guaranty Fund assessment; and

(4) the Commission's fiscal situation, including information on licensing trends and operating expenses.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 185

(Senate Bill 147)

AN ACT concerning

State Government – Administrative Procedure Act – Changes to Previously Published Proposed Regulations

FOR the purpose of requiring the Administrator of State Documents to refuse to publish a notice of adoption of a regulation that differs from text previously published unless the unit counsel of the Maryland Commission on Civil Rights, the Public Service Commission, or the State Ethics Commission provides a certain certification; defining a certain term; and generally relating to the Administrative Procedure Act and the publication of proposed regulations.

BY repealing and reenacting, without amendments,
Article – State Government
Section 10–107
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 10–113
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – State Government

10–107.

(a) "Unit counsel" means the unit counsel for the Commission on Civil Rights, the Public Service Commission, and the State Ethics Commission.

(b) Unless a proposed regulation is submitted to the Attorney General or to the unit counsel for approval as to legality, the regulation:

(1) may not be adopted under any statutory authority; and

(2) if adopted, is not effective.

10–113.

(A) IN THIS SECTION, "UNIT COUNSEL" HAS THE MEANING STATED IN § 10–107 OF THIS SUBTITLE.

[(a)**] (B)** If a unit wishes to change the text of a proposed regulation so that any part of the text differs substantively from the text previously published in the Register, the unit may not adopt the proposed regulation unless it is proposed anew

and adopted in accordance with the requirements of §§ 10–111 and 10–112 of this subtitle.

[(b)**] (C)** If the regulation is proposed anew, the changes in the text shall be shown with the symbols that the Administrator requires.

[(c)**] (D)** (1) The Administrator shall refuse to publish the notice of adoption of a regulation that differs from the text previously published unless the notice is accompanied by a certification from the Attorney General **OR THE UNIT COUNSEL** that the provisions of subsections **[**(a) and**]** (b) **AND (C)** of this section are not applicable.

(2) The certification shall:

(i) be prepared in the form and according to guidelines specified by the Administrator;

(ii) contain a description of the nature of each change and the basis for the conclusion; and

(iii) be published in the Register as part of the notice of adoption.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 186

(Senate Bill 178)

AN ACT concerning

Education – Informal Kinship Care – ~~Documentation Supporting Affidavit – Repeal~~ Enrollment Before Submission of Documentation

FOR the purpose of ~~repealing the requirement that certain supporting documentation accompany~~ authorizing certain county superintendents of schools to require that a certain affidavit verifying to a certain county superintendant ~~of schools~~ that a child is living in an informal kinship care arrangement for certain school attendance purposes be accompanied by certain supporting documentation only after allowing a certain child to enroll in a certain public school under certain circumstances; ~~repealing a requirement that certain instructions explain the necessity of and encourage the submission of certain supporting documentation~~ specifying that if certain documentation is required it must be consistent with

certain policies and statutes; and generally relating to ~~the repeal of requirements for~~ requiring enrollment before submission of documentation supporting an affidavit of informal kinship care for educational purposes.

BY repealing and reenacting, with amendments,
Article – Education
Section 7–101
Annotated Code of Maryland
(2008 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Education

7–101.

(a) All individuals who are 5 years old or older and under 21 shall be admitted free of charge to the public schools of this State.

(b) (1) Except as provided in § 7–301 of this title and in paragraph (2) of this subsection, each child shall attend a public school in the county where the child is domiciled with the child's parent, guardian, or relative providing informal kinship care, as defined in subsection (c) of this section.

(2) Upon request and in accordance with a county board's policies concerning residency, a county superintendent may allow a child to attend school in the county even if the child is not domiciled in that county with the child's parent or guardian.

(3) If a child fraudulently attends a public school in a county where the child is not domiciled with the child's parent or guardian, the child's parent or guardian shall be subject to a penalty payable to the county for the pro rata share of tuition for the time the child fraudulently attends a public school in the county.

(4) Nothing in this section alters the requirements for out–of–county placements contained in § 4–122 and Title 8, Subtitles 3 and 4 of this article or in any other State or federal law.

(c) (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Informal kinship care" means a living arrangement in which a relative of a child, who is not in the care, custody, or guardianship of the local department of social services, provides for the care and custody of the child due to a serious family hardship.

(iii) "Relative" means an adult related to the child by blood or marriage within the fifth degree of consanguinity.

(iv) "Serious family hardship" means:

1. Death of a parent or legal guardian of the child;

2. Serious illness of a parent or legal guardian of the child;

3. Drug addiction of a parent or legal guardian of the child;

4. Incarceration of a parent or legal guardian of the child;

5. Abandonment by a parent or legal guardian of the child; or

6. Assignment of a parent or legal guardian of a child to active military duty.

(2) ~~[~~(i)~~]~~ A county superintendent shall allow a child who is a resident of this State to attend a public school in:

~~[~~1.~~]~~ ~~(I)~~ A county other than the county where the child is domiciled with the child's parent or legal guardian if the child lives with a relative providing informal kinship care in the county and the relative verifies the informal kinship care relationship through a sworn affidavit; or

~~[~~2.~~]~~ ~~(II)~~ A school attendance area other than the school in the school attendance area where the child is domiciled with the child's parent or legal guardian if the child lives with a relative providing informal kinship care in the school attendance area and the relative verifies the informal kinship care relationship through a sworn affidavit.

~~[~~(ii) 1. ~~The~~ **AFTER ALLOWING A CHILD TO ENROLL UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, SUBSEQUENTLY A COUNTY SUPERINTENDENT MAY REQUIRE THAT THE** affidavit ~~shall~~ be accompanied by supporting documentation of one or more serious family hardships and, where possible, the telephone number and address of any authority who is legally authorized to reveal information which can verify the assertions in the affidavit.

2. ~~The~~ **IF** supporting documentation **IS** required under subsubparagraph 1 of this subparagraph**, THE DOCUMENTATION** shall be consistent with local, State, and federal privacy and confidentiality policies and statutes.~~]~~

(3) The affidavit shall include:

(i) The name and date of birth of the child;

(ii) The name and address of the child's parent or legal guardian;

(iii) The name and address of the relative providing informal kinship care;

(iv) The date the relative assumed informal kinship care;

(v) The nature of the serious family hardship and why it resulted in informal kinship care;

(vi) The kinship relation to the child of the relative providing informal kinship care;

(vii) The name and address of the school the child previously attended;

(viii) Notice that the county superintendent may verify the facts given by the relative providing informal kinship care in the affidavit and conduct an audit of the case after the child has been enrolled in the county public school system;

(ix) Notice that if fraud or misrepresentation is discovered during an audit, the county superintendent shall remove the child from the public school or county public school system roll; and

(x) Notice that any person who willfully makes a material misrepresentation in the affidavit shall be subject to a penalty payable to the county for three times the pro rata share of tuition for the time the child fraudulently attends a public school in the county.

(4) The affidavit shall be in the following form:

(i) I, the undersigned, am over eighteen (18) years of age and competent to testify to the facts and matters set forth herein.

(ii) _____ (name of child), whose date of birth is _____, is living with me because of the following serious family hardship: (check each that is applicable)

_____death of father/mother/legal guardian
_____serious illness of father/mother/legal guardian
_____drug addiction of father/mother/legal guardian

_____incarceration of father/mother/legal guardian
_____abandonment by father/mother/legal guardian
_____assignment of a parent or legal guardian of a child to active military duty

(iii) The name and last known address of the child's parent(s) or legal guardian is:

_____
_____
_____

(iv) My kinship relation to the child is _____

(v) My address is:

_____
Street Apt. No.
_____
City State Zip Code

(vi) I assumed informal kinship care of this child for 24 hours a day and 7 days a week on _____(day/month/year).

(vii) The name and address of the last school that the child attended is:

_____
_____

(viii) The county superintendent may verify the facts contained in the foregoing affidavit and conduct an audit on a case–by–case basis after the child has been enrolled in the county public school system. If the county superintendent discovers fraud or misrepresentation, the child shall be removed from the public school or county public school system roll.

(ix) I solemnly affirm under the penalties of perjury that the contents of the foregoing are true to the best of my knowledge, information, and belief.

_____
Signature of affiant

_____
(Day/month/year)

(x) Any person who willfully makes a material misrepresentation in this affidavit shall be subject to a penalty payable to the county for three times the pro rata share of tuition for the time the child fraudulently attends a public school in the county.

(5) (i) Instructions that explain the necessity for [both] an affidavit [and**, WHEN APPROPRIATE, THE** supporting documentation] of the serious family hardship resulting in informal kinship care shall:

1. Be attached to affidavit forms that comply with paragraph (4) of this subsection; and

2. Include language encouraging the relative providing informal kinship care to submit the affidavit [and**, WHEN APPROPRIATE, THE** supporting documentation] prior to September 30 of each year.

(ii) The affidavit forms, with attached instructions, shall be made available free of charge at the offices of each county board of education, each local department of social services, and each local area agency on aging.

(6) If a change occurs in the care or in the serious family hardship of the child, the relative providing informal kinship care for the child shall notify the local school system in writing within 30 days after the change occurs.

(7) (i) An informal kinship care affidavit may be filed during a school year.

(ii) The relative providing informal kinship care shall file an affidavit annually at least 2 weeks prior to the beginning of the school year for each year the child continues to live with the relative because of a serious family hardship.

(8) Unless the court appoints a guardian for the child or awards custody of the child to someone other than the relative providing informal kinship care, the relative providing informal kinship care shall make the full range of educational decisions for the child.

(9) The relative providing informal kinship care shall make reasonable efforts to inform the parent or legal guardian of the child of the informal kinship care relationship.

(10) The parent or legal guardian of a child in an informal kinship care relationship shall have final decision making authority regarding the educational needs of the child.

(d) Section 4–122.1 of this article shall apply to the education funding of a child in an informal kinship care relationship if the fiscal impact of the requirements of subsections (b) and (c) of this section exceed 0.1% of a county board's total operating budget for a fiscal year.

(e) (1) By the 2007–2008 school year, each county board shall provide full–day kindergarten programs for all kindergarten students in that county.

(2) In the comprehensive master plan that is submitted under § 5–401 of this article, a county board shall identify the strategies that will be used in that county to ensure that full–day kindergarten programs are provided to all kindergarten students in that county by the 2007–2008 school year.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 187

(House Bill 617)

AN ACT concerning

Education – Informal Kinship Care – ~~Documentation Supporting Affidavit – Repeal~~ Enrollment Before Submission of Documentation

FOR the purpose of ~~repealing the requirement that certain supporting documentation accompany~~ authorizing certain county superintendents of schools to require that a certain affidavit verifying to a certain county superintendent ~~of schools~~ that a child is living in an informal kinship care arrangement for certain school attendance purposes be accompanied by certain supporting documentation only after allowing a certain child to enroll in a certain public school under certain circumstances; ~~repealing a requirement that certain instructions explain the necessity of and encourage the submission of certain supporting documentation~~ specifying that if certain documentation is required it must be consistent with certain policies and statutes; and generally relating to ~~the repeal of requirements for~~ requiring enrollment before submission of documentation supporting an affidavit of informal kinship care for educational purposes.

BY repealing and reenacting, with amendments,
Article – Education
Section 7–101
Annotated Code of Maryland
(2008 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Education

7–101.

(a) All individuals who are 5 years old or older and under 21 shall be admitted free of charge to the public schools of this State.

(b) (1) Except as provided in § 7–301 of this title and in paragraph (2) of this subsection, each child shall attend a public school in the county where the child is domiciled with the child's parent, guardian, or relative providing informal kinship care, as defined in subsection (c) of this section.

(2) Upon request and in accordance with a county board's policies concerning residency, a county superintendent may allow a child to attend school in the county even if the child is not domiciled in that county with the child's parent or guardian.

(3) If a child fraudulently attends a public school in a county where the child is not domiciled with the child's parent or guardian, the child's parent or guardian shall be subject to a penalty payable to the county for the pro rata share of tuition for the time the child fraudulently attends a public school in the county.

(4) Nothing in this section alters the requirements for out–of–county placements contained in § 4–122 and Title 8, Subtitles 3 and 4 of this article or in any other State or federal law.

(c) (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Informal kinship care" means a living arrangement in which a relative of a child, who is not in the care, custody, or guardianship of the local department of social services, provides for the care and custody of the child due to a serious family hardship.

(iii) "Relative" means an adult related to the child by blood or marriage within the fifth degree of consanguinity.

(iv) "Serious family hardship" means:

1. Death of a parent or legal guardian of the child;

2. Serious illness of a parent or legal guardian of the child;

3. Drug addiction of a parent or legal guardian of the child;

4. Incarceration of a parent or legal guardian of the child;

5. Abandonment by a parent or legal guardian of the child; or

6. Assignment of a parent or legal guardian of a child to active military duty.

(2) ~~[~~(i)~~]~~ A county superintendent shall allow a child who is a resident of this State to attend a public school in:

~~[~~1.~~]~~ ~~(I)~~ A county other than the county where the child is domiciled with the child's parent or legal guardian if the child lives with a relative providing informal kinship care in the county and the relative verifies the informal kinship care relationship through a sworn affidavit; or

~~[~~2.~~]~~ ~~(II)~~ A school attendance area other than the school in the school attendance area where the child is domiciled with the child's parent or legal guardian if the child lives with a relative providing informal kinship care in the school attendance area and the relative verifies the informal kinship care relationship through a sworn affidavit.

~~[~~(ii) 1. ~~The~~ **AFTER ALLOWING A CHILD TO ENROLL UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, SUBSEQUENTLY A COUNTY SUPERINTENDENT MAY REQUIRE THAT THE** affidavit ~~shall~~ be accompanied by supporting documentation of one or more serious family hardships and, where possible, the telephone number and address of any authority who is legally authorized to reveal information which can verify the assertions in the affidavit.

2. ~~The~~ **IF** supporting documentation **IS** required under subsubparagraph 1 of this subparagraph**, THE DOCUMENTATION** shall be consistent with local, State, and federal privacy and confidentiality policies and statutes.~~]~~

(3) The affidavit shall include:

(i) The name and date of birth of the child;

(ii) The name and address of the child's parent or legal guardian;

(iii) The name and address of the relative providing informal kinship care;

(iv) The date the relative assumed informal kinship care;

(v) The nature of the serious family hardship and why it resulted in informal kinship care;

(vi) The kinship relation to the child of the relative providing informal kinship care;

(vii) The name and address of the school the child previously attended;

(viii) Notice that the county superintendent may verify the facts given by the relative providing informal kinship care in the affidavit and conduct an audit of the case after the child has been enrolled in the county public school system;

(ix) Notice that if fraud or misrepresentation is discovered during an audit, the county superintendent shall remove the child from the public school or county public school system roll; and

(x) Notice that any person who willfully makes a material misrepresentation in the affidavit shall be subject to a penalty payable to the county for three times the pro rata share of tuition for the time the child fraudulently attends a public school in the county.

(4) The affidavit shall be in the following form:

(i) I, the undersigned, am over eighteen (18) years of age and competent to testify to the facts and matters set forth herein.

(ii) _____ (name of child), whose date of birth is _____, is living with me because of the following serious family hardship: (check each that is applicable)

_____death of father/mother/legal guardian
_____serious illness of father/mother/legal guardian
_____drug addiction of father/mother/legal guardian
_____incarceration of father/mother/legal guardian
_____abandonment by father/mother/legal guardian
_____assignment of a parent or legal guardian of a child to active military duty

(iii) The name and last known address of the child's parent(s) or legal guardian is:

_____
_____
_____

(iv) My kinship relation to the child is _____

(v) My address is:

_____

Street Apt. No.

_____

City State Zip Code

(vi) I assumed informal kinship care of this child for 24 hours a day and 7 days a week on _____(day/month/year).

(vii) The name and address of the last school that the child attended is:

_____

_____

(viii) The county superintendent may verify the facts contained in the foregoing affidavit and conduct an audit on a case–by–case basis after the child has been enrolled in the county public school system. If the county superintendent discovers fraud or misrepresentation, the child shall be removed from the public school or county public school system roll.

(ix) I solemnly affirm under the penalties of perjury that the contents of the foregoing are true to the best of my knowledge, information, and belief.

_____

Signature of affiant

_____

(Day/month/year)

(x) Any person who willfully makes a material misrepresentation in this affidavit shall be subject to a penalty payable to the county for three times the pro rata share of tuition for the time the child fraudulently attends a public school in the county.

(5) (i) Instructions that explain the necessity for **[**both**]** an affidavit **[**and**, WHEN APPROPRIATE, THE** supporting documentation**]** of the serious family hardship resulting in informal kinship care shall:

1. Be attached to affidavit forms that comply with paragraph (4) of this subsection; and

2. Include language encouraging the relative providing informal kinship care to submit the affidavit **[**and**, WHEN APPROPRIATE, THE** supporting documentation**]** prior to September 30 of each year.

(ii) The affidavit forms, with attached instructions, shall be made available free of charge at the offices of each county board of education, each local department of social services, and each local area agency on aging.

(6) If a change occurs in the care or in the serious family hardship of the child, the relative providing informal kinship care for the child shall notify the local school system in writing within 30 days after the change occurs.

(7) (i) An informal kinship care affidavit may be filed during a school year.

(ii) The relative providing informal kinship care shall file an affidavit annually at least 2 weeks prior to the beginning of the school year for each year the child continues to live with the relative because of a serious family hardship.

(8) Unless the court appoints a guardian for the child or awards custody of the child to someone other than the relative providing informal kinship care, the relative providing informal kinship care shall make the full range of educational decisions for the child.

(9) The relative providing informal kinship care shall make reasonable efforts to inform the parent or legal guardian of the child of the informal kinship care relationship.

(10) The parent or legal guardian of a child in an informal kinship care relationship shall have final decision making authority regarding the educational needs of the child.

(d) Section 4–122.1 of this article shall apply to the education funding of a child in an informal kinship care relationship if the fiscal impact of the requirements of subsections (b) and (c) of this section exceed 0.1% of a county board's total operating budget for a fiscal year.

(e) (1) By the 2007–2008 school year, each county board shall provide full–day kindergarten programs for all kindergarten students in that county.

(2) In the comprehensive master plan that is submitted under § 5–401 of this article, a county board shall identify the strategies that will be used in that county to ensure that full–day kindergarten programs are provided to all kindergarten students in that county by the 2007–2008 school year.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 188

(Senate Bill 182)

AN ACT concerning

Tax Sales – Complaint to Foreclose Right of Redemption – Notice

FOR the purpose of prohibiting a holder of a certificate of tax sale from filing a complaint to foreclose the right of redemption until a certain amount of time after sending a certain notice to certain persons; requiring a certain notice to be sent in a certain manner; authorizing a holder of a certificate of tax sale to be reimbursed for certain expenses related to mailing a certain notice; and generally relating to the timing of required notices in tax sales.

BY repealing and reenacting, with amendments,
Article – Tax – Property
Section 14–833(a–1)(1), (3)(v), and (6) and 14–843(a)(3)
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, without amendments,
Article – Tax – Property
Section 14–833(a–1)(4)
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Tax – Property

14–833.

(a–1) (1) The holder of a certificate of sale may not file a complaint to foreclose the right of redemption until at least 2 months after sending the first **[**of two notices**]** **NOTICE AND AT LEAST 30 DAYS AFTER SENDING THE SECOND NOTICE** required under this subsection to:

(i) the person who last appears as owner of the property on the collector's tax roll; and

(ii) 1. the current mortgagee of the property, assignee of a mortgagee of record, or servicer of the current mortgage; or

2. the current holder of a beneficial interest in a deed of trust recorded against the property.

(3) The notices required under this subsection shall include at least the following:

(v) a statement that if the property is redeemed before an action to foreclose the right of redemption is filed, the amount that shall be paid to redeem the property is:

1. the total lien amount on the property at the time of sale, with interest;

2. any taxes, interest, and penalties paid by the holder of the certificate of sale;

3. any taxes, interest, and penalties accruing after the date of the tax sale; and

4. the following expenses incurred by the holder of the certificate of sale:

A. costs for recording the certificate of sale;

B. a title search fee, not to exceed $250; **[**and**]**

C. THE POSTAGE AND CERTIFIED MAILING COSTS ACTUALLY INCURRED FOR THE NOTICES; AND

[C.**]** **D.** reasonable attorney's fees, not to exceed $500;

(4) (i) The first of the two notices required under this subsection may not be sent until 4 months after the date of sale.

(ii) The second of the two notices required under this section shall be sent:

1. to the persons listed in paragraph (1) of this subsection; and

2. no earlier than 1 week after the first notice required under this subsection is sent.

(6) (i) The first of the two notices required under this subsection shall be sent:

1. by first–class **CERTIFIED** mail**, POSTAGE PREPAID, RETURN RECEIPT REQUESTED, BEARING A POSTMARK FROM THE UNITED STATES POSTAL SERVICE**; and

2. in an envelope prominently marked on the outside with the following phrase "Notice of Delinquent Property Tax".

(ii) The second of the two notices required under this subsection shall be sent:

1. by first–class certified mail, postage prepaid, return receipt requested, bearing a postmark from the United States Postal Service; and

2. in an envelope prominently marked on the outside with the following phrase "Notice of Delinquent Property Tax".

14–843.

(a) (3) If an action to foreclose the right of redemption has not been filed, and the property is redeemed more than 4 months after the date of the tax sale, the holder of a certificate of sale may be reimbursed for the following expenses actually incurred:

(i) costs for recording the certificate of sale;

(ii) a title search fee, not to exceed $250; **[**and**]**

(III) THE POSTAGE AND CERTIFIED MAILING COSTS FOR THE NOTICES REQUIRED UNDER § 14–833(A–1) OF THIS TITLE; AND

[(iii)**] (IV)** reasonable attorney's fees, not to exceed $500.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 189

(Senate Bill 193)

AN ACT concerning

Agriculture – Maryland Standard of Identity for Honey

FOR the purpose of establishing a Maryland standard of identity for honey; requiring the standard to be applied to certain products; authorizing the designation of certain products as honey; requiring certain products to be distinguished from pure honey under certain circumstances; authorizing certain naming and labeling requirements for honey; requiring that the country of origin be declared on the label for a certain honey designation; requiring that certain styles of honey be declared on the label; ~~authorizing a person that has suffered certain damages to bring a certain action to recover damages in a certain court; authorizing certain persons to bring an enforcement action in a certain circuit court; authorizing the court to enjoin certain persons from distributing mislabeled honey products in the State~~ *authorizing certain persons to file an action to enforce this Act in a certain court; authorizing the court to order certain relief under certain circumstances*; clarifying that, notwithstanding certain provisions of law, the Department of Agriculture is not required to enforce the requirements of this Act; defining certain terms; and generally relating to establishing a standard of identity for honey in Maryland.

BY adding to
Article – Agriculture
Section 10–1901 through 10–1907 to be under the new subtitle "Subtitle 19. Standard of Identity for Honey"
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Agriculture

SUBTITLE 19. STANDARD OF IDENTITY FOR HONEY.

10–1901.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "BLOSSOM HONEY" OR "NECTAR HONEY" MEANS HONEY THAT COMES FROM NECTARS OF PLANTS.

(C) "HONEY" MEANS THE NATURAL FOOD PRODUCT THAT:

(1) HONEY BEES PRODUCE FROM THE NECTAR OF PLANTS, SECRETIONS OF LIVING PARTS OF PLANTS, OR EXCRETIONS OF PLANT–SUCKING INSECTS ON THE LIVING PARTS OF PLANTS;

(2) HONEY BEES COLLECT, TRANSFORM BY COMBINING WITH SPECIFIC SUBSTANCES OF THEIR OWN, DEPOSIT, DEHYDRATE, STORE, AND LEAVE IN THE HONEY COMB TO RIPEN AND MATURE;

(3) CONSISTS ESSENTIALLY OF DIFFERENT SUGARS, PREDOMINANTLY FRUCTOSE AND GLUCOSE, AND OTHER SUBSTANCES, INCLUDING ORGANIC ACIDS, ENZYMES, AND SOLID PARTICLES DERIVED FROM HONEY COLLECTION;

(4) HAS THE COLOR THAT MAY VARY FROM NEARLY COLORLESS TO DARK BROWN;

(5) HAS THE CONSISTENCY THAT MAY BE FLUID, VISCOUS, OR PARTLY TO ENTIRELY CRYSTALLIZED; AND

(6) HAS THE FLAVOR AND AROMA THAT ARE DERIVED FROM THE PLANT OF ORIGIN AND MAY VARY.

(D) "HONEYDEW HONEY" MEANS HONEY THAT COMES MAINLY FROM EXCRETIONS OF PLANT–SUCKING INSECTS (HEMIPTERA) ON THE LIVING PARTS OF PLANTS OR SECRETIONS OF LIVING PARTS OF PLANTS.

10–1902.

THERE IS A MARYLAND STANDARD OF IDENTITY FOR HONEY.

10–1903.

THE MARYLAND STANDARD OF IDENTITY FOR HONEY SHALL APPLY TO:

(1) ALL HONEY PRODUCED BY HONEY BEES FROM NECTAR;

(2) ALL STYLES OF HONEY PRESENTATION THAT ARE PROCESSED AND ULTIMATELY INTENDED FOR DIRECT CONSUMPTION; AND

(3) ALL HONEY PACKED, PROCESSED, OR INTENDED FOR SALE IN BULK CONTAINERS AS HONEY THAT MAY BE REPACKED FOR RETAIL SALE OR FOR USE AS AN INGREDIENT IN OTHER FOODS.

10–1904.

(A) A PRODUCT MEETS THE MARYLAND STANDARD OF IDENTITY FOR HONEY IF THE PRODUCT:

(1) DOES NOT CONTAIN ANY SUBSTANCE OTHER THAN HONEY, INCLUDING ANY FOOD ADDITIVE AS DEFINED IN § 21–101 OF THE HEALTH – GENERAL ARTICLE;

(2) HAS NOT BEEN SUBJECTED TO CHEMICAL OR BIOCHEMICAL TREATMENTS USED TO INFLUENCE HONEY CRYSTALLIZATION;

(3) HAS NOT HAD ANY WATER ADDED TO THE PRODUCT IN THE COURSE OF EXTRACTION OR PACKING FOR SALE OR RESALE AS HONEY;

(4) HAS NOT BEGUN TO FERMENT OR EFFERVESCE;

(5) DOES NOT HAVE A MOISTURE CONTENT GREATER THAN:

(I) 23% FOR HEATHER HONEY (CALLUNA); OR

(II) 18.6% FOR ALL OTHER HONEY;

(6) DOES NOT HAVE A WATER–INSOLUBLE–SOLIDS CONTENT GREATER THAN:

(I) 0.5 GRAM PER 100 GRAMS FOR PRESSED HONEY; OR

(II) 0.1 GRAM PER 100 GRAMS FOR ALL OTHER HONEY;

(7) DOES NOT HAVE A FRUCTOSE CONTENT GREATER THAN 50 GRAMS PER 100 GRAMS;

(8) HAS A TOTAL AMOUNT OF FRUCTOSE AND GLUCOSE EQUAL TO AT LEAST:

(I) 45 GRAMS PER 100 GRAMS FOR HONEYDEW HONEY AND BLENDS OF HONEYDEW HONEY WITH BLOSSOM HONEY; OR

(II) 60 GRAMS PER 100 GRAMS FOR ALL OTHER HONEY; AND

(9) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, HAS A SUCROSE CONTENT NO GREATER THAN 5 GRAMS PER 100 GRAMS.

(B) (1) THE SUCROSE CONTENT OF THE FOLLOWING TYPES OF HONEY MAY BE GREATER THAN 5 GRAMS PER 100 GRAMS BUT NOT GREATER THAN 10 GRAMS PER 100 GRAMS TO MEET THE MARYLAND STANDARD OF IDENTITY FOR HONEY:

(I) ALFALFA (MEDICAGO SATIVA);

(II) CITRUS SPP.;

(III) FALSE ACACIA (ROBINIA PSEUDOACACIA);

(IV) FRENCH HONEYSUCKLE (HEDYSARUM);

(V) MENZES BANKSIA (BANKSIA MENZIESII);

(VI) RED GUM (EUCALYPTUS CAMALDULENSISI);

(VII) LEATHERWOOD (EUCRYPHIA LUCIDA); AND

(VIII) EUCRYPHIA MILLIGAMI.

(2) THE SUCROSE CONTENT OF THE FOLLOWING TYPES OF HONEY MAY BE GREATER THAN 5 GRAMS PER 100 GRAMS BUT NOT GREATER THAN 15 GRAMS PER 100 GRAMS TO MEET THE MARYLAND STANDARD OF IDENTITY FOR HONEY:

(I) LAVENDER (LAVANDULA SPP.); AND

(II) BORAGE (BORAGO OFFICINALIS).

10–1905.

(A) A PERSON MAY DESIGNATE A FOOD PRODUCT AS "HONEY" IF THE PRODUCT CONFORMS TO THE MARYLAND STANDARD OF IDENTITY FOR HONEY SET FORTH IN § 10–1904 OF THIS SUBTITLE.

(B) IF A FOOD PRODUCT CONTAINS ANY FLAVORING, SPICE, OR OTHER INGREDIENT IN ADDITION TO HONEY, THE NAME OF THE PRODUCT SHALL DISTINGUISH THE PRODUCT FROM PURE HONEY AND DESIGNATE THE FOOD ADDITIVE.

(C) IF PROCESSING MATERIALLY CHANGES THE FLAVOR, COLOR, VISCOSITY, OR OTHER MATERIAL CHARACTERISTIC OF PURE HONEY, THE NAME OF THE PRODUCT SHALL DISTINGUISH THE PRODUCT FROM PURE HONEY AND DESIGNATE THE MODIFICATION.

(D) FOR BLOSSOM OR NECTAR HONEY, THE NAME OF THE FOOD MAY BE SUPPLEMENTED BY THE TERM "BLOSSOM" OR "NECTAR".

(E) FOR HONEYDEW HONEY, THE WORD "HONEYDEW" MAY BE PLACED IN CLOSE PROXIMITY TO THE NAME OF THE FOOD.

(F) FOR MIXTURES OF BLOSSOM OR NECTAR HONEY WITH HONEYDEW HONEY, THE NAME OF THE FOOD MAY BE SUPPLEMENTED WITH THE WORDS "A BLEND OF HONEYDEW HONEY WITH BLOSSOM HONEY" OR "A BLEND OF HONEYDEW HONEY WITH NECTAR HONEY".

(G) (1) HONEY MAY BE DESIGNATED BY THE NAME OF A GEOGRAPHICAL OR TOPOGRAPHICAL REGION IF THE HONEY WAS PRODUCED EXCLUSIVELY WITHIN THE AREA REFERRED TO IN THE DESIGNATION.

(2) WHEN HONEY HAS BEEN DESIGNATED BY THE NAME OF A GEOGRAPHICAL OR TOPOGRAPHICAL REGION, THE NAME OF THE COUNTRY WHERE THE HONEY HAS BEEN PRODUCED SHALL BE DECLARED ON THE LABEL.

(H) (1) HONEY MAY BE DESIGNATED ACCORDING TO A FLORAL OR PLANT SOURCE IF IT COMES WHOLLY OR MAINLY FROM THAT PARTICULAR SOURCE AND HAS THE ORGANOLEPTIC, PHYSICOCHEMICAL, AND MICROSCOPIC PROPERTIES CORRESPONDING WITH THAT ORIGIN.

(2) WHEN HONEY HAS BEEN DESIGNATED ACCORDING TO A FLORAL OR PLANT SOURCE:

(I) THE COMMON NAME OR THE BOTANICAL NAME OF THE FLORAL SOURCE SHALL BE IN CLOSE PROXIMITY TO THE WORD "HONEY"; AND

(II) THE NAME OF THE COUNTRY WHERE THE HONEY HAS BEEN PRODUCED SHALL BE DECLARED ON THE LABEL.

(I) (1) HONEY MAY BE DESIGNATED ACCORDING TO THE FOLLOWING METHODS OF REMOVAL FROM THE COMB:

(I) "EXTRACTED HONEY" IS HONEY OBTAINED BY CENTRIFUGING DECAPPED BROODLESS COMBS;

(II) "PRESSED HONEY" IS HONEY OBTAINED BY PRESSING BROODLESS COMBS; OR

(III) "DRAINED HONEY" IS HONEY OBTAINED BY DRAINING DECAPPED BROODLESS COMBS.

(2) THE DESIGNATIONS IN PARAGRAPH (1) OF THIS SUBSECTION MAY NOT BE USED UNLESS THE HONEY CONFORMS TO THE APPLICABLE DESCRIPTION.

(J) (1) HONEY MAY BE DESIGNATED ACCORDING TO THE FOLLOWING STYLES:

(I) "HONEY" THAT IS HONEY IN LIQUID, CRYSTALLINE STATE, OR A MIXTURE OF THE TWO;

(II) "COMB HONEY" THAT IS HONEY STORED BY BEES IN THE CELLS OF FRESHLY BUILT BROODLESS COMBS AND THAT IS SOLD IN SEALED WHOLE COMBS OR SECTIONS OF SUCH COMBS; OR

(III) "CUT COMB IN HONEY", "HONEY WITH COMB", OR "CHUNK HONEY" THAT IS HONEY CONTAINING ONE OR MORE PIECES OF COMB HONEY.

(2) THE STYLES DESIGNATED IN PARAGRAPH (1)(II) AND (III) OF THIS SUBSECTION SHALL BE DECLARED ON THE LABEL.

10–1906.

~~**(A) A PERSON THAT SUFFERS DAMAGES AS A RESULT OF A VIOLATION OF THIS SUBTITLE MAY BRING A CIVIL ACTION FOR DAMAGES IN ANY COURT OF COMPETENT JURISDICTION.**~~

~~**(B) (1) THE FOLLOWING PERSONS MAY BRING AN ACTION TO ENFORCE THIS SUBTITLE IN THE APPROPRIATE CIRCUIT COURT:**~~

~~**(I) A BEEKEEPER OR PRODUCER OF HONEY IN THE STATE;**~~

~~**(II) AN ASSOCIATION OF BEEKEEPERS OR HONEY PRODUCERS IN THE STATE; AND**~~

~~**(III) THE ATTORNEY GENERAL.**~~

~~**(2) IF A PERSON VIOLATES THIS SUBTITLE, THE COURT MAY:**~~

~~**(I) ENJOIN A PRODUCER, MANUFACTURER, OR DISTRIBUTOR FROM DISTRIBUTING THE MISLABELED PRODUCT IN THE STATE; OR**~~

~~(II) ORDER ANY OTHER RELIEF THE COURT FINDS APPROPRIATE.~~

(A) AN ACTION TO ENFORCE THIS SUBTITLE MAY BE FILED IN THE CIRCUIT COURT OF THE COUNTY IN WHICH THE VIOLATION OCCURRED BY:

(1) A BEEKEEPER OR AN ASSOCIATION OF BEEKEEPERS;

(2) A HONEY PACKER OR AN ASSOCIATION OF HONEY PACKERS;

(3) A HONEY PRODUCER OR AN ASSOCIATION OF HONEY PRODUCERS; OR

(4) THE ATTORNEY GENERAL.

(B) IF THE COURT DETERMINES THAT A VIOLATION OF THIS SUBTITLE EXISTS, THE COURT MAY ORDER APPROPRIATE RELIEF, INCLUDING AN ORDER TO ENJOIN A PRODUCER, MANUFACTURER, OR DISTRIBUTOR FROM DISTRIBUTING IN THE STATE A PRODUCT DESIGNATED AS "HONEY" IF THE PRODUCT DOES NOT CONFORM TO THE MARYLAND STANDARD OF IDENTITY FOR HONEY ESTABLISHED UNDER THIS SUBTITLE.

10–1907.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE RELATING TO THE EXERCISE OF THE DEPARTMENT'S ENFORCEMENT AUTHORITY, THE DEPARTMENT IS NOT REQUIRED TO ENFORCE THE REQUIREMENTS OF THIS SUBTITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 190

(Senate Bill 205)

AN ACT concerning

Garrett County – Correctional Officers' Bill of Rights

FOR the purpose of adding Garrett County to the provisions of law relating to the Cecil County and St. Mary's County Correctional Officers' Bill of Rights; and generally relating to the Correctional Officers' Bill of Rights.

BY repealing and reenacting, with amendments,
Article – Correctional Services
Section 11–1002
Annotated Code of Maryland
(2008 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Correctional Services

11–1002.

This subtitle applies only in Cecil County**, GARRETT COUNTY,** and St. Mary's County.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 191

(Senate Bill 208)

AN ACT concerning

Environment – Recycling – Apartment Buildings and Condominiums

FOR the purpose of requiring a county to address the collection and recycling of certain materials by certain property owners ~~or,~~ managers, and councils in a certain recycling plan; *requiring a county to address, in a certain recycling plan, a method for implementing a reporting requirement for certain recyclable materials under certain circumstances;* requiring certain owners ~~or,~~ managers, and councils of apartment buildings or condominiums that contain a certain number of dwelling units to provide for recycling for residents on or before a certain date; clarifying that certain provisions of this Act do not affect the authority of a county, municipality, or other local government to enact and enforce certain recycling requirements; clarifying that certain provisions of this Act do not require a county to manage or enforce certain recycling activities within the boundaries of a municipality; ~~requiring certain owners or, managers,~~

~~and councils to report annually to a county in accordance with certain requirements beginning on a certain date; requiring a county to determine the types of information that should be reported annually after consultation with certain property owners, managers, and councils;~~ *authorizing a county to require certain property owners, managers, and councils to report to the county on recycling activities;* requiring that the recycling required under this Act be done in accordance with certain recycling plans; providing for a civil penalty for a violation of this Act; providing for disbursement of penalties collected under this Act to certain jurisdictions; providing for a delayed effective date for a certain provision of this Act; clarifying that this Act does not preempt or prevail over certain other legislation; and generally relating to recycling ~~by owners or managers of~~ in certain apartment buildings and condominiums.

BY repealing and reenacting, without amendments,
Article – Environment
Section 9–1703(a)
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Environment
Section 9–1703(b)
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

BY adding to
Article – Environment
Section 9–1711
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Environment

9–1703.

(a) Each county shall submit a recycling plan to the Secretary for approval when the county submits its county plan to the Secretary in accordance with the provisions of § 9–505 of this title.

(b) In preparing the recycling plan as required in § 9–505 of this title, the county shall address:

(1) Methods to meet the solid waste stream reduction;

(2) The feasibility of source separation of the solid waste stream generated within the county;

(3) The recyclable materials to be separated;

(4) The strategy for the collection, processing, marketing, and disposition of recyclable materials, including the cost–effective use of recycling centers;

(5) Methods of financing the recycling efforts proposed by the county;

(6) Methods for the separate collection and composting of yard waste;

(7) The feasibility of a system for the composting of mixed solid wastes;

(8) The feasibility of a system for the collection and recycling of white goods;

(9) The separate collection of other recyclable materials;

(10) The strategy for the collection, processing, marketing, and disposition of recyclable materials from county public schools;

(11) The strategy for the collection and recycling of fluorescent and compact fluorescent lights that contain mercury; **[**and**]**

(12) ~~**THE COLLECTION AND RECYCLING OF RECYCLABLE MATERIALS FROM RESIDENTS BY PROPERTY OWNERS OR MANAGERS OF APARTMENT BUILDINGS AND CONDOMINIUMS THAT CONTAIN 10 OR MORE DWELLING UNITS; AND**~~ **THE COLLECTION AND RECYCLING OF RECYCLABLE MATERIALS FROM RESIDENTS OF APARTMENT BUILDINGS AND CONDOMINIUMS THAT CONTAIN 10 OR MORE DWELLING UNITS BY PROPERTY OWNERS OR MANAGERS OF APARTMENT BUILDINGS AND COUNCILS OF UNIT OWNERS OF CONDOMINIUMS;** ~~**AND**~~

(13) IF APPLICABLE, A METHOD FOR IMPLEMENTING A REPORTING REQUIREMENT FOR RECYCLABLE MATERIALS GENERATED AT APARTMENT BUILDINGS AND CONDOMINIUMS THAT CONTAIN 10 OR MORE DWELLING UNITS; AND

[(12)**]** ~~**(13)**~~ ***(14)*** Any other alternative methods of recycling that will attain or exceed the solid waste stream reduction goals determined by the county.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Environment

9–1711.

(A) (1) THIS SECTION APPLIES ONLY TO:

(I) ~~THE~~ A PROPERTY OWNER OR MANAGER OF AN APARTMENT BUILDING THAT CONTAINS 10 OR MORE DWELLING UNITS ~~OR A;~~ AND

(II) A COUNCIL OF UNIT OWNERS OF A CONDOMINIUM THAT CONTAINS 10 OR MORE DWELLING UNITS.

(2) THIS SECTION DOES NOT AFFECT THE AUTHORITY OF A COUNTY, MUNICIPALITY, OR OTHER LOCAL GOVERNMENT TO ENACT AND ENFORCE RECYCLING REQUIREMENTS, INCLUDING ESTABLISHING CIVIL PENALTIES, FOR AN APARTMENT BUILDING OR A CONDOMINIUM THAT ARE MORE STRINGENT THAN THE REQUIREMENTS OF THIS SECTION.

(3) THIS SECTION DOES NOT REQUIRE A COUNTY TO MANAGE OR ENFORCE THE RECYCLING ACTIVITIES OF AN APARTMENT BUILDING OR CONDOMINIUM THAT IS LOCATED WITHIN THE BOUNDARIES OF A MUNICIPALITY.

(B) (1) ON OR BEFORE OCTOBER 1, ~~2013~~ 2014, EACH PROPERTY OWNER OR MANAGER OF AN APARTMENT BUILDING OR A *COUNCIL OF UNIT OWNERS OF A* CONDOMINIUM SHALL PROVIDE FOR RECYCLING FOR THE RESIDENTS OF THE DWELLING UNITS, INCLUDING:

(I) THE COLLECTION OF RECYCLABLE MATERIALS FROM RESIDENTS OF THE DWELLING UNITS; AND

(II) THE REMOVAL FOR FURTHER RECYCLING OF RECYCLABLE MATERIALS COLLECTED FROM RESIDENTS OF THE DWELLING UNITS.

~~(2) (I) BEGINNING ON MARCH 1, 2014 2015, AND ON OR BEFORE MARCH 1 EACH YEAR THEREAFTER, EACH PROPERTY OWNER OR MANAGER OF AN APARTMENT BUILDING OR A COUNCIL OF UNIT OWNERS OF A CONDOMINIUM THAT PROVIDES FOR RECYCLING FOR THE RESIDENTS OF THE DWELLING UNITS IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION SHALL REPORT TO THE COUNTY IN WHICH THE APARTMENT BUILDING OR CONDOMINIUM IS LOCATED ON RECYCLING ACTIVITIES IN THE PRIOR CALENDAR YEAR.~~

~~(II) THE INFORMATION REPORTED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL INCLUDE:~~

~~1. THE TYPE AND TONNAGE OF RECYCLABLE MATERIALS COLLECTED AND RECYCLED FROM THE DWELLING UNITS;~~

~~2. THE TONNAGE OF WASTE DISPOSED FROM THE DWELLING UNITS; AND~~

~~3. THE CONTRACTOR'S NAME, CONTACT INFORMATION, AND RELEVANT LICENSE AND REGISTRATION INFORMATION~~ A COUNTY SHALL DETERMINE THE TYPES OF INFORMATION THAT SHOULD BE REPORTED ANNUALLY BY PROPERTY OWNERS OR MANAGERS OF APARTMENT BUILDINGS OR COUNCILS OF UNIT OWNERS OF CONDOMINIUMS, AFTER CONSULTATION WITH PROPERTY OWNERS OR MANAGERS OF APARTMENT BUILDINGS OR COUNCILS OF UNIT OWNERS OF CONDOMINIUMS IN THE COUNTY

(2) A COUNTY MAY REQUIRE A PROPERTY OWNER OR MANAGER OF AN APARTMENT BUILDING OR A COUNCIL OF UNIT OWNERS OF A CONDOMINIUM THAT PROVIDES FOR RECYCLING FOR THE RESIDENTS OF THE DWELLING UNITS IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION TO REPORT TO THE COUNTY ON RECYCLING ACTIVITIES IN A MANNER DETERMINED BY THE COUNTY.

(C) THE RECYCLING REQUIRED UNDER SUBSECTION (B) OF THIS SECTION SHALL BE CARRIED OUT IN ACCORDANCE WITH THE RECYCLING PLAN REQUIRED UNDER § 9–1703 OF THIS SUBTITLE FOR THE COUNTY IN WHICH THE APARTMENT BUILDING OR CONDOMINIUM THAT CONTAINS 10 OR MORE DWELLING UNITS IS LOCATED.

(D) A PERSON THAT VIOLATES ~~SUBSECTION~~ ~~SUBSECTIONS~~ *SUBSECTION* (B) ~~AND~~ *OR* (C) OF THIS SECTION IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING $50 FOR EACH DAY ON WHICH THE VIOLATION EXISTS.

(E) AN ENFORCEMENT UNIT, OFFICER, OR OFFICIAL OF A COUNTY, MUNICIPALITY, OR OTHER LOCAL GOVERNMENT MAY CONDUCT INSPECTIONS OF AN APARTMENT BUILDING OR CONDOMINIUM TO ENFORCE SUBSECTION (B) OF THIS SECTION.

(F) ANY PENALTIES COLLECTED UNDER SUBSECTION (D) OF THIS SECTION SHALL BE PAID TO THE COUNTY, MUNICIPALITY, OR OTHER LOCAL GOVERNMENT THAT BROUGHT THE ENFORCEMENT ACTION.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act may not be construed to preempt or prevail over any ordinance, resolution, law, or rule more stringent than this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect October 1, 2013.

SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section 4 of this Act, this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 192

(House Bill 1)

AN ACT concerning

Environment – Recycling – Apartment Buildings and Condominiums

FOR the purpose of requiring a county to address the collection and recycling of certain materials by certain property owners ~~or~~, managers, and councils in a certain recycling plan; requiring a county to address, in a certain recycling plan, a method for implementing a reporting requirement for certain recyclable materials under certain circumstances; requiring certain owners ~~or~~, managers, and councils of apartment buildings or condominiums that contain a certain number of dwelling units to provide for recycling for residents on or before a certain date; clarifying that certain provisions of this Act do not affect the authority of a county, municipality, or other local government to enact and enforce certain recycling requirements; clarifying that certain provisions of this Act do not require a county to manage or enforce certain recycling activities within the boundaries of a municipality; ~~requiring certain owners or managers to report annually to a county in accordance with certain requirements beginning on a certain date;~~ authorizing a county to require certain property owners, managers, and councils to report to the county on recycling activities; requiring that the recycling required under this Act be done in accordance with certain recycling plans; providing for a civil penalty for a violation of this Act; providing for disbursement of penalties collected under this Act to certain jurisdictions; providing for a delayed effective date for a certain provision of this Act; clarifying that this Act does not preempt or prevail over certain other legislation; and generally relating to recycling ~~by owners or managers of~~ in certain apartment buildings and condominiums.

BY repealing and reenacting, without amendments,
Article – Environment

Section 9–1703(a)
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Environment
Section 9–1703(b)
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

BY adding to
Article – Environment
Section 9–1711
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Environment

9–1703.

(a) Each county shall submit a recycling plan to the Secretary for approval when the county submits its county plan to the Secretary in accordance with the provisions of § 9–505 of this title.

(b) In preparing the recycling plan as required in § 9–505 of this title, the county shall address:

(1) Methods to meet the solid waste stream reduction;

(2) The feasibility of source separation of the solid waste stream generated within the county;

(3) The recyclable materials to be separated;

(4) The strategy for the collection, processing, marketing, and disposition of recyclable materials, including the cost–effective use of recycling centers;

(5) Methods of financing the recycling efforts proposed by the county;

(6) Methods for the separate collection and composting of yard waste;

(7) The feasibility of a system for the composting of mixed solid wastes;

(8) The feasibility of a system for the collection and recycling of white goods;

(9) The separate collection of other recyclable materials;

(10) The strategy for the collection, processing, marketing, and disposition of recyclable materials from county public schools;

(11) The strategy for the collection and recycling of fluorescent and compact fluorescent lights that contain mercury; **[**and**]**

(12) ~~THE COLLECTION AND RECYCLING OF RECYCLABLE MATERIALS FROM RESIDENTS BY PROPERTY OWNERS OR MANAGERS OF APARTMENT BUILDINGS AND CONDOMINIUMS THAT CONTAIN 10 OR MORE DWELLING UNITS; AND~~ THE COLLECTION AND RECYCLING OF RECYCLABLE MATERIALS FROM RESIDENTS OF APARTMENT BUILDINGS AND CONDOMINIUMS THAT CONTAIN 10 OR MORE DWELLING UNITS BY PROPERTY OWNERS OR MANAGERS OF APARTMENT BUILDINGS AND COUNCILS OF UNIT OWNERS OF CONDOMINIUMS;

(13) IF APPLICABLE, A METHOD FOR IMPLEMENTING A REPORTING REQUIREMENT FOR RECYCLABLE MATERIALS GENERATED AT APARTMENT BUILDINGS AND CONDOMINIUMS THAT CONTAIN 10 OR MORE DWELLING UNITS; AND

[(12)**]** **~~(13)~~ (14)** Any other alternative methods of recycling that will attain or exceed the solid waste stream reduction goals determined by the county.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Environment

9–1711.

(A) (1) THIS SECTION APPLIES ONLY TO ~~THE~~:

(I) A PROPERTY OWNER OR MANAGER OF AN APARTMENT BUILDING THAT CONTAINS 10 OR MORE DWELLING UNITS; ~~OR A~~ AND

(II) A COUNCIL OF UNIT OWNERS OF A CONDOMINIUM THAT CONTAINS 10 OR MORE DWELLING UNITS.

(2) THIS SECTION DOES NOT AFFECT THE AUTHORITY OF A COUNTY, MUNICIPALITY, OR OTHER LOCAL GOVERNMENT TO ENACT AND

ENFORCE RECYCLING REQUIREMENTS, INCLUDING ESTABLISHING CIVIL PENALTIES, FOR AN APARTMENT BUILDING OR A CONDOMINIUM THAT ARE MORE STRINGENT THAN THE REQUIREMENTS OF THIS SECTION.

(3) THIS SECTION DOES NOT REQUIRE A COUNTY TO MANAGE OR ENFORCE THE RECYCLING ACTIVITIES OF AN APARTMENT BUILDING OR CONDOMINIUM THAT IS LOCATED WITHIN THE BOUNDARIES OF A MUNICIPALITY.

(B) (1) ON OR BEFORE OCTOBER 1, ~~2013~~ 2014, EACH PROPERTY OWNER OR MANAGER OF AN APARTMENT BUILDING OR A COUNCIL OF UNIT OWNERS OF A CONDOMINIUM SHALL PROVIDE FOR RECYCLING FOR THE RESIDENTS OF THE DWELLING UNITS, INCLUDING:

(I) THE COLLECTION OF RECYCLABLE MATERIALS FROM RESIDENTS OF THE DWELLING UNITS; AND

(II) THE REMOVAL FOR FURTHER RECYCLING OF RECYCLABLE MATERIALS COLLECTED FROM RESIDENTS OF THE DWELLING UNITS.

~~**(2) (I) BEGINNING ON MARCH 1, 2014, AND ON OR BEFORE MARCH 1 EACH YEAR THEREAFTER, EACH PROPERTY OWNER OR MANAGER OF AN APARTMENT BUILDING OR A CONDOMINIUM THAT PROVIDES FOR RECYCLING FOR THE RESIDENTS OF THE DWELLING UNITS IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION SHALL REPORT TO THE COUNTY IN WHICH THE APARTMENT BUILDING OR CONDOMINIUM IS LOCATED ON RECYCLING ACTIVITIES IN THE PRIOR CALENDAR YEAR.**~~

~~**(II) THE INFORMATION REPORTED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL INCLUDE:**~~

~~**1. THE TYPE AND TONNAGE OF RECYCLABLE MATERIALS COLLECTED AND RECYCLED FROM THE DWELLING UNITS;**~~

~~**2. THE TONNAGE OF WASTE DISPOSED FROM THE DWELLING UNITS; AND**~~

~~**3. THE CONTRACTOR'S NAME, CONTACT INFORMATION, AND RELEVANT LICENSE AND REGISTRATION INFORMATION.**~~

(2) A COUNTY MAY REQUIRE A PROPERTY OWNER OR MANAGER OF AN APARTMENT BUILDING OR A COUNCIL OF UNIT OWNERS OF A CONDOMINIUM THAT PROVIDES FOR RECYCLING FOR THE RESIDENTS OF THE

DWELLING UNITS IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION TO REPORT TO THE COUNTY ON RECYCLING ACTIVITIES IN A MANNER DETERMINED BY THE COUNTY.

(C) THE RECYCLING REQUIRED UNDER SUBSECTION (B) OF THIS SECTION SHALL BE CARRIED OUT IN ACCORDANCE WITH THE RECYCLING PLAN REQUIRED UNDER § 9–1703 OF THIS SUBTITLE FOR THE COUNTY IN WHICH THE APARTMENT BUILDING OR CONDOMINIUM THAT CONTAINS 10 OR MORE DWELLING UNITS IS LOCATED.

(D) A PERSON THAT VIOLATES SUBSECTION (B) OR (C) OF THIS SECTION IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING $50 FOR EACH DAY ON WHICH THE VIOLATION EXISTS.

(E) AN ENFORCEMENT UNIT, OFFICER, OR OFFICIAL OF A COUNTY, MUNICIPALITY, OR OTHER LOCAL GOVERNMENT MAY CONDUCT INSPECTIONS OF AN APARTMENT BUILDING OR CONDOMINIUM TO ENFORCE SUBSECTION (B) OF THIS SECTION.

(F) ANY PENALTIES COLLECTED UNDER SUBSECTION (D) OF THIS SECTION SHALL BE PAID TO THE COUNTY, MUNICIPALITY, OR OTHER LOCAL GOVERNMENT THAT BROUGHT THE ENFORCEMENT ACTION.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act may not be construed to preempt or prevail over any ordinance, resolution, law, or rule more stringent than this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect October 1, 2013.

SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section 4 of this Act, this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 193

(Senate Bill 214)

AN ACT concerning

Criminal Law – Possession of Marijuana – De ~~Minimus~~ *Minimis* Quantity

FOR the purpose of establishing a reduced penalty for a person convicted of the use or possession of less than a certain quantity of marijuana; providing that, with a certain exception, the use or possession of less than a certain quantity of marijuana may not be considered a lesser included crime of any other crime; providing that a certain sentence imposed under this Act shall be stayed under certain circumstances without requiring an appeal bond; and generally relating to penalties for possession of marijuana.

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 5–601
Annotated Code of Maryland
(2002 Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Law

5–601.

(a) Except as otherwise provided in this title, a person may not:

(1) possess or administer to another a controlled dangerous substance, unless obtained directly or by prescription or order from an authorized provider acting in the course of professional practice; or

(2) obtain or attempt to obtain a controlled dangerous substance, or procure or attempt to procure the administration of a controlled dangerous substance by:

(i) fraud, deceit, misrepresentation, or subterfuge;

(ii) the counterfeiting or alteration of a prescription or a written order;

(iii) the concealment of a material fact;

(iv) the use of a false name or address;

(v) falsely assuming the title of or representing to be a manufacturer, distributor, or authorized provider; or

(vi) making, issuing, or presenting a false or counterfeit prescription or written order.

(b) Information that is communicated to a physician in an effort to obtain a controlled dangerous substance in violation of this section is not a privileged communication.

(c) (1) Except as provided in paragraphs (2) and (3) of this subsection, a person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 4 years or a fine not exceeding $25,000 or both.

(2) **(I)** A person whose violation of this section involves the use or possession of marijuana is subject to imprisonment not exceeding 1 year or a fine not exceeding $1,000 or both.

(II) 1. A PERSON CONVICTED OF THE USE OR POSSESSION OF LESS THAN ~~14~~ *10* GRAMS OF MARIJUANA IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

2. UNLESS SPECIFICALLY CHARGED BY THE STATE, THE USE OR POSSESSION OF LESS THAN ~~14~~ *10* GRAMS OF MARIJUANA UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH MAY NOT BE CONSIDERED A LESSER INCLUDED CRIME OF ANY OTHER CRIME.

3. IF A PERSON IS CONVICTED UNDER THIS SUBPARAGRAPH, THE COURT SHALL STAY ANY SENTENCE IMPOSED *THAT INCLUDES AN UNSERVED, NONSUSPENDED PERIOD OF IMPRISONMENT* WITHOUT REQUIRING AN APPEAL BOND:

A. UNTIL THE TIME FOR FILING AN APPEAL HAS EXPIRED; AND

B. IF AN APPEAL IS FILED, DURING THE PENDENCY OF THE APPEAL.

(3) (i) 1. In this paragraph the following words have the meanings indicated.

2. "Bona fide physician–patient relationship" means a relationship in which the physician has ongoing responsibility for the assessment, care, and treatment of a patient's medical condition.

3. "Debilitating medical condition" means a chronic or debilitating disease or medical condition or the treatment of a chronic or debilitating disease or medical condition that produces one or more of the following, as documented by a physician with whom the patient has a bona fide physician–patient relationship:

A. cachexia or wasting syndrome;

B. severe or chronic pain;

C. severe nausea;

D. seizures;

E. severe and persistent muscle spasms; or

F. any other condition that is severe and resistant to conventional medicine.

(ii) 1. In a prosecution for the use or possession of marijuana, the defendant may introduce and the court shall consider as a mitigating factor any evidence of medical necessity.

2. Notwithstanding paragraph (2) of this subsection, if the court finds that the person used or possessed marijuana because of medical necessity, on conviction of a violation of this section, the maximum penalty that the court may impose on the person is a fine not exceeding $100.

(iii) 1. In a prosecution for the use or possession of marijuana under this section, it is an affirmative defense that the defendant used or possessed marijuana because:

A. the defendant has a debilitating medical condition that has been diagnosed by a physician with whom the defendant has a bona fide physician–patient relationship;

B. the debilitating medical condition is severe and resistant to conventional medicine; and

C. marijuana is likely to provide the defendant with therapeutic or palliative relief from the debilitating medical condition.

2. The affirmative defense may not be used if the defendant was:

A. using marijuana in a public place; or

B. in possession of more than 1 ounce of marijuana.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 194

(House Bill 350)

AN ACT concerning

Criminal Law – Possession of Marijuana – De ~~Minimus~~ *Minimis* Quantity

FOR the purpose of establishing a reduced penalty for a person convicted of the use or possession of less than a certain quantity of marijuana; providing that, with a certain exception, the use or possession of less than a certain quantity of marijuana may not be considered a lesser included crime of any other crime; providing that a *certain* sentence imposed under this Act shall be stayed under certain circumstances without requiring an appeal bond; and generally relating to penalties for possession of marijuana.

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 5–601
Annotated Code of Maryland
(2002 Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Law

5–601.

(a) Except as otherwise provided in this title, a person may not:

(1) possess or administer to another a controlled dangerous substance, unless obtained directly or by prescription or order from an authorized provider acting in the course of professional practice; or

(2) obtain or attempt to obtain a controlled dangerous substance, or procure or attempt to procure the administration of a controlled dangerous substance by:

(i) fraud, deceit, misrepresentation, or subterfuge;

(ii) the counterfeiting or alteration of a prescription or a written order;

(iii) the concealment of a material fact;

(iv) the use of a false name or address;

(v) falsely assuming the title of or representing to be a manufacturer, distributor, or authorized provider; or

(vi) making, issuing, or presenting a false or counterfeit prescription or written order.

(b) Information that is communicated to a physician in an effort to obtain a controlled dangerous substance in violation of this section is not a privileged communication.

(c) (1) Except as provided in paragraphs (2) and (3) of this subsection, a person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 4 years or a fine not exceeding $25,000 or both.

(2) **(I)** A person whose violation of this section involves the use or possession of marijuana is subject to imprisonment not exceeding 1 year or a fine not exceeding $1,000 or both.

(II) 1. A PERSON CONVICTED OF THE USE OR POSSESSION OF LESS THAN ~~14~~ ~~7~~ *10* GRAMS OF MARIJUANA IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

2. UNLESS SPECIFICALLY CHARGED BY THE STATE, THE USE OR POSSESSION OF LESS THAN ~~14~~ ~~7~~ *10* GRAMS OF MARIJUANA UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH MAY NOT BE CONSIDERED A LESSER INCLUDED CRIME OF ANY OTHER CRIME.

3. IF A PERSON IS CONVICTED UNDER THIS SUBPARAGRAPH ~~AND FILES AN APPEAL, THE COURT SHALL STAY ANY SENTENCE IMPOSED THAT INCLUDES A PERIOD OF IMPRISONMENT DURING THE PENDENCY OF THE APPEAL WITHOUT REQUIRING AN APPEAL BOND~~, *THE COURT SHALL STAY ANY SENTENCE IMPOSED THAT INCLUDES AN UNSERVED, NONSUSPENDED PERIOD OF IMPRISONMENT WITHOUT REQUIRING AN APPEAL BOND:*

A. UNTIL THE TIME FOR FILING AN APPEAL HAS EXPIRED; AND

B. ***IF AN APPEAL IS FILED, DURING THE PENDENCY OF THE APPEAL.***

(3) (i) 1. In this paragraph the following words have the meanings indicated.

2. "Bona fide physician–patient relationship" means a relationship in which the physician has ongoing responsibility for the assessment, care, and treatment of a patient's medical condition.

3. "Debilitating medical condition" means a chronic or debilitating disease or medical condition or the treatment of a chronic or debilitating disease or medical condition that produces one or more of the following, as documented by a physician with whom the patient has a bona fide physician–patient relationship:

A. cachexia or wasting syndrome;

B. severe or chronic pain;

C. severe nausea;

D. seizures;

E. severe and persistent muscle spasms; or

F. any other condition that is severe and resistant to conventional medicine.

(ii) 1. In a prosecution for the use or possession of marijuana, the defendant may introduce and the court shall consider as a mitigating factor any evidence of medical necessity.

2. Notwithstanding paragraph (2) of this subsection, if the court finds that the person used or possessed marijuana because of medical necessity, on conviction of a violation of this section, the maximum penalty that the court may impose on the person is a fine not exceeding $100.

(iii) 1. In a prosecution for the use or possession of marijuana under this section, it is an affirmative defense that the defendant used or possessed marijuana because:

A. the defendant has a debilitating medical condition that has been diagnosed by a physician with whom the defendant has a bona fide physician–patient relationship;

B. the debilitating medical condition is severe and resistant to conventional medicine; and

C. marijuana is likely to provide the defendant with therapeutic or palliative relief from the debilitating medical condition.

2. The affirmative defense may not be used if the defendant was:

A. using marijuana in a public place; or

B. in possession of more than 1 ounce of marijuana.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 195

(Senate Bill 227)

AN ACT concerning

Maryland Health Care Commission – Assessment of Fees and Maryland Trauma Physician Services Fund – Revisions

FOR the purpose of repealing a certain requirement that the Maryland Insurance Commissioner notify the Maryland Health Care Commission of certain health insurance premiums on or before a certain date each year; altering the manner in which the Commission calculates certain fees assessed on certain payors; altering the maximum amount that may be expended from the Maryland Trauma Physician Services Fund for costs incurred in a fiscal year; and generally relating to the Maryland Health Care Commission.

BY repealing and reenacting, without amendments,
Article – Health – General
Section 19–111(a)(1), (2), (3), and (6) and 19–130(a)(1), (2), (5), and (6)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing
Article – Health – General
Section 19–111(g)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 19–111(h) through (j) and 19–130(e)(1)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General

19–111.

(a) (1) In this section the following words have the meanings indicated.

(2) "Fund" means the Maryland Health Care Commission Fund.

(3) "Health benefit plan" has the meaning stated in § 15–1201 of the Insurance Article.

(6) "Payor" means:

(i) A health insurer or nonprofit health service plan that holds a certificate of authority and provides health insurance policies or contracts in the State in accordance with this article or the Insurance Article; or

(ii) A health maintenance organization that holds a certificate of authority in the State.

[(g) On or before May 30 of each year, the Insurance Commissioner shall notify the Commission of the total premiums earned in the State for health benefit plans of all payors in the State during the prior calendar year and each payor's total premiums earned in the State for health benefit plans for the same calendar year.**]**

[(h)**] (G)** The Commission shall:

(1) (i) Assess fees on payors in a manner that apportions the total amount of the fees to be assessed on payors under subsection (d)(1) of this section among each payor based on the ratio of each payor's total premiums **[**earned**] WRITTEN** in the State for health benefit plans to the total **[**earned**] WRITTEN** premiums of all payors **[**earned**] WRITTEN** in the State; and

(ii) On or before June 30 of each year, assess each payor a fee in accordance with item (i) of this item;

(2) (i) Assess fees for each hospital equal to the sum of:

1. The amount equal to one–half of the total fees to be assessed on hospitals under subsection (d)(1) of this section times the ratio of admissions of the hospital to total admissions of all hospitals; and

2. The amount equal to one–half of the total fees to be assessed on hospitals under subsection (d)(1) of this section times the ratio of gross operating revenue of each hospital to total gross operating revenues of all hospitals;

(ii) Establish minimum and maximum assessments; and

(iii) On or before June 30 of each year, assess each hospital a fee in accordance with item (i) of this item; and

(3) (i) Assess fees for each nursing home equal to the sum of:

1. The amount equal to one–half of the total fees to be assessed on nursing homes under subsection (d)(1) of this section times the ratio of admissions of the nursing home to total admissions of all nursing homes; and

2. The amount equal to one–half of the total fees to be assessed on nursing homes under subsection (d)(1) of this section times the ratio of gross operating revenue of each nursing home to total gross operating revenues of all nursing homes;

(ii) Establish minimum and maximum assessments; and

(iii) On or before June 30 of each year, assess each nursing home a fee in accordance with item (i) of this item.

[(i)**] (H)** (1) On or before September 1 of each year, each payor, hospital, and nursing home assessed under this section shall make payment to the Commission.

(2) The Commission shall make provisions for partial payments.

[(j)**] (I)** Any bill not paid within 30 days of the payment due date may be subject to an interest penalty to be determined and collected by the Commission.

19–130.

(a) (1) In this section the following words have the meanings indicated.

(2) "Fund" means the Maryland Trauma Physician Services Fund.

(5) (i) "Trauma center" means a facility designated by the Maryland Institute for Emergency Medical Services Systems as:

1. The State primary adult resource center;

2. A Level I trauma center;

3. A Level II trauma center;

4. A Level III trauma center;

5. A pediatric trauma center; or

6. The Maryland Trauma Specialty Referral Centers.

(ii) "Trauma center" includes an out–of–state pediatric trauma center that has entered into an agreement with the Maryland Institute for Emergency Medical Services Systems.

(6) "Trauma physician" means a physician who provides care in a trauma center or in a rehabilitation hospital to trauma patients on the State trauma registry as defined by the Maryland Institute for Emergency Medical Services Systems.

(e) (1) Except as provided in paragraph (2) of this subsection and notwithstanding any other provision of law, expenditures from the Fund for costs incurred in any fiscal year may not exceed revenues of the Fund **[**in that fiscal year**]**.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 196

(Senate Bill 230)

AN ACT concerning

Insurance – Maryland Health Care Provider Rate Stabilization Fund

FOR the purpose of altering the time at which certain professional liability insurers seeking reimbursement from the Rate Stabilization Account of the Maryland Health Care Provider Rate Stabilization Fund on behalf of certain health care providers are required to make a certain determination, send a certain notice, and apply to the Rate Stabilization Account for reimbursement; repealing a requirement that money be disbursed from the Rate Stabilization Account on a quarterly basis; repealing ~~a~~ certain audit ~~requirement~~ requirements; requiring

the Secretary of Health and Mental Hygiene, instead of the Maryland Insurance Commissioner, ~~to include a certain audit in a certain annual report and~~ to report to a certain committee of the General Assembly on or before a certain date each year; altering the contents of a certain report; and generally relating to the Maryland Health Care Provider Rate Stabilization Fund.

BY repealing and reenacting, with amendments,
Article – Insurance
Section 19–805 and 19–808
Annotated Code of Maryland
(2011 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Insurance

19–805.

(a) (1) Participation in the Fund by a medical professional liability insurer shall be voluntary.

(2) **[**On at least an annual basis, a**]** **A** medical professional liability insurer seeking reimbursement from the Rate Stabilization Account shall:

(i) determine the amount of the subsidy for each policyholder; and

(ii) send a written notice to each policyholder stating:

1. the amount of the estimated annual subsidy provided by the State; and

2. the procedure a health care provider shall follow if electing not to receive a rate reduction, credit, or refund.

(b) Subject to § 19–804(d) of this subtitle and subsection (c) of this section, the subsidy provided to each policyholder shall be:

(1) for medical professional liability insurance policies subject to rates that were approved for an initial effective date on or after January 1, 2005, but prior to January 1, 2006, the amount of a premium increase that is greater than 5% of the approved rates in effect 1 year prior to the effective date of the policy; and

(2) for medical professional liability insurance policies subject to rates that were approved for an initial effective date on or after January 1, 2006, a percentage of the policyholder's premium for the prior year that equals the quotient,

measured as a percentage of the balance of the Rate Stabilization Account for the current calendar year divided by the aggregate amount of premiums for medical professional liability insurance that would have been paid by health care providers at the approved rate during the prior calendar year.

(c) The State subsidy calculated under subsection (b) of this section may not include the amount of a rate increase resulting from a premium surcharge or the loss of a discount due to a health care provider's loss experience.

(d) A health care provider may elect not to receive a rate reduction, credit, or refund by:

(1) notifying the medical professional liability insurer within 15 days of receiving the notice under subsection (a) of this section of the health care provider's intent not to accept a rate reduction, credit, or refund; and

(2) paying, either in full, or on an installment basis, the amount of premium billed by the medical professional liability insurer.

(e) (1) **[**On at least an annual basis, a**]** **A** medical professional liability insurer seeking reimbursement from the Rate Stabilization Account on behalf of health care providers shall apply to the Rate Stabilization Account **ON OR BEFORE SEPTEMBER 30, 2012,** on a form and in a manner approved by the Commissioner.

(2) The Commissioner may adopt regulations that specify the information that medical professional liability insurers shall submit to receive money from the Rate Stabilization Account.

(3) The information required shall include:

(i) by health care provider classification and geographic territory, the amount of the base premium rate charged by the insurer at the approved rate;

(ii) by health care provider classification and geographic territory, the amount of the base premium rate charged by the insurer reduced by the amount of the subsidy;

(iii) the number of health care providers in each classification and geographic territory;

(iv) the total amount of reimbursement requested from the Rate Stabilization Account;

(v) the name, classification, and geographic territory of each health care provider electing not to receive a rate reduction, credit, or refund; and

(vi) any other information the Commissioner considers necessary to disburse money from the Rate Stabilization Account.

(f) Within 60 days of receipt of a request for reimbursement from the Fund, the Commissioner shall disburse money from the Rate Stabilization Account **[**on a quarterly basis**]** to medical professional liability insurers to be used to provide a rate reduction, credit, or refund to health care providers.

(g) In anticipation of reimbursement or on reimbursement from the Rate Stabilization Account, a medical professional liability insurer shall provide a rate reduction, credit, or refund to a policyholder as follows:

(1) for premiums paid on an installment basis, the rate reduction or credit shall be applied against the base premium rate due on the next installment; and

(2) if the amount of the rate reduction or credit is more than the amount due on the next installment, or if a policy is paid in full, the policyholder may elect that either a refund be issued, or that a credit be applied against the base premium rate due on the policyholder's next renewal.

(h) During the period in which disbursements are made from the Rate Stabilization Account to pay for health care provider rate reductions, credits, or refunds:

(1) a disbursement from the Rate Stabilization Account to a medical professional liability insurer conducting business as a mutual company shall be reduced by the value of a dividend that may be issued by the insurer; and

(2) a disbursement may not be made from the Rate Stabilization Account to the Medical Mutual Liability Insurance Society of Maryland during any period for which the Commissioner has determined, under § 24–212 of this article, that the surplus of the Society is excessive.

[(i) The Commissioner or the Commissioner's designee shall conduct an annual audit to verify the information submitted by a medical professional liability insurer applying for reimbursement from the Rate Stabilization Account.**]**

19–808.

(a) ~~Each year the Office of Legislative Audits shall audit the receipts and disbursements of the Fund and the **[**Commissioner**]** **SECRETARY OF HEALTH AND MENTAL HYGIENE** shall include the audit as a part of the annual report required under subsection (c) of this section.~~

~~(b)~~ The Fund, the Rate Stabilization Account, and the Medical Assistance Program Account shall be used only for the purposes stated in this subtitle.

~~(c)~~ **(B)** On or before March 15 of each year, the **[**Commissioner**]** **SECRETARY OF HEALTH AND MENTAL HYGIENE** shall report to the Legislative Policy Committee, in accordance with § 2–1246 of the State Government Article, on:

[(1) for each year that an allocation is made to the Rate Stabilization Account:

(i) the amount of money applied for by medical professional liability insurers during the previous calendar year;

(ii) by classification and geographic territory, the amount of money disbursed to medical professional liability insurers on behalf of health care providers during the previous calendar year;

(iii) by classification and geographic territory, the number of health care providers electing not to receive a rate reduction, credit, or refund in the previous calendar year;

(iv) the costs incurred by the Commissioner in administering the Rate Stabilization Account during the previous calendar year, including a justification of the audit costs incurred under § 19–805(i) of this subtitle; and

(v) the amount of money available in the Rate Stabilization Account on the last day of the previous calendar year;

(2) the amount of money available in the Fund and the Medical Assistance Program Account on the last day of the previous calendar year;

(3) (i)**] (1)** the amount of money disbursed to the Maryland Medical Assistance Program under § 19–807 of this subtitle;

[(ii)**] (2)** the amount of increase in fee–for–service health care provider rates; and

[(iii)**] (3)** the amount of increase in capitation payments to managed care organizations**[**; and

(4) the report of audited receipts and disbursements of the Fund as required under subsection (a) of this section**]**.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 197

(Senate Bill 243)

AN ACT concerning

Baltimore City – Hotel Room Tax – Convention Center Promotion

FOR the purpose of extending to a certain date provisions requiring that for certain fiscal years certain amounts measured by proceeds from a hotel room tax imposed by Baltimore City be appropriated to a certain association for certain purposes; and generally relating to hotel room taxes and convention center marketing and tourism promotion in Baltimore City.

BY repealing and reenacting, with amendments,
The Charter of Baltimore City
Article II – General Powers
Section (40)(e)
(2007 Replacement Volume, as amended)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

The Charter of Baltimore City

Article II – General Powers

The Mayor and City Council of Baltimore shall have full power and authority to exercise all of the powers heretofore or hereafter granted to it by the Constitution of Maryland or by any Public General or Public Local Laws of the State of Maryland; and in particular, without limitation upon the foregoing, shall have power by ordinance, or such other method as may be provided for in its Charter, subject to the provisions of said Constitution and Public General Laws:

(40)

(e) (1) For each fiscal year beginning on or after July 1, 1997 but before **[**July 1, 2012,**]** **JULY 1, 2017,** the Mayor and City Council shall appropriate from its General Fund to **[**the Baltimore Area Convention and Visitors Association**]** **VISIT BALTIMORE** specifically for Convention Center marketing and tourism promotion an amount equal to at least 40% of the proceeds of any hotel room tax imposed.

(2) If the appropriation made for any fiscal year pursuant to paragraph (1) of this subsection is less than the amount required when compared to actual receipts for the completed fiscal year, the difference shall be added to the appropriation to be made for the second succeeding fiscal year. If the appropriation

made for any fiscal year pursuant to paragraph (1) of this subsection is more than the amount required when compared to actual receipts for the completed fiscal year, the difference may be deleted from the appropriation to be made for the second succeeding fiscal year.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 198

(Senate Bill 245)

AN ACT concerning

Juvenile Law – Disposition – Committed ~~Programs~~ *Facilities*

FOR the purpose of ~~repealing a provision authorizing the juvenile court to designate the type of facility where a certain child is to be accommodated~~ authorizing the Department of Juvenile Services to transfer a child committed for residential placement from a certain facility ~~or program~~ to another facility ~~or program~~ under certain circumstances; *specifying the type of facility to which a child may be transferred under this Act;* requiring the Department of Juvenile Services to notify certain individuals if a child's residential placement is changed; authorizing the juvenile court to conduct a certain hearing; *requiring the Department of Juvenile Services to report to the General Assembly on or before a certain date; providing for the termination of this Act;* and generally relating to juvenile law.

BY repealing and reenacting, without amendments,
Article – Courts and Judicial Proceedings
Section 3–8A–19(d)(1)(i) and (ii)
Annotated Code of Maryland
(2006 Replacement Volume and 2011 Supplement)

~~BY repealing and reenacting, with amendments,~~
~~Article – Courts and Judicial Proceedings~~
~~Section 3–8A–19(d)(1)(ii)~~
~~Annotated Code of Maryland~~
~~(2006 Replacement Volume and 2011 Supplement)~~

BY adding to
Article – Courts and Judicial Proceedings
Section 3–8A–19(l)

Annotated Code of Maryland
(2006 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

3–8A–19.

(d) (1) In making a disposition on a petition under this subtitle, the court may:

(i) Place the child on probation or under supervision in his own home or in the custody or under the guardianship of a relative or other fit person, upon terms the court deems appropriate, including community detention;

(ii) Subject to the provisions of paragraph (2) of this subsection, commit the child to the custody or under the guardianship of the Department of Juvenile Services, the Department of Health and Mental Hygiene, or a public or licensed private agency on terms that the court considers appropriate to meet the priorities set forth in § 3–8A–02 of this subtitle~~[~~, including designation of the type of facility where the child is to be accommodated,~~]~~ until custody or guardianship is terminated with approval of the court or as required under § 3–8A–24 of this subtitle;

(L) (1) ~~**IF THE CHILD'S RESIDENTIAL PLACEMENT IS CHANGED AT ANY TIME AFTER THE COMMITMENT OF THE CHILD TO THE DEPARTMENT OF JUVENILE SERVICES UNDER THIS SECTION, THE DEPARTMENT SHALL NOTIFY THE COURT, THE CHILD'S COUNSEL, AND THE CHILD'S PARENT OR GUARDIAN WITHIN 7 DAYS**~~ **WHEN NECESSARY TO APPROPRIATELY ADMINISTER THE COMMITMENT OF THE CHILD, THE DEPARTMENT OF JUVENILE SERVICES, *ON APPROVAL OF THE DIRECTOR OF BEHAVIORAL HEALTH,* MAY TRANSFER A CHILD COMMITTED FOR RESIDENTIAL PLACEMENT FROM ONE FACILITY ~~OR PROGRAM~~ TO ANOTHER FACILITY ~~OR PROGRAM~~ THAT IS OPERATED, LICENSED, OR CONTRACTED BY THE DEPARTMENT.**

(2) A FACILITY TO WHICH A CHILD IS TRANSFERRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE:

(I) CONSISTENT WITH THE TYPE OF FACILITY DESIGNATED BY THE COURT UNDER SUBSECTION (D)(1)(II) OF THIS SECTION; OR

(II) MORE SECURE THAN THE TYPE OF FACILITY DESIGNATED BY THE COURT UNDER SUBSECTION (D)(1)(II) OF THIS SECTION.

~~(2)~~ *(3)* **PRIOR TO TRANSFER, THE DEPARTMENT SHALL NOTIFY:**

(I) THE COURT;

(II) THE COUNSEL FOR THE CHILD;

(III) THE STATE'S ATTORNEY; AND

(IV) THE PARENT OR GUARDIAN OF THE CHILD.

~~(2)~~ ~~(3)~~ *(4)* **THE COURT MAY CONDUCT A HEARING AT ANY TIME FOR THE PURPOSE OF REVIEWING THE COMMITMENT ORDER AND THE TRANSFER OF A CHILD UNDER THIS SUBSECTION.**

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before January 1, 2014, the Department of Juvenile Services shall report to the General Assembly, in accordance with § 2–1246 of the State Government Article, on the implementation of this Act.

SECTION ~~2.~~ *3.* AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ *June* 1, 2012. *It shall remain effective for a period of 2 years and 1 month and, at the end of June 30, 2014, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.*

Approved by the Governor, May 2, 2012.

Chapter 199

(Senate Bill 246)

AN ACT concerning

Secondhand Precious Metal Object Dealers – Securing and Tagging Items – Requirements

FOR the purpose of authorizing a secondhand precious metal object dealer, during a certain holding period, to place certain items into a secure container under certain circumstances; requiring a dealer to tag certain items in a certain manner when the dealer places certain items in the dealer's inventory; and generally relating to requirements for securing and tagging items by a secondhand precious metal object dealer.

BY repealing and reenacting, with amendments,
Article – Business Regulation
Section 12–301
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Business Regulation

12–301.

(a) (1) Each dealer shall make a written record, on a form provided by the Secretary, of each business transaction that involves the acquisition of a secondhand precious metal object when the transaction is made.

(2) Each dealer shall retain the original copy of the written record required to be made under paragraph (1) of this subsection at the dealer's place of business.

(b) Each pawnbroker shall make a written record, on a form provided by the Secretary, of each business transaction that involves:

(1) lending money on pledge of personal property, other than a security or printed evidence of indebtedness; **[**or**]**

(2) buying personal property on condition of selling it back at a stipulated price; or

(3) buying the following items for the purpose of resale:

(i) binoculars;

(ii) cameras;

(iii) firearms;

(iv) furs;

(v) household appliances;

(vi) musical instruments;

(vii) office machines or equipment;

(viii) radios, televisions, videodisc machines, videocassette recorders, and stereo equipment;

(ix) personal computers, tapes, and disc recorders;

(x) watches;

(xi) bicycles; and

(xii) tangible personal property pledged as collateral.

(c) Each pawnbroker shall make a written record, on a form provided by the Secretary, of each transaction that involves the acquisition of an item described in subsection (b)(3) of this section for the purpose of resale.

(d) (1) A separate record entry shall be made for each item involved in a transaction.

(2) Items in a matching set may be recorded as a set if acquired in a single transaction.

(e) **DURING THE HOLDING PERIOD REQUIRED UNDER § 12–305 OF THIS SUBTITLE, A DEALER MAY PLACE ALL OF THE ITEMS ACQUIRED IN A SINGLE TRANSACTION IN A SECURE CONTAINER THAT HAS BEEN APPROVED BY THE PRIMARY LAW ENFORCEMENT UNIT, IF:**

(1) EACH ITEM IN THE TRANSACTION HAS A SEPARATE RECORD ENTRY IN THE WRITTEN RECORD REQUIRED UNDER THIS SECTION; AND

(2) THE SECURE CONTAINER IS TAGGED BY THE DEALER WITH THE NUMBER THAT CORRESPONDS TO THE TRANSACTION UNDER WHICH THE ITEMS WERE ACQUIRED AND THE WRITTEN RECORD LISTING THE ITEMS OBTAINED IN THE TRANSACTION.

(F) (1) **[**The**]** **WHEN A DEALER PLACES ITEMS INTO THEIR INVENTORY, THE** dealer shall tag each item individually with a number that corresponds to the transaction under which it was acquired. However, items acquired in a matching set may be tagged as a set.

(2) Each item tagged by a dealer under paragraph (1) of this subsection shall remain tagged for the entire period the item is stored in the dealer's inventory.

[(f)**] (G)** For the purposes of this subtitle, there is a presumption that an object is a precious metal object if:

(1) it reasonably appears to be a precious metal object; and

(2) it was received by a dealer in the course of business or is found in the place of business or storage facility of a dealer.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 200

(House Bill 206)

AN ACT concerning

Secondhand Precious Metal Object Dealers – Securing and Tagging Items – Requirements

FOR the purpose of authorizing a secondhand precious metal object dealer, during a certain holding period, to place certain items into a secure container under certain circumstances; requiring a dealer to tag certain items in a certain manner when the dealer places certain items in the dealer's inventory; and generally relating to requirements for securing and tagging items by a secondhand precious metal object dealer.

BY repealing and reenacting, with amendments,
Article – Business Regulation
Section 12–301
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Business Regulation

12–301.

(a) (1) Each dealer shall make a written record, on a form provided by the Secretary, of each business transaction that involves the acquisition of a secondhand precious metal object when the transaction is made.

(2) Each dealer shall retain the original copy of the written record required to be made under paragraph (1) of this subsection at the dealer's place of business.

(b) Each pawnbroker shall make a written record, on a form provided by the Secretary, of each business transaction that involves:

(1) lending money on pledge of personal property, other than a security or printed evidence of indebtedness; **[**or**]**

(2) buying personal property on condition of selling it back at a stipulated price; or

(3) buying the following items for the purpose of resale:

(i) binoculars;

(ii) cameras;

(iii) firearms;

(iv) furs;

(v) household appliances;

(vi) musical instruments;

(vii) office machines or equipment;

(viii) radios, televisions, videodisc machines, videocassette recorders, and stereo equipment;

(ix) personal computers, tapes, and disc recorders;

(x) watches;

(xi) bicycles; and

(xii) tangible personal property pledged as collateral.

(c) Each pawnbroker shall make a written record, on a form provided by the Secretary, of each transaction that involves the acquisition of an item described in subsection (b)(3) of this section for the purpose of resale.

(d) (1) A separate record entry shall be made for each item involved in a transaction.

(2) Items in a matching set may be recorded as a set if acquired in a single transaction.

(e) **DURING THE HOLDING PERIOD REQUIRED UNDER § 12–305 OF THIS SUBTITLE, A DEALER MAY PLACE ALL OF THE ITEMS ACQUIRED IN A SINGLE TRANSACTION IN A SECURE CONTAINER THAT HAS BEEN APPROVED BY THE PRIMARY LAW ENFORCEMENT UNIT, IF:**

(1) EACH ITEM IN THE TRANSACTION HAS A SEPARATE RECORD ENTRY IN THE WRITTEN RECORD REQUIRED UNDER THIS SECTION; AND

(2) THE SECURE CONTAINER IS TAGGED BY THE DEALER WITH THE NUMBER THAT CORRESPONDS TO THE TRANSACTION UNDER WHICH THE ITEMS WERE ACQUIRED AND THE WRITTEN RECORD LISTING THE ITEMS OBTAINED IN THE TRANSACTION.

(F) (1) **[**The**]** **WHEN A DEALER PLACES ITEMS INTO THEIR INVENTORY, THE** dealer shall tag each item individually with a number that corresponds to the transaction under which it was acquired. However, items acquired in a matching set may be tagged as a set.

(2) Each item tagged by a dealer under paragraph (1) of this subsection shall remain tagged for the entire period the item is stored in the dealer's inventory.

[(f)**] (G)** For the purposes of this subtitle, there is a presumption that an object is a precious metal object if:

(1) it reasonably appears to be a precious metal object; and

(2) it was received by a dealer in the course of business or is found in the place of business or storage facility of a dealer.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 201

(Senate Bill 253)

AN ACT concerning

State Government – Administrative Procedure Act – ~~Proposed~~ Regulations

FOR the purpose of ~~altering a certain period of time after which a unit in the Executive Branch of State government may adopt a proposed regulation; altering a certain period of time within which the Joint Committee on Administrative, Executive, and Legislative Review may make a certain determination and delay the adoption of a regulation in a certain manner; altering a certain period of time that provides the Committee with a further period of review of a proposed regulation under certain circumstances; altering a certain period of time for public comment on a proposed regulation;~~ requiring a unit to publish the text of a proposed regulation on the unit's Web site no later than a certain number of business days after the date that the regulation is published in the Maryland Register; requiring a unit that submits a ~~proposed~~ regulation to the Committee for approval of emergency adoption to publish the text of the ~~proposed~~ regulation on the unit's Web site no later than a certain number of business days after the date that the regulation is submitted to the Committee for approval of emergency adoption; requiring a unit to publish a ~~proposed~~ regulation on its Web site in a certain manner; ~~requiring a unit to develop and implement a mechanism for a person to receive certain electronic alerts under certain circumstances;~~ providing that the failure of a unit to comply with certain provisions of law may not invalidate or affect the adoption of certain regulations; requiring the Division of State Documents to report certain compliance to the General Assembly on or before a certain date; and generally relating to proposed regulations under the Administrative Procedure Act.

BY repealing and reenacting, without amendments,
Article – State Government
Section 10–101(a), (b), (c), (f), (g), and (i), 10–109, and 10–112
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

~~BY repealing and reenacting, with amendments,~~
~~Article – State Government~~
~~Section 10–111(a) and (b)(1)~~
~~Annotated Code of Maryland~~
~~(2009 Replacement Volume and 2011 Supplement)~~

BY adding to
Article – State Government
Section 10–112.1
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – State Government

10–101.

(a) In this subtitle the following words have the meanings indicated.

(b) "Administrator" means the Administrator of the Division of State Documents.

(c) "Committee" means the Joint Committee on Administrative, Executive, and Legislative Review.

(f) "Register" means the Maryland Register.

(g) (1) "Regulation" means a statement or an amendment or repeal of a statement that:

(i) has general application;

(ii) has future effect;

(iii) is adopted by a unit to:

1. detail or carry out a law that the unit administers;

2. govern organization of the unit;

3. govern the procedure of the unit; or

4. govern practice before the unit; and

(iv) is in any form, including:

1. a guideline;

2. a rule;

3. a standard;

4. a statement of interpretation; or

5. a statement of policy.

(2) "Regulation" does not include:

(i) a statement that:

1. concerns only internal management of the unit; and

2. does not affect directly the rights of the public or the procedures available to the public;

(ii) a response of the unit to a petition for adoption of a regulation, under § 10–123 of this subtitle; or

(iii) a declaratory ruling of the unit as to a regulation, order, or statute, under Subtitle 3 of this title.

(3) "Regulation", as used in §§ 10–110 and 10–111.1 of this subtitle, means all or any portion of a regulation.

(i) "Unit" means an officer or unit authorized by law to adopt regulations.

10–109.

This Part III of this subtitle applies only to a unit in the Executive Branch of the State government.

~~10–111.~~

~~(a) (1) Except as provided in subsection (b) of this section, a unit may not adopt a proposed regulation until:~~

~~(i) after submission of the proposed regulation to the Committee for preliminary review under § 10–110 of this subtitle; and~~

~~(ii) at least [45] 55 days after its first publication in the Register.~~

~~(2) (i) If the Committee determines that an appropriate review cannot reasonably be conducted within [45] 55 days and that an additional period of review is required, it may delay the adoption of the regulation by so notifying the promulgating unit and the Division of State Documents, in writing, prior to the expiration of the [45–day] 55–DAY period.~~

~~(ii) If notice is provided to the promulgating unit pursuant to subparagraph (i) of this paragraph, the promulgating unit may not adopt the regulation until it notifies the Committee, in writing, of its intention to adopt the regulation and provides the Committee with a further period of review of the regulation that terminates not earlier than the later of the following:~~

~~1. the 30th day following the notice provided by the promulgating unit under this subparagraph; or~~

~~2. the [105th] 115TH day following the initial publication of the regulation in the Register.~~

~~(3) The promulgating unit shall permit public comment for at least [30] 40 days of the [45–day] 55–DAY period under paragraph (1)(ii) of this subsection.~~

~~(b) (1) The unit may adopt a proposed regulation immediately if the unit:~~

~~(i) declares that the emergency adoption is necessary;~~

~~(II) PUBLISHES THE PROPOSED REGULATION ON ITS WEB SITE IN ACCORDANCE WITH § 10–112.1 OF THIS SUBTITLE;~~

~~[(ii)] (III) submits the proposed regulation to the Committee and the Department of Legislative Services, together with the fiscal impact statement required under subsection (e) of this section; and~~

~~[(iii)] (IV) has the approval of the Committee for the emergency adoption.~~

10–112.

(a) (1) This subsection does not apply to the emergency adoption of a regulation.

(2) To have a proposed regulation published in the Register, a unit shall submit to the Administrator:

(i) the proposed regulation; and

(ii) a notice of the proposed adoption.

(3) The notice under this subsection shall:

(i) state the estimated economic impact of the proposed regulation on:

1. the revenues and expenditures of units of the State government and of local government units; and

2. groups such as consumer, industry, taxpayer, or trade groups;

(ii) include a statement of purpose;

(iii) satisfy the requirements of § 2–1505.2 of this article;

(iv) comply with § 7–113(c) of the Human Services Article; and

(v) give persons an opportunity to comment before adoption of the proposed regulation, by:

1. setting a date, time, and place for a public hearing at which oral or written views and information may be submitted; or

2. giving a telephone number that a person may call to comment and an address to which a person may send comments.

(4) (i) The estimated economic impact statement required under paragraph (3)(i) of this subsection shall state whether the proposed regulation imposes a mandate on a local government unit.

(ii) If the proposed regulation imposes a mandate, the fiscal impact statement shall:

1. indicate whether the regulation is required to comply with a federal statutory or regulatory mandate; and

2. include, in addition to the estimate under paragraph (3)(i)1 of this subsection, the estimated effect on local property tax rates, if applicable, and if the required data is available.

(b) As soon as the Committee approves emergency adoption of a regulation, the Committee shall submit the regulation to the Administrator.

(c) If a regulation under this section amends or repeals an adopted regulation, the text of the regulation under this section shall show the changes with the symbols that the Administrator requires.

10–112.1.

(A) WHENEVER A UNIT PUBLISHES A PROPOSED REGULATION IN THE REGISTER IN ACCORDANCE WITH § 10–112 OF THIS SUBTITLE, THE UNIT SHALL PUBLISH THE TEXT OF THE PROPOSED REGULATION ON THE UNIT'S WEB SITE NOT LATER THAN 3 BUSINESS DAYS AFTER THE DATE THAT THE PROPOSED REGULATION IS PUBLISHED IN THE REGISTER.

(B) WHENEVER A UNIT SUBMITS A ~~PROPOSED~~ REGULATION TO THE COMMITTEE FOR APPROVAL ~~OF~~ AS AN EMERGENCY ADOPTION IN ACCORDANCE WITH § 10–111(B) OF THIS SUBTITLE, THE UNIT SHALL PUBLISH THE TEXT OF THE ~~PROPOSED~~ REGULATION ON THE UNIT'S WEB SITE NOT LATER THAN 3

BUSINESS DAYS AFTER THE DATE THAT THE ~~PROPOSED~~ REGULATION IS SUBMITTED TO THE COMMITTEE FOR APPROVAL OF EMERGENCY ADOPTION.

(C) TO COMPLY WITH THE PUBLICATION REQUIREMENT OF THIS SECTION, A UNIT SHALL:

(1) PUBLISH THE TEXT OF THE ~~PROPOSED~~ REGULATION ON THE UNIT'S HOME PAGE ON ITS WEB SITE; OR

(2) PROVIDE A LINK ON THE UNIT'S HOME PAGE TO THE TEXT OF THE ~~PROPOSED~~ REGULATION IF THE TEXT OF THE REGULATION IS AVAILABLE ELSEWHERE ON THE UNIT'S WEB SITE.

~~(D) A UNIT SHALL DEVELOP AND IMPLEMENT A MECHANISM BY WHICH A PERSON MAY RECEIVE AN ELECTRONIC ALERT WHEN A REGULATION IS PUBLISHED ON THE UNIT'S WEB SITE UNDER THIS SECTION.~~

~~(E)~~ *(D)* THE FAILURE OF A UNIT TO PUBLISH THE TEXT OF A REGULATION IN A TIMELY MANNER UNDER THIS SECTION MAY NOT INVALIDATE OR OTHERWISE AFFECT THE ADOPTION OF THE REGULATION.

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1, 2012, the Division of State Documents shall report to the General Assembly, in accordance with § 2–1246 of the State Government Article, regarding the compliance of the units in the Executive Branch of the State government with the requirements of this Act.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ June 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 202

(Senate Bill 258)

AN ACT concerning

Credit Regulation – Installment Loans Secured by Motor Vehicle Lien – Balloon Payments

FOR the purpose of altering the circumstances under which a credit grantor is authorized to require a consumer borrower to pay a balloon payment at maturity of an installment loan secured by a lien on a motor vehicle; limiting

the authority to liens on certain motor vehicles and installment loans in excess of certain amounts; and generally relating to installment loans secured by a lien on a motor vehicle.

BY repealing and reenacting, with amendments,
Article – Commercial Law
Section 12–1003
Annotated Code of Maryland
(2005 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Commercial Law

12–1003.

(a) A credit grantor may charge and collect interest on a loan at any daily, weekly, monthly, annual, or other periodic percentage rate as the agreement, the note, or other evidence of the loan provides if the effective rate of simple interest is not in excess of 24 percent per year. The rate of interest chargeable on a loan must be expressed in the agreement as a simple interest rate or rates.

(b) (1) Interest may be calculated by way of simple interest or by any other method as the agreement, note, or other evidence of the loan provides. If the interest is precomputed, it may be calculated on the assumption that all scheduled payments will be made when due.

(2) For purposes of this section, a year may be any period of from 360 to 366 days, including or disregarding the effect of leap year, as the credit grantor may determine.

(c) (1) (i) Except as provided in paragraph (2) of this subsection, if an installment loan under this subtitle made to a consumer borrower is secured by collateral other than a lien on residential real property, the credit grantor may not require a schedule of repayment under which a consumer borrower may be required to pay a balloon payment at maturity.

(ii) If an installment loan under this subtitle made to a consumer borrower is secured by a secondary lien on residential real property, the credit grantor may require a schedule of repayment providing for a balloon payment at maturity. On request, the consumer borrower is permitted to postpone payment of the balloon payment once for a period not to exceed 6 months. The borrower must continue to make installment payments in the amount required prior to maturity during the extension period. The credit grantor may not impose any charges or fees as a result of allowing an extension period.

(2) **(I) 1. IN THIS PARAGRAPH THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

2. "MOTORCYCLE" HAS THE MEANING STATED IN § 11–136 OF THE TRANSPORTATION ARTICLE.

3. "PASSENGER CAR" HAS THE MEANING STATED IN § 11–144.1 OF THE TRANSPORTATION ARTICLE.

(II) A credit grantor may require a schedule of repayment under which a consumer borrower may be required to pay a balloon payment at maturity if:

[(i) The amount of the installment loan exceeds $30,000; and

(ii)**]** **1.** The installment loan is secured by a lien on a motor vehicle **THAT IS A MOTORCYCLE OR PASSENGER CAR; AND**

2. THE AMOUNT OF THE INSTALLMENT LOAN EXCEEDS:

A. $10,000, IF THE MOTOR VEHICLE IS A MOTORCYCLE; AND

B. $30,000, IF THE MOTOR VEHICLE IS A PASSENGER CAR.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ *June* 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 203

(House Bill 730)

AN ACT concerning

Credit Regulation – Installment Loans Secured by Motor Vehicle Lien – Balloon Payments

FOR the purpose of altering the circumstances under which a credit grantor is authorized to require a consumer borrower to pay a balloon payment at maturity of an installment loan secured by a lien on a motor vehicle; limiting the authority to liens on certain motor vehicles and installment loans in excess

of certain amounts; and generally relating to installment loans secured by a lien on a motor vehicle.

BY repealing and reenacting, with amendments,
Article – Commercial Law
Section 12–1003
Annotated Code of Maryland
(2005 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Commercial Law

12–1003.

(a) A credit grantor may charge and collect interest on a loan at any daily, weekly, monthly, annual, or other periodic percentage rate as the agreement, the note, or other evidence of the loan provides if the effective rate of simple interest is not in excess of 24 percent per year. The rate of interest chargeable on a loan must be expressed in the agreement as a simple interest rate or rates.

(b) (1) Interest may be calculated by way of simple interest or by any other method as the agreement, note, or other evidence of the loan provides. If the interest is precomputed, it may be calculated on the assumption that all scheduled payments will be made when due.

(2) For purposes of this section, a year may be any period of from 360 to 366 days, including or disregarding the effect of leap year, as the credit grantor may determine.

(c) (1) (i) Except as provided in paragraph (2) of this subsection, if an installment loan under this subtitle made to a consumer borrower is secured by collateral other than a lien on residential real property, the credit grantor may not require a schedule of repayment under which a consumer borrower may be required to pay a balloon payment at maturity.

(ii) If an installment loan under this subtitle made to a consumer borrower is secured by a secondary lien on residential real property, the credit grantor may require a schedule of repayment providing for a balloon payment at maturity. On request, the consumer borrower is permitted to postpone payment of the balloon payment once for a period not to exceed 6 months. The borrower must continue to make installment payments in the amount required prior to maturity during the extension period. The credit grantor may not impose any charges or fees as a result of allowing an extension period.

(2) **(I) 1. IN THIS PARAGRAPH THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

2. "MOTORCYCLE" HAS THE MEANING STATED IN § 11–136 OF THE TRANSPORTATION ARTICLE.

3. "PASSENGER CAR" HAS THE MEANING STATED IN § 11–144.1 OF THE TRANSPORTATION ARTICLE.

(II) A credit grantor may require a schedule of repayment under which a consumer borrower may be required to pay a balloon payment at maturity if:

[(i) The amount of the installment loan exceeds $30,000; and

(ii)**]** **1.** The installment loan is secured by a lien on a motor vehicle **THAT IS A MOTORCYCLE OR PASSENGER CAR; AND**

2. THE AMOUNT OF THE INSTALLMENT LOAN EXCEEDS:

A. $10,000, IF THE MOTOR VEHICLE IS A MOTORCYCLE; AND

B. $30,000, IF THE MOTOR VEHICLE IS A PASSENGER CAR.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ June 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 204

(Senate Bill 262)

AN ACT concerning

Health Occupations – Psychologists – Penalties for Misrepresentation and Practicing Without a License

FOR the purpose of altering certain penalties for a violation of certain provisions of law governing the practice of psychology; authorizing the State Board of Examiners of Psychologists to assess a civil fine of not more than a certain amount in accordance with certain regulations against a person who violates

certain provisions of law prohibiting the practice, attempt to practice, or offer to practice psychology without a license; requiring the Board to pay certain penalties into a certain fund; and generally relating to the practice of psychology in the State.

BY repealing and reenacting, without amendments,
Article – Health Occupations
Section 18–401 and 18–402
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 18–404
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health Occupations

18–401.

(a) Except as otherwise provided in this title, a person may not practice, attempt to practice, or offer to practice psychology in this State unless licensed by the Board.

(b) Each violation of this section is a separate offense.

18–402.

(a) Unless authorized to practice psychology under this title, a person may not represent to the public by title, by description of services, methods, or procedures, or otherwise, that the person is authorized to practice psychology in this State.

(b) Unless authorized or permitted to do so by this title, a person may not use as a title or describe the services the person provides by use of the words "psychological", "psychologist", or "psychology".

18–404.

(A) A person who violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding **[**$500**] $10,000** or imprisonment in jail not exceeding **[**6 months**] 1 YEAR** or both.

(B) (1) A PERSON WHO VIOLATES § 18–401 OF THIS SUBTITLE IS SUBJECT TO A CIVIL FINE OF NOT MORE THAN $50,000 TO BE ASSESSED BY THE BOARD IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE BOARD.

(2) THE BOARD SHALL PAY ANY PENALTY COLLECTED UNDER THIS SUBSECTION INTO THE STATE BOARD OF EXAMINERS FOR PSYCHOLOGISTS FUND.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 205

(House Bill 276)

AN ACT concerning

Health Occupations – Psychologists – Penalties for Misrepresentation and Practicing Without a License

FOR the purpose of altering certain penalties for a violation of certain provisions of law governing the practice of psychology; authorizing the State Board of Examiners of Psychologists to assess a civil fine of not more than a certain amount in accordance with certain regulations against a person who violates certain provisions of law prohibiting the practice, attempt to practice, or offer to practice psychology without a license; requiring the Board to pay certain penalties into a certain fund; and generally relating to the practice of psychology in the State.

BY repealing and reenacting, without amendments,
Article – Health Occupations
Section 18–401 and 18–402
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 18–404
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health Occupations

18–401.

(a) Except as otherwise provided in this title, a person may not practice, attempt to practice, or offer to practice psychology in this State unless licensed by the Board.

(b) Each violation of this section is a separate offense.

18–402.

(a) Unless authorized to practice psychology under this title, a person may not represent to the public by title, by description of services, methods, or procedures, or otherwise, that the person is authorized to practice psychology in this State.

(b) Unless authorized or permitted to do so by this title, a person may not use as a title or describe the services the person provides by use of the words "psychological", "psychologist", or "psychology".

18–404.

(A) A person who violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding **[**$500**]** **$10,000** or imprisonment in jail not exceeding **[**6 months**]** **1 YEAR** or both.

(B) (1) A PERSON WHO VIOLATES § 18–401 OF THIS SUBTITLE IS SUBJECT TO A CIVIL FINE OF NOT MORE THAN $50,000 TO BE ASSESSED BY THE BOARD IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE BOARD.

(2) THE BOARD SHALL PAY ANY PENALTY COLLECTED UNDER THIS SUBSECTION INTO THE STATE BOARD OF EXAMINERS FOR PSYCHOLOGISTS FUND.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 206

(Senate Bill 272)

AN ACT concerning

Labor and Employment – Workplace Fraud Act – Revisions

FOR the purpose of ~~repealing a certain presumption that certain work performed by an individual creates an employer–employee relationship except under certain circumstances; defining the term "independent contractor" as used in the Workplace Fraud Act; making conforming changes;~~ establishing an exception for an employer that produces certain documents for inspection to the presumption that an employer–employee relationship exists for purposes of the Workplace Fraud Act; authorizing an employer to comply with a certain requirement to provide records by producing copies of the records; altering the number of days within which an employer is required to produce certain records; requiring the Commissioner to take certain action regarding an alleged violation of the Workplace Fraud Act within a certain time after the Commissioner receives certain records from an employer; providing that an employer is entitled to a certain hearing within a certain number of days after the hearing is requested unless the right is waived; altering a certain provision of law regarding the issuance of citations by the Commissioner for violations of the Workplace Fraud Act; and generally relating to the Workplace Fraud Act.

~~BY renumbering~~
~~Article – Labor and Employment~~
~~Section 3–901(e) through (h), respectively~~
~~to be Section 3–901(f) through (i), respectively~~
~~Annotated Code of Maryland~~
~~(2008 Replacement Volume and 2011 Supplement)~~

~~BY adding to~~
~~Article – Labor and Employment~~
~~Section 3–901(e)~~
~~Annotated Code of Maryland~~
~~(2008 Replacement Volume and 2011 Supplement)~~

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section ~~3–903 and 3–904~~ 3–903, 3–905(d) and (e), 3–906, and 3–913
Annotated Code of Maryland
(2008 Replacement Volume and 2011 Supplement)

BY adding to
Article – Labor and Employment
Section 3–903.1

Annotated Code of Maryland
(2008 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, without amendments,
Article – Labor and Employment
Section 3–905(c)
Annotated Code of Maryland
(2008 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That ~~Section(s) 3–901(e) through (h), respectively, of Article – Labor and Employment of the Annotated Code of Maryland be renumbered to be Section(s) 3–901(f) through (i), respectively.~~ the Laws of Maryland read as follows:

~~SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:~~

Article – Labor and Employment

~~3–901.~~

~~**(E) "INDEPENDENT CONTRACTOR" MEANS AN INDIVIDUAL WHO IS NOT AN EMPLOYEE FOR PURPOSES OF THE FEDERAL INSURANCE CONTRIBUTIONS ACT AND THE FEDERAL UNEMPLOYMENT TAX ACT, BASED ON APPLICATION OF THE 20 FACTORS SET FORTH IN THE INTERNAL REVENUE SERVICE REVENUE RULING 87–41, ISSUED UNDER 26 C.F.R. 31.3306(I)–1 AND 26 C.F.R. 31.3121(D)–1.**~~

3–903.

(a) An employer may not fail to properly classify an individual who performs work for remuneration paid by the employer.

(b) An employer has failed to properly classify an individual when an employer–employee relationship exists ~~[~~as determined under subsection (c) of this section~~]~~ but the employer has not classified the individual as an employee.

(c) ~~[~~(1) ~~For~~ **EXCEPT AS PROVIDED IN § 3–903.1 OF THIS SUBTITLE, FOR** purposes of enforcement of this subtitle only, work performed by an individual for remuneration paid by an employer shall be presumed to create an employer–employee relationship, unless:

(i) the individual is an exempt person; or

(ii) an employer demonstrates that:

1. the individual who performs the work is free from control and direction over its performance both in fact and under the contract;

2. the individual customarily is engaged in an independent business or occupation of the same nature as that involved in the work; and

3. the work is:

A. outside of the usual course of business of the person for whom the work is performed; or

B. performed outside of any place of business of the person for whom the work is performed.

(2) Work is outside of the usual course of business of the person for whom it is performed under paragraph (1) of this subsection if:

(i) the individual performs the work off the employer's premises;

(ii) the individual performs work that is not integrated into the employer's operation; or

(iii) the work performed is unrelated to the employer's business.

(3)~~]~~ By contract, an employer may engage another business entity, which may have its own employees, to do the same type of work in which the employer engages, at the same location where the employer is working, without establishing an employer–employee relationship between the two contracting entities.

(d) The Commissioner shall adopt regulations to explain further and provide specific examples of the application of subsection (c) of this section.

3–903.1.

THE PRESUMPTION THAT AN EMPLOYER–EMPLOYEE RELATIONSHIP EXISTS UNDER § 3–903(C)(1) OF THIS SUBTITLE DOES NOT APPLY IF:

(1) AN EMPLOYER PRODUCES FOR INSPECTION BY THE COMMISSIONER:

(I) A WRITTEN CONTRACT, SIGNED BY THE EMPLOYER AND BUSINESS ENTITY, THAT:

1. DESCRIBES THE NATURE OF THE WORK TO BE PERFORMED BY THE BUSINESS ENTITY;

2. DESCRIBES THE REMUNERATION TO BE PAID FOR THE WORK PERFORMED BY THE BUSINESS ENTITY; AND

3. INCLUDES AN ACKNOWLEDGEMENT BY THE BUSINESS ENTITY OF THE BUSINESS ENTITY'S OBLIGATIONS UNDER THIS ARTICLE TO:

A. WITHHOLD, REPORT, AND REMIT PAYROLL TAXES ON BEHALF OF ALL EMPLOYEES WORKING FOR THE BUSINESS ENTITY;

B. PAY UNEMPLOYMENT INSURANCE TAXES FOR ALL EMPLOYEES WORKING FOR THE BUSINESS ENTITY; AND

C. MAINTAIN WORKERS' COMPENSATION INSURANCE;

(II) AN AFFIDAVIT SIGNED BY THE BUSINESS ENTITY INDICATING THAT THE BUSINESS ENTITY IS AN INDEPENDENT CONTRACTOR WHO IS AVAILABLE TO WORK FOR OTHER BUSINESS ENTITIES;

(III) A CURRENT CERTIFICATE OF STATUS OF THE BUSINESS ENTITY, ISSUED BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION, INDICATING THAT THE BUSINESS ENTITY IS IN GOOD STANDING; AND

(IV) PROOF THAT THE BUSINESS ENTITY HOLDS ALL OCCUPATIONAL LICENSES REQUIRED BY STATE AND LOCAL AUTHORITIES FOR THE WORK PERFORMED; AND

(2) THE EMPLOYER PROVIDED TO EACH INDIVIDUAL CLASSIFIED AS AN INDEPENDENT CONTRACTOR OR EXEMPT PERSON A WRITTEN NOTICE UNDER § 3–914 OF THIS SUBTITLE.

~~3–904.~~

~~(a) An employer may not knowingly fail to properly classify an individual who performs work for remuneration paid by the employer.~~

~~(b) An employer has knowingly failed to properly classify an individual when:~~

~~(1) an employer–employee relationship exists [as determined under § 3–903(c) of this subtitle]; and~~

~~(2) the employer has knowingly failed to properly classify the individual as an employee.~~

~~(c) The Commissioner shall consider, as strong evidence that the employer did not knowingly fail to properly classify an individual, whether:~~

~~(1) before a complaint was filed against the employer or the Commissioner began an investigation of the employer, the employer:~~

~~(i) sought and obtained evidence that the individual:~~

~~1. is an exempt person; or~~

~~2. as an independent contractor:~~

~~A. withholds, reports, and remits payroll taxes on behalf of all individuals working for the independent contractor;~~

~~B. pays unemployment insurance taxes for all individuals working for the independent contractor; and~~

~~C. maintains workers' compensation insurance; and~~

~~(ii) provided to the exempt person or independent contractor a written notice as required by § 3–914 of this subtitle; or~~

~~(2) the employer:~~

~~(i) 1. classifies all workers who perform the same or substantially the same tasks for the employer as independent contractors; and~~

~~2. reports the income of the workers to the Internal Revenue Service as required by federal law; and~~

~~(ii) has received a determination from the Internal Revenue Service that the individual or a worker who performs the same or substantially the same task as the individual is an independent contractor.~~

~~(d) The Commissioner shall adopt regulations to provide guidance as to what constitutes the evidence relevant to the determination of whether an employer knowingly failed to properly classify an employee.~~

3–905.

(c) The Commissioner may enter a place of business or work site to:

(1) observe work being performed;

(2) interview individuals on the work site, including those identified as employees and independent contractors; and

(3) review and copy records.

(d) **(1)** The Commissioner may require each employer to:

[(1)**]** **(I) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION,** identify and produce **FOR COPYING OR INSPECTION** all records relevant to the classification of each individual;

[(2)**]** **(II)** attest to the truthfulness of each record that is copied in accordance with subsection (c)(3) of this section **OR EACH COPY OF A RECORD THAT IS PROVIDED TO THE COMMISSIONER UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH** and to sign the copy; or

[(3)**]** **(III)** at the option of the employer, submit a written statement about the classification of each employee on the form provided by the Commissioner, with any relevant records attached.

(2) AN EMPLOYER MAY COMPLY WITH A REQUIREMENT TO PRODUCE RECORDS UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION BY PRODUCING COPIES OF THE RECORDS.

(e) An employer that fails to produce records **FOR COPYING OR INSPECTION** or a written statement under subsection (d) of this section within **[**15**]** **30** business days after the Commissioner's request**, OR AN EXTENSION OF TIME MUTUALLY AGREED ON BY BOTH PARTIES,** shall be subject to a fine not exceeding $500 per day for each day the records are not produced.

3–906.

(a) **[**If, after investigation**]** **AFTER THE EMPLOYER HAS PROVIDED ALL OF THE RECORDS REQUESTED UNDER § 3–905(D) OF THIS SUBTITLE**, **[**the Commissioner determines that an employer has violated this subtitle or a regulation adopted under this subtitle,**]** the Commissioner shall **[**promptly**]** issue a citation to the employer **OR CLOSE THE INVESTIGATION WITHIN 90 DAYS**.

(b) Each citation shall:

(1) describe in detail the nature of the alleged violation;

(2) cite the provision of this subtitle or any regulation that the employer is alleged to have violated; and

(3) state the civil penalty, if any, that the Commissioner proposes to assess.

(c) Within a reasonable time after issuance of a citation, the Commissioner shall send by certified mail to the employer:

(1) a copy of the citation; and

(2) notice of the opportunity to request a hearing.

(d) Within 15 days after an employer receives a notice under subsection (c) of this section, the employer may submit a written request for a hearing on the citation and proposed penalty.

(e) If a hearing is not requested within 15 days, the citation, including any penalties, shall become a final order of the Commissioner.

(f) **(1)** If the employer requests a hearing, the Commissioner shall delegate to the Office of Administrative Hearings the authority to hold a hearing and issue findings of fact, conclusions of law, and an order, and assess a penalty under § 3–909 of this subtitle in accordance with Title 10, Subtitle 2 of the State Government Article.

(2) THE EMPLOYER IS ENTITLED TO A HEARING WITHIN 90 DAYS AFTER A TIMELY REQUEST MADE UNDER THIS SUBSECTION, UNLESS THE EMPLOYER WAIVES THAT RIGHT.

(g) Within 15 days after a request, in accordance with Title 10, Subtitle 6 of the State Government Article and the applicable regulations of the Department and the Office of Administrative Hearings, the Commissioner shall provide copies of all relevant evidence, including a list of potential witnesses, on which the Commissioner intends to rely at any administrative hearing under this subtitle.

(h) The Commissioner has the burden of proof to show that an employer has knowingly failed to properly classify an individual as an employee.

(i) A decision of an administrative law judge issued in accordance with Title 10, Subtitle 2 of the State Government Article shall become a final order of the Commissioner.

(j) Any party aggrieved by a final order of the Commissioner under subsection (i) of this section may seek judicial review and appeal under §§ 10–222 and 10–223 of the State Government Article.

3–913.

(a) Where, after investigation, the Commissioner issues a citation for a **KNOWING** violation of this subtitle or regulations adopted under this subtitle by an employer engaged in work on a contract with a public body, the Commissioner shall promptly notify the public body.

(b) (1) On notification, the public body shall withhold from payment due the employer an amount that is sufficient to:

(i) pay restitution to each employee for the full amount of wages due; and

(ii) pay any benefits, taxes, or other contributions that are required by law to be paid on behalf of the employee.

(2) The public body shall release:

(i) on issuance of a favorable final order of a court or an administrative unit, the full amount of the withheld funds; and

(ii) on an adverse final order of a court or an administrative unit, the balance of the withheld funds after all obligations are satisfied under paragraph (1) of this subsection.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October 1, 2012~~ July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 207

(House Bill 1364)

AN ACT concerning

Labor and Employment – ~~Determination of Independent Contractor Status – Workplace Fraud Act and Unemployment Insurance~~ – Revisions

FOR the purpose of establishing an exception for an employer that produces certain documents for inspection to the presumption that an employer–employee relationship exists for purposes of the Workplace Fraud Act; ~~repealing the requirement that the Commissioner of Labor and Industry consider certain factors as strong evidence that an employer did not violate a certain provision of law; providing for a presumption, under certain circumstances, that an~~

~~individual working for remuneration is an independent contractor under certain circumstances; prohibiting the Commissioner, under certain circumstances, from entering a place of business or work site to review and copy certain records;~~ authorizing an employer to comply with a certain requirement to provide records by producing copies of the records; altering the number of days within which an employer is required to produce certain records; ~~repealing a certain provision of law regarding the issuance of citations by the Commissioner for violations of the Workplace Fraud Act;~~ requiring the Commissioner to take certain action regarding an alleged violation of the Workplace Fraud Act within a certain time after the Commissioner receives certain records from an employer; providing that an employer is entitled to a certain hearing within a certain number of days after the hearing is requested unless the right is waived; ~~repealing a certain notification requirement; requiring that a copy of a certain order be submitted to a public body under certain circumstances;~~ altering the requirement that a certain public body withhold certain funds from an employer; ~~repealing the requirement that a certain public body release certain funds on issuance of a certain order; establishing that certain work is not covered employment for the purposes of unemployment insurance if the Secretary of Labor, Licensing, and Regulation is satisfied that the individual performing the work entered into a certain contract with the employer;~~ altering a certain provision of law regarding the issuance of citations by the Commissioner for violations of the Workplace Fraud Act; and generally relating to the ~~determination of independent contractor status~~ Workplace Fraud Act.

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section 3–903 ~~through 3–906, 3–913, and 8–205~~ 3–905, 3–906, and 3–913
Annotated Code of Maryland
(2008 Replacement Volume and 2011 Supplement)

BY adding to
Article – Labor and Employment
Section 3–903.1
Annotated Code of Maryland
(2008 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Labor and Employment

3–903.

(a) An employer may not fail to properly classify an individual who performs work for remuneration paid by the employer.

(b) An employer has failed to properly classify an individual when an employer–employee relationship exists as determined under subsection (c) of this section but the employer has not classified the individual as an employee.

(c) (1) ~~For~~ **EXCEPT AS PROVIDED IN § 3–903.1 OF THIS SUBTITLE, FOR** purposes of enforcement of this subtitle only, work performed by an individual for remuneration paid by an employer shall be presumed to create an employer–employee relationship, unless:

(i) the individual is an exempt person; ~~[~~or~~]~~

(ii) an employer demonstrates that:

1. the individual who performs the work is free from control and direction over its performance both in fact and under the contract;

2. the individual customarily is engaged in an independent business or occupation of the same nature as that involved in the work; and

3. the work is:

A. outside of the usual course of business of the person for whom the work is performed; or

B. performed outside of any place of business of the person for whom the work is performed~~; OR~~.

~~(III) AN EMPLOYER PRODUCES FOR INSPECTION BY THE COMMISSIONER:~~

~~1. A WRITTEN CONTRACT, SIGNED BY THE EMPLOYER AND THE INDIVIDUAL, THAT:~~

~~A. DESCRIBES THE NATURE OF THE WORK TO BE PERFORMED BY THE INDIVIDUAL;~~

~~B. DESCRIBES THE REMUNERATION TO BE PAID FOR THE WORK PERFORMED BY THE INDIVIDUAL; AND~~

~~C. INCLUDES AN ACKNOWLEDGEMENT BY THE INDIVIDUAL OF THE INDIVIDUAL'S OBLIGATIONS UNDER THIS ARTICLE;~~

~~2. AN AFFIDAVIT SIGNED BY THE INDIVIDUAL INDICATING THAT THE INDIVIDUAL IS AN INDEPENDENT CONTRACTOR THAT PERFORMS WORK FOR OTHER EMPLOYERS; AND~~

~~3. A CERTIFICATE OF STATUS OF THE INDIVIDUAL'S BUSINESS THAT IS ISSUED BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION.~~

(2) Work is outside of the usual course of business of the person for whom it is performed under paragraph (1) of this subsection if:

(i) the individual performs the work off the employer's premises;

(ii) the individual performs work that is not integrated into the employer's operation; or

(iii) the work performed is unrelated to the employer's business.

(3) By contract, an employer may engage another business entity, which may have its own employees, to do the same type of work in which the employer engages, at the same location where the employer is working, without establishing an employer–employee relationship between the two contracting entities.

(d) The Commissioner shall adopt regulations to explain further and provide specific examples of the application of subsection (c) of this section.

3–903.1.

THE PRESUMPTION THAT AN EMPLOYER–EMPLOYEE RELATIONSHIP EXISTS UNDER § 3–903(C)(1) OF THIS SUBTITLE DOES NOT APPLY IF:

(1) AN EMPLOYER PRODUCES FOR INSPECTION BY THE COMMISSIONER:

(I) A WRITTEN CONTRACT, SIGNED BY THE EMPLOYER AND BUSINESS ENTITY, THAT:

1. DESCRIBES THE NATURE OF THE WORK TO BE PERFORMED BY THE BUSINESS ENTITY;

2. DESCRIBES THE REMUNERATION TO BE PAID FOR THE WORK PERFORMED BY THE BUSINESS ENTITY; AND

3. INCLUDES AN ACKNOWLEDGMENT BY THE BUSINESS ENTITY OF THE BUSINESS ENTITY'S OBLIGATIONS UNDER THIS ARTICLE TO:

A. WITHHOLD, REPORT, AND REMIT PAYROLL TAXES ON BEHALF OF ALL EMPLOYEES WORKING FOR THE BUSINESS ENTITY;

B. PAY UNEMPLOYMENT INSURANCE TAXES FOR ALL EMPLOYEES WORKING FOR THE BUSINESS ENTITY; AND

C. MAINTAIN WORKERS' COMPENSATION INSURANCE;

(II) AN AFFIDAVIT SIGNED BY THE BUSINESS ENTITY INDICATING THAT THE BUSINESS ENTITY IS AN INDEPENDENT CONTRACTOR WHO IS AVAILABLE TO WORK FOR OTHER BUSINESS ENTITIES;

(III) A CURRENT CERTIFICATE OF STATUS OF THE BUSINESS ENTITY, ISSUED BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION, INDICATING THAT THE BUSINESS ENTITY IS IN GOOD STANDING; AND

(IV) PROOF THAT THE BUSINESS ENTITY HOLDS ALL OCCUPATIONAL LICENSES REQUIRED BY STATE AND LOCAL AUTHORITIES FOR THE WORK PERFORMED; AND

(2) THE EMPLOYER PROVIDED TO EACH INDIVIDUAL CLASSIFIED AS AN INDEPENDENT CONTRACTOR OR EXEMPT PERSON A WRITTEN NOTICE UNDER § 3–914 OF THIS SUBTITLE.

~~3–904.~~

~~(a) An employer may not knowingly fail to properly classify an individual who performs work for remuneration paid by the employer.~~

~~(b) An employer has knowingly failed to properly classify an individual when:~~

~~(1) an employer–employee relationship exists as determined under § 3–903(c) of this subtitle; and~~

~~(2) the employer has knowingly failed to properly classify the individual as an employee.~~

[~~(c) The Commissioner shall consider, as strong evidence that the employer did not knowingly fail to properly classify an individual, whether:~~

~~(1) before a complaint was filed against the employer or the Commissioner began an investigation of the employer, the employer:~~

~~(i) sought and obtained evidence that the individual:~~

~~1. is an exempt person; or~~

~~2. as an independent contractor:~~

~~A. withholds, reports, and remits payroll taxes on behalf of all individuals working for the independent contractor;~~

~~B. pays unemployment insurance taxes for all individuals working for the independent contractor; and~~

~~C. maintains workers' compensation insurance; and~~

~~(ii) provided to the exempt person or independent contractor a written notice as required by § 3–914 of this subtitle; or~~

~~(2) the employer:~~

~~(i) 1. classifies all workers who perform the same or substantially the same tasks for the employer as independent contractors; and~~

~~2. reports the income of the workers to the Internal Revenue Service as required by federal law; and~~

~~(ii) has received a determination from the Internal Revenue Service that the individual or a worker who performs the same or substantially the same task as the individual is an independent contractor.~~**]**

~~(C) IT SHALL BE PRESUMED THAT AN INDIVIDUAL WORKING FOR REMUNERATION IS AN INDEPENDENT CONTRACTOR OF THE EMPLOYER IF, BEFORE A COMPLAINT WAS FILED AGAINST THE EMPLOYER OR THE COMMISSIONER BEGAN AN INVESTIGATION OF THE EMPLOYER, THE EMPLOYER:~~

~~(1) SOUGHT AND OBTAINED EVIDENCE THAT THE INDIVIDUAL:~~

~~(I) IS AN EXEMPT PERSON; OR~~

~~(II) AS AN INDEPENDENT CONTRACTOR:~~

~~**1. WITHHOLDS, REPORTS, AND REMITS PAYROLL TAXES ON BEHALF OF ALL INDIVIDUALS WORKING FOR THE INDEPENDENT CONTRACTOR;**~~

~~**2. PAYS UNEMPLOYMENT INSURANCE TAXES FOR ALL INDIVIDUALS WORKING FOR THE INDEPENDENT CONTRACTOR; AND**~~

~~**3. MAINTAINS WORKERS' COMPENSATION INSURANCE; AND**~~

~~**(2) PROVIDED TO THE INDIVIDUAL A WRITTEN NOTICE AS REQUIRED BY § 3–914 OF THIS SUBTITLE.**~~

~~(d) The Commissioner shall adopt regulations to provide guidance as to what constitutes the evidence relevant to the determination of whether an employer knowingly failed to properly classify an employee.~~

3–905.

(a) The Commissioner shall investigate as necessary to determine compliance with this subtitle and regulations adopted under this subtitle.

(b) (1) Any written or oral complaint or statement made by a person as part of an investigation under this section is confidential and may not be disclosed without the consent of the person until the investigation is concluded and a citation is issued.

(2) Any written or oral statement made by an individual alleged to be employed by the respondent as part of an investigation under this section is confidential and may not be disclosed without the consent of the individual.

(c) ~~**(1)**~~ The Commissioner may enter a place of business or work site to:

~~**[**~~(1)~~**]**~~ ~~**(I)**~~ observe work being performed;

~~**[**~~(2)~~**]**~~ ~~**(II)**~~ interview individuals on the work site, including those identified as employees and independent contractors; and

~~**[**~~(3)~~**]**~~ ~~**(III)**~~ ~~**SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION,**~~ review and copy records.

~~**(2) THE COMMISSIONER MAY NOT ENTER A PLACE OF BUSINESS OR WORK SITE TO REVIEW AND COPY RECORDS IF THE EMPLOYER CHOOSES TO PROVIDE COPIES OF THE RECORDS TO THE COMMISSIONER FOR REVIEW**~~

~~WITHOUT ALLOWING THE COMMISSIONER TO ENTER THE PLACE OF BUSINESS OR WORK SITE.~~

(d) **(1)** The Commissioner may require each employer to:

[(1)**]** **(I) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION,** identify and produce **FOR COPYING OR INSPECTION** all records relevant to the classification of each individual;

[(2)**]** **(II)** attest to the truthfulness of each record that is copied in accordance with ~~[~~subsection (c)(3)~~]~~ ~~SUBSECTION (C)(1)(III)~~ of this section **OR EACH COPY OF A RECORD THAT IS PROVIDED TO THE COMMISSIONER UNDER** ~~SUBSECTION (C)(2) OF THIS SECTION~~ **ITEM (I) OF THIS PARAGRAPH** and to sign the copy; or

[(3)**]** **(III)** at the option of the employer, submit a written statement about the classification of each employee on the form provided by the Commissioner, with any relevant records attached.

(2) AN EMPLOYER MAY COMPLY WITH A REQUIREMENT TO PRODUCE RECORDS UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION BY PRODUCING COPIES OF THE RECORDS.

(e) An employer that fails to produce records ~~OR COPIES OF RECORDS~~ **FOR COPYING OR INSPECTION** or a written statement under subsection (d) of this section within **[**15**]** **30** business days after the Commissioner's request**, OR AN EXTENSION OF TIME MUTUALLY AGREED ON BY BOTH PARTIES,** shall be subject to a fine not exceeding $500 per day for each day the records are not produced.

(f) (1) The Commissioner may issue a subpoena for testimony and the production of records.

(2) If a person fails to comply with a subpoena issued under this subsection, the Commissioner may file a complaint in the circuit court for the county where the person resides, is employed, or has a place of business, requesting an order directing compliance with the subpoena.

3–906.

~~(a) [If, after investigation~~**] WITHIN 45 DAYS AFTER THE COMMISSIONER RECEIVES COPIES OF AN EMPLOYER'S RECORDS OR INSPECTS AN EMPLOYER'S RECORDS**~~, the Commissioner [determines]~~ **, the Commissioner SHALL:**

~~**(1) MAKE A DETERMINATION that [an] THE employer has violated this subtitle or a regulation adopted under this subtitle[, the Commissioner shall promptly] AND issue a citation to the employer; OR**~~

~~**(2) CLOSE THE CASE.**~~

(A) AFTER THE EMPLOYER HAS PROVIDED ALL THE RECORDS REQUESTED UNDER § 3–905(D) OF THIS SUBTITLE, THE COMMISSIONER SHALL ISSUE A CITATION TO THE EMPLOYER OR CLOSE THE INVESTIGATION WITHIN 90 DAYS.

~~(b) [Each] A citation ISSUED UNDER SUBSECTION (A) OF THIS SECTION shall:~~

(B) EACH CITATION SHALL:

(1) describe in detail the nature of the alleged violation;

(2) cite the provision of this subtitle or any regulation that the employer is alleged to have violated; and

(3) state the civil penalty, if any, that the Commissioner proposes to assess.

(c) Within a reasonable time after issuance of a citation, the Commissioner shall send by certified mail to the employer:

(1) a copy of the citation; and

(2) notice of the opportunity to request a hearing.

(d) Within 15 days after an employer receives a notice under subsection (c) of this section, the employer may submit a written request for a hearing on the citation and proposed penalty.

(e) If a hearing is not requested within 15 days, the citation, including any penalties, shall become a final order of the Commissioner.

(f) **(1)** If the employer requests a hearing, the Commissioner shall delegate to the Office of Administrative Hearings the authority to hold a hearing and issue findings of fact, conclusions of law, and an order, and assess a penalty under § 3–909 of this subtitle in accordance with Title 10, Subtitle 2 of the State Government Article.

(2) ~~**IF THE EMPLOYER REQUESTS A HEARING, THE**~~ **THE EMPLOYER IS ENTITLED TO A HEARING WITHIN 90 DAYS AFTER** ~~**THE REQUEST IS**~~

~~SUBMITTED UNDER SUBSECTION (D) OF THIS SECTION UNLESS THE RIGHT IS WAIVED~~ **A TIMELY REQUEST IS MADE UNDER THIS SUBSECTION, UNLESS THE EMPLOYER WAIVES THAT RIGHT.**

(g) Within 15 days after a request, in accordance with Title 10, Subtitle 6 of the State Government Article and the applicable regulations of the Department and the Office of Administrative Hearings, the Commissioner shall provide copies of all relevant evidence, including a list of potential witnesses, on which the Commissioner intends to rely at any administrative hearing under this subtitle.

(h) The Commissioner has the burden of proof to show that an employer has knowingly failed to properly classify an individual as an employee.

(i) A decision of an administrative law judge issued in accordance with Title 10, Subtitle 2 of the State Government Article shall become a final order of the Commissioner.

(j) Any party aggrieved by a final order of the Commissioner under subsection (i) of this section may seek judicial review and appeal under §§ 10–222 and 10–223 of the State Government Article.

3–913.

(a) ~~[~~Where, after investigation, the Commissioner issues a citation for a **KNOWING** violation of this subtitle or regulations adopted under this subtitle by an employer engaged in work on a contract with a public body, the Commissioner shall promptly notify the public body.~~]~~ ~~IF A COURT OR AN ADMINISTRATIVE UNIT FINDS A VIOLATION OF THIS SUBTITLE BY AN EMPLOYER ENGAGED IN WORK ON A CONTRACT WITH A PUBLIC BODY, A COPY OF THE FINAL ORDER ISSUED BY THE COURT OR ADMINISTRATIVE UNIT SHALL BE SUBMITTED TO THE PUBLIC BODY.~~

(b) (1) On ~~[~~notification,~~]~~ ~~RECEIPT OF A COPY OF A FINAL ORDER SUBMITTED TO A PUBLIC BODY UNDER SUBSECTION (A) OF THIS SECTION,~~ the public body shall withhold from payment due the employer an amount that is sufficient to:

(i) pay restitution to each employee for the full amount of wages due; and

(ii) pay any benefits, taxes, or other contributions that are required by law to be paid on behalf of the employee.

(2) The public body shall release~~[~~:

(i) on issuance of a favorable final order of a court or an administrative unit, the full amount of the withheld funds; and

(ii) on an adverse final order of a court or an administrative unit,~~]~~ the balance of the withheld funds after all obligations are satisfied under paragraph (1) of this subsection.

~~8–205.~~

~~(a) Work that an individual performs under any contract of hire is not covered employment if the Secretary is satisfied that:~~

~~(1)~~ **~~(I)~~** ~~the individual who performs the work is free from control and direction over its performance both in fact and under the contract;~~

~~[~~~~(2)~~**~~]~~** **~~(II)~~** ~~the individual customarily is engaged in an independent business or occupation of the same nature as that involved in the work; and~~

~~[~~~~(3)~~**~~]~~** **~~(III)~~** ~~the work is:~~

~~[~~~~(i)~~**~~]~~** **~~1.~~** ~~outside of the usual course of business of the person for whom the work is performed; or~~

~~[~~~~(ii)~~**~~]~~** **~~2.~~** ~~performed outside of any place of business of the person for whom the work is performed~~**~~; OR~~**

~~(2) THE INDIVIDUAL WHO PERFORMS THE WORK HAS ENTERED INTO A WRITTEN CONTRACT THAT STATES EXPRESSLY AND PROMINENTLY THAT THE INDIVIDUAL KNOWS AND UNDERSTANDS THAT:~~

~~(I) THE INDIVIDUAL IS RESPONSIBLE FOR PAYING ESTIMATED SOCIAL SECURITY TAXES FOR SELF–EMPLOYMENT AND FOR PAYING STATE AND FEDERAL INCOME TAXES; AND~~

~~(II) THE WORK IS NOT COVERED EMPLOYMENT AND THE INDIVIDUAL IS RESPONSIBLE FOR COMPLIANCE WITH TITLES 8 AND 9 OF THIS ARTICLE.~~

~~(b) The Secretary shall adopt regulations to provide:~~

~~(1) general guidance about the application of subsection (a) of this section; and~~

~~(2) specific examples of how subsection (a) of this section is applied to certain industries, including the construction industry, the landscaping industry, and the home care services industry.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 208

(Senate Bill 295)

AN ACT concerning

Commercial Law – Security Freezes – Minors and Protected Persons

FOR the purpose of authorizing certain ~~individuals~~ representatives to request a security freeze on the consumer report or a certain record of certain protected consumers who are minor children ~~and certain consumers who are~~ or individuals under guardianship or conservatorship in accordance with certain application procedures; ~~requiring a consumer reporting agency to place a security freeze on certain consumer reports of certain consumers on request of certain individuals and to send certain information to the individuals; authorizing a consumer reporting agency to require certain individuals to confirm a certain request in writing; requiring a consumer reporting agency to create a certain consumer report for a certain consumer under certain circumstances;~~ requiring a consumer reporting agency to place a security freeze for a protected consumer under certain circumstances and within a certain period of time; requiring a consumer reporting agency to create a certain record under certain circumstances; prohibiting a consumer reporting agency from releasing certain information while a security freeze is in place ~~without certain authorization~~; ~~authorizing a person who requests access to a consumer report of a certain consumer to treat a certain application as incomplete under certain circumstances; providing for the temporary or permanent removal of a security freeze on a consumer report of a certain consumer in accordance with certain procedures; prohibiting the charging of a fee for imposition of a security freeze on the consumer report of a certain consumer under certain circumstances; requiring a certain notice to contain certain information; altering the application of certain provisions of law; defining a certain term; altering a certain definition; making certain stylistic and conforming changes;~~ providing that a certain security freeze remains in effect until a certain request is made or the security freeze is removed in accordance with a certain provision of this Act; providing that a certain protected consumer or representative may request the removal of a certain security freeze by submitting a certain request in a certain manner and under certain circumstances; requiring a consumer reporting agency to remove a certain security freeze within a certain period of time; prohibiting a consumer reporting agency from charging a certain fee except

under certain circumstances; allowing a consumer reporting agency to remove a certain security freeze or delete a certain record under certain circumstances; providing that the exclusive remedy for a certain violation shall be a certain complaint filed with the Commissioner of Financial Regulation; defining certain terms; repealing certain obsolete provisions; providing for a delayed effective date; and generally relating to consumer reports and security freezes.

BY repealing and reenacting, with amendments,
Article – Commercial Law
Section 14–1212.1
Annotated Code of Maryland
(2005 Replacement Volume and 2011 Supplement)

BY adding to
Article – Commercial Law
Section 14–1212.2
Annotated Code of Maryland
(2005 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Commercial Law

14–1212.1.

(a) (1) In this section the following words have the meanings indicated.

(2) "Account review" includes activities related to account maintenance, account monitoring, credit line increases, and account upgrades and enhancements.

~~(3) "REPRESENTATIVE" MEANS:~~

~~(I) THE CUSTODIAL PARENT OR LEGAL GUARDIAN OF A CONSUMER WHO IS A MINOR; OR~~

~~(II) THE GUARDIAN OR CONSERVATOR OF A CONSUMER WHO IS AN INCAPACITATED PERSON OR A PROTECTED PERSON APPOINTED IN ACCORDANCE WITH TITLE 13 OF THE ESTATES AND TRUSTS ARTICLE.~~

~~(4)~~ **(3)** "Security freeze" means a restriction placed on a consumer's consumer report at the request of the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~ that prohibits a consumer reporting agency from releasing the consumer's consumer report or any information derived from the consumer's consumer

report without the express authorization of the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~.

(b) (1) This section does not apply to the use of a consumer's consumer report by:

(i) A person, or a subsidiary, affiliate, agent, or assignee of the person, with which the consumer has, or prior to assignment had, an account, contract, or debtor–creditor relationship, for the purpose of account review or collecting the financial obligation owing for the account, contract, or debt;

(ii) A person that was given access to the consumer's consumer report under subsection (e) of this section for the purpose of facilitating an extension of credit to the consumer or another permissible use;

(iii) A person acting in accordance with a court order, warrant, or subpoena;

(iv) A unit of State or local government that administers a program for establishing and enforcing child support obligations;

(v) The Department of Health and Mental Hygiene in connection with a fraud investigation conducted by the Department;

(vi) The State Department of Assessments and Taxation, the Comptroller, or any other State or local taxing authority in connection with:

1. An investigation conducted by the Department, Comptroller, or taxing authority;

2. The collection of delinquent taxes or unpaid court orders by the Department, Comptroller, or taxing authority; or

3. The performance of any other duty provided for by law;

(vii) A person for the purpose of prescreening, as defined by the federal Fair Credit Reporting Act;

(viii) A person administering a credit file monitoring subscription service to which the consumer has subscribed;

(ix) A person providing a consumer ~~OR A CONSUMER'S REPRESENTATIVE~~ with a copy of the consumer's consumer report on request of the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~; or

(x) To the extent not prohibited by other State law, a person only for the purpose of setting or adjusting an insurance rate, adjusting an insurance claim, or underwriting an insurance risk.

(2) This section does not apply to:

(i) A check services or fraud prevention services company that issues:

1. Reports on incidents of fraud; or

2. Authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar payment methods;

(ii) A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automated teller machine abuse, or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution; or

(iii) A consumer reporting agency database or file that consists entirely of consumer information concerning, and used solely for:

1. Criminal record information;

2. Personal loss history information;

3. Fraud prevention or detection;

4. Employment screening; or

5. Tenant screening.

(c) (1) A consumer ~~**OR A CONSUMER'S REPRESENTATIVE**~~ may elect to place a security freeze on the consumer's consumer report by:

(i) Written request sent by certified mail;

(ii) ~~Beginning January 1, 2010, subject~~ **SUBJECT** to paragraph (6) of this subsection, telephone, by providing certain personal information that the consumer reporting agency may require to verify the identity of the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~;

(iii) Electronic mail using an electronic postmark if a secure electronic mail connection is made available by the consumer reporting agency; or

(iv) If the consumer reporting agency makes a secure connection available on its website, an electronic request through that secure connection.

(2) A consumer reporting agency shall require a consumer ~~OR A CONSUMER'S REPRESENTATIVE~~ to provide proper identifying information when requesting a security freeze.

(3) Except as provided in paragraph (5) of this subsection, a consumer reporting agency shall place a security freeze on a consumer's consumer report~~:~~

~~(i) Before July 1, 2008, within 5 business days after receiving a request under paragraph (1) of this subsection; or~~

~~(ii) On or after July 1, 2008,~~ within 3 business days after receiving a request under paragraph (1) of this subsection.

(4) Within 5 business days after placing a security freeze on a consumer's consumer report, the consumer reporting agency shall:

(i) Send a written confirmation of the security freeze to the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~;

(ii) Provide the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~ with a unique personal identification number or password to be used by the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~ when authorizing the release of the consumer's consumer report to a specific person or for a specific period of time; and

(iii) Provide the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~ with a written statement of the procedures for requesting the consumer reporting agency to remove or temporarily lift a security freeze.

(5) (i) Subject to subparagraph (ii) of this paragraph, a consumer reporting agency is not required to place a security freeze on a consumer report if the consumer reporting agency:

1. Acts only as a reseller of credit information by assembling and merging information contained in a database of another consumer reporting agency or multiple consumer reporting agencies; and

2. Does not maintain a permanent database of credit information from which new consumer reports are produced.

(ii) A consumer reporting agency that acts as a reseller of credit information shall honor a security freeze placed on a consumer report by another consumer reporting agency.

(6) (i) If a consumer ~~OR A CONSUMER'S REPRESENTATIVE~~ requests placement of a security freeze by telephone under paragraph (1)(ii) of this subsection, the consumer reporting agency may require the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~ to confirm the request in writing on a form that the consumer reporting agency provides to the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~ with the materials sent in accordance with paragraph (4) of this subsection.

(ii) If the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~ fails to return written confirmation that the consumer reporting agency requires under subparagraph (i) of this paragraph, the consumer reporting agency may remove the security freeze in accordance with subsection (g)(2) of this section.

~~(7) IF A CONSUMER FOR WHOM A SECURITY FREEZE IS REQUESTED BY THE CONSUMER'S REPRESENTATIVE DOES NOT HAVE A CONSUMER REPORT AT THE TIME OF THE REQUEST, THE CONSUMER REPORTING AGENCY SHALL CREATE A CONSUMER REPORT FOR THE CONSUMER FOR THE PURPOSE OF IMPOSING A SECURITY FREEZE ON IT IN ACCORDANCE WITH THIS SECTION.~~

(d) (1) While a security freeze is in place, a consumer reporting agency may not release a consumer's consumer report or any information derived from a consumer's consumer report without the express prior authorization of the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~.

(2) A consumer reporting agency may advise a person that a security freeze is in effect with respect to a consumer's consumer report.

(3) A consumer reporting agency may not state or imply to any person that a security freeze on a consumer's consumer report reflects a negative credit score, credit history, or credit rating.

(e) (1) If a consumer ~~OR A CONSUMER'S REPRESENTATIVE~~ wants to temporarily lift a security freeze to allow the consumer's consumer report to be accessed by a specific person or for a specific period of time while a security freeze is in place, the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~ shall:

(i) Contact the consumer reporting agency by:

1. Mail in the manner prescribed by the consumer reporting agency;

2. Telephone in the manner prescribed by the consumer reporting agency;

3. Electronic mail using an electronic postmark if a secure electronic mail connection is made available to the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~ by the consumer reporting agency; or

4. Electronic request if a secure connection is made available on the website of the consumer reporting agency;

(ii) Request that the security freeze be temporarily lifted; and

(iii) Provide the following to the consumer reporting agency:

1. Proper identifying information;

2. The unique personal identification number or password provided to the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~ under subsection (c)(4)(ii) of this section; and

3. The proper information regarding the person that is to receive the consumer report or the time period during which the consumer report is to be available to users of the consumer report.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, a consumer reporting agency shall comply with a request made under paragraph (1) of this subsection within 3 business days after receiving the request.

(ii) 1. ~~After January 31, 2009, a~~ **A** consumer reporting agency shall comply with a request made under paragraph (1) of this subsection within 15 minutes after the consumer's ~~OR THE CONSUMER'S REPRESENTATIVE'S~~ request is received by the consumer reporting agency if the request is made by telephone, by electronic mail, or by secure connection on the website of the consumer reporting agency.

2. A consumer reporting agency that is unable to temporarily lift a security freeze under subsubparagraph 1 of this subparagraph shall lift the security freeze as soon as it is reasonably capable of doing so.

(3) A consumer reporting agency may develop procedures involving the use of facsimile or other electronic media to receive and process, in an expedited manner, a request from a consumer ~~OR A CONSUMER'S REPRESENTATIVE~~ to temporarily lift or remove a security freeze on the consumer's consumer report.

(f) If, in connection with an application for credit or for any other use, a person requests access to a consumer's consumer report while a security freeze is in place and the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~ does not authorize access to the consumer report, the person may treat the application as incomplete.

(g) (1) Except as provided in paragraph (2) of this subsection, a consumer reporting agency may remove or temporarily lift a security freeze placed on a consumer's consumer report only on request of the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~ made under subsection (e) or (h) of this section.

(2) (i) A consumer reporting agency may remove a security freeze placed on a consumer's consumer report if:

1. Placement of the security freeze was based on a material misrepresentation of fact by the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~; or

2. The consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~:

A. Made the request to place the security freeze by telephone under subsection (c)(1)(ii) of this section; and

B. Failed to confirm the request in writing if required in accordance with subsection (c)(6) of this section.

(ii) If a consumer reporting agency intends to remove a security freeze under subparagraph (i) of this paragraph, the consumer reporting agency shall notify the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~ in writing of its intent at least 5 business days before removing the security freeze.

(h) (1) Subject to subsection (g)(2) of this section, a security freeze shall remain in place until the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~ requests that the security freeze be removed.

(2) If a consumer ~~**OR A CONSUMER'S REPRESENTATIVE**~~ wants to remove a security freeze from the consumer's consumer report, the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~ shall:

(i) Contact the consumer reporting agency by:

1. Mail in the manner prescribed by the consumer reporting agency;

2. Telephone in the manner prescribed by the consumer reporting agency;

3. Electronic mail using an electronic postmark if a secure electronic mail connection is made available to the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~ by the consumer reporting agency; or

4. Electronic request if a secure connection is made available on the website of the consumer reporting agency;

(ii) Request that the security freeze be removed; and

(iii) Provide the following to the consumer reporting agency:

1. Proper identifying information; and

2. The unique personal identification number or password provided by the consumer reporting agency under subsection (c)(4)(ii) of this section.

(3) A consumer reporting agency shall remove a security freeze within 3 business days after receiving a request for removal.

(i) (1) Except as provided in paragraph (2) of this subsection, a consumer ~~**OR A CONSUMER'S REPRESENTATIVE**~~ may not be charged for any service relating to a security freeze.

(2) A consumer reporting agency may charge a reasonable fee, not exceeding $5, for each placement, temporary lift, or removal of a security freeze.

(3) Notwithstanding paragraph (2) of this subsection, a consumer reporting agency may not charge any fee under this section to a consumer ~~**OR A CONSUMER'S REPRESENTATIVE**~~ who:

(i) Has obtained a report of alleged identity fraud against the consumer under § 8–304 of the Criminal Law Article or an identity theft passport under § 8–305 of the Criminal Law Article; and

(ii) Provides a copy of the report or passport to the consumer reporting agency.

(j) At any time that a consumer is entitled to receive a summary of rights under § 609 of the federal Fair Credit Reporting Act or § 14–1206 of this subtitle, the following notice shall be included:

"NOTICE

You have a right, under § 14–1212.1 of the Commercial Law Article of the Annotated Code of Maryland, to place a security freeze on your credit report. The security freeze will prohibit a consumer reporting agency from releasing your credit report or any information derived from your credit report without your express authorization. The purpose of a security freeze is to prevent credit, loans, and services from being approved in your name without your consent. ~~**A PARENT, GUARDIAN, OR**~~

~~**CONSERVATOR MAY REQUEST A SECURITY FREEZE ON A CREDIT REPORT OF A MINOR OR ANOTHER INDIVIDUAL UNDER GUARDIANSHIP OR CONSERVATORSHIP.**~~

You may elect to have a consumer reporting agency place a security freeze on your credit report by written request sent by certified mail or by electronic mail or the Internet if the consumer reporting agency provides a secure electronic connection. The consumer reporting agency must place a security freeze on your credit report within ~~5~~ **3** business days after your request is received~~, or within 3 business days starting July 1, 2008~~. Within 5 business days after a security freeze is placed on your credit report, you will be provided with a unique personal identification number or password to use if you want to remove the security freeze or temporarily lift the security freeze to release your credit report to a specific person or for a specific period of time. You also will receive information on the procedures for removing or temporarily lifting a security freeze.

If you want to temporarily lift the security freeze on your credit report, you must contact the consumer reporting agency and provide all of the following:

(1) The unique personal identification number or password provided by the consumer reporting agency;

(2) The proper identifying information to verify your identity; and

(3) The proper information regarding the person who is to receive the credit report or the period of time for which the credit report is to be available to users of the credit report.

A consumer reporting agency must comply with a request to temporarily lift a security freeze on a credit report within 3 business days after the request is received, or within 15 minutes ~~starting January 31, 2009,~~ for certain requests. A consumer reporting agency must comply with a request to remove a security freeze on a credit report within 3 business days after the request is received.

If you are actively seeking credit, you should be aware that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a security freeze, either completely if you are seeking credit from a number of sources, or just for a specific creditor if you are applying only to that creditor, a few days before actually applying for new credit.

A consumer reporting agency may charge a reasonable fee not exceeding $5 for each placement, temporary lift, or removal of a security freeze. However, a consumer reporting agency may not charge any fee to a consumer ~~**OR A CONSUMER'S REPRESENTATIVE**~~ who, at the time of a request to place, temporarily lift, or remove a security freeze, presents to the consumer reporting agency a police report of alleged identity fraud against the consumer or an identity theft passport.

A security freeze does not apply if you have an existing account relationship and a copy of your credit report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities."

(k) If a consumer reporting agency violates a security freeze by releasing a ~~[~~consumer's~~]~~ consumer report subject to a security freeze or any information derived from a ~~[~~consumer's~~]~~ consumer report subject to a security freeze without authorization, the consumer reporting agency, within 5 business days after discovering or being notified of the release, shall notify the consumer in writing of:

(1) The specific information released; and

(2) The name and address of, or other available contact information for, the recipient of the consumer report or the information released.

(l) The exclusive remedy for a violation of subsection (e)(2)(ii) of this section shall be a complaint filed with the Commissioner under § 14–1217 of this subtitle.

14–1212.2.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "PROTECTED CONSUMER" MEANS AN INDIVIDUAL WHO IS:

(I) UNDER THE AGE OF 16 YEARS AT THE TIME A REQUEST FOR THE PLACEMENT OF A SECURITY FREEZE IS MADE; OR

(II) AN INCAPACITATED PERSON OR A PROTECTED PERSON FOR WHOM A GUARDIAN OR CONSERVATOR HAS BEEN APPOINTED IN ACCORDANCE WITH TITLE 13 OF THE ESTATES AND TRUSTS ARTICLE.

(3) "RECORD" MEANS A COMPILATION OF INFORMATION THAT:

(I) IDENTIFIES A PROTECTED CONSUMER;

(II) IS CREATED BY A CONSUMER REPORTING AGENCY SOLELY FOR THE PURPOSE OF COMPLYING WITH THIS SECTION; AND

(III) MAY NOT BE CREATED OR USED TO CONSIDER THE PROTECTED CONSUMER'S CREDIT WORTHINESS, CREDIT STANDING, CREDIT CAPACITY, CHARACTER, GENERAL REPUTATION, PERSONAL CHARACTERISTICS,

OR MODE OF LIVING FOR ANY PURPOSE LISTED IN § 14–1201(D)(1) OF THIS SUBTITLE.

(4) "REPRESENTATIVE" MEANS A PERSON WHO PROVIDES TO A CONSUMER REPORTING AGENCY SUFFICIENT PROOF OF AUTHORITY TO ACT ON BEHALF OF A PROTECTED CONSUMER.

(5) "SECURITY FREEZE" MEANS:

(I) IF A CONSUMER REPORTING AGENCY DOES NOT HAVE A FILE PERTAINING TO A PROTECTED CONSUMER, A RESTRICTION THAT:

1. IS PLACED ON THE PROTECTED CONSUMER'S RECORD IN ACCORDANCE WITH THIS SECTION; AND

2. PROHIBITS THE CONSUMER REPORTING AGENCY FROM RELEASING THE PROTECTED CONSUMER'S RECORD EXCEPT AS PROVIDED IN THIS SECTION; OR

(II) IF A CONSUMER REPORTING AGENCY HAS A FILE PERTAINING TO THE PROTECTED CONSUMER, A RESTRICTION THAT:

1. IS PLACED ON THE PROTECTED CONSUMER'S CONSUMER REPORT IN ACCORDANCE WITH THIS SECTION; AND

2. PROHIBITS THE CONSUMER REPORTING AGENCY FROM RELEASING THE PROTECTED CONSUMER'S CONSUMER REPORT OR ANY INFORMATION DERIVED FROM THE PROTECTED CONSUMER'S CONSUMER REPORT EXCEPT AS PROVIDED IN THIS SECTION.

(6) (I) "SUFFICIENT PROOF OF AUTHORITY" MEANS DOCUMENTATION THAT SHOWS A REPRESENTATIVE HAS AUTHORITY TO ACT ON BEHALF OF A PROTECTED CONSUMER.

(II) "SUFFICIENT PROOF OF AUTHORITY" INCLUDES:

1. AN ORDER ISSUED BY A COURT OF LAW;

2. A LAWFULLY EXECUTED AND VALID POWER OF ATTORNEY; AND

3. A WRITTEN, NOTARIZED STATEMENT SIGNED BY A REPRESENTATIVE THAT EXPRESSLY DESCRIBES THE AUTHORITY OF THE REPRESENTATIVE TO ACT ON BEHALF OF A PROTECTED CONSUMER.

(7) (I) "SUFFICIENT PROOF OF IDENTIFICATION" MEANS INFORMATION OR DOCUMENTATION THAT IDENTIFIES A PROTECTED CONSUMER OR A REPRESENTATIVE OF A PROTECTED CONSUMER.

(II) "SUFFICIENT PROOF OF IDENTIFICATION" INCLUDES:

1. A SOCIAL SECURITY NUMBER OR A COPY OF A SOCIAL SECURITY CARD ISSUED BY THE SOCIAL SECURITY ADMINISTRATION;

2. A CERTIFIED OR OFFICIAL COPY OF A BIRTH CERTIFICATE ISSUED BY THE ENTITY AUTHORIZED TO ISSUE THE BIRTH CERTIFICATE;

3. A COPY OF A DRIVER'S LICENSE, AN IDENTIFICATION CARD ISSUED BY THE MOTOR VEHICLE ADMINISTRATION, OR ANY OTHER GOVERNMENT–ISSUED IDENTIFICATION; OR

4. A COPY OF A BILL, INCLUDING A BILL FOR TELEPHONE, SEWER, SEPTIC TANK, WATER, ELECTRIC, OIL, OR NATURAL GAS SERVICES, THAT SHOWS A NAME AND HOME ADDRESS.

(B) THIS SECTION DOES NOT APPLY TO THE USE OF A PROTECTED CONSUMER'S CONSUMER REPORT OR RECORD BY:

(1) A PERSON ADMINISTERING A CREDIT FILE MONITORING SUBSCRIPTION SERVICE TO WHICH:

(I) THE PROTECTED CONSUMER HAS SUBSCRIBED; OR

(II) THE REPRESENTATIVE OF THE PROTECTED CONSUMER HAS SUBSCRIBED ON BEHALF OF THE PROTECTED CONSUMER;

(2) A PERSON PROVIDING THE PROTECTED CONSUMER OR THE PROTECTED CONSUMER'S REPRESENTATIVE WITH A COPY OF THE PROTECTED CONSUMER'S CONSUMER REPORT ON REQUEST OF THE PROTECTED CONSUMER OR THE PROTECTED CONSUMER'S REPRESENTATIVE; OR

(3) AN ENTITY LISTED IN § 14–1212.1(B)(2)(I) OR (II) OR (C)(5) OF THIS SUBTITLE.

(C) (1) A CONSUMER REPORTING AGENCY SHALL PLACE A SECURITY FREEZE FOR A PROTECTED CONSUMER IF:

(I) THE CONSUMER REPORTING AGENCY RECEIVES A REQUEST FROM THE PROTECTED CONSUMER'S REPRESENTATIVE FOR THE PLACEMENT OF THE SECURITY FREEZE UNDER THIS SECTION; AND

(II) THE PROTECTED CONSUMER'S REPRESENTATIVE:

1. SUBMITS THE REQUEST TO THE CONSUMER REPORTING AGENCY AT THE ADDRESS OR OTHER POINT OF CONTACT AND IN THE MANNER SPECIFIED BY THE CONSUMER REPORTING AGENCY;

2. PROVIDES TO THE CONSUMER REPORTING AGENCY SUFFICIENT PROOF OF IDENTIFICATION OF THE PROTECTED CONSUMER AND THE REPRESENTATIVE;

3. PROVIDES TO THE CONSUMER REPORTING AGENCY SUFFICIENT PROOF OF AUTHORITY TO ACT ON BEHALF OF THE PROTECTED CONSUMER; AND

4. PAYS TO THE CONSUMER REPORTING AGENCY A FEE AS PROVIDED IN SUBSECTION (I) OF THIS SECTION.

(2) IF A CONSUMER REPORTING AGENCY DOES NOT HAVE A FILE PERTAINING TO A PROTECTED CONSUMER WHEN THE CONSUMER REPORTING AGENCY RECEIVES A REQUEST UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE CONSUMER REPORTING AGENCY SHALL CREATE A RECORD FOR THE PROTECTED CONSUMER.

(D) WITHIN 30 DAYS AFTER RECEIVING A REQUEST THAT MEETS THE REQUIREMENTS OF SUBSECTION (C)(1) OF THIS SECTION, A CONSUMER REPORTING AGENCY SHALL PLACE A SECURITY FREEZE FOR THE PROTECTED CONSUMER.

(E) UNLESS A SECURITY FREEZE FOR A PROTECTED CONSUMER IS REMOVED IN ACCORDANCE WITH SUBSECTION (G) OR (J) OF THIS SECTION, A CONSUMER REPORTING AGENCY MAY NOT RELEASE THE PROTECTED CONSUMER'S CONSUMER REPORT, ANY INFORMATION DERIVED FROM THE PROTECTED CONSUMER'S CONSUMER REPORT, OR ANY RECORD CREATED FOR THE PROTECTED CONSUMER.

(F) A SECURITY FREEZE FOR A PROTECTED CONSUMER PLACED UNDER SUBSECTION (D) OF THIS SECTION SHALL REMAIN IN EFFECT UNTIL:

(1) THE PROTECTED CONSUMER OR THE PROTECTED CONSUMER'S REPRESENTATIVE REQUESTS THE CONSUMER REPORTING AGENCY

TO REMOVE THE SECURITY FREEZE IN ACCORDANCE WITH SUBSECTION (G) OF THIS SECTION; OR

(2) THE SECURITY FREEZE IS REMOVED IN ACCORDANCE WITH SUBSECTION (J) OF THIS SECTION.

(G) IF A PROTECTED CONSUMER OR A PROTECTED CONSUMER'S REPRESENTATIVE WISHES TO REMOVE A SECURITY FREEZE FOR THE PROTECTED CONSUMER, THE PROTECTED CONSUMER OR THE PROTECTED CONSUMER'S REPRESENTATIVE SHALL:

(1) SUBMIT A REQUEST FOR THE REMOVAL OF THE SECURITY FREEZE TO THE CONSUMER REPORTING AGENCY AT THE ADDRESS OR OTHER POINT OF CONTACT AND IN THE MANNER SPECIFIED BY THE CONSUMER REPORTING AGENCY;

(2) PROVIDE TO THE CONSUMER REPORTING AGENCY:

(I) IN THE CASE OF A REQUEST BY THE PROTECTED CONSUMER:

1. PROOF THAT THE SUFFICIENT PROOF OF AUTHORITY FOR THE PROTECTED CONSUMER'S REPRESENTATIVE TO ACT ON BEHALF OF THE PROTECTED CONSUMER IS NO LONGER VALID; AND

2. SUFFICIENT PROOF OF IDENTIFICATION OF THE PROTECTED CONSUMER; OR

(II) IN THE CASE OF A REQUEST BY THE REPRESENTATIVE OF A PROTECTED CONSUMER:

1. SUFFICIENT PROOF OF IDENTIFICATION OF THE PROTECTED CONSUMER AND THE REPRESENTATIVE; AND

2. SUFFICIENT PROOF OF AUTHORITY TO ACT ON BEHALF OF THE PROTECTED CONSUMER; AND

(3) PAY TO THE CONSUMER REPORTING AGENCY A FEE AS PROVIDED IN SUBSECTION (I) OF THIS SECTION.

(H) WITHIN 30 DAYS AFTER RECEIVING A REQUEST THAT MEETS THE REQUIREMENTS OF SUBSECTION (G) OF THIS SECTION, THE CONSUMER REPORTING AGENCY SHALL REMOVE THE SECURITY FREEZE FOR THE PROTECTED CONSUMER.

(I) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A CONSUMER REPORTING AGENCY MAY NOT CHARGE A FEE FOR ANY SERVICE PERFORMED UNDER THIS SECTION.

(2) A CONSUMER REPORTING AGENCY MAY CHARGE A REASONABLE FEE, NOT EXCEEDING $5, FOR EACH PLACEMENT OR REMOVAL OF A SECURITY FREEZE FOR A PROTECTED CONSUMER.

(3) NOTWITHSTANDING PARAGRAPH (2) OF THIS SUBSECTION, A CONSUMER REPORTING AGENCY MAY NOT CHARGE ANY FEE UNDER THIS SECTION IF:

(I) THE PROTECTED CONSUMER'S REPRESENTATIVE:

1. HAS OBTAINED A REPORT OF ALLEGED IDENTITY FRAUD AGAINST THE PROTECTED CONSUMER UNDER § 8–304 OF THE CRIMINAL LAW ARTICLE OR AN IDENTITY THEFT PASSPORT UNDER § 8–305 OF THE CRIMINAL LAW ARTICLE; AND

2. PROVIDES A COPY OF THE REPORT OR PASSPORT TO THE CONSUMER REPORTING AGENCY; OR

(II) 1. A REQUEST FOR THE PLACEMENT OR REMOVAL OF A SECURITY FREEZE IS FOR A PROTECTED CONSUMER WHO IS UNDER THE AGE OF 16 YEARS AT THE TIME OF THE REQUEST; AND

2. THE CONSUMER REPORTING AGENCY HAS A CONSUMER REPORT PERTAINING TO THE PROTECTED CONSUMER.

(J) A CONSUMER REPORTING AGENCY MAY REMOVE A SECURITY FREEZE FOR A PROTECTED CONSUMER OR DELETE A RECORD OF A PROTECTED CONSUMER IF THE SECURITY FREEZE WAS PLACED OR THE RECORD WAS CREATED BASED ON A MATERIAL MISREPRESENTATION OF FACT BY THE PROTECTED CONSUMER OR THE PROTECTED CONSUMER'S REPRESENTATIVE.

(K) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE EXCLUSIVE REMEDY FOR A VIOLATION OF THIS SECTION SHALL BE A COMPLAINT FILED WITH THE COMMISSIONER UNDER § 14–1217 OF THIS SUBTITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October 1, 2012~~ January 1, 2013.

Approved by the Governor, May 2, 2012.

Chapter 209

(House Bill 555)

AN ACT concerning

Commercial Law – Security Freezes – Minors and Protected Persons

FOR the purpose of authorizing certain ~~individuals~~ representatives to request a security freeze on the consumer report or a certain record of certain protected consumers who are minor children ~~and certain consumers who are~~ or individuals under guardianship or conservatorship in accordance with certain application procedures; ~~requiring a consumer reporting agency to place a security freeze on certain consumer reports of certain consumers on request of certain individuals and to send certain information to the individuals; authorizing a consumer reporting agency to require certain individuals to confirm a certain request in writing; requiring a consumer reporting agency to create a certain consumer report for a certain consumer under certain circumstances;~~ requiring a consumer reporting agency to place a security freeze for a protected consumer under certain circumstances and within a certain period of time; requiring a consumer reporting agency to create a certain record under certain circumstances; prohibiting a consumer reporting agency from releasing certain information while a security freeze is in place ~~without certain authorization~~; ~~authorizing a person who requests access to a consumer report of a certain consumer to treat a certain application as incomplete under certain circumstances; providing for the temporary or permanent removal of a security freeze on a consumer report of a certain consumer in accordance with certain procedures; prohibiting the charging of a fee for imposition of a security freeze on the consumer report of a certain consumer under certain circumstances; requiring a certain notice to contain certain information; altering the application of certain provisions of law; defining a certain term; altering a certain definition; making certain stylistic and conforming changes;~~ providing that a certain security freeze remains in effect until a certain request is made or the security freeze is removed in accordance with a certain provision of this Act; providing that a certain protected consumer or representative may request the removal of a certain security freeze by submitting a certain request in a certain manner and under certain circumstances; requiring a consumer reporting agency to remove a certain security freeze within a certain period of time; prohibiting a consumer reporting agency from charging a certain fee except under certain circumstances; allowing a consumer reporting agency to remove a certain security freeze or delete a certain record under certain circumstances; providing that the exclusive remedy for a certain violation shall be a certain complaint filed with the Commissioner of Financial Regulation; defining certain

terms; repealing certain obsolete provisions; providing for a delayed effective date; and generally relating to consumer reports and security freezes.

BY repealing and reenacting, with amendments,
Article – Commercial Law
Section 14–1212.1
Annotated Code of Maryland
(2005 Replacement Volume and 2011 Supplement)

BY adding to
Article – Commercial Law
Section 14–1212.2
Annotated Code of Maryland
(2005 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Commercial Law

14–1212.1.

(a) (1) In this section the following words have the meanings indicated.

(2) "Account review" includes activities related to account maintenance, account monitoring, credit line increases, and account upgrades and enhancements.

~~(3)~~ **~~"REPRESENTATIVE" MEANS:~~**

~~(I) THE CUSTODIAL PARENT OR LEGAL GUARDIAN OF A CONSUMER WHO IS A MINOR; OR~~

~~(II) THE GUARDIAN OR CONSERVATOR OF A CONSUMER WHO IS AN INCAPACITATED PERSON OR A PROTECTED PERSON APPOINTED IN ACCORDANCE WITH TITLE 13 OF THE ESTATES AND TRUSTS ARTICLE.~~

~~(4)~~ (3) "Security freeze" means a restriction placed on a consumer's consumer report at the request of the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~ that prohibits a consumer reporting agency from releasing the consumer's consumer report or any information derived from the consumer's consumer report without the express authorization of the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~.

(b) (1) This section does not apply to the use of a consumer's consumer report by:

(i) A person, or a subsidiary, affiliate, agent, or assignee of the person, with which the consumer has, or prior to assignment had, an account, contract, or debtor–creditor relationship, for the purpose of account review or collecting the financial obligation owing for the account, contract, or debt;

(ii) A person that was given access to the consumer's consumer report under subsection (e) of this section for the purpose of facilitating an extension of credit to the consumer or another permissible use;

(iii) A person acting in accordance with a court order, warrant, or subpoena;

(iv) A unit of State or local government that administers a program for establishing and enforcing child support obligations;

(v) The Department of Health and Mental Hygiene in connection with a fraud investigation conducted by the Department;

(vi) The State Department of Assessments and Taxation, the Comptroller, or any other State or local taxing authority in connection with:

1. An investigation conducted by the Department, Comptroller, or taxing authority;

2. The collection of delinquent taxes or unpaid court orders by the Department, Comptroller, or taxing authority; or

3. The performance of any other duty provided for by law;

(vii) A person for the purpose of prescreening, as defined by the federal Fair Credit Reporting Act;

(viii) A person administering a credit file monitoring subscription service to which the consumer has subscribed;

(ix) A person providing a consumer ~~**OR A CONSUMER'S REPRESENTATIVE**~~ with a copy of the consumer's consumer report on request of the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~; or

(x) To the extent not prohibited by other State law, a person only for the purpose of setting or adjusting an insurance rate, adjusting an insurance claim, or underwriting an insurance risk.

(2) This section does not apply to:

(i) A check services or fraud prevention services company that issues:

1. Reports on incidents of fraud; or

2. Authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar payment methods;

(ii) A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automated teller machine abuse, or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution; or

(iii) A consumer reporting agency database or file that consists entirely of consumer information concerning, and used solely for:

1. Criminal record information;

2. Personal loss history information;

3. Fraud prevention or detection;

4. Employment screening; or

5. Tenant screening.

(c) (1) A consumer ~~**OR A CONSUMER'S REPRESENTATIVE**~~ may elect to place a security freeze on the consumer's consumer report by:

(i) Written request sent by certified mail;

(ii) ~~Beginning January 1, 2010, subject~~ **SUBJECT** to paragraph (6) of this subsection, telephone, by providing certain personal information that the consumer reporting agency may require to verify the identity of the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~;

(iii) Electronic mail using an electronic postmark if a secure electronic mail connection is made available by the consumer reporting agency; or

(iv) If the consumer reporting agency makes a secure connection available on its website, an electronic request through that secure connection.

(2) A consumer reporting agency shall require a consumer ~~OR A CONSUMER'S REPRESENTATIVE~~ to provide proper identifying information when requesting a security freeze.

(3) Except as provided in paragraph (5) of this subsection, a consumer reporting agency shall place a security freeze on a consumer's consumer report~~:~~

~~(i) Before July 1, 2008, within 5 business days after receiving a request under paragraph (1) of this subsection; or~~

~~(ii) On or after July 1, 2008,~~ within 3 business days after receiving a request under paragraph (1) of this subsection.

(4) Within 5 business days after placing a security freeze on a consumer's consumer report, the consumer reporting agency shall:

(i) Send a written confirmation of the security freeze to the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~;

(ii) Provide the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~ with a unique personal identification number or password to be used by the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~ when authorizing the release of the consumer's consumer report to a specific person or for a specific period of time; and

(iii) Provide the consumer ~~OR THE CONSUMER'S REPRESENTATIVE~~ with a written statement of the procedures for requesting the consumer reporting agency to remove or temporarily lift a security freeze.

(5) (i) Subject to subparagraph (ii) of this paragraph, a consumer reporting agency is not required to place a security freeze on a consumer report if the consumer reporting agency:

1. Acts only as a reseller of credit information by assembling and merging information contained in a database of another consumer reporting agency or multiple consumer reporting agencies; and

2. Does not maintain a permanent database of credit information from which new consumer reports are produced.

(ii) A consumer reporting agency that acts as a reseller of credit information shall honor a security freeze placed on a consumer report by another consumer reporting agency.

(6) (i) If a consumer ~~OR A CONSUMER'S REPRESENTATIVE~~ requests placement of a security freeze by telephone under paragraph (1)(ii) of this

subsection, the consumer reporting agency may require the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~ to confirm the request in writing on a form that the consumer reporting agency provides to the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~ with the materials sent in accordance with paragraph (4) of this subsection.

(ii) If the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~ fails to return written confirmation that the consumer reporting agency requires under subparagraph (i) of this paragraph, the consumer reporting agency may remove the security freeze in accordance with subsection (g)(2) of this section.

~~**(7) IF A CONSUMER FOR WHOM A SECURITY FREEZE IS REQUESTED BY THE CONSUMER'S REPRESENTATIVE DOES NOT HAVE A CONSUMER REPORT AT THE TIME OF THE REQUEST, THE CONSUMER REPORTING AGENCY SHALL CREATE A CONSUMER REPORT FOR THE CONSUMER FOR THE PURPOSE OF IMPOSING A SECURITY FREEZE ON IT IN ACCORDANCE WITH THIS SECTION.**~~

(d) (1) While a security freeze is in place, a consumer reporting agency may not release a consumer's consumer report or any information derived from a consumer's consumer report without the express prior authorization of the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~.

(2) A consumer reporting agency may advise a person that a security freeze is in effect with respect to a consumer's consumer report.

(3) A consumer reporting agency may not state or imply to any person that a security freeze on a consumer's consumer report reflects a negative credit score, credit history, or credit rating.

(e) (1) If a consumer ~~**OR A CONSUMER'S REPRESENTATIVE**~~ wants to temporarily lift a security freeze to allow the consumer's consumer report to be accessed by a specific person or for a specific period of time while a security freeze is in place, the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~ shall:

(i) Contact the consumer reporting agency by:

1. Mail in the manner prescribed by the consumer reporting agency;

2. Telephone in the manner prescribed by the consumer reporting agency;

3. Electronic mail using an electronic postmark if a secure electronic mail connection is made available to the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~ by the consumer reporting agency; or

4. Electronic request if a secure connection is made available on the website of the consumer reporting agency;

(ii) Request that the security freeze be temporarily lifted; and

(iii) Provide the following to the consumer reporting agency:

1. Proper identifying information;

2. The unique personal identification number or password provided to the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~ under subsection (c)(4)(ii) of this section; and

3. The proper information regarding the person that is to receive the consumer report or the time period during which the consumer report is to be available to users of the consumer report.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, a consumer reporting agency shall comply with a request made under paragraph (1) of this subsection within 3 business days after receiving the request.

(ii) 1. ~~After January 31, 2009, a~~ **A** consumer reporting agency shall comply with a request made under paragraph (1) of this subsection within 15 minutes after the consumer's ~~**OR THE CONSUMER'S REPRESENTATIVE'S**~~ request is received by the consumer reporting agency if the request is made by telephone, by electronic mail, or by secure connection on the website of the consumer reporting agency.

2. A consumer reporting agency that is unable to temporarily lift a security freeze under subsubparagraph 1 of this subparagraph shall lift the security freeze as soon as it is reasonably capable of doing so.

(3) A consumer reporting agency may develop procedures involving the use of facsimile or other electronic media to receive and process, in an expedited manner, a request from a consumer ~~**OR A CONSUMER'S REPRESENTATIVE**~~ to temporarily lift or remove a security freeze on the consumer's consumer report.

(f) If, in connection with an application for credit or for any other use, a person requests access to a consumer's consumer report while a security freeze is in place and the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~ does not authorize access to the consumer report, the person may treat the application as incomplete.

(g) (1) Except as provided in paragraph (2) of this subsection, a consumer reporting agency may remove or temporarily lift a security freeze placed on a

consumer's consumer report only on request of the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~ made under subsection (e) or (h) of this section.

(2) (i) A consumer reporting agency may remove a security freeze placed on a consumer's consumer report if:

1. Placement of the security freeze was based on a material misrepresentation of fact by the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~; or

2. The consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~:

A. Made the request to place the security freeze by telephone under subsection (c)(1)(ii) of this section; and

B. Failed to confirm the request in writing if required in accordance with subsection (c)(6) of this section.

(ii) If a consumer reporting agency intends to remove a security freeze under subparagraph (i) of this paragraph, the consumer reporting agency shall notify the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~ in writing of its intent at least 5 business days before removing the security freeze.

(h) (1) Subject to subsection (g)(2) of this section, a security freeze shall remain in place until the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~ requests that the security freeze be removed.

(2) If a consumer ~~**OR A CONSUMER'S REPRESENTATIVE**~~ wants to remove a security freeze from the consumer's consumer report, the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~ shall:

(i) Contact the consumer reporting agency by:

1. Mail in the manner prescribed by the consumer reporting agency;

2. Telephone in the manner prescribed by the consumer reporting agency;

3. Electronic mail using an electronic postmark if a secure electronic mail connection is made available to the consumer ~~**OR THE CONSUMER'S REPRESENTATIVE**~~ by the consumer reporting agency; or

4. Electronic request if a secure connection is made available on the website of the consumer reporting agency;

(ii) Request that the security freeze be removed; and

(iii) Provide the following to the consumer reporting agency:

1. Proper identifying information; and

2. The unique personal identification number or password provided by the consumer reporting agency under subsection (c)(4)(ii) of this section.

(3) A consumer reporting agency shall remove a security freeze within 3 business days after receiving a request for removal.

(i) (1) Except as provided in paragraph (2) of this subsection, a consumer ~~OR A CONSUMER'S REPRESENTATIVE~~ may not be charged for any service relating to a security freeze.

(2) A consumer reporting agency may charge a reasonable fee, not exceeding $5, for each placement, temporary lift, or removal of a security freeze.

(3) Notwithstanding paragraph (2) of this subsection, a consumer reporting agency may not charge any fee under this section to a consumer ~~OR A CONSUMER'S REPRESENTATIVE~~ who:

(i) Has obtained a report of alleged identity fraud against the consumer under § 8–304 of the Criminal Law Article or an identity theft passport under § 8–305 of the Criminal Law Article; and

(ii) Provides a copy of the report or passport to the consumer reporting agency.

(j) At any time that a consumer is entitled to receive a summary of rights under § 609 of the federal Fair Credit Reporting Act or § 14–1206 of this subtitle, the following notice shall be included:

"NOTICE

You have a right, under § 14–1212.1 of the Commercial Law Article of the Annotated Code of Maryland, to place a security freeze on your credit report. The security freeze will prohibit a consumer reporting agency from releasing your credit report or any information derived from your credit report without your express authorization. The purpose of a security freeze is to prevent credit, loans, and services from being approved in your name without your consent. ~~A PARENT, GUARDIAN, OR CONSERVATOR MAY REQUEST A SECURITY FREEZE ON A CREDIT REPORT OF A~~

~~**MINOR OR ANOTHER INDIVIDUAL UNDER GUARDIANSHIP OR CONSERVATORSHIP.**~~

You may elect to have a consumer reporting agency place a security freeze on your credit report by written request sent by certified mail or by electronic mail or the Internet if the consumer reporting agency provides a secure electronic connection. The consumer reporting agency must place a security freeze on your credit report within ~~5~~ **3** business days after your request is received~~, or within 3 business days starting July 1, 2008~~. Within 5 business days after a security freeze is placed on your credit report, you will be provided with a unique personal identification number or password to use if you want to remove the security freeze or temporarily lift the security freeze to release your credit report to a specific person or for a specific period of time. You also will receive information on the procedures for removing or temporarily lifting a security freeze.

If you want to temporarily lift the security freeze on your credit report, you must contact the consumer reporting agency and provide all of the following:

(1) The unique personal identification number or password provided by the consumer reporting agency;

(2) The proper identifying information to verify your identity; and

(3) The proper information regarding the person who is to receive the credit report or the period of time for which the credit report is to be available to users of the credit report.

A consumer reporting agency must comply with a request to temporarily lift a security freeze on a credit report within 3 business days after the request is received, or within 15 minutes ~~starting January 31, 2009,~~ for certain requests. A consumer reporting agency must comply with a request to remove a security freeze on a credit report within 3 business days after the request is received.

If you are actively seeking credit, you should be aware that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a security freeze, either completely if you are seeking credit from a number of sources, or just for a specific creditor if you are applying only to that creditor, a few days before actually applying for new credit.

A consumer reporting agency may charge a reasonable fee not exceeding $5 for each placement, temporary lift, or removal of a security freeze. However, a consumer reporting agency may not charge any fee to a consumer ~~**OR A CONSUMER'S REPRESENTATIVE**~~ who, at the time of a request to place, temporarily lift, or remove a security freeze, presents to the consumer reporting agency a police report of alleged identity fraud against the consumer or an identity theft passport.

A security freeze does not apply if you have an existing account relationship and a copy of your credit report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities."

(k) If a consumer reporting agency violates a security freeze by releasing a ~~[~~consumer's~~]~~ consumer report subject to a security freeze or any information derived from a ~~[~~consumer's~~]~~ consumer report subject to a security freeze without authorization, the consumer reporting agency, within 5 business days after discovering or being notified of the release, shall notify the consumer in writing of:

(1) The specific information released; and

(2) The name and address of, or other available contact information for, the recipient of the consumer report or the information released.

(l) The exclusive remedy for a violation of subsection (e)(2)(ii) of this section shall be a complaint filed with the Commissioner under § 14–1217 of this subtitle.

14–1212.2.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "PROTECTED CONSUMER" MEANS AN INDIVIDUAL WHO IS:

(I) UNDER THE AGE OF 16 YEARS AT THE TIME A REQUEST FOR THE PLACEMENT OF A SECURITY FREEZE IS MADE; OR

(II) AN INCAPACITATED PERSON OR A PROTECTED PERSON FOR WHOM A GUARDIAN OR CONSERVATOR HAS BEEN APPOINTED IN ACCORDANCE WITH TITLE 13 OF THE ESTATES AND TRUSTS ARTICLE.

(3) "RECORD" MEANS A COMPILATION OF INFORMATION THAT:

(I) IDENTIFIES A PROTECTED CONSUMER;

(II) IS CREATED BY A CONSUMER REPORTING AGENCY SOLELY FOR THE PURPOSE OF COMPLYING WITH THIS SECTION; AND

(III) MAY NOT BE CREATED OR USED TO CONSIDER THE PROTECTED CONSUMER'S CREDIT WORTHINESS, CREDIT STANDING, CREDIT CAPACITY, CHARACTER, GENERAL REPUTATION, PERSONAL CHARACTERISTICS, OR MODE OF LIVING FOR ANY PURPOSE LISTED IN § 14–1201(D)(1) OF THIS SUBTITLE.

(4) "REPRESENTATIVE" MEANS A PERSON WHO PROVIDES TO A CONSUMER REPORTING AGENCY SUFFICIENT PROOF OF AUTHORITY TO ACT ON BEHALF OF A PROTECTED CONSUMER.

(5) "SECURITY FREEZE" MEANS:

(I) IF A CONSUMER REPORTING AGENCY DOES NOT HAVE A FILE PERTAINING TO A PROTECTED CONSUMER, A RESTRICTION THAT:

1. IS PLACED ON THE PROTECTED CONSUMER'S RECORD IN ACCORDANCE WITH THIS SECTION; AND

2. PROHIBITS THE CONSUMER REPORTING AGENCY FROM RELEASING THE PROTECTED CONSUMER'S RECORD EXCEPT AS PROVIDED IN THIS SECTION; OR

(II) IF A CONSUMER REPORTING AGENCY HAS A FILE PERTAINING TO THE PROTECTED CONSUMER, A RESTRICTION THAT:

1. IS PLACED ON THE PROTECTED CONSUMER'S CONSUMER REPORT IN ACCORDANCE WITH THIS SECTION; AND

2. PROHIBITS THE CONSUMER REPORTING AGENCY FROM RELEASING THE PROTECTED CONSUMER'S CONSUMER REPORT OR ANY INFORMATION DERIVED FROM THE PROTECTED CONSUMER'S CONSUMER REPORT EXCEPT AS PROVIDED IN THIS SECTION.

(6) (I) "SUFFICIENT PROOF OF AUTHORITY" MEANS DOCUMENTATION THAT SHOWS A REPRESENTATIVE HAS AUTHORITY TO ACT ON BEHALF OF A PROTECTED CONSUMER.

(II) "SUFFICIENT PROOF OF AUTHORITY" INCLUDES:

1. AN ORDER ISSUED BY A COURT OF LAW;

2. A LAWFULLY EXECUTED AND VALID POWER OF ATTORNEY; AND

3. A WRITTEN, NOTARIZED STATEMENT SIGNED BY A REPRESENTATIVE THAT EXPRESSLY DESCRIBES THE AUTHORITY OF THE REPRESENTATIVE TO ACT ON BEHALF OF A PROTECTED CONSUMER.

(7) (I) "SUFFICIENT PROOF OF IDENTIFICATION" MEANS INFORMATION OR DOCUMENTATION THAT IDENTIFIES A PROTECTED CONSUMER OR A REPRESENTATIVE OF A PROTECTED CONSUMER.

(II) "SUFFICIENT PROOF OF IDENTIFICATION" INCLUDES:

1. A SOCIAL SECURITY NUMBER OR A COPY OF A SOCIAL SECURITY CARD ISSUED BY THE SOCIAL SECURITY ADMINISTRATION;

2. A CERTIFIED OR OFFICIAL COPY OF A BIRTH CERTIFICATE ISSUED BY THE ENTITY AUTHORIZED TO ISSUE THE BIRTH CERTIFICATE;

3. A COPY OF A DRIVER'S LICENSE, AN IDENTIFICATION CARD ISSUED BY THE MOTOR VEHICLE ADMINISTRATION, OR ANY OTHER GOVERNMENT–ISSUED IDENTIFICATION; OR

4. A COPY OF A BILL, INCLUDING A BILL FOR TELEPHONE, SEWER, SEPTIC TANK, WATER, ELECTRIC, OIL, OR NATURAL GAS SERVICES, THAT SHOWS A NAME AND HOME ADDRESS.

(B) THIS SECTION DOES NOT APPLY TO THE USE OF A PROTECTED CONSUMER'S CONSUMER REPORT OR RECORD BY:

(1) A PERSON ADMINISTERING A CREDIT FILE MONITORING SUBSCRIPTION SERVICE TO WHICH:

(I) THE PROTECTED CONSUMER HAS SUBSCRIBED; OR

(II) THE REPRESENTATIVE OF THE PROTECTED CONSUMER HAS SUBSCRIBED ON BEHALF OF THE PROTECTED CONSUMER;

(2) A PERSON PROVIDING THE PROTECTED CONSUMER OR THE PROTECTED CONSUMER'S REPRESENTATIVE WITH A COPY OF THE PROTECTED CONSUMER'S CONSUMER REPORT ON REQUEST OF THE PROTECTED CONSUMER OR THE PROTECTED CONSUMER'S REPRESENTATIVE; OR

(3) AN ENTITY LISTED IN § 14–1212.1(B)(2)(I) OR (II) OR (C)(5) OF THIS SUBTITLE.

(C) (1) A CONSUMER REPORTING AGENCY SHALL PLACE A SECURITY FREEZE FOR A PROTECTED CONSUMER IF:

(I) THE CONSUMER REPORTING AGENCY RECEIVES A REQUEST FROM THE PROTECTED CONSUMER'S REPRESENTATIVE FOR THE PLACEMENT OF THE SECURITY FREEZE UNDER THIS SECTION; AND

(II) THE PROTECTED CONSUMER'S REPRESENTATIVE:

1. SUBMITS THE REQUEST TO THE CONSUMER REPORTING AGENCY AT THE ADDRESS OR OTHER POINT OF CONTACT AND IN THE MANNER SPECIFIED BY THE CONSUMER REPORTING AGENCY;

2. PROVIDES TO THE CONSUMER REPORTING AGENCY SUFFICIENT PROOF OF IDENTIFICATION OF THE PROTECTED CONSUMER AND THE REPRESENTATIVE;

3. PROVIDES TO THE CONSUMER REPORTING AGENCY SUFFICIENT PROOF OF AUTHORITY TO ACT ON BEHALF OF THE PROTECTED CONSUMER; AND

4. PAYS TO THE CONSUMER REPORTING AGENCY A FEE AS PROVIDED IN SUBSECTION (I) OF THIS SECTION.

(2) IF A CONSUMER REPORTING AGENCY DOES NOT HAVE A FILE PERTAINING TO A PROTECTED CONSUMER WHEN THE CONSUMER REPORTING AGENCY RECEIVES A REQUEST UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE CONSUMER REPORTING AGENCY SHALL CREATE A RECORD FOR THE PROTECTED CONSUMER.

(D) WITHIN 30 DAYS AFTER RECEIVING A REQUEST THAT MEETS THE REQUIREMENTS OF SUBSECTION (C)(1) OF THIS SECTION, A CONSUMER REPORTING AGENCY SHALL PLACE A SECURITY FREEZE FOR THE PROTECTED CONSUMER.

(E) UNLESS A SECURITY FREEZE FOR A PROTECTED CONSUMER IS REMOVED IN ACCORDANCE WITH SUBSECTION (G) OR (J) OF THIS SECTION, A CONSUMER REPORTING AGENCY MAY NOT RELEASE THE PROTECTED CONSUMER'S CONSUMER REPORT, ANY INFORMATION DERIVED FROM THE PROTECTED CONSUMER'S CONSUMER REPORT, OR ANY RECORD CREATED FOR THE PROTECTED CONSUMER.

(F) A SECURITY FREEZE FOR A PROTECTED CONSUMER PLACED UNDER SUBSECTION (D) OF THIS SECTION SHALL REMAIN IN EFFECT UNTIL:

(1) THE PROTECTED CONSUMER OR THE PROTECTED CONSUMER'S REPRESENTATIVE REQUESTS THE CONSUMER REPORTING AGENCY

TO REMOVE THE SECURITY FREEZE IN ACCORDANCE WITH SUBSECTION (G) OF THIS SECTION; OR

(2) THE SECURITY FREEZE IS REMOVED IN ACCORDANCE WITH SUBSECTION (J) OF THIS SECTION.

(G) IF A PROTECTED CONSUMER OR A PROTECTED CONSUMER'S REPRESENTATIVE WISHES TO REMOVE A SECURITY FREEZE FOR THE PROTECTED CONSUMER, THE PROTECTED CONSUMER OR THE PROTECTED CONSUMER'S REPRESENTATIVE SHALL:

(1) SUBMIT A REQUEST FOR THE REMOVAL OF THE SECURITY FREEZE TO THE CONSUMER REPORTING AGENCY AT THE ADDRESS OR OTHER POINT OF CONTACT AND IN THE MANNER SPECIFIED BY THE CONSUMER REPORTING AGENCY;

(2) PROVIDE TO THE CONSUMER REPORTING AGENCY:

(I) IN THE CASE OF A REQUEST BY THE PROTECTED CONSUMER:

1. PROOF THAT THE SUFFICIENT PROOF OF AUTHORITY FOR THE PROTECTED CONSUMER'S REPRESENTATIVE TO ACT ON BEHALF OF THE PROTECTED CONSUMER IS NO LONGER VALID; AND

2. SUFFICIENT PROOF OF IDENTIFICATION OF THE PROTECTED CONSUMER; OR

(II) IN THE CASE OF A REQUEST BY THE REPRESENTATIVE OF A PROTECTED CONSUMER:

1. SUFFICIENT PROOF OF IDENTIFICATION OF THE PROTECTED CONSUMER AND THE REPRESENTATIVE; AND

2. SUFFICIENT PROOF OF AUTHORITY TO ACT ON BEHALF OF THE PROTECTED CONSUMER; AND

(3) PAY TO THE CONSUMER REPORTING AGENCY A FEE AS PROVIDED IN SUBSECTION (I) OF THIS SECTION.

(H) WITHIN 30 DAYS AFTER RECEIVING A REQUEST THAT MEETS THE REQUIREMENTS OF SUBSECTION (G) OF THIS SECTION, THE CONSUMER REPORTING AGENCY SHALL REMOVE THE SECURITY FREEZE FOR THE PROTECTED CONSUMER.

(I) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A CONSUMER REPORTING AGENCY MAY NOT CHARGE A FEE FOR ANY SERVICE PERFORMED UNDER THIS SECTION.

(2) A CONSUMER REPORTING AGENCY MAY CHARGE A REASONABLE FEE, NOT EXCEEDING $5, FOR EACH PLACEMENT OR REMOVAL OF A SECURITY FREEZE FOR A PROTECTED CONSUMER.

(3) NOTWITHSTANDING PARAGRAPH (2) OF THIS SUBSECTION, A CONSUMER REPORTING AGENCY MAY NOT CHARGE ANY FEE UNDER THIS SECTION IF:

(I) THE PROTECTED CONSUMER'S REPRESENTATIVE:

1. HAS OBTAINED A REPORT OF ALLEGED IDENTITY FRAUD AGAINST THE PROTECTED CONSUMER UNDER § 8–304 OF THE CRIMINAL LAW ARTICLE OR AN IDENTITY THEFT PASSPORT UNDER § 8–305 OF THE CRIMINAL LAW ARTICLE; AND

2. PROVIDES A COPY OF THE REPORT OR PASSPORT TO THE CONSUMER REPORTING AGENCY; OR

(II) 1. A REQUEST FOR THE PLACEMENT OR REMOVAL OF A SECURITY FREEZE IS FOR A PROTECTED CONSUMER WHO IS UNDER THE AGE OF 16 YEARS AT THE TIME OF THE REQUEST; AND

2. THE CONSUMER REPORTING AGENCY HAS A CONSUMER REPORT PERTAINING TO THE PROTECTED CONSUMER.

(J) A CONSUMER REPORTING AGENCY MAY REMOVE A SECURITY FREEZE FOR A PROTECTED CONSUMER OR DELETE A RECORD OF A PROTECTED CONSUMER IF THE SECURITY FREEZE WAS PLACED OR THE RECORD WAS CREATED BASED ON A MATERIAL MISREPRESENTATION OF FACT BY THE PROTECTED CONSUMER OR THE PROTECTED CONSUMER'S REPRESENTATIVE.

(K) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE EXCLUSIVE REMEDY FOR A VIOLATION OF THIS SECTION SHALL BE A COMPLAINT FILED WITH THE COMMISSIONER UNDER § 14–1217 OF THIS SUBTITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October 1, 2012~~ January 1, 2013.

Approved by the Governor, May 2, 2012.

Chapter 210

(Senate Bill 309)

AN ACT concerning

Mopeds and Motor Scooters – Titling, ~~Registration,~~ Insurance, and Required Use of Protective Headgear

FOR the purpose of authorizing a certain insurer to exclude a moped and motor scooter from certain insurance benefits; expanding the pool of vehicles eligible to be covered by the Maryland Automobile Insurance Fund; requiring a moped or motor scooter in the State to be titled ~~and registered~~ by the Motor Vehicle Administration; requiring an owner or prospective owner of a moped or motor scooter to obtain or maintain certain security; ~~requiring an application for the registration of a moped or motor scooter to be submitted electronically; requiring a licensed dealer of mopeds or motor scooters under certain circumstances to obtain a moped or motor scooter registration application from the owner, collect registration fees, and transmit the application and fees in a certain manner within a certain period of time; providing for the registration classification of mopeds and motor scooters; establishing an annual registration fee and surcharge for mopeds and motor scooters~~ requiring an application for a certificate of title for a motor scooter or moped to be submitted electronically; requiring the Administration to issue a permanent decal to the owner of a motor scooter or moped for which a certificate of title is issued; requiring an owner of a motor scooter or moped to display the decal in a certain manner; requiring a decal to display a unique number sequence assigned by the Administration; requiring the Administration to establish a certain fee for the decal and adopt certain regulations; prohibiting a person from operating a motor scooter or moped unless the motor scooter or moped displays the decal in a certain manner; establishing a certain fee for a certificate of title issued for a motor scooter or moped; establishing the criteria for determining the fair market value of a motor scooter or a moped for the purpose of determining the excise tax under certain circumstances; *requiring that an excise tax be imposed for a certificate of title for a moped or motor scooter for which sales and use tax is not collected at the time of purchase;* requiring the owner of a motor scooter or moped to certify at the time of titling that the vehicle is covered by a certain security; requiring the operator of a motor scooter or moped to carry evidence of a certain required security when operating the motor scooter or moped; prohibiting an individual from operating or riding on a moped or motor scooter unless the individual is wearing certain protective headgear and a certain eye–protective device; authorizing the Motor Vehicle Administrator to approve or disapprove certain headgear and eye–protective devices and adopt and

enforce certain regulations; requiring the Administrator to publish a certain list; establishing that the failure of certain individuals to wear certain protective headgear or a certain eye–protective device may not be considered certain evidence or diminish the recovery of certain damages; establishing that certain provisions relating to moped and motor scooter headgear and eye–protective devices do not limit certain liabilities or rights; requiring certain procedures in certain civil proceedings; ~~providing that certain vehicle equipment and inspection requirements do not apply to mopeds and motor scooters;~~ requiring the Motor Vehicle Administration to waive certain fees associated with titling a moped or motor scooter for certain individuals under certain circumstances; altering certain definitions; making certain stylistic changes and technical corrections; and generally relating to mopeds and motor scooters.

BY repealing and reenacting, with amendments,
Article – Insurance
Section 19–505(c) and 20–501
Annotated Code of Maryland
(2011 Replacement Volume)

BY repealing and reenacting, without amendments,
Article – Transportation
Section 11–134.1, 11–134.5, *13–809(a)(1) and (3),* ~~13–101.1, 13–402(a)(1), 17–104(a) and (b),~~ 21–1207, ~~23–101(a),~~ and 23–104~~, 23–107(a)(1), 23–202(a)(1), and 23–206(a)~~
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Transportation
Section ~~11–135, 11–176, 13–403, 13–954,~~ 13–102, 13–104(a), 13–106, 13–802, ~~13–809(a)(1), (2), and (3),~~ *13–809(a)(2) and (b)(1),* and 22–101(e)(1)~~, 23–101(i)(3), and 23–206.2(e)~~
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY adding to
Article – Transportation
Section ~~13–939.3~~ 17–104.1~~, 21–1306.1, and 23–206.2(e)~~ *and 21–1306.1*
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Insurance

19–505.

(c) (1) An insurer may exclude from the coverage described in this section benefits for:

(i) an individual, otherwise insured under the policy, who:

1. intentionally causes the motor vehicle accident resulting in the injury for which benefits are claimed;

2. is a nonresident of the State and is injured as a pedestrian in a motor vehicle accident that occurs outside of the State;

3. is injured in a motor vehicle accident while operating or voluntarily riding in a motor vehicle that the individual knows is stolen; or

4. is injured in a motor vehicle accident while committing a felony or while violating § 21–904 of the Transportation Article; or

(ii) the named insured or a family member of the named insured who resides in the named insured's household for an injury that occurs while the named insured or family member is occupying an uninsured motor vehicle owned by:

1. the named insured; or

2. an immediate family member of the named insured who resides in the named insured's household.

(2) In the case of motorcycles, **MOPEDS, OR MOTOR SCOOTERS,** an insurer may:

(i) exclude the economic loss benefits described in this section; or

(ii) offer the economic loss benefits with deductibles, options, or specific exclusions.

20–501.

(a) In this subtitle, "covered vehicle" means a ~~motor~~ vehicle for which the Fund is required to provide coverage under this subtitle.

(b) "Covered vehicle" includes **[**an automobile, truck, van, and trailer**]:**

(1) ANY MOTOR VEHICLE REQUIRED TO BE REGISTERED UNDER TITLE 13 OF THE TRANSPORTATION ARTICLE;

(2) A MOPED; AND

(3) A MOTOR SCOOTER.

[(c) "Covered vehicle" does not include a motorcycle, low speed vehicle, or motorbike.**]**

Article – Transportation

11–134.1.

"Moped" means a bicycle that:

(1) Is designed to be operated by human power with the assistance of a motor;

(2) Is equipped with pedals that mechanically drive the rear wheel or wheels;

(3) Has two or three wheels, of which one is more than 14 inches in diameter; and

(4) Has a motor with a rating of 1.5 brake horsepower or less and, if the motor is an internal combustion engine, a capacity of 50 cubic centimeters piston displacement or less.

11–134.5.

(a) "Motor scooter" means a nonpedal vehicle that:

(1) Has a seat for the operator;

(2) Has two wheels, of which one is 10 inches or more in diameter;

(3) Has a step–through chassis;

(4) Has a motor:

(i) With a rating of 2.7 brake horsepower or less; or

(ii) If the motor is an internal combustion engine, with a capacity of 50 cubic centimeters piston displacement or less; and

(5) Is equipped with an automatic transmission.

(b) "Motor scooter" does not include a vehicle that has been manufactured for off–road use, including a motorcycle and an all–terrain vehicle.

~~11–135.~~

~~(a) [(1)] "Motor vehicle" means[, except as provided in subsection (b) of this section,] a vehicle that:~~

~~[(i)] (1) Is self–propelled or propelled by electric power obtained from overhead electrical wires; and~~

~~[(ii)] (2) Is not operated on rails.~~

~~[(2)] (B) "Motor vehicle" includes [a]:~~

~~(1) A low speed vehicle;~~

~~(2) A MOPED; AND~~

~~(3) A MOTOR SCOOTER.~~

~~[(b) "Motor vehicle" does not include:~~

~~(1) A moped, as defined in § 11–134.1 of this subtitle; or~~

~~(2) A motor scooter, as defined in § 11–134.5 of this subtitle.]~~

~~11–176.~~

~~(a) (1) "Vehicle" means, except as provided in subsection (b) of this section, any device in, on, or by which any individual or property is or might be transported or towed on a highway.~~

~~(2) "Vehicle" includes [a]:~~

~~(I) A low speed vehicle [and an];~~

~~(II) A MOPED;~~

~~(III) A MOTOR SCOOTER; AND~~

~~(IV) AN off–highway recreational vehicle.~~

~~(b) "Vehicle" does not include an electric personal assistive mobility device as defined in § 21–101(j) of this article.~~

~~13–101.1.~~

~~Except as provided in § 13–102 of this subtitle, the owner of each vehicle that is in this State and for which the Administration has not issued a certificate of title shall apply to the Administration for a certificate of title of the vehicle.~~

~~13–402.~~

~~(a) (1) Except as otherwise provided in this section or elsewhere in the Maryland Vehicle Law, each motor vehicle, trailer, semitrailer, and pole trailer driven on a highway shall be registered under this subtitle.~~

~~13–403.~~

~~(a) (1) Except as provided in paragraph (2) of this subsection, the owner of a vehicle subject to registration under this subtitle shall apply to the Administration for the registration of the vehicle in a manner that the Administration requires.~~

~~(2) The application for registration of a low–speed vehicle~~**~~, A MOPED, OR A MOTOR SCOOTER~~** ~~shall be made by electronic transmission under § 13–610 of this title.~~

~~(b) The application shall contain the information that the Administration reasonably requires to determine if the vehicle is entitled to registration.~~

~~(c) If a licensed dealer holds a low–speed vehicle~~**~~, A MOPED, OR A MOTOR SCOOTER~~** ~~for sale and transfers the vehicle to a person other than another licensed dealer, the dealer shall:~~

~~(1) Obtain from the transferee a completed application;~~

~~(2) Collect all fees required to register the low–speed vehicle~~**~~, MOPED, OR MOTOR SCOOTER~~** ~~under this subtitle; and~~

~~(3) Within 30 days of the date of delivery of the low–speed vehicle~~**~~, MOPED, OR MOTOR SCOOTER~~**~~, electronically transmit the application and fees in accordance with § 13–610 of this title.~~

~~13–939.3.~~

~~(A) WHEN REGISTERED WITH THE ADMINISTRATION, EVERY MOPED AND MOTOR SCOOTER IS A CLASS S (MOPED/MOTOR SCOOTER) VEHICLE.~~

~~(B) FOR EACH CLASS S (MOPED/MOTOR SCOOTER) VEHICLE, THE ANNUAL REGISTRATION FEE IS $35.~~

~~13–954.~~

~~(a) In this section, "motor vehicle" means a:~~

~~(1) Class A (passenger) vehicle;~~

~~(2) Class B (for hire) vehicle;~~

~~(3) Class C (funeral and ambulance) vehicle;~~

~~(4) Class D (motorcycle) vehicle;~~

~~(5) Class E (truck) vehicle;~~

~~(6) Class F (tractor) vehicle;~~

~~(7) Class H (school) vehicle;~~

~~(8) Class J (vanpool) vehicle;~~

~~(9) Class M (multipurpose) vehicle;~~

~~(10) Class P (passenger bus) vehicle;~~

~~(11) Class Q (limousine) vehicle;~~

~~(12) Class R (low speed) vehicle; [or]~~

~~(13) CLASS S (MOPED/MOTOR SCOOTER) VEHICLE; OR~~

~~(14) Vehicle within any other class designated by the Administrator.~~

~~(b) (1) In addition to the registration fee otherwise required by this title, the owner of any motor vehicle registered under this title shall pay a surcharge of $13.50 per year for each motor vehicle registered.~~

~~(2) $2.50 of the surcharge collected under paragraph (1) of this subsection shall be paid into the Maryland Trauma Physician Services Fund established under § 19–130 of the Health – General Article.~~

~~17–104.~~

~~(a) The Administration may not issue or transfer the registration of a motor vehicle unless the owner or prospective owner of the vehicle furnishes evidence satisfactory to the Administration that the required security is in effect.~~

~~(b) The owner of a motor vehicle that is required to be registered in this State shall maintain the required security for the vehicle during the registration period.~~

13–102.

A certificate of title is not required for:

(1) A vehicle owned and used by the United States, unless it is registered in this State;

(2) A new vehicle owned by a manufacturer or dealer and held for sale, even though incidentally moved on the highway or used for purposes of testing or demonstration or used as allowed under § 13–621 of this title;

(3) A vehicle used by a manufacturer only for testing;

(4) A vehicle owned by a nonresident of this State and not required by law to be registered in this State;

(5) A vehicle regularly engaged in the interstate transportation of people or property and for which a currently effective certificate of title has been issued in another state;

(6) A vehicle moved only by human or animal power;

(7) A bicycle**, EXCEPT FOR A MOPED**;

(8) A vehicle in which interest has passed to a secured party on default of the owner;

(9) Farm equipment;

(10) Special mobile equipment;

(11) A self–propelled invalid:

(i) Wheelchair; or

(ii) Tricycle;

(12) A trailer, other than a camping trailer, rated by the manufacturer as having a gross vehicle weight of 2,500 pounds or less; or

(13) An off–highway recreational vehicle purchased before October 1, 2010.

13–104.

(a) (1) The application for a certificate of title of a vehicle shall be made by the owner of the vehicle on the form that the Administration requires.

(2) Notwithstanding any other provision of this title, an application for a certificate of title of an off–highway recreational vehicle**, A MOTOR SCOOTER, OR A MOPED** shall be made by electronic transmission under § 13–610 of this title.

(3) THE OWNER OF A MOTOR SCOOTER OR MOPED SHALL CERTIFY AT THE TIME OF TITLING THAT THE MOTOR SCOOTER OR MOPED IS COVERED BY THE REQUIRED SECURITY DESCRIBED IN § 17–103 OF THIS ARTICLE.

13–106.

(a) The Administration shall:

(1) File each application for a certificate of title that it receives; and

(2) Issue a certificate of title of the vehicle if:

(i) It finds that the applicant is entitled to the certificate of title; and

(ii) It has received the required fees.

(b) The Administration shall keep a record of all certificates of title that it issues, as follows:

(1) Under a distinctive title number assigned to the vehicle;

(2) Under the vehicle identification number of the vehicle or, if a distinguishing number has been assigned to it, under the distinguishing number; and

(3) Under any other method that the Administration determines.

(c) Upon receipt with the application for a certificate of title, the Administration shall maintain a record of the following documents as a part of its certificate of title records for a motor vehicle:

(1) A notice from a dealer under § 14–1502(f)(1) of the Commercial Law Article;

(2) A notice from a manufacturer or factory branch under § 14–1502(f)(2) of the Commercial Law Article; and

(3) A manufacturer's disclosure form provided to the Administration under § 14–1502(g) of the Commercial Law Article.

(D) (1) THE ADMINISTRATION SHALL ISSUE A PERMANENT DECAL TO THE OWNER OF A MOTOR SCOOTER OR MOPED FOR WHICH A CERTIFICATE OF TITLE IS ISSUED.

(2) AN OWNER OF A MOTOR SCOOTER OR MOPED FOR WHICH A CERTIFICATE OF TITLE IS ISSUED SHALL DISPLAY THE DECAL ON THE VEHICLE AS PRESCRIBED BY THE ADMINISTRATION.

(3) A DECAL SHALL DISPLAY A UNIQUE NUMBER SEQUENCE ASSIGNED BY THE ADMINISTRATION.

(4) THE ADMINISTRATION:

(I) SHALL ESTABLISH A FEE OF $5 FOR A DECAL; AND

(II) MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.

13–802.

(a) Except as provided in subsection (b) of this section and § 13–805 of this subtitle, the fee for each certificate of title issued under this title is $100.

(b) **(1)** For fiscal years 2012 through 2014 only, the fee for each certificate of title issued for a rental vehicle is $50.

(2) THE FEE FOR EACH CERTIFICATE OF TITLE ISSUED FOR A MOTOR SCOOTER OR A MOPED IS $20.

13–809.

(a) (1) In this section the following words have the meanings indicated.

(2) "Fair market value" means:

(i) As to the sale of any new or used vehicle by a licensed dealer, the total purchase price, as certified by the dealer;

(ii) Except as provided in item (iv) of this paragraph, as to a used vehicle that is sold by any person other than a licensed dealer and that has a designated model year that is 7 years old or older, the greater of:

1. The total purchase price; or

2. $640;

(iii) Except as provided in item (iv) of this paragraph, as to any other used vehicle that is sold by any person other than a licensed dealer:

1. The total purchase price, if the total purchase price is less than $500 below the retail value of the vehicle as shown in a national publication of used car values adopted for use by the Department; or

2. If the total purchase price is $500 or more below the retail value of the vehicle as shown in a national publication of used car values adopted for use by the Department:

A. The total purchase price, if verified to the satisfaction of the Administration by a notarized bill of sale submitted in accordance with subsection (d)(2) of this section; or

B. The valuation shown in the national publication of used car values, if the Administration finds that the documentation submitted under subsection (d)(2) of this section fails to verify the total purchase price;

(iv) As to a used trailer**, A MOTOR SCOOTER, A MOPED,** or **AN** off–highway recreational vehicle that is sold by any person other than a licensed dealer, the greater of:

1. The total purchase price; or

2. $320; and

(v) In any other case, the valuation shown in a national publication of used car values adopted for use by the Department.

(3) (i) Subject to subparagraph (ii) of this paragraph, "total purchase price" means the price of a vehicle agreed on by the buyer and the seller, including any dealer processing charge, less an allowance for trade–in but with no allowance for other nonmonetary consideration.

(ii) As to a person trading in a nonleased vehicle to enter into a lease for a period of more than 180 consecutive days, "total purchase price" means the retail value of the vehicle as certified by the dealer, including any dealer processing charge, less an allowance for the trade–in of the nonleased vehicle but with no allowance for other nonmonetary consideration.

(b) (1) Except as otherwise provided in this part, in addition to any other charge required by the Maryland Vehicle Law, an excise tax is imposed:

(i) For each original and each subsequent certificate of title issued in this State for a motor vehicle, a trailer, a semitrailer, ***A MOPED, A MOTOR SCOOTER,*** *or an off–highway recreational vehicle for which sales and use tax is not collected at the time of purchase; and*

(ii) Except as provided in paragraph (2) of this subsection, for each motor vehicle, trailer, or semitrailer that is in interstate operation and registered under § 13–109(c) or (d) of this title without a certificate of title.

17–104.1.

THE ~~OWNER~~ *OPERATOR* OF A MOPED OR MOTOR SCOOTER SHALL CARRY EVIDENCE OF THE REQUIRED SECURITY WHEN OPERATING THE MOPED OR MOTOR SCOOTER.

21–1207.

(a) (1) If a bicycle or a motor scooter is used on a highway at any time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of 1,000 feet, the bicycle or motor scooter shall be equipped:

(i) On the front, with a lamp that emits a white light visible from a distance of at least 500 feet to the front; and

(ii) On the rear, with a red reflector of a type approved by the Administration and visible from all distances from 600 feet to 100 feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle.

(2) A bicycle or bicyclist may be equipped with a functioning lamp that acts as a reflector and emits a red light or a flashing amber light visible from a distance of 500 feet to the rear instead of or in addition to the red reflector required by paragraph (1) of this subsection.

(b) Subject to subsection (c) of this section, a person may operate a bicycle or a motor scooter that is equipped with a bell or other device capable of giving a signal audible for a distance of at least 100 feet.

(c) A bicycle or motor scooter may not be equipped with nor may any person use on a bicycle any siren or whistle.

(d) Every bicycle and motor scooter shall be equipped with a braking system capable of stopping from a speed of 10 miles per hour within 15 feet on dry, level, clean pavement.

21–1306.1.

(A) THIS SECTION DOES NOT APPLY TO ANY INDIVIDUAL RIDING IN AN ENCLOSED CAB.

(B) AN INDIVIDUAL MAY NOT OPERATE OR RIDE ON A MOPED OR MOTOR SCOOTER UNLESS THE INDIVIDUAL IS WEARING PROTECTIVE HEADGEAR THAT MEETS THE STANDARDS ~~ESTABLISHED BY THE ADMINISTRATOR~~ PROVIDED UNDER 49 C.F.R. § 571.218.

(C) AN INDIVIDUAL MAY NOT OPERATE A MOPED OR MOTOR SCOOTER UNLESS:

(1) THE INDIVIDUAL IS WEARING AN EYE–PROTECTIVE DEVICE OF A TYPE APPROVED BY THE ADMINISTRATOR; OR

(2) THE MOPED OR MOTOR SCOOTER IS EQUIPPED WITH A WINDSCREEN.

(D) THE ADMINISTRATOR:

(1) MAY APPROVE OR DISAPPROVE PROTECTIVE HEADGEAR AND EYE–PROTECTIVE DEVICES REQUIRED BY THIS SECTION;

(2) MAY ADOPT AND ENFORCE REGULATIONS ESTABLISHING STANDARDS AND SPECIFICATIONS FOR THE APPROVAL OF PROTECTIVE HEADGEAR AND EYE–PROTECTIVE DEVICES; AND

(3) SHALL PUBLISH LISTS OF ALL PROTECTIVE HEADGEAR AND EYE–PROTECTIVE DEVICES THAT THE ADMINISTRATOR APPROVES, BY NAME AND TYPE.

(E) (1) THE FAILURE OF AN INDIVIDUAL TO WEAR PROTECTIVE HEADGEAR REQUIRED UNDER SUBSECTION (B) OF THIS SECTION MAY NOT:

(I) BE CONSIDERED EVIDENCE OF NEGLIGENCE;

(II) BE CONSIDERED EVIDENCE OF CONTRIBUTORY NEGLIGENCE;

(III) LIMIT LIABILITY OF A PARTY OR AN INSURER; OR

(IV) DIMINISH RECOVERY FOR DAMAGES ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR OPERATION OF A MOPED OR MOTOR SCOOTER.

(2) SUBJECT TO THE PROVISIONS OF PARAGRAPH (3) OF THIS SUBSECTION, A PARTY, WITNESS, OR COUNSEL MAY NOT MAKE REFERENCE TO PROTECTIVE HEADGEAR DURING A TRIAL OF A CIVIL ACTION THAT INVOLVES PROPERTY DAMAGE, PERSONAL INJURY, OR DEATH IF THE DAMAGE, INJURY, OR DEATH IS NOT RELATED TO THE DESIGN, MANUFACTURE, SUPPLYING, OR REPAIR OF PROTECTIVE HEADGEAR.

(3) (I) NOTHING CONTAINED IN THIS SUBSECTION MAY BE CONSTRUED TO PROHIBIT THE RIGHT OF A PERSON TO INSTITUTE A CIVIL ACTION FOR DAMAGES AGAINST A DEALER, MANUFACTURER, DISTRIBUTOR, FACTORY BRANCH, OR OTHER APPROPRIATE ENTITY OR PERSON ARISING OUT OF AN INCIDENT THAT INVOLVES PROTECTIVE HEADGEAR ALLEGED TO BE DEFECTIVELY DESIGNED, MANUFACTURED, OR REPAIRED.

(II) IN A CIVIL ACTION DESCRIBED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IN WHICH TWO OR MORE PARTIES ARE NAMED AS JOINT TORT–FEASORS, INTERPLEADED AS DEFENDANTS, OR IMPLEADED AS DEFENDANTS, AND AT LEAST ONE OF THE JOINT TORT–FEASORS OR DEFENDANTS IS NOT INVOLVED IN THE DESIGN, MANUFACTURE, SUPPLYING, OR REPAIR OF PROTECTIVE HEADGEAR, A COURT SHALL ORDER ON A MOTION OF ANY PARTY SEPARATE TRIALS TO ACCOMPLISH THE ENDS OF JUSTICE.

22–101.

(e) (1) The provisions of this title with respect to equipment on vehicles do not apply to farm equipment, road machinery, road rollers, **[**or**]** farm tractors, **MOPEDS, OR MOTOR SCOOTERS,** except as made applicable in this title.

~~23–101.~~

~~(a) In this subtitle the following words have the meanings indicated.~~

~~(i) (3) "Vehicle" does not include any Class L (historic) vehicle,~~ **CLASS S (MOPED/MOTOR SCOOTER) VEHICLE,** or **[**~~any~~**]** ~~trailer which is a mobile home as defined by § 11–134 of this article.~~

23–104.

(a) Every vehicle driven on the highways in this State shall, where applicable, have the following equipment, meeting or exceeding the standards established jointly by the Administration and the Division: brakes, steering, suspension, horn, door handles, mirrors, tires, exhaust system, lights, glazing, windshield wipers, odometer, speedometer, bumpers, properly aligned wheels, wheels and wheel lugs, fenders, floor pans, hood, hood catches, emissions equipment, fuel

system, front seat, motor mounts, gear selection indicator for automatic transmissions, universal joints, and seat belts or combination seat belt–shoulder harness if required as original equipment under § 22–412 or § 22–412.1 of this article.

(b) (1) The Administration and the Division jointly may establish standards by rule or regulation for this equipment.

(2) The Administration and the Division shall adopt, consistent with federal law, regulations establishing equipment, performance, and other technical standards for low speed vehicles.

~~23–107.~~

~~(a) (1) Before the Administration titles and registers any used vehicle, it shall require the applicant to present a valid inspection certificate for the vehicle.~~

~~23–202.~~

~~(a) (1) Subject to subsection (d) of this section, the Administration and the Secretary shall establish an emissions control program in the State in accordance with the federal Clean Air Act.~~

~~23–206.~~

~~(a) An owner of a motor vehicle that is registered in this State shall have the vehicle inspected and tested as required under this subtitle.~~

~~23–206.2.~~

~~**(C) A MOPED OR MOTOR SCOOTER IS EXEMPT FROM THE MANDATORY INSPECTIONS REQUIRED BY THIS SUBTITLE.**~~

~~**[**(c)**] (D)** The Administrator may adopt regulations as necessary to administer or enforce the provisions of this section.~~

SECTION 2. AND BE IT FURTHER ENACTED, That, except for the decal fee established under this Act, the Motor Vehicle Administration shall waive all fees associated with titling a moped or motor scooter for an individual who owned the moped or motor scooter on the effective date of this Act and titles the vehicle on or before October 1, 2013.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 211

(House Bill 149)

AN ACT concerning

Mopeds and Motor Scooters – Titling, ~~Registration,~~ Insurance, and Required Use of Protective Headgear

FOR the purpose of authorizing a certain insurer to exclude a moped and motor scooter from certain insurance benefits; expanding the pool of vehicles eligible to be covered by the Maryland Automobile Insurance Fund; requiring a moped or motor scooter in the State to be titled ~~and registered~~ by the Motor Vehicle Administration; requiring an owner or prospective owner of a moped or motor scooter to obtain or maintain certain security; ~~requiring an application for the registration of a moped or motor scooter to be submitted electronically; requiring a licensed dealer of mopeds or motor scooters under certain circumstances to obtain a moped or motor scooter registration application from the owner, collect registration fees, and transmit the application and fees in a certain manner within a certain period of time; providing for the registration classification of mopeds and motor scooters; establishing an annual registration fee and surcharge for mopeds and motor scooters~~ requiring an application for a certificate of title for a motor scooter or moped to be submitted electronically; requiring the Administration to issue a permanent decal to the owner of a motor scooter or moped for which a certificate of title is issued; requiring an owner of a motor scooter or moped to display the decal in a certain manner; requiring a decal to display a unique number sequence assigned by the Administration; requiring the Administration to establish a certain fee for the decal and adopt certain regulations; prohibiting a person from operating a motor scooter or moped unless the motor scooter or moped displays the decal in a certain manner; establishing a certain fee for a certificate of title issued for a motor scooter or moped; establishing the criteria for determining the fair market value of a motor scooter or a moped for the purpose of determining the excise tax under certain circumstances; *requiring that an excise tax be imposed for a certificate of title for a moped or motor scooter for which sales and use tax is not collected at the time of purchase;* requiring the owner of a motor scooter or moped to certify at the time of titling that the vehicle is covered by a certain security; requiring the operator of a motor scooter or moped to carry evidence of a certain required security when operating the motor scooter or moped; prohibiting an individual from operating or riding on a moped or motor scooter unless the individual is wearing certain protective headgear and a certain eye–protective device; authorizing the Motor Vehicle Administrator to approve or disapprove certain headgear and eye–protective devices and adopt and enforce certain regulations; requiring the Administrator to publish a certain list; establishing that the failure of certain individuals to wear certain protective headgear or a certain eye–protective device may not be considered

certain evidence or diminish the recovery of certain damages; establishing that certain provisions relating to moped and motor scooter headgear and eye–protective devices do not limit certain liabilities or rights; requiring certain procedures in certain civil proceedings; ~~providing that certain vehicle equipment and inspection requirements do not apply to mopeds and motor scooters;~~ requiring the Motor Vehicle Administration to waive certain fees associated with titling a moped or motor scooter for certain individuals under certain circumstances; altering certain definitions; making certain stylistic changes and technical corrections; and generally relating to mopeds and motor scooters.

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BY repealing and reenacting, with amendments,
Article – Transportation
Section ~~11–135, 11–176, 13–403, 13–954,~~ 13–102, 13–104(a), 13–106, 13–802, ~~13–809(a)(1), (2), and (3),~~ *13–809(a)(2) and (b)(1),* and 22–101(e)(1)~~, 23–101(i)(3), and 23–206.2(c)~~
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY adding to
Article – Transportation
Section ~~13–939.3~~ 17–104.1~~, 21–1306.1, and 23–206.2(c)~~ *and 21–1306.1*
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Insurance

19–505.

(c) (1) An insurer may exclude from the coverage described in this section benefits for:

(i) an individual, otherwise insured under the policy, who:

1. intentionally causes the motor vehicle accident resulting in the injury for which benefits are claimed;

2. is a nonresident of the State and is injured as a pedestrian in a motor vehicle accident that occurs outside of the State;

3. is injured in a motor vehicle accident while operating or voluntarily riding in a motor vehicle that the individual knows is stolen; or

4. is injured in a motor vehicle accident while committing a felony or while violating § 21–904 of the Transportation Article; or

(ii) the named insured or a family member of the named insured who resides in the named insured's household for an injury that occurs while the named insured or family member is occupying an uninsured motor vehicle owned by:

1. the named insured; or

2. an immediate family member of the named insured who resides in the named insured's household.

(2) In the case of motorcycles, **MOPEDS, OR MOTOR SCOOTERS,** an insurer may:

(i) exclude the economic loss benefits described in this section; or

(ii) offer the economic loss benefits with deductibles, options, or specific exclusions.

20–501.

(a) In this subtitle, "covered vehicle" means a ~~motor~~ vehicle for which the Fund is required to provide coverage under this subtitle.

(b) "Covered vehicle" includes **[**an automobile, truck, van, and trailer**]:**

(1) ANY MOTOR VEHICLE REQUIRED TO BE REGISTERED UNDER TITLE 13 OF THE TRANSPORTATION ARTICLE;

(2) A MOPED; AND

(3) A MOTOR SCOOTER.

[(c) "Covered vehicle" does not include a motorcycle, low speed vehicle, or motorbike.**]**

Article – Transportation

11–134.1.

"Moped" means a bicycle that:

(1) Is designed to be operated by human power with the assistance of a motor;

(2) Is equipped with pedals that mechanically drive the rear wheel or wheels;

(3) Has two or three wheels, of which one is more than 14 inches in diameter; and

(4) Has a motor with a rating of 1.5 brake horsepower or less and, if the motor is an internal combustion engine, a capacity of 50 cubic centimeters piston displacement or less.

11–134.5.

(a) "Motor scooter" means a nonpedal vehicle that:

(1) Has a seat for the operator;

(2) Has two wheels, of which one is 10 inches or more in diameter;

(3) Has a step–through chassis;

(4) Has a motor:

(i) With a rating of 2.7 brake horsepower or less; or

(ii) If the motor is an internal combustion engine, with a capacity of 50 cubic centimeters piston displacement or less; and

(5) Is equipped with an automatic transmission.

(b) "Motor scooter" does not include a vehicle that has been manufactured for off–road use, including a motorcycle and an all–terrain vehicle.

~~11–135.~~

~~(a)~~ **[**~~(1)~~**]** ~~"Motor vehicle" means~~**[**~~, except as provided in subsection (b) of this section,~~**]** ~~a vehicle that:~~

[~~(i)~~**] (1)** ~~Is self–propelled or propelled by electric power obtained from overhead electrical wires; and~~

[~~(ii)~~**] (2)** ~~Is not operated on rails.~~

[~~(2)~~**] (B)** ~~"Motor vehicle" includes~~ **[**~~a~~**]:**

(1) ~~**A** low–speed vehicle~~**;**

(2) ~~**A MOPED; AND**~~

(3) ~~**A MOTOR SCOOTER.**~~

[~~(b) "Motor vehicle" does not include:~~

~~(1) A moped, as defined in § 11–134.1 of this subtitle; or~~

~~(2) A motor scooter, as defined in § 11–134.5 of this subtitle.~~**]**

~~11–176.~~

~~(a) (1) "Vehicle" means, except as provided in subsection (b) of this section, any device in, on, or by which any individual or property is or might be transported or towed on a highway.~~

~~(2) "Vehicle" includes~~ **[**~~a~~**]:**

(I) ~~**A** low–speed vehicle~~ **[**~~and an~~**];**

(II) ~~**A MOPED;**~~

(III) ~~**A MOTOR SCOOTER; AND**~~

(IV) ~~**AN** off–highway recreational vehicle.~~

~~(b) "Vehicle" does not include an electric personal assistive mobility device as defined in § 21–101(j) of this article.~~

~~13–101.1.~~

~~Except as provided in § 13–102 of this subtitle, the owner of each vehicle that is in this State and for which the Administration has not issued a certificate of title shall apply to the Administration for a certificate of title of the vehicle.~~

~~13–402.~~

~~(a) (1) Except as otherwise provided in this section or elsewhere in the Maryland Vehicle Law, each motor vehicle, trailer, semitrailer, and pole trailer driven on a highway shall be registered under this subtitle.~~

~~13–403.~~

~~(a) (1) Except as provided in paragraph (2) of this subsection, the owner of a vehicle subject to registration under this subtitle shall apply to the Administration for the registration of the vehicle in a manner that the Administration requires.~~

~~(2) The application for registration of a low–speed vehicle~~**, A MOPED, OR A MOTOR SCOOTER** ~~shall be made by electronic transmission under § 13–610 of this title.~~

~~(b) The application shall contain the information that the Administration reasonably requires to determine if the vehicle is entitled to registration.~~

~~(c) If a licensed dealer holds a low–speed vehicle~~**, A MOPED, OR A MOTOR SCOOTER** ~~for sale and transfers the vehicle to a person other than another licensed dealer, the dealer shall:~~

~~(1) Obtain from the transferee a completed application;~~

~~(2) Collect all fees required to register the low–speed vehicle~~**, MOPED, OR MOTOR SCOOTER** ~~under this subtitle; and~~

~~(3) Within 30 days of the date of delivery of the low–speed vehicle~~**, MOPED, OR MOTOR SCOOTER**~~, electronically transmit the application and fees in accordance with § 13–610 of this title.~~

~~13–939.3.~~

~~(A) WHEN REGISTERED WITH THE ADMINISTRATION, EVERY MOPED AND MOTOR SCOOTER IS A CLASS S (MOPED/MOTOR SCOOTER) VEHICLE.~~

~~(B) FOR EACH CLASS S (MOPED/MOTOR SCOOTER) VEHICLE, THE ANNUAL REGISTRATION FEE IS $35.~~

~~13–954.~~

~~(a) In this section, "motor vehicle" means a:~~

~~(1) Class A (passenger) vehicle;~~

~~(2) Class B (for hire) vehicle;~~

~~(3) Class C (funeral and ambulance) vehicle;~~

~~(4) Class D (motorcycle) vehicle;~~

~~(5) Class E (truck) vehicle;~~

~~(6) Class F (tractor) vehicle;~~

~~(7) Class H (school) vehicle;~~

~~(8) Class J (vanpool) vehicle;~~

~~(9) Class M (multipurpose) vehicle;~~

~~(10) Class P (passenger bus) vehicle;~~

~~(11) Class Q (limousine) vehicle;~~

~~(12) Class R (low speed) vehicle; [or]~~

~~(13) CLASS S (MOPED/MOTOR SCOOTER) VEHICLE; OR~~

~~(14)~~ Vehicle within any other class designated by the Administrator.

~~(b) (1) In addition to the registration fee otherwise required by this title, the owner of any motor vehicle registered under this title shall pay a surcharge of $13.50 per year for each motor vehicle registered.~~

~~(2) $2.50 of the surcharge collected under paragraph (1) of this subsection shall be paid into the Maryland Trauma Physician Services Fund established under § 19–130 of the Health – General Article.~~

~~17–104.~~

~~(a) The Administration may not issue or transfer the registration of a motor vehicle unless the owner or prospective owner of the vehicle furnishes evidence satisfactory to the Administration that the required security is in effect.~~

~~(b) The owner of a motor vehicle that is required to be registered in this State shall maintain the required security for the vehicle during the registration period.~~

13–102.

A certificate of title is not required for:

(1) A vehicle owned and used by the United States, unless it is registered in this State;

(2) A new vehicle owned by a manufacturer or dealer and held for sale, even though incidentally moved on the highway or used for purposes of testing or demonstration or used as allowed under § 13–621 of this title;

(3) A vehicle used by a manufacturer only for testing;

(4) A vehicle owned by a nonresident of this State and not required by law to be registered in this State;

(5) A vehicle regularly engaged in the interstate transportation of people or property and for which a currently effective certificate of title has been issued in another state;

(6) A vehicle moved only by human or animal power;

(7) A bicycle**, EXCEPT FOR A MOPED**;

(8) A vehicle in which interest has passed to a secured party on default of the owner;

(9) Farm equipment;

(10) Special mobile equipment;

(11) A self–propelled invalid:

(i) Wheelchair; or

(ii) Tricycle;

(12) A trailer, other than a camping trailer, rated by the manufacturer as having a gross vehicle weight of 2,500 pounds or less; or

(13) An off–highway recreational vehicle purchased before October 1, 2010.

13–104.

(a) (1) The application for a certificate of title of a vehicle shall be made by the owner of the vehicle on the form that the Administration requires.

(2) Notwithstanding any other provision of this title, an application for a certificate of title of an off–highway recreational vehicle**, A MOTOR SCOOTER, OR A MOPED** shall be made by electronic transmission under § 13–610 of this title.

(3) THE OWNER OF A MOTOR SCOOTER OR MOPED SHALL CERTIFY AT THE TIME OF TITLING THAT THE MOTOR SCOOTER OR MOPED IS COVERED BY THE REQUIRED SECURITY DESCRIBED IN § 17–103 OF THIS ARTICLE.

13–106.

(a) The Administration shall:

(1) File each application for a certificate of title that it receives; and

(2) Issue a certificate of title of the vehicle if:

(i) It finds that the applicant is entitled to the certificate of title; and

(ii) It has received the required fees.

(b) The Administration shall keep a record of all certificates of title that it issues, as follows:

(1) Under a distinctive title number assigned to the vehicle;

(2) Under the vehicle identification number of the vehicle or, if a distinguishing number has been assigned to it, under the distinguishing number; and

(3) Under any other method that the Administration determines.

(c) Upon receipt with the application for a certificate of title, the Administration shall maintain a record of the following documents as a part of its certificate of title records for a motor vehicle:

(1) A notice from a dealer under § 14–1502(f)(1) of the Commercial Law Article;

(2) A notice from a manufacturer or factory branch under § 14–1502(f)(2) of the Commercial Law Article; and

(3) A manufacturer's disclosure form provided to the Administration under § 14–1502(g) of the Commercial Law Article.

(D) (1) THE ADMINISTRATION SHALL ISSUE A PERMANENT DECAL TO THE OWNER OF A MOTOR SCOOTER OR MOPED FOR WHICH A CERTIFICATE OF TITLE IS ISSUED.

(2) AN OWNER OF A MOTOR SCOOTER OR MOPED FOR WHICH A CERTIFICATE OF TITLE IS ISSUED SHALL DISPLAY THE DECAL ON THE VEHICLE AS PRESCRIBED BY THE ADMINISTRATION.

(3) A DECAL SHALL DISPLAY A UNIQUE NUMBER SEQUENCE ASSIGNED BY THE ADMINISTRATION.

(4) THE ADMINISTRATION:

(I) SHALL ESTABLISH A FEE OF $5 FOR A DECAL; AND

(II) MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.

13–802.

(a) Except as provided in subsection (b) of this section and § 13–805 of this subtitle, the fee for each certificate of title issued under this title is $100.

(b) **(1)** For fiscal years 2012 through 2014 only, the fee for each certificate of title issued for a rental vehicle is $50.

(2) THE FEE FOR EACH CERTIFICATE OF TITLE ISSUED FOR A MOTOR SCOOTER OR A MOPED IS $20.

13–809.

(a) (1) In this section the following words have the meanings indicated.

(2) "Fair market value" means:

(i) As to the sale of any new or used vehicle by a licensed dealer, the total purchase price, as certified by the dealer;

(ii) Except as provided in item (iv) of this paragraph, as to a used vehicle that is sold by any person other than a licensed dealer and that has a designated model year that is 7 years old or older, the greater of:

1. The total purchase price; or

2. $640;

(iii) Except as provided in item (iv) of this paragraph, as to any other used vehicle that is sold by any person other than a licensed dealer:

1. The total purchase price, if the total purchase price is less than $500 below the retail value of the vehicle as shown in a national publication of used car values adopted for use by the Department; or

2. If the total purchase price is $500 or more below the retail value of the vehicle as shown in a national publication of used car values adopted for use by the Department:

A. The total purchase price, if verified to the satisfaction of the Administration by a notarized bill of sale submitted in accordance with subsection (d)(2) of this section; or

B. The valuation shown in the national publication of used car values, if the Administration finds that the documentation submitted under subsection (d)(2) of this section fails to verify the total purchase price;

(iv) As to a used trailer**, A MOTOR SCOOTER, A MOPED,** or **AN** off–highway recreational vehicle that is sold by any person other than a licensed dealer, the greater of:

1. The total purchase price; or

2. $320; and

(v) In any other case, the valuation shown in a national publication of used car values adopted for use by the Department.

(3) (i) Subject to subparagraph (ii) of this paragraph, "total purchase price" means the price of a vehicle agreed on by the buyer and the seller, including any dealer processing charge, less an allowance for trade–in but with no allowance for other nonmonetary consideration.

(ii) As to a person trading in a nonleased vehicle to enter into a lease for a period of more than 180 consecutive days, "total purchase price" means the retail value of the vehicle as certified by the dealer, including any dealer processing charge, less an allowance for the trade–in of the nonleased vehicle but with no allowance for other nonmonetary consideration.

(b) (1) Except as otherwise provided in this part, in addition to any other charge required by the Maryland Vehicle Law, an excise tax is imposed:

(i) For each original and each subsequent certificate of title issued in this State for a motor vehicle, a trailer, a semitrailer, ***A MOPED, A MOTOR***

SCOOTER, *or an off–highway recreational vehicle for which sales and use tax is not collected at the time of purchase; and*

(ii) Except as provided in paragraph (2) of this subsection, for each motor vehicle, trailer, or semitrailer that is in interstate operation and registered under § 13–109(c) or (d) of this title without a certificate of title.

17–104.1.

THE ~~OWNER~~ *OPERATOR* OF A MOPED OR MOTOR SCOOTER SHALL CARRY EVIDENCE OF THE REQUIRED SECURITY WHEN OPERATING THE MOPED OR MOTOR SCOOTER.

21–1207.

(a) (1) If a bicycle or a motor scooter is used on a highway at any time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of 1,000 feet, the bicycle or motor scooter shall be equipped:

(i) On the front, with a lamp that emits a white light visible from a distance of at least 500 feet to the front; and

(ii) On the rear, with a red reflector of a type approved by the Administration and visible from all distances from 600 feet to 100 feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle.

(2) A bicycle or bicyclist may be equipped with a functioning lamp that acts as a reflector and emits a red light or a flashing amber light visible from a distance of 500 feet to the rear instead of or in addition to the red reflector required by paragraph (1) of this subsection.

(b) Subject to subsection (c) of this section, a person may operate a bicycle or a motor scooter that is equipped with a bell or other device capable of giving a signal audible for a distance of at least 100 feet.

(c) A bicycle or motor scooter may not be equipped with nor may any person use on a bicycle any siren or whistle.

(d) Every bicycle and motor scooter shall be equipped with a braking system capable of stopping from a speed of 10 miles per hour within 15 feet on dry, level, clean pavement.

21–1306.1.

(A) THIS SECTION DOES NOT APPLY TO ANY INDIVIDUAL RIDING IN AN ENCLOSED CAB.

(B) AN INDIVIDUAL MAY NOT OPERATE OR RIDE ON A MOPED OR MOTOR SCOOTER UNLESS THE INDIVIDUAL IS WEARING PROTECTIVE HEADGEAR THAT MEETS THE STANDARDS ~~ESTABLISHED BY THE ADMINISTRATOR~~ PROVIDED UNDER 49 C.F.R § 571.218.

(C) AN INDIVIDUAL MAY NOT OPERATE A MOPED OR MOTOR SCOOTER UNLESS:

(1) THE INDIVIDUAL IS WEARING AN EYE–PROTECTIVE DEVICE OF A TYPE APPROVED BY THE ADMINISTRATOR; OR

(2) THE MOPED OR MOTOR SCOOTER IS EQUIPPED WITH A WINDSCREEN.

(D) THE ADMINISTRATOR:

(1) MAY APPROVE OR DISAPPROVE PROTECTIVE HEADGEAR AND EYE–PROTECTIVE DEVICES REQUIRED BY THIS SECTION;

(2) MAY ADOPT AND ENFORCE REGULATIONS ESTABLISHING STANDARDS AND SPECIFICATIONS FOR THE APPROVAL OF PROTECTIVE HEADGEAR AND EYE–PROTECTIVE DEVICES; AND

(3) SHALL PUBLISH LISTS OF ALL PROTECTIVE HEADGEAR AND EYE–PROTECTIVE DEVICES THAT THE ADMINISTRATOR APPROVES, BY NAME AND TYPE.

(E) (1) THE FAILURE OF AN INDIVIDUAL TO WEAR PROTECTIVE HEADGEAR REQUIRED UNDER SUBSECTION (B) OF THIS SECTION MAY NOT:

(I) BE CONSIDERED EVIDENCE OF NEGLIGENCE;

(II) BE CONSIDERED EVIDENCE OF CONTRIBUTORY NEGLIGENCE;

(III) LIMIT LIABILITY OF A PARTY OR AN INSURER; OR

(IV) DIMINISH RECOVERY FOR DAMAGES ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR OPERATION OF A MOPED OR MOTOR SCOOTER.

(2) SUBJECT TO THE PROVISIONS OF PARAGRAPH (3) OF THIS SUBSECTION, A PARTY, WITNESS, OR COUNSEL MAY NOT MAKE REFERENCE TO PROTECTIVE HEADGEAR DURING A TRIAL OF A CIVIL ACTION THAT INVOLVES PROPERTY DAMAGE, PERSONAL INJURY, OR DEATH IF THE DAMAGE, INJURY, OR DEATH IS NOT RELATED TO THE DESIGN, MANUFACTURE, SUPPLYING, OR REPAIR OF PROTECTIVE HEADGEAR.

(3) (I) NOTHING CONTAINED IN THIS SUBSECTION MAY BE CONSTRUED TO PROHIBIT THE RIGHT OF A PERSON TO INSTITUTE A CIVIL ACTION FOR DAMAGES AGAINST A DEALER, MANUFACTURER, DISTRIBUTOR, FACTORY BRANCH, OR OTHER APPROPRIATE ENTITY OR PERSON ARISING OUT OF AN INCIDENT THAT INVOLVES PROTECTIVE HEADGEAR ALLEGED TO BE DEFECTIVELY DESIGNED, MANUFACTURED, OR REPAIRED.

(II) IN A CIVIL ACTION DESCRIBED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IN WHICH TWO OR MORE PARTIES ARE NAMED AS JOINT TORT–FEASORS, INTERPLEADED AS DEFENDANTS, OR IMPLEADED AS DEFENDANTS, AND AT LEAST ONE OF THE JOINT TORT–FEASORS OR DEFENDANTS IS NOT INVOLVED IN THE DESIGN, MANUFACTURE, SUPPLYING, OR REPAIR OF PROTECTIVE HEADGEAR, A COURT SHALL ORDER ON A MOTION OF ANY PARTY SEPARATE TRIALS TO ACCOMPLISH THE ENDS OF JUSTICE.

22–101.

(e) (1) The provisions of this title with respect to equipment on vehicles do not apply to farm equipment, road machinery, road rollers, **[**or**]** farm tractors, **MOPEDS, OR MOTOR SCOOTERS,** except as made applicable in this title.

~~23–101.~~

~~(a) In this subtitle the following words have the meanings indicated.~~

~~(i) (3) "Vehicle" does not include any Class L (historic) vehicle,~~ **CLASS S ~~(MOPED/MOTOR SCOOTER) VEHICLE,~~** ~~or~~ **[**~~any~~**]** ~~trailer which is a mobile home as defined by § 11–134 of this article.~~

23–104.

(a) Every vehicle driven on the highways in this State shall, where applicable, have the following equipment, meeting or exceeding the standards established jointly by the Administration and the Division: brakes, steering, suspension, horn, door handles, mirrors, tires, exhaust system, lights, glazing, windshield wipers, odometer, speedometer, bumpers, properly aligned wheels, wheels and wheel lugs, fenders, floor pans, hood, hood catches, emissions equipment, fuel system, front seat, motor mounts, gear selection indicator for automatic transmissions,

universal joints, and seat belts or combination seat belt–shoulder harness if required as original equipment under § 22–412 or § 22–412.1 of this article.

(b) (1) The Administration and the Division jointly may establish standards by rule or regulation for this equipment.

(2) The Administration and the Division shall adopt, consistent with federal law, regulations establishing equipment, performance, and other technical standards for low speed vehicles.

~~23–107.~~

~~(a) (1) Before the Administration titles and registers any used vehicle, it shall require the applicant to present a valid inspection certificate for the vehicle.~~

~~23–202.~~

~~(a) (1) Subject to subsection (d) of this section, the Administration and the Secretary shall establish an emissions control program in the State in accordance with the federal Clean Air Act.~~

~~23–206.~~

~~(a) An owner of a motor vehicle that is registered in this State shall have the vehicle inspected and tested as required under this subtitle.~~

~~23–206.2.~~

~~**(C) A MOPED OR MOTOR SCOOTER IS EXEMPT FROM THE MANDATORY INSPECTIONS REQUIRED BY THIS SUBTITLE.**~~

~~**[**(c)**] (D)** The Administrator may adopt regulations as necessary to administer or enforce the provisions of this section.~~

SECTION 2. AND BE IT FURTHER ENACTED, That, except for the decal fee established under this Act, the Motor Vehicle Administration shall waive all fees associated with titling a moped or motor scooter for an individual who owned the moped or motor scooter on the effective date of this Act and titles the vehicle on or before October 1, 2013.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 212

(Senate Bill 315)

AN ACT concerning

Council for the Procurement of Health, Educational, and Social Services

FOR the purpose of establishing the Council for the Procurement of Health, Educational, and Social Services; providing for the composition, chair, and staffing of the Council; requiring the Council to advise the Board of Public Works on a certain task force report and make certain recommendations for the procurement process for health, educational, and social services; requiring the Council to report its activities and recommendations to the General Assembly on or before a certain date each year; and generally relating to the Council for the Procurement of Health, Educational, and Social Services.

BY repealing and reenacting, without amendments,
Article – State Finance and Procurement
Section 11–101(a) and (d)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY adding to
Article – State Finance and Procurement
Section 12–110
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – State Finance and Procurement

11–101.

(a) In this Division II the following words have the meanings indicated unless:

(1) the context clearly requires a different meaning; or

(2) a different definition is provided for a particular title or provision.

(d) "Board" means the Board of Public Works.

12–110.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "COUNCIL" MEANS THE COUNCIL FOR THE PROCUREMENT OF HEALTH, EDUCATIONAL, AND SOCIAL SERVICES.

(3) "HEALTH, EDUCATIONAL, AND SOCIAL SERVICES" MEANS SERVICES PROCURED TO PROVIDE OR ASSIST IN PROVIDING:

(I) SUPPORT, CARE, OR SHELTER TO THIRD–PARTY CLIENTS UNDER A CONTRACT; OR

(II) TRAINING TO THIRD–PARTY CLIENTS UNDER A CONTRACT.

(4) "TASK FORCE REPORT" MEANS THE REPORT ENTITLED "TASK FORCE REPORT TO THE GOVERNOR AND THE GENERAL ASSEMBLY ON PROCUREMENT OF HEALTH, EDUCATION AND SOCIAL SERVICES BY STATE AGENCIES" THAT WAS ISSUED ON NOVEMBER 30, 2011, BY THE TASK FORCE TO STUDY THE PROCUREMENT OF HEALTH, EDUCATION, AND SOCIAL SERVICES BY STATE AGENCIES.

(B) THERE IS A COUNCIL FOR THE PROCUREMENT OF HEALTH, EDUCATIONAL, AND SOCIAL SERVICES.

(C) (1) THE COUNCIL CONSISTS OF THE FOLLOWING ~~21~~ MEMBERS:

(I) THE STATE TREASURER;

(II) THE ATTORNEY GENERAL;

(III) THE PROCUREMENT ADVISOR;

(IV) THE STATE SUPERINTENDENT OF SCHOOLS;

(V) THE SECRETARY OF BUDGET AND MANAGEMENT;

(VI) THE SECRETARY OF JUVENILE SERVICES;

(VII) THE SECRETARY OF HUMAN RESOURCES;

(VIII) THE SECRETARY OF HEALTH AND MENTAL HYGIENE;

(IX) ~~THE SECRETARY OF AGING;~~

~~(X) THE SECRETARY OF VETERANS AFFAIRS;~~

~~(XI)~~ **THE DIRECTOR OF THE GOVERNOR'S GRANTS OFFICE;**

~~(XII)~~ (X) **THE EXECUTIVE DIRECTOR OF THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION;**

~~(XIII) THE EXECUTIVE DIRECTOR OF THE GOVERNOR'S OFFICE OF COMMUNITY INITIATIVES;~~

~~(XIV)~~ (XI) **THE EXECUTIVE DIRECTOR OF THE GOVERNOR'S OFFICE FOR CHILDREN;**

~~(XV)~~ (XII) **THE SPECIAL SECRETARY FOR THE OFFICE OF MINORITY AFFAIRS;**

~~(XVI)~~ (XIII) **FOUR REPRESENTATIVES OF PRIVATE ORGANIZATIONS WITH EXPERIENCE PROVIDING HUMAN SERVICES FUNDED BY CONTRACTS ~~OR GRANTS~~ THROUGH STATE UNITS, APPOINTED BY THE GOVERNOR;**

~~(XVII)~~ (XIV) **A MEMBER OF THE SENATE, APPOINTED BY THE PRESIDENT OF THE SENATE; AND**

~~(XVIII)~~ (XV) **A MEMBER OF THE HOUSE OF DELEGATES, APPOINTED BY THE SPEAKER OF THE HOUSE.**

(2) (I) IF THE STATE TREASURER IS UNABLE TO ATTEND A MEETING OF THE COUNCIL, THE TREASURER MAY DESIGNATE A DEPUTY TREASURER TO ATTEND THE MEETING.

(II) IF A MEMBER OF THE COUNCIL LISTED IN PARAGRAPH (1)(II) THROUGH ~~(XV)~~ (XII) OF THIS SUBSECTION IS UNABLE TO ATTEND A MEETING OF THE COUNCIL, THE MEMBER MAY DESIGNATE THE CHIEF PROCUREMENT OFFICER OR ANOTHER SENIOR MANAGEMENT STAFF MEMBER OF THE AGENCY OR ORGANIZATION TO ATTEND THE MEETING.

(D) THE PROCUREMENT ADVISOR IS THE CHAIR OF THE COUNCIL.

(E) THE COUNCIL SHALL MEET AT LEAST TWICE EACH YEAR.

(F) THE STAFFING RESPONSIBILITIES OF THE COUNCIL SHALL BE SHARED BY:

(1) THE AGENCIES REPRESENTED ON THE COUNCIL; AND

(2) ADDITIONAL STAFF THAT THE BOARD AUTHORIZES IN ACCORDANCE WITH THE STATE BUDGET.

(G) THE COUNCIL SHALL:

(1) ADVISE THE BOARD ON SPECIFIC STEPS NECESSARY TO IMPLEMENT THE RECOMMENDATIONS OF THE TASK FORCE REPORT;

(2) MONITOR AND REPORT TO THE BOARD THE PROGRESS OF IMPLEMENTATION OF THE RECOMMENDATIONS IN THE TASK FORCE REPORT;

(3) ESTABLISH SUBCOMMITTEES OR WORKING COMMITTEES CONSISTING OF MEMBERS OF THE COUNCIL AND INTERESTED PARTIES TO ADDRESS OR STUDY SPECIFIC ISSUES;

(4) WITH REGARD TO THE PROCUREMENT OF HEALTH, EDUCATIONAL, AND SOCIAL SERVICES:

(I) EFFECT AND ENHANCE COMMUNICATION BETWEEN STATE UNITS ON PROCUREMENT MATTERS, WITH AN EMPHASIS ON DISSEMINATING INFORMATION ON CURRENT DEVELOPMENTS AND ADVANCES IN PROCUREMENT METHODS AND MANAGEMENT;

(II) PROVIDE A FORUM FOR THE DISCUSSION OF SPECIFIC PROCUREMENT ISSUES AND PROBLEMS THAT ARISE;

(III) ADVISE THE BOARD ON PROBLEMS IN THE PROCUREMENT PROCESS AND MAKE RECOMMENDATIONS FOR IMPROVEMENT TO THE PROCUREMENT PROCESS; AND

(IV) REVIEW EXISTING PROCUREMENT REGULATIONS TO DETERMINE WHETHER THEY FULFILL THE INTENT AND PURPOSE OF THE LAW, ESPECIALLY AS THE LAW RELATES TO FOSTERING BROAD–BASED COMPETITION AND MAKING EFFECTIVE USE OF STATE FUNDS FOR THE DELIVERY OF HEALTH, EDUCATIONAL, AND SOCIAL SERVICES; AND

(5) ON OR BEFORE DECEMBER 31 OF EACH YEAR, REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2–1246 OF THE STATE GOVERNMENT ARTICLE, ON THE COUNCIL'S ACTIVITIES AND RECOMMENDATIONS REGARDING THE PROCUREMENT OF HEALTH, EDUCATIONAL, AND SOCIAL SERVICES BY STATE AGENCIES.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 213

(House Bill 217)

AN ACT concerning

Council for the Procurement of Health, Educational, and Social Services

FOR the purpose of establishing the Council for the Procurement of Health, Educational, and Social Services; providing for the composition, chair, and staffing of the Council; requiring the Council to advise the Board of Public Works on a certain task force report and make certain recommendations for the procurement process for health, educational, and social services; requiring the Council to report its activities and recommendations to the General Assembly on or before a certain date each year; and generally relating to the Council for the Procurement of Health, Educational, and Social Services.

BY repealing and reenacting, without amendments,
Article – State Finance and Procurement
Section 11–101(a) and (d)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY adding to
Article – State Finance and Procurement
Section 12–110
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – State Finance and Procurement

11–101.

(a) In this Division II the following words have the meanings indicated unless:

(1) the context clearly requires a different meaning; or

(2) a different definition is provided for a particular title or provision.

(d) "Board" means the Board of Public Works.

12–110.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "COUNCIL" MEANS THE COUNCIL FOR THE PROCUREMENT OF HEALTH, EDUCATIONAL, AND SOCIAL SERVICES.

(3) "HEALTH, EDUCATIONAL, AND SOCIAL SERVICES" MEANS SERVICES PROCURED TO PROVIDE OR ASSIST IN PROVIDING:

(I) SUPPORT, CARE, OR SHELTER TO THIRD–PARTY CLIENTS UNDER A CONTRACT; OR

(II) TRAINING TO THIRD–PARTY CLIENTS UNDER A CONTRACT.

(4) "TASK FORCE REPORT" MEANS THE REPORT ENTITLED "TASK FORCE REPORT TO THE GOVERNOR AND THE GENERAL ASSEMBLY ON PROCUREMENT OF HEALTH, EDUCATION AND SOCIAL SERVICES BY STATE AGENCIES" THAT WAS ISSUED ON NOVEMBER 30, 2011, BY THE TASK FORCE TO STUDY THE PROCUREMENT OF HEALTH, EDUCATION, AND SOCIAL SERVICES BY STATE AGENCIES.

(B) THERE IS A COUNCIL FOR THE PROCUREMENT OF HEALTH, EDUCATIONAL, AND SOCIAL SERVICES.

(C) (1) THE COUNCIL CONSISTS OF THE FOLLOWING ~~21~~ MEMBERS:

(I) THE STATE TREASURER;

(II) THE ATTORNEY GENERAL;

(III) THE PROCUREMENT ADVISOR;

(IV) THE STATE SUPERINTENDENT OF SCHOOLS;

(V) THE SECRETARY OF BUDGET AND MANAGEMENT;

(VI) THE SECRETARY OF JUVENILE SERVICES;

(VII) THE SECRETARY OF HUMAN RESOURCES;

(VIII) THE SECRETARY OF HEALTH AND MENTAL HYGIENE;

~~**(IX) THE SECRETARY OF AGING;**~~

~~**(X) THE SECRETARY OF VETERANS AFFAIRS;**~~

~~**(XI)**~~ **(IX) THE DIRECTOR OF THE GOVERNOR'S GRANTS OFFICE;**

~~**(XII)**~~ **(X) THE EXECUTIVE DIRECTOR OF THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION;**

~~**(XIII) THE EXECUTIVE DIRECTOR OF THE GOVERNOR'S OFFICE OF COMMUNITY INITIATIVES;**~~

~~**(XIV)**~~ **(XI) THE EXECUTIVE DIRECTOR OF THE GOVERNOR'S OFFICE FOR CHILDREN;**

~~**(XV)**~~ **(XII) THE SPECIAL SECRETARY FOR THE OFFICE OF MINORITY AFFAIRS;**

~~**(XVI)**~~ **(XIII) FOUR REPRESENTATIVES OF PRIVATE ORGANIZATIONS WITH EXPERIENCE PROVIDING HUMAN SERVICES FUNDED BY CONTRACTS ~~OR GRANTS~~ THROUGH STATE UNITS, APPOINTED BY THE GOVERNOR;**

~~**(XVII)**~~ **(XIV) A MEMBER OF THE SENATE, APPOINTED BY THE PRESIDENT OF THE SENATE; AND**

~~**(XVIII)**~~ **(XV) A MEMBER OF THE HOUSE OF DELEGATES, APPOINTED BY THE SPEAKER OF THE HOUSE.**

(2) (I) IF THE STATE TREASURER IS UNABLE TO ATTEND A MEETING OF THE COUNCIL, THE TREASURER MAY DESIGNATE A DEPUTY TREASURER TO ATTEND THE MEETING.

(II) IF A MEMBER OF THE COUNCIL LISTED IN PARAGRAPH (1)(II) THROUGH ~~(XV)~~ *(XII)* OF THIS SUBSECTION IS UNABLE TO ATTEND A MEETING OF THE COUNCIL, THE MEMBER MAY DESIGNATE THE CHIEF PROCUREMENT OFFICER OR ANOTHER SENIOR MANAGEMENT STAFF MEMBER OF THE AGENCY OR ORGANIZATION TO ATTEND THE MEETING.

(D) THE PROCUREMENT ADVISOR IS THE CHAIR OF THE COUNCIL.

(E) THE COUNCIL SHALL MEET AT LEAST TWICE EACH YEAR.

(F) THE STAFFING RESPONSIBILITIES OF THE COUNCIL SHALL BE SHARED BY:

(1) THE AGENCIES REPRESENTED ON THE COUNCIL; AND

(2) ADDITIONAL STAFF THAT THE BOARD AUTHORIZES IN ACCORDANCE WITH THE STATE BUDGET.

(G) THE COUNCIL SHALL:

(1) ADVISE THE BOARD ON SPECIFIC STEPS NECESSARY TO IMPLEMENT THE RECOMMENDATIONS OF THE TASK FORCE REPORT;

(2) MONITOR AND REPORT TO THE BOARD THE PROGRESS OF IMPLEMENTATION OF THE RECOMMENDATIONS IN THE TASK FORCE REPORT;

(3) ESTABLISH SUBCOMMITTEES OR WORKING COMMITTEES CONSISTING OF MEMBERS OF THE COUNCIL AND INTERESTED PARTIES TO ADDRESS OR STUDY SPECIFIC ISSUES;

(4) WITH REGARD TO THE PROCUREMENT OF HEALTH, EDUCATIONAL, AND SOCIAL SERVICES:

(I) EFFECT AND ENHANCE COMMUNICATION BETWEEN STATE UNITS ON PROCUREMENT MATTERS, WITH AN EMPHASIS ON DISSEMINATING INFORMATION ON CURRENT DEVELOPMENTS AND ADVANCES IN PROCUREMENT METHODS AND MANAGEMENT;

(II) PROVIDE A FORUM FOR THE DISCUSSION OF SPECIFIC PROCUREMENT ISSUES AND PROBLEMS THAT ARISE;

(III) ADVISE THE BOARD ON PROBLEMS IN THE PROCUREMENT PROCESS AND MAKE RECOMMENDATIONS FOR IMPROVEMENT TO THE PROCUREMENT PROCESS; AND

(IV) REVIEW EXISTING PROCUREMENT REGULATIONS TO DETERMINE WHETHER THEY FULFILL THE INTENT AND PURPOSE OF THE LAW, ESPECIALLY AS THE LAW RELATES TO FOSTERING BROAD–BASED COMPETITION

AND MAKING EFFECTIVE USE OF STATE FUNDS FOR THE DELIVERY OF HEALTH, EDUCATIONAL, AND SOCIAL SERVICES; AND

(5) ON OR BEFORE DECEMBER 31 OF EACH YEAR, REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2–1246 OF THE STATE GOVERNMENT ARTICLE, ON THE COUNCIL'S ACTIVITIES AND RECOMMENDATIONS REGARDING THE PROCUREMENT OF HEALTH, EDUCATIONAL, AND SOCIAL SERVICES BY STATE AGENCIES.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 214

(Senate Bill 317)

AN ACT concerning

Retail Pet Stores – Sales of Dogs – Required Records, Health Disclosures, and Purchaser Remedies

FOR the purpose of requiring a retail pet store that sells dogs to post conspicuously on each dog's cage certain information about the dog; requiring a retail pet store to maintain a written record that contains certain information about each dog in the possession of the retail pet store; requiring a retail pet store to maintain a certain record for a certain period of time after the date of sale of a dog; requiring a retail pet store to make certain records available to certain persons and the ~~Department of Labor, Licensing, and Regulation~~ Division of Consumer Protection of the Office of the Attorney General under certain circumstances; requiring a retail pet store to provide ~~a~~ certain written ~~health disclosure~~ information to a purchaser; providing that it is an unfair or deceptive trade practice within the meaning of the Maryland Consumer Protection Act for a retail pet store to include any false or misleading statements in a certain certificate or record; authorizing a purchaser of a dog to seek certain remedies for certain health problems under certain circumstances; requiring a purchaser seeking a remedy under this Act to provide ~~certain notice and information to~~ a certain written statement to the owner or operator of the retail pet store ~~and to take the dog for certain examinations on request; requiring a certain statement by a veterinarian to contain certain information; establishing criteria for certain veterinary fees to be considered reasonable~~; requiring the owner or operator of a retail pet store to make a certain reimbursement within a certain period of time; providing that a purchaser is not entitled to a remedy under this Act under

certain circumstances; ~~authorizing a retail pet store to contest a remedy under this Act in a certain manner; authorizing a contested remedy to be resolved in a certain manner; authorizing a court or arbiter to require a party acting in bad faith to pay reasonable attorney's fees and court costs of the adverse party; requiring a retail pet store to conspicuously post a certain notice of purchaser's rights under this Act; requiring a retail pet store to provide a written notice of purchaser's rights under this Act at a certain time in a certain manner; requiring a retail pet store that makes a certain representation related to a dog's registration to provide a certain notice to a purchaser at the time of the sale in a certain manner; prohibiting a retail pet store from making certain statements,~~ ~~promises, or representations related to a dog's registration unless the retail pet store provides certain documents to the purchaser within a certain period of time; authorizing a purchaser to seek a certain remedy if a retail pet store does not provide certain documents under certain circumstances;~~ establishing ~~civil penalties for a first or subsequent~~ that a violation of this Act is an unfair or deceptive trade practice within the meaning of the Maryland Consumer Protection Act and is subject to certain enforcement and penalty provisions; establishing that this Act does not limit certain rights or remedies, the ability to agree to certain additional terms and conditions, or the ability of the State or a local government to prosecute a retail pet store for any other violation of laws; making certain conforming changes; providing for the application of this Act; defining certain terms; and generally relating to required records, health disclosures, and purchase remedies related to dog sales by retail pet stores.

BY adding to
Article – Business Regulation
Section 19–701 through ~~19–708~~ 19–707 to be under the new subtitle "Subtitle 7. Retail Pet Stores"
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Commercial Law
Section 13–301(14)(xxvii)
Annotated Code of Maryland
(2005 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, without amendments,
Article – Commercial Law
Section 13–301(14)(xxviii)
Annotated Code of Maryland
(2005 Replacement Volume and 2011 Supplement)

BY adding to
Article – Commercial Law
Section 13–301(14)(xxix)

Annotated Code of Maryland
(2005 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Business Regulation

SUBTITLE 7. RETAIL PET STORES.

19–701.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "BREEDER" MEANS A PERSON WHO BREEDS OR RAISES DOGS TO SELL, EXCHANGE, OR OTHERWISE TRANSFER TO THE PUBLIC.

(C) "CLINICALLY ILL" MEANS AN ILLNESS THAT IS APPARENT TO A LICENSED VETERINARIAN BASED ON OBSERVATION, EXAMINATION, OR TESTING OF THE DOG.

(D) (1) "DEALER" MEANS A PERSON WHO, FOR COMPENSATION:

(I) BUYS, SELLS, OR NEGOTIATES THE PURCHASE OF A DOG; OR

(II) DELIVERS FOR TRANSPORT OR TRANSPORTS A DOG.

(2) "DEALER" DOES NOT INCLUDE A PERSON WHO TRANSPORTS A DOG AS A CARRIER ONLY.

(E) "NONELECTIVE SURGICAL PROCEDURE" MEANS A SURGICAL PROCEDURE THAT IS NECESSARY TO PRESERVE OR RESTORE THE HEALTH OF AN ANIMAL OR TO CORRECT A CONDITION THAT WOULD:

(1) INTERFERE WITH THE ANIMAL'S ABILITY TO WALK, RUN, JUMP, OR OTHERWISE FUNCTION IN A NORMAL MANNER; OR

(2) CAUSE PAIN AND SUFFERING TO THE ANIMAL.

(F) "PURCHASER" MEANS ANY PERSON WHO PURCHASES A DOG FROM A RETAIL PET STORE.

(G) "RETAIL PET STORE" MEANS A FOR–PROFIT ESTABLISHMENT OPEN TO THE PUBLIC THAT SELLS OR OFFERS FOR SALE DOMESTIC ANIMALS TO BE KEPT AS HOUSEHOLD PETS.

19–702.

THIS SUBTITLE DOES NOT APPLY TO A BONA FIDE NONPROFIT ORGANIZATION OPERATING WITHIN A RETAIL PET STORE.

19–703.

(A) A RETAIL PET STORE THAT SELLS DOGS SHALL:

(1) POST CONSPICUOUSLY ON EACH DOG'S CAGE:

(I) THE BREED, AGE, AND DATE OF BIRTH OF THE DOG, IF KNOWN;

(II) THE STATE IN WHICH THE BREEDER OR DEALER OF THE DOG IS LOCATED; AND

(III) THE UNITED STATES DEPARTMENT OF AGRICULTURE LICENSE NUMBER OF THE BREEDER OR DEALER, IF REQUIRED;

(2) MAINTAIN A WRITTEN RECORD THAT INCLUDES THE FOLLOWING INFORMATION ABOUT EACH DOG IN THE POSSESSION OF THE RETAIL PET STORE:

(I) THE BREED, AGE, AND DATE OF BIRTH OF THE DOG, IF KNOWN;

(II) THE SEX, COLOR, AND ANY IDENTIFYING MARKINGS OF THE DOG;

(III) DOCUMENTATION OF ALL INOCULATIONS, WORMING TREATMENTS, AND OTHER MEDICAL TREATMENTS, IF KNOWN, INCLUDING THE DATE OF THE MEDICAL TREATMENT, THE DIAGNOSES, AND THE NAME AND TITLE OF THE TREATMENT PROVIDER;

(IV) THE NAME AND ADDRESS OF:

1. THE BREEDER OR DEALER WHO SUPPLIED THE DOG; ~~AND~~

2. THE FACILITY WHERE THE DOG WAS BORN; AND

~~2.~~ 3. THE TRANSPORTER OR CARRIER OF THE DOG, IF ANY;

(V) THE UNITED STATES DEPARTMENT OF AGRICULTURE LICENSE NUMBER OF THE BREEDER OR DEALER, IF REQUIRED;

(VI) ANY IDENTIFIER INFORMATION, INCLUDING A TAG, TATTOO, COLLAR NUMBER, OR MICROCHIP; AND

(VII) IF THE DOG IS BEING SOLD AS REGISTERED OR REGISTRABLE:

1. THE NAMES AND REGISTRATION NUMBERS OF THE SIRE AND DAM; AND

2. THE LITTER NUMBER; AND

(3) FOR EACH DOG ACQUIRED BY THE RETAIL PET STORE, MAINTAIN A WRITTEN RECORD OF THE HEALTH, STATUS, AND DISPOSITION OF THE DOG, INCLUDING ANY DOCUMENTS THAT ARE REQUIRED AT THE TIME OF SALE.

(B) A RETAIL PET STORE SHALL MAINTAIN A COPY OF THE RECORDS REQUIRED UNDER SUBSECTION (A)(2) OF THIS SECTION FOR AT LEAST 1 YEAR AFTER THE DATE OF SALE OF THE DOG.

(C) A RETAIL PET STORE SHALL MAKE THE RECORDS REQUIRED UNDER SUBSECTION (A)(2) OF THIS SECTION AVAILABLE TO:

(1) THE ~~DEPARTMENT~~ DIVISION OF CONSUMER PROTECTION OF THE OFFICE OF THE ATTORNEY GENERAL ON REASONABLE NOTICE;

(2) ANY BONA FIDE PROSPECTIVE PURCHASER ON REQUEST; AND

(3) THE PURCHASER AT THE TIME OF A SALE.

~~19–703.~~ 19–704.

~~A RETAIL PET STORE SHALL PROVIDE TO A PURCHASER AT THE TIME OF A SALE OF A DOG A WRITTEN DISCLOSURE THAT:~~

~~(1) IS SIGNED AND DATED BY THE OWNER OR OPERATOR OF THE RETAIL PET STORE AND THE PURCHASER;~~

~~(2) INCLUDES A STATEMENT BY THE RETAIL PET STORE:~~

~~(I) STATING THAT, AT THE TIME OF THE SALE, THE DOG HAS NO KNOWN DISEASE, ILLNESS, OR CONGENITAL OR HEREDITARY CONDITION THAT ADVERSELY AFFECTS THE HEALTH OF THE DOG OR IS LIKELY TO ADVERSELY AFFECT THE HEALTH OF THE DOG IN THE FUTURE; OR~~

~~(II) IDENTIFYING ANY KNOWN DISEASE, ILLNESS, OR CONGENITAL OR HEREDITARY CONDITION THAT ADVERSELY AFFECTS THE HEALTH OF THE DOG OR IS LIKELY TO ADVERSELY AFFECT THE HEALTH OF THE DOG IN THE FUTURE; AND~~

~~(3) IF THE DOG HAS NOT RECEIVED A VETERINARY EXAMINATION, INCLUDES A STATEMENT THAT THE DOG HAS NOT RECEIVED A VETERINARY EXAMINATION BEFORE THE SALE.~~

(A) A RETAIL PET STORE SHALL PROVIDE TO A PURCHASER AT THE TIME OF A SALE OF A DOG:

(1) A HEALTH CERTIFICATE FROM A VETERINARIAN LICENSED IN THE STATE ISSUED WITHIN 30 DAYS BEFORE THE DATE OF SALE CERTIFYING THAT THE DOG:

(I) HAS NO KNOWN DISEASE, ILLNESS, OR CONGENITAL OR HEREDITARY CONDITION WHICH IS DIAGNOSABLE WITH REASONABLE ACCURACY; AND

(II) DOES NOT APPEAR TO BE CLINICALLY ILL FROM PARASITIC INFECTION AT THE TIME OF THE EXAMINATION;

(2) THE WRITTEN RECORD ABOUT THE DOG MAINTAINED BY THE RETAIL PET STORE UNDER § 19–703(A)(2) OF THIS SUBTITLE; AND

(3) A STATEMENT NOTIFYING THE PURCHASER OF THE SPECIFIC RIGHTS AVAILABLE TO THE PURCHASER UNDER THIS SUBTITLE.

(B) IT IS AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF TITLE 13 OF THE COMMERCIAL LAW ARTICLE FOR A RETAIL PET STORE TO INCLUDE ANY FALSE OR MISLEADING STATEMENTS IN THE HEALTH CERTIFICATE OR WRITTEN RECORD PROVIDED TO A PURCHASER UNDER SUBSECTION (A) OF THIS SECTION.

~~19–704.~~ 19–705.

(A) (1) A PERSON WHO PURCHASED A DOG FROM A RETAIL PET STORE IS ENTITLED TO A REMEDY UNDER THIS SECTION IF:

(I) WITHIN ~~21~~ 7 DAYS AFTER THE DATE OF THE SALE, ~~A~~ THE PERSON HAD THE DOG EXAMINED BY A VETERINARIAN LICENSED IN THE STATE AND, WITHIN 14 DAYS AFTER THE DATE OF THE SALE, THE LICENSED VETERINARIAN STATES IN WRITING THAT THE DOG SUFFERS FROM OR HAS DIED OF A DISEASE OR ILLNESS ADVERSELY AFFECTING THE HEALTH OF THE DOG AND THAT EXISTED IN THE DOG ON OR BEFORE THE DATE OF DELIVERY TO THE PURCHASER; OR

(II) WITHIN ~~1 YEAR~~ 180 DAYS AFTER THE DATE OF THE SALE, A LICENSED VETERINARIAN STATES IN WRITING THAT THE DOG POSSESSES OR HAS DIED OF A CONGENITAL OR HEREDITARY CONDITION ADVERSELY AFFECTING THE HEALTH OF THE DOG OR THAT REQUIRES HOSPITALIZATION OR A NONELECTIVE SURGICAL PROCEDURE.

(2) INTESTINAL OR EXTERNAL PARASITES MAY NOT BE CONSIDERED TO ADVERSELY AFFECT THE HEALTH OF THE DOG UNLESS THE PRESENCE OF THE PARASITES MAKES THE DOG CLINICALLY ILL.

(B) (1) A PURCHASER ENTITLED TO A REMEDY UNDER SUBSECTION (A) OF THIS SECTION MAY:

(I) RETURN THE DOG TO THE RETAIL PET STORE FOR A FULL REFUND OF THE PURCHASE PRICE;

(II) EXCHANGE THE DOG FOR ANOTHER DOG OF COMPARABLE VALUE CHOSEN BY THE PURCHASER, IF AVAILABLE; OR

(III) RETAIN THE DOG AND BE REIMBURSED BY THE RETAIL PET STORE FOR REASONABLE AND DOCUMENTED VETERINARY FEES FOR DIAGNOSIS AND TREATMENT OF THE DOG, NOT EXCEEDING ~~THREE TIMES~~ THE PURCHASE PRICE OF THE DOG.

(2) ~~VETERINARY FEES UNDER PARAGRAPH (1)(III) OF THIS SUBSECTION SHALL BE CONSIDERED REASONABLE IF:~~

~~(I) THE SERVICES PROVIDED ARE APPROPRIATE FOR THE DIAGNOSIS AND TREATMENT OF THE DISEASE, ILLNESS, OR CONGENITAL OR HEREDITARY CONDITION; AND~~

~~(II) THE COST OF THE SERVICES IS COMPARABLE TO THAT CHARGED FOR SIMILAR SERVICES BY OTHER LICENSED VETERINARIANS LOCATED IN CLOSE PROXIMITY TO THE TREATING VETERINARIAN.~~

~~(3)~~ **UNLESS THE OWNER OR OPERATOR OF THE RETAIL PET STORE CONTESTS A REIMBURSEMENT REQUIRED UNDER PARAGRAPH (1)(III) OF THIS SUBSECTION, THE REIMBURSEMENT SHALL BE MADE TO THE PURCHASER NO LATER THAN 10 BUSINESS DAYS AFTER THE RETAIL PET STORE RECEIVES THE VETERINARIAN'S STATEMENT UNDER SUBSECTION ~~(C)(1)~~ (C) OF THIS SECTION.**

(C) ~~(1)~~ TO OBTAIN A REMEDY UNDER THIS SECTION, A PURCHASER SHALL~~:~~

~~(I) NOTIFY THE OWNER OR OPERATOR OF THE RETAIL PET STORE WITHIN 3 BUSINESS DAYS AFTER A DIAGNOSIS BY A LICENSED VETERINARIAN OF A DISEASE, ILLNESS, OR CONGENITAL OR HEREDITARY CONDITION OF THE DOG FOR WHICH THE PURCHASER IS SEEKING A REMEDY;~~

~~(II)~~ **PROVIDE TO THE OWNER OR OPERATOR OF THE RETAIL PET STORE, WITHIN 5 BUSINESS DAYS AFTER RECEIPT, A WRITTEN STATEMENT FROM A LICENSED VETERINARIAN ~~WITHIN 5 BUSINESS DAYS AFTER A DIAGNOSIS BY THE VETERINARIAN~~ THAT THE DOG SUFFERS FROM OR HAS DIED OF A DISEASE, ILLNESS, OR CONGENITAL OR HEREDITARY CONDITION ADVERSELY AFFECTING THE HEALTH OF THE DOG AND THAT EXISTED IN THE DOG ON OR BEFORE THE DATE OF DELIVERY TO THE PURCHASER~~;~~.**

~~(III) ON REQUEST OF THE OWNER OR OPERATOR OF THE RETAIL PET STORE, TAKE THE DOG FOR AN EXAMINATION BY A LICENSED VETERINARIAN CHOSEN BY THE OWNER OR OPERATOR OF THE RETAIL PET STORE, AT THE EXPENSE OF THE RETAIL PET STORE;~~

~~(IV) IF THE DOG HAS DIED, ON REQUEST OF THE OWNER OR OPERATOR OF THE RETAIL PET STORE, TAKE THE DECEASED DOG FOR A NECROPSY BY A LICENSED VETERINARIAN CHOSEN BY THE OWNER OR OPERATOR OF THE RETAIL PET STORE, AT THE EXPENSE OF THE RETAIL PET STORE; AND~~

~~(V) IF THE PURCHASER REQUESTS A REIMBURSEMENT OF REASONABLE VETERINARY FEES UNDER SUBSECTION (B)(1)(III) OF THIS SECTION, PROVIDE TO THE RETAIL PET STORE AN ITEMIZED BILL FOR THE DIAGNOSIS AND TREATMENT OF THE DISEASE, ILLNESS, OR CONGENITAL OR~~

~~HEREDITARY CONDITION OF THE DOG FOR WHICH THE PURCHASER IS SEEKING A REMEDY.~~

~~(2) A VETERINARIAN'S STATEMENT UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION SHALL INCLUDE:~~

~~(I) THE PURCHASER'S NAME AND ADDRESS;~~

~~(II) A STATEMENT THAT THE VETERINARIAN EXAMINED THE DOG;~~

~~(III) THE DATE OR DATES ON WHICH THE DOG WAS EXAMINED;~~

~~(IV) THE BREED AND AGE OF THE DOG, IF KNOWN;~~

~~(V) A STATEMENT THAT THE DOG HAS OR HAD A DISEASE, ILLNESS, OR CONGENITAL OR HEREDITARY CONDITION THAT IS SUBJECT TO A REMEDY; AND~~

~~(VI) THE FINDINGS OF THE EXAMINATION OR NECROPSY, INCLUDING LABORATORY RESULTS OR COPIES OF THE RESULTS.~~

(D) A PURCHASER IS NOT ENTITLED TO A REMEDY UNDER THIS SECTION IF:

(1) THE ILLNESS OR DEATH RESULTED FROM:

(I) MALTREATMENT OR NEGLECT BY THE PURCHASER;

(II) AN INJURY SUSTAINED AFTER THE DELIVERY OF THE DOG TO THE PURCHASER; OR

(III) AN ILLNESS OR DISEASE CONTRACTED AFTER THE DELIVERY OF THE DOG TO THE PURCHASER;

(2) THE PURCHASER DOES NOT CARRY OUT THE RECOMMENDED TREATMENT PRESCRIBED BY THE VETERINARIAN WHO MADE THE DIAGNOSIS; *OR*

(3) THE ILLNESS, DISEASE, OR CONGENITAL OR HEREDITARY CONDITION WAS DISCLOSED AT THE TIME OF PURCHASE~~; OR~~

~~(4) THE PURCHASER DOES NOT RETURN TO THE RETAIL PET STORE ALL DOCUMENTS PROVIDED TO THE PURCHASER TO REGISTER THE DOG.~~

~~(E) (1) A RETAIL PET STORE MAY CONTEST A REMEDY UNDER THIS SECTION BY HAVING THE DOG EXAMINED BY A LICENSED VETERINARIAN AT THE EXPENSE OF THE RETAIL PET STORE.~~

~~(2) IF THE PURCHASER AND THE RETAIL PET STORE HAVE NOT REACHED AN AGREEMENT WITHIN 10 BUSINESS DAYS AFTER THE EXAMINATION OF THE DOG BY THE VETERINARIAN CHOSEN BY THE RETAIL PET STORE:~~

~~(I) THE PURCHASER MAY BRING SUIT IN A COURT OF COMPETENT JURISDICTION TO RESOLVE THE DISPUTE; OR~~

~~(II) IF THE PARTIES AGREE IN WRITING, THE PARTIES MAY SUBMIT THE DISPUTE TO BINDING ARBITRATION.~~

~~(3) IF THE COURT OR ARBITER FINDS THAT EITHER PARTY ACTED IN BAD FAITH IN SEEKING OR DENYING THE REQUESTED REMEDY, THE OFFENDING PARTY MAY BE REQUIRED TO PAY REASONABLE ATTORNEY'S FEES AND COURT COSTS OF THE ADVERSE PARTY.~~

~~19–705.~~

~~(A) A RETAIL PET STORE THAT SELLS DOGS SHALL CONSPICUOUSLY POST A NOTICE STATING THAT PURCHASERS OF DOGS HAVE SPECIFIC RIGHTS UNDER THE LAW AND THAT A WRITTEN STATEMENT OF THOSE RIGHTS IS AVAILABLE ON REQUEST.~~

~~(B) (1) AT THE TIME OF A SALE OF A DOG OR ON REQUEST OF A PROSPECTIVE PURCHASER, A RETAIL PET STORE SHALL PROVIDE A WRITTEN NOTICE OF PURCHASER'S RIGHTS UNDER THIS SUBTITLE.~~

~~(2) AT THE TIME A WRITTEN NOTICE IS PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE NOTICE SHALL BE SIGNED BY THE OWNER OR OPERATOR OF THE RETAIL PET STORE AND THE PURCHASER.~~

~~19–706.~~

~~(A) (1) A RETAIL PET STORE THAT REPRESENTS THAT A DOG SOLD BY THE RETAIL PET STORE IS REGISTERED OR REGISTRABLE SHALL PROVIDE THE PURCHASER WITH A WRITTEN NOTICE AT THE TIME OF THE SALE THAT STATES: "A PEDIGREE OR REGISTRATION DOES NOT ASSURE PROPER BREEDING CONDITION, HEALTH, QUALITY, OR CLAIMS TO LINEAGE."~~

~~(2) AT THE TIME A WRITTEN NOTICE IS PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE NOTICE SHALL BE SIGNED BY THE OWNER OR OPERATOR OF THE RETAIL PET STORE AND THE PURCHASER.~~

~~(B) (1) A RETAIL PET STORE MAY NOT STATE, PROMISE, OR REPRESENT TO A PURCHASER, DIRECTLY OR INDIRECTLY, THAT A DOG IS REGISTERED OR REGISTRABLE UNLESS THE RETAIL PET STORE PROVIDES THE PURCHASER WITH THE DOCUMENTS NECESSARY FOR REGISTRATION WITHIN 120 DAYS AFTER THE DATE OF SALE.~~

~~(2) IF THE RETAIL PET STORE DOES NOT PROVIDE THE DOCUMENTS AS REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE PURCHASER MAY:~~

~~(I) PROVIDE WRITTEN NOTICE TO THE RETAIL PET STORE OF THE PURCHASER'S INTENT TO SEEK A REMEDY AUTHORIZED IN ITEM (II) OF THIS PARAGRAPH; AND~~

~~(II) 1. RETURN THE DOG AND ALL ACCOMPANYING DOCUMENTATION TO THE RETAIL PET STORE FOR A FULL REFUND OF THE PURCHASE PRICE; OR~~

~~2. RETAIN THE DOG AND BE REIMBURSED BY THE RETAIL PET STORE FOR 50% OF THE PURCHASE PRICE.~~

~~19–707.~~ **19–706.**

~~AN OWNER OR OPERATOR OF A RETAIL PET STORE THAT VIOLATES THIS SUBTITLE IS LIABLE FOR A CIVIL PENALTY NOT EXCEEDING:~~

~~(1) $500 FOR A FIRST OFFENSE; OR~~

~~(2) $1,000 FOR EACH SUBSEQUENT OFFENSE.~~

A VIOLATION OF THIS SUBTITLE:

(1) IS AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF TITLE 13 OF THE COMMERCIAL LAW ARTICLE; AND

(2) IS SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS CONTAINED IN TITLE 13 OF THE COMMERCIAL LAW ARTICLE.

~~19–708.~~ **19–707.**

NOTHING IN THIS SUBTITLE LIMITS:

(1) THE RIGHTS OR REMEDIES OTHERWISE AVAILABLE TO A PURCHASER;

(2) THE ABILITY OF THE OWNER OR OPERATOR OF A RETAIL PET STORE AND PURCHASER TO AGREE TO ADDITIONAL TERMS AND CONDITIONS THAT DO NOT IMPAIR THE RIGHTS GRANTED TO A PURCHASER UNDER THIS SUBTITLE; OR

(3) THE ABILITY OF THE STATE OR A LOCAL GOVERNMENT TO PROSECUTE THE OWNER OR OPERATOR OF A RETAIL PET STORE FOR ANY OTHER VIOLATION OF LAW.

Article – Commercial Law

13–301.

Unfair or deceptive trade practices include any:

(14) Violation of a provision of:

(xxvii) Section 7–405(e)(2)(ii) of the Health Occupations Article; **[**or**]**

(xxviii) Title 12, Subtitle 10 of the Financial Institutions Article; or

(XXIX) TITLE 19, SUBTITLE 7 OF THE BUSINESS REGULATION ARTICLE; OR

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 215

(House Bill 131)

AN ACT concerning

Retail Pet Stores – Sales of Dogs – Required Records, Health Disclosures, and Purchaser Remedies

FOR the purpose of requiring a retail pet store that sells dogs to post conspicuously on each dog's cage certain information about the dog; requiring a retail pet store to maintain a written record that contains certain information about each dog in the possession of the retail pet store; requiring a retail pet store to maintain a certain record for a certain period of time after the date of sale of a dog; requiring a retail pet store to make certain records available to certain persons and the ~~Department of Labor, Licensing, and Regulation~~ Division of Consumer Protection of the Office of the Attorney General under certain circumstances; requiring a retail pet store to provide ~~a~~ certain written ~~health disclosure~~ *information* to a purchaser; *providing that it is an unfair or deceptive trade practice within the meaning of the Maryland Consumer Protection Act for a retail pet store to include any false or misleading statements in a certain certificate or record;* authorizing a purchaser of a dog to seek certain remedies for certain health problems under certain circumstances; requiring a purchaser seeking a remedy under this Act to provide ~~certain notice and information to~~ *a certain written statement to the owner or operator of* the retail pet store ~~and to take the dog for certain examinations on request; requiring a certain statement by a veterinarian to contain certain information; establishing criteria for certain veterinary fees to be considered reasonable~~; requiring the owner or operator of a retail pet store to make a certain reimbursement within a certain period of time; providing that a purchaser is not entitled to a remedy under this Act under certain circumstances; ~~authorizing a retail pet store to contest a remedy under this Act in a certain manner; authorizing a contested remedy to be resolved in a certain manner; authorizing a court or arbiter to require a party acting in bad faith to pay reasonable attorney's fees and court costs of the adverse party; requiring a retail pet store to conspicuously post a certain notice of purchaser's rights under this Act; requiring a retail pet store to provide a written notice of purchaser's rights under this Act at a certain time in a certain manner; requiring a retail pet store that makes a certain representation related to a dog's registration to provide a certain notice to a purchaser at the time of the sale in a certain manner; prohibiting a retail pet store from making certain statements, promises, or representations related to a dog's registration unless the retail pet store provides certain documents to the purchaser within a certain period of time; authorizing a purchaser to seek a certain remedy if a retail pet store does not provide certain documents under certain circumstances;~~ establishing ~~civil penalties for a first or subsequent~~ that a violation of this Act is an unfair or deceptive trade practice within the meaning of the Maryland Consumer Protection Act and is subject to certain enforcement and penalty provisions; establishing that this Act does not limit certain rights or remedies, the ability to agree to certain additional terms and conditions, or the ability of the State or a local government to prosecute a retail pet store for any other violation of laws; *making certain conforming changes;* providing for the application of this Act; defining certain terms; and generally relating to

required records, health disclosures, and purchase remedies related to dog sales by retail pet stores.

BY adding to
Article – Business Regulation
Section 19–701 through ~~19–708~~ ~~19–709~~ *19–707* to be under the new subtitle "Subtitle 7. Retail Pet Stores"
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Commercial Law
Section 13–301(14)(xxvii)
Annotated Code of Maryland
(2005 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, without amendments,
Article – Commercial Law
Section 13–301(14)(xxviii)
Annotated Code of Maryland
(2005 Replacement Volume and 2011 Supplement)

BY adding to
Article – Commercial Law
Section 13–301(14)(xxix)
Annotated Code of Maryland
(2005 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Business Regulation

SUBTITLE 7. RETAIL PET STORES.

19–701.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "BREEDER" MEANS A PERSON WHO BREEDS OR RAISES DOGS TO SELL, EXCHANGE, OR OTHERWISE TRANSFER TO THE PUBLIC.

(C) "CLINICALLY ILL" MEANS AN ILLNESS THAT IS APPARENT TO A LICENSED VETERINARIAN BASED ON OBSERVATION, EXAMINATION, OR TESTING OF THE DOG.

(D) (1) "DEALER" MEANS A PERSON WHO, FOR COMPENSATION:

(I) BUYS, SELLS, OR NEGOTIATES THE PURCHASE OF A DOG; OR

(II) DELIVERS FOR TRANSPORT OR TRANSPORTS A DOG.

(2) "DEALER" DOES NOT INCLUDE A PERSON WHO TRANSPORTS A DOG AS A CARRIER ONLY.

(E) "NONELECTIVE SURGICAL PROCEDURE" MEANS A SURGICAL PROCEDURE THAT IS NECESSARY TO PRESERVE OR RESTORE THE HEALTH OF AN ANIMAL OR TO CORRECT A CONDITION THAT WOULD:

(1) INTERFERE WITH THE ANIMAL'S ABILITY TO WALK, RUN, JUMP, OR OTHERWISE FUNCTION IN A NORMAL MANNER; OR

(2) CAUSE PAIN AND SUFFERING TO THE ANIMAL.

(F) "PURCHASER" MEANS ANY PERSON WHO PURCHASES A DOG FROM A RETAIL PET STORE.

(G) "RETAIL PET STORE" MEANS A FOR–PROFIT ESTABLISHMENT OPEN TO THE PUBLIC THAT SELLS OR OFFERS FOR SALE DOMESTIC ANIMALS TO BE KEPT AS HOUSEHOLD PETS.

19–702.

THIS SUBTITLE DOES NOT APPLY TO A BONA FIDE NONPROFIT ORGANIZATION OPERATING WITHIN A RETAIL PET STORE.

19–703.

(A) A RETAIL PET STORE THAT SELLS DOGS SHALL:

(1) POST CONSPICUOUSLY ON EACH DOG'S CAGE:

(I) THE BREED, AGE, AND DATE OF BIRTH OF THE DOG, IF KNOWN;

(II) THE STATE IN WHICH THE BREEDER OR DEALER OF THE DOG IS LOCATED; AND

(III) THE UNITED STATES DEPARTMENT OF AGRICULTURE LICENSE NUMBER OF THE BREEDER OR DEALER, IF REQUIRED;

(2) MAINTAIN A WRITTEN RECORD THAT INCLUDES THE FOLLOWING INFORMATION ABOUT EACH DOG IN THE POSSESSION OF THE RETAIL PET STORE:

(I) THE BREED, AGE, AND DATE OF BIRTH OF THE DOG, IF KNOWN;

(II) THE SEX, COLOR, AND ANY IDENTIFYING MARKINGS OF THE DOG;

(III) DOCUMENTATION OF ALL INOCULATIONS, WORMING TREATMENTS, AND OTHER MEDICAL TREATMENTS, IF KNOWN, INCLUDING THE DATE OF THE MEDICAL TREATMENT, THE DIAGNOSES, AND THE NAME AND TITLE OF THE TREATMENT PROVIDER;

(IV) THE NAME AND ADDRESS OF:

1. THE BREEDER OR DEALER WHO SUPPLIED THE DOG; ~~AND~~

2. THE FACILITY WHERE THE DOG WAS BORN; AND

~~2.~~ 3. THE TRANSPORTER OR CARRIER OF THE DOG, IF ANY;

(V) THE UNITED STATES DEPARTMENT OF AGRICULTURE LICENSE NUMBER OF THE BREEDER OR DEALER, IF REQUIRED;

(VI) ANY IDENTIFIER INFORMATION, INCLUDING A TAG, TATTOO, COLLAR NUMBER, OR MICROCHIP; AND

(VII) IF THE DOG IS BEING SOLD AS REGISTERED OR REGISTRABLE:

1. THE NAMES AND REGISTRATION NUMBERS OF THE SIRE AND DAM; AND

2. THE LITTER NUMBER; AND

(3) FOR EACH DOG ACQUIRED BY THE RETAIL PET STORE, MAINTAIN A WRITTEN RECORD OF THE HEALTH, STATUS, AND DISPOSITION OF

THE DOG, INCLUDING ANY DOCUMENTS THAT ARE REQUIRED AT THE TIME OF SALE.

(B) A RETAIL PET STORE SHALL MAINTAIN A COPY OF THE RECORDS REQUIRED UNDER SUBSECTION (A)(2) OF THIS SECTION FOR AT LEAST 1 YEAR AFTER THE DATE OF SALE OF THE DOG.

(C) A RETAIL PET STORE SHALL MAKE THE RECORDS REQUIRED UNDER SUBSECTION (A)(2) OF THIS SECTION AVAILABLE TO:

(1) THE ~~DEPARTMENT~~ DIVISION OF CONSUMER PROTECTION OF THE OFFICE OF THE ATTORNEY GENERAL ON REASONABLE NOTICE;

(2) ANY BONA FIDE PROSPECTIVE PURCHASER ON REQUEST; AND

(3) THE PURCHASER AT THE TIME OF A SALE.

~~19–703.~~ 19–704.

~~**A RETAIL PET STORE SHALL PROVIDE TO A PURCHASER AT THE TIME OF A SALE OF A DOG A WRITTEN DISCLOSURE THAT:**~~

~~**(1) IS SIGNED AND DATED BY THE OWNER OR OPERATOR OF THE RETAIL PET STORE AND THE PURCHASER;**~~

~~**(2) INCLUDES A STATEMENT BY THE RETAIL PET STORE:**~~

~~**(I) STATING THAT, AT THE TIME OF THE SALE, THE DOG HAS NO KNOWN DISEASE, ILLNESS, OR CONGENITAL OR HEREDITARY CONDITION THAT ADVERSELY AFFECTS THE HEALTH OF THE DOG OR IS LIKELY TO ADVERSELY AFFECT THE HEALTH OF THE DOG IN THE FUTURE; OR**~~

~~**(II) IDENTIFYING ANY KNOWN DISEASE, ILLNESS, OR CONGENITAL OR HEREDITARY CONDITION THAT ADVERSELY AFFECTS THE HEALTH OF THE DOG OR IS LIKELY TO ADVERSELY AFFECT THE HEALTH OF THE DOG IN THE FUTURE; AND**~~

~~**(3) IF THE DOG HAS NOT RECEIVED A VETERINARY EXAMINATION, INCLUDES A STATEMENT THAT THE DOG HAS NOT RECEIVED A VETERINARY EXAMINATION BEFORE THE SALE.**~~

(A) A RETAIL PET STORE SHALL PROVIDE TO A PURCHASER AT THE TIME OF A SALE OF A DOG:

(1) A HEALTH CERTIFICATE FROM A VETERINARIAN LICENSED IN THE STATE ISSUED WITHIN 30 DAYS BEFORE THE DATE OF SALE CERTIFYING THAT THE DOG:

(I) HAS NO KNOWN DISEASE, ILLNESS, OR CONGENITAL OR HEREDITARY CONDITION WHICH IS DIAGNOSABLE WITH REASONABLE ACCURACY; AND

(II) DOES NOT APPEAR TO BE CLINICALLY ILL FROM PARASITIC INFECTION AT THE TIME OF THE EXAMINATION;

(2) THE WRITTEN RECORD ABOUT THE DOG MAINTAINED BY THE RETAIL PET STORE UNDER § 19–703(A)(2) OF THIS SUBTITLE; AND

(3) A STATEMENT NOTIFYING THE PURCHASER OF THE SPECIFIC RIGHTS AVAILABLE TO THE PURCHASER UNDER THIS SUBTITLE.

(B) IT IS AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF TITLE 13 OF THE COMMERCIAL LAW ARTICLE FOR A RETAIL PET STORE TO INCLUDE ANY FALSE OR MISLEADING STATEMENTS IN THE HEALTH CERTIFICATE OR WRITTEN RECORD PROVIDED TO A PURCHASER UNDER SUBSECTION (A) OF THIS SECTION.

~~19–704.~~ **19–705.**

(A) (1) A PERSON WHO PURCHASED A DOG FROM A RETAIL PET STORE IS ENTITLED TO A REMEDY UNDER THIS SECTION IF:

(I) WITHIN ~~21~~ 7 DAYS AFTER THE DATE OF THE SALE, ~~A~~ THE PERSON HAD THE DOG EXAMINED BY A ~~LICENSED~~ VETERINARIAN *LICENSED IN THE STATE* AND, WITHIN 14 DAYS AFTER THE DATE OF THE SALE, THE LICENSED VETERINARIAN STATES IN WRITING THAT THE DOG SUFFERS FROM OR HAS DIED OF A DISEASE OR ILLNESS ADVERSELY AFFECTING THE HEALTH OF THE DOG AND THAT EXISTED IN THE DOG ON OR BEFORE THE DATE OF DELIVERY TO THE PURCHASER; OR

(II) WITHIN ~~1 YEAR~~ *180 DAYS* AFTER THE DATE OF THE SALE, A LICENSED VETERINARIAN STATES IN WRITING THAT THE DOG POSSESSES OR HAS DIED OF A CONGENITAL OR HEREDITARY CONDITION ADVERSELY AFFECTING THE HEALTH OF THE DOG OR THAT REQUIRES HOSPITALIZATION OR A NONELECTIVE SURGICAL PROCEDURE.

(2) INTESTINAL OR EXTERNAL PARASITES MAY NOT BE CONSIDERED TO ADVERSELY AFFECT THE HEALTH OF THE DOG UNLESS THE PRESENCE OF THE PARASITES MAKES THE DOG CLINICALLY ILL.

(B) (1) A PURCHASER ENTITLED TO A REMEDY UNDER SUBSECTION (A) OF THIS SECTION MAY:

(I) RETURN THE DOG TO THE RETAIL PET STORE FOR A FULL REFUND OF THE PURCHASE PRICE;

(II) EXCHANGE THE DOG FOR ANOTHER DOG OF COMPARABLE VALUE CHOSEN BY THE PURCHASER, IF AVAILABLE; OR

(III) RETAIN THE DOG AND BE REIMBURSED BY THE RETAIL PET STORE FOR REASONABLE AND DOCUMENTED VETERINARY FEES FOR DIAGNOSIS AND TREATMENT OF THE DOG, NOT EXCEEDING ~~THREE~~ TWO ~~TIMES~~ THE PURCHASE PRICE OF THE DOG.

(2) ~~VETERINARY FEES UNDER PARAGRAPH (1)(III) OF THIS SUBSECTION SHALL BE CONSIDERED REASONABLE IF:~~

~~(I) THE SERVICES PROVIDED ARE APPROPRIATE FOR THE DIAGNOSIS AND TREATMENT OF THE DISEASE, ILLNESS, OR CONGENITAL OR HEREDITARY CONDITION; AND~~

~~(II) THE COST OF THE SERVICES IS COMPARABLE TO THAT CHARGED FOR SIMILAR SERVICES BY OTHER LICENSED VETERINARIANS LOCATED IN CLOSE PROXIMITY TO THE TREATING VETERINARIAN.~~

~~(3)~~ UNLESS THE OWNER OR OPERATOR OF THE RETAIL PET STORE CONTESTS A REIMBURSEMENT REQUIRED UNDER PARAGRAPH (1)(III) OF THIS SUBSECTION, THE REIMBURSEMENT SHALL BE MADE TO THE PURCHASER NO LATER THAN 10 BUSINESS DAYS AFTER THE RETAIL PET STORE RECEIVES THE VETERINARIAN'S STATEMENT UNDER SUBSECTION ~~(C)(1)~~ *(C)* OF THIS SECTION.

(C) ~~(1)~~ TO OBTAIN A REMEDY UNDER THIS SECTION, A PURCHASER SHALL~~:~~

~~(I) NOTIFY THE OWNER OR OPERATOR OF THE RETAIL PET STORE WITHIN 3 BUSINESS DAYS AFTER A DIAGNOSIS BY A LICENSED VETERINARIAN OF A DISEASE, ILLNESS, OR CONGENITAL OR HEREDITARY CONDITION OF THE DOG FOR WHICH THE PURCHASER IS SEEKING A REMEDY;~~

~~(II)~~ **PROVIDE TO THE OWNER OR OPERATOR OF THE RETAIL PET STORE,** ***WITHIN 5 BUSINESS DAYS AFTER RECEIPT*****, A WRITTEN STATEMENT FROM A LICENSED VETERINARIAN** ~~**WITHIN 5 BUSINESS DAYS AFTER A DIAGNOSIS BY THE VETERINARIAN**~~ **THAT THE DOG SUFFERS FROM OR HAS DIED OF A DISEASE, ILLNESS, OR CONGENITAL OR HEREDITARY CONDITION ADVERSELY AFFECTING THE HEALTH OF THE DOG AND THAT EXISTED IN THE DOG ON OR BEFORE THE DATE OF DELIVERY TO THE PURCHASER**~~;~~ **.**

~~(III) ON REQUEST OF THE OWNER OR OPERATOR OF THE RETAIL PET STORE, PROMPTLY TAKE THE DOG FOR AN EXAMINATION BY A LICENSED VETERINARIAN CHOSEN BY THE OWNER OR OPERATOR OF THE RETAIL PET STORE, AT THE EXPENSE OF THE RETAIL PET STORE;~~

~~(IV) IF THE DOG HAS DIED, ON REQUEST OF THE OWNER OR OPERATOR OF THE RETAIL PET STORE, TAKE THE DECEASED DOG FOR A NECROPSY BY A LICENSED VETERINARIAN CHOSEN BY THE OWNER OR OPERATOR OF THE RETAIL PET STORE, AT THE EXPENSE OF THE RETAIL PET STORE; AND~~

~~(V) IF THE PURCHASER REQUESTS A REIMBURSEMENT OF REASONABLE VETERINARY FEES UNDER SUBSECTION (B)(1)(III) OF THIS SECTION, PROVIDE TO THE RETAIL PET STORE AN ITEMIZED BILL FOR THE DIAGNOSIS AND TREATMENT OF THE DISEASE, ILLNESS, OR CONGENITAL OR HEREDITARY CONDITION OF THE DOG FOR WHICH THE PURCHASER IS SEEKING A REMEDY.~~

~~(2) A VETERINARIAN'S STATEMENT UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION SHALL INCLUDE:~~

~~(I) THE PURCHASER'S NAME AND ADDRESS;~~

~~(II) A STATEMENT THAT THE VETERINARIAN EXAMINED THE DOG;~~

~~(III) THE DATE OR DATES ON WHICH THE DOG WAS EXAMINED;~~

~~(IV) THE BREED AND AGE OF THE DOG, IF KNOWN;~~

~~(V) A STATEMENT THAT THE DOG HAS OR HAD A DISEASE, ILLNESS, OR CONGENITAL OR HEREDITARY CONDITION THAT IS SUBJECT TO A REMEDY; AND~~

~~(VI) THE FINDINGS OF THE EXAMINATION OR NECROPSY, INCLUDING LABORATORY RESULTS OR COPIES OF THE RESULTS.~~

(D) A PURCHASER IS NOT ENTITLED TO A REMEDY UNDER THIS SECTION IF:

(1) THE ILLNESS OR DEATH RESULTED FROM:

(I) MALTREATMENT OR NEGLECT BY THE PURCHASER;

(II) AN INJURY SUSTAINED AFTER THE DELIVERY OF THE DOG TO THE PURCHASER; OR

(III) AN ILLNESS OR DISEASE CONTRACTED AFTER THE DELIVERY OF THE DOG TO THE PURCHASER;

(2) THE PURCHASER DOES NOT CARRY OUT THE RECOMMENDED TREATMENT PRESCRIBED BY THE VETERINARIAN WHO MADE THE DIAGNOSIS; ***OR***

(3) THE ILLNESS, DISEASE, OR CONGENITAL OR HEREDITARY CONDITION WAS DISCLOSED AT THE TIME OF PURCHASE~~; OR~~

~~(4) THE PURCHASER DOES NOT RETURN TO THE RETAIL PET STORE ALL DOCUMENTS PROVIDED TO THE PURCHASER TO REGISTER THE DOG~~**.**

~~(E) (1) A RETAIL PET STORE MAY CONTEST A REMEDY UNDER THIS SECTION BY HAVING THE DOG EXAMINED BY A LICENSED VETERINARIAN AT THE EXPENSE OF THE RETAIL PET STORE.~~

~~(2) IF THE PURCHASER AND THE RETAIL PET STORE HAVE NOT REACHED AN AGREEMENT WITHIN 10 BUSINESS DAYS AFTER THE EXAMINATION OF THE DOG BY THE VETERINARIAN CHOSEN BY THE RETAIL PET STORE:~~

~~(I) THE PURCHASER MAY BRING SUIT IN A COURT OF COMPETENT JURISDICTION TO RESOLVE THE DISPUTE; OR~~

~~(II) IF THE PARTIES AGREE IN WRITING, THE PARTIES MAY SUBMIT THE DISPUTE TO BINDING ARBITRATION.~~

~~(3) IF THE COURT OR ARBITER FINDS THAT EITHER PARTY ACTED IN BAD FAITH IN SEEKING OR DENYING THE REQUESTED REMEDY, THE OFFENDING PARTY MAY BE REQUIRED TO PAY REASONABLE ATTORNEY'S FEES AND COURT COSTS OF THE ADVERSE PARTY.~~

~~19–705.~~ 19–706.

~~(A) A RETAIL PET STORE THAT SELLS DOGS SHALL CONSPICUOUSLY POST A NOTICE STATING THAT PURCHASERS OF DOGS HAVE SPECIFIC RIGHTS UNDER THE LAW AND THAT A WRITTEN STATEMENT OF THOSE RIGHTS IS AVAILABLE ON REQUEST.~~

~~(B) (1) AT THE TIME OF A SALE OF A DOG OR ON REQUEST OF A PROSPECTIVE PURCHASER, A RETAIL PET STORE SHALL PROVIDE A WRITTEN NOTICE OF PURCHASER'S RIGHTS UNDER THIS SUBTITLE.~~

~~(2) AT THE TIME A WRITTEN NOTICE IS PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE NOTICE SHALL BE SIGNED BY THE OWNER OR OPERATOR OF THE RETAIL PET STORE AND THE PURCHASER.~~

~~19–706.~~ 19–707.

~~(A) (1) A RETAIL PET STORE THAT REPRESENTS THAT A DOG SOLD BY THE RETAIL PET STORE IS REGISTERED OR REGISTRABLE SHALL PROVIDE THE PURCHASER WITH A WRITTEN NOTICE AT THE TIME OF THE SALE THAT STATES: "A PEDIGREE OR REGISTRATION DOES NOT ASSURE PROPER BREEDING CONDITION, HEALTH, QUALITY, OR CLAIMS TO LINEAGE."~~

~~(2) AT THE TIME A WRITTEN NOTICE IS PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE NOTICE SHALL BE SIGNED BY THE OWNER OR OPERATOR OF THE RETAIL PET STORE AND THE PURCHASER.~~

~~(B) (1) A RETAIL PET STORE MAY NOT STATE, PROMISE, OR REPRESENT TO A PURCHASER, DIRECTLY OR INDIRECTLY, THAT A DOG IS REGISTERED OR REGISTRABLE UNLESS THE RETAIL PET STORE PROVIDES THE PURCHASER WITH THE DOCUMENTS NECESSARY FOR REGISTRATION WITHIN 120~~ 90 ~~DAYS AFTER THE DATE OF SALE.~~

~~(2) IF THE RETAIL PET STORE DOES NOT PROVIDE THE DOCUMENTS AS REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE PURCHASER MAY:~~

~~(I) PROVIDE WRITTEN NOTICE TO THE RETAIL PET STORE OF THE PURCHASER'S INTENT TO SEEK A REMEDY AUTHORIZED IN ITEM (II) OF THIS PARAGRAPH; AND~~

~~(II) 1. RETURN THE DOG AND ALL ACCOMPANYING DOCUMENTATION TO THE RETAIL PET STORE FOR A FULL REFUND OF THE PURCHASE PRICE; OR~~

~~2. RETAIN THE DOG AND BE REIMBURSED BY THE RETAIL PET STORE FOR 50% OF THE PURCHASE PRICE.~~

~~19–707.~~ ~~19–708.~~ *19–706.*

~~AN OWNER OR OPERATOR OF A RETAIL PET STORE THAT VIOLATES THIS SUBTITLE IS LIABLE FOR A CIVIL PENALTY NOT EXCEEDING:~~

~~(1) $500 FOR A FIRST OFFENSE; OR~~

~~(2) $1,000 FOR EACH SUBSEQUENT OFFENSE.~~

A VIOLATION OF THIS SUBTITLE:

(1) IS AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF TITLE 13 OF THE COMMERCIAL LAW ARTICLE; AND

(2) IS SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS CONTAINED IN TITLE 13 OF THE COMMERCIAL LAW ARTICLE.

~~19–708.~~ ~~19–709.~~ *19–707.*

NOTHING IN THIS SUBTITLE LIMITS:

(1) THE RIGHTS OR REMEDIES OTHERWISE AVAILABLE TO A PURCHASER;

(2) THE ABILITY OF THE OWNER OR OPERATOR OF A RETAIL PET STORE AND PURCHASER TO AGREE TO ADDITIONAL TERMS AND CONDITIONS THAT DO NOT IMPAIR THE RIGHTS GRANTED TO A PURCHASER UNDER THIS SUBTITLE; OR

(3) THE ABILITY OF THE STATE OR A LOCAL GOVERNMENT TO PROSECUTE THE OWNER OR OPERATOR OF A RETAIL PET STORE FOR ANY OTHER VIOLATION OF LAW.

Article – Commercial Law

13–301.

Unfair or deceptive trade practices include any:

(14) *Violation of a provision of:*

(xxvii) *Section 7–405(e)(2)(ii) of the Health Occupations Article;* ***[or]***

(xxviii) *Title 12, Subtitle 10 of the Financial Institutions Article; or*

(XXIX) ***TITLE 19, SUBTITLE 7 OF THE BUSINESS REGULATION ARTICLE; OR***

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 216

(Senate Bill 321)

AN ACT concerning

Frederick County – Alcoholic Beverages – Licensed Restaurants – Removal of Tables and Chairs for Expanded Occupancy

FOR the purpose of authorizing in Frederick County a restaurant for which a Class B beer, wine and liquor license is issued to remove its tables and chairs to accommodate additional patrons at a certain number of special events in a year; requiring that a restaurant that removes its tables and chairs give notice to the Board of License Commissioners not less than a certain time before the event; requiring the removed tables and chairs to be stored in a certain manner; prohibiting a restaurant from allowing entry to more than the maximum number of occupants that the County Fire Marshal allows; and generally relating to restaurants for which an alcoholic beverages license is issued in Frederick County.

BY repealing and reenacting, without amendments,
Article 2B – Alcoholic Beverages
Section 6–201(a)(1) and (l)(1) and (2)(iii)
Annotated Code of Maryland
(2011 Replacement Volume)

BY adding to
Article 2B – Alcoholic Beverages

Section 6–201(l)(2)(iv)
Annotated Code of Maryland
(2011 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article 2B – Alcoholic Beverages

6–201.

(a) (1) A Class B beer, wine and liquor license shall be issued by the license issuing authority of the county in which the place of business is located, and the license authorizes its holder to keep for sale and sell all alcoholic beverages at retail at any hotel or restaurant at the place described, for consumption on the premises or elsewhere, or as provided in this section.

(l) (1) This subsection applies only in Frederick County.

(2) (iii) This license may be issued to a restaurant which:

1. Serves full–course meals at least twice daily;

2. Has a regular seating capacity at tables (not including seats at bars or counters) for 50 or more persons;

3. Is operated in a physical plant which has a valuation for purposes of State and local assessment and taxation of not less than $40,000 and which has a valuation of personal property for purposes of State and local assessment and taxation of not less than $5,000. This license in a restaurant permits sales for consumption on the premises on which meals are prepared and served, except in the case of beverages with an alcoholic content of not more than 14.5 percent by volume, which may be sold for off–premises consumption; and

4. A. The area of the licensed premises normally used as a restaurant for the preparation and consumption of food and beverages on the premises may occupy no less than 80 percent of the square foot area, except for recreational use premises such as bowling alleys and pool halls.

B. The provisions of this sub–subparagraph of this subparagraph do not apply to or affect any licensee that had a license on December 31, 1993, or to any person who has a permit for a building that was under construction on that date.

(IV) 1. A RESTAURANT ISSUED A LICENSE UNDER THIS SUBSECTION MAY REMOVE ITS TABLES AND CHAIRS TO ACCOMMODATE

ADDITIONAL PATRONS AT NOT MORE THAN FOUR SPECIAL EVENTS HELD IN THE RESTAURANT IN A CALENDAR YEAR.

2. A RESTAURANT THAT REMOVES ITS TABLES AND CHAIRS FOR A SPECIAL EVENT:

A. SHALL GIVE NOTICE TO THE BOARD OF LICENSE COMMISSIONERS NOT LESS THAN 1 WEEK BEFORE THE EVENT;

B. SHALL STORE THE REMOVED TABLES AND CHAIRS IN AN APPROPRIATE LOCATION IN THE RESTAURANT AND IN A MANNER THAT DOES NOT BLOCK THE EXITS OF THE RESTAURANT; AND

C. MAY NOT ALLOW INTO THE RESTAURANT MORE THAN THE MAXIMUM NUMBER OF OCCUPANTS THAT THE COUNTY FIRE MARSHAL ALLOWS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 217

(Senate Bill 328)

AN ACT concerning

Baltimore City – 45th Legislative District – Alcoholic Beverages – Landlords – Licensed Premises

FOR the purpose of making it a misdemeanor in the 45th Legislative District in Baltimore City for a landlord to rent out a premises to be used for the sale of alcoholic beverages by a holder of a Class A alcoholic beverages license if the landlord knows or has reason to know that the use would violate a certain minimum distance requirement between a licensed premises and a place of worship or school; providing for the application of this Act; providing a penalty; and generally relating to the sale of alcoholic beverages in the 45th Legislative District in Baltimore City.

BY adding to
Article 2B – Alcoholic Beverages
Section 16–509.1
Annotated Code of Maryland

(2011 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article 2B – Alcoholic Beverages

16–509.1.

(A) IN THE 45TH LEGISLATIVE DISTRICT IN BALTIMORE CITY, A LANDLORD MAY NOT RENT OUT TO A HOLDER OF A CLASS A ALCOHOLIC BEVERAGES LICENSE OF ANY TYPE A PREMISES TO BE USED FOR THE SALE OF ALCOHOLIC BEVERAGES IF THE LANDLORD KNOWS OR HAS REASON TO KNOW THAT THE SALE OF ALCOHOLIC BEVERAGES ON THE PREMISES WOULD VIOLATE A PROVISION IN THIS ARTICLE THAT REQUIRES A MINIMUM DISTANCE TO BE MAINTAINED BETWEEN A LICENSED PREMISES AND A PLACE OF WORSHIP OR SCHOOL.

(B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $1,000.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any premises rented out to be used for the sale of alcoholic beverages in the 45th Legislative District of Baltimore City before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 218

(House Bill 13)

AN ACT concerning

Baltimore City – 45th Legislative District – Alcoholic Beverages – Landlords – Licensed Premises

FOR the purpose of making it a misdemeanor in the 45th Legislative District in Baltimore City for a landlord to rent out a premises to be used for the sale of

alcoholic beverages by a holder of a Class A alcoholic beverages license if the landlord knows or has reason to know that the use would violate a certain minimum distance requirement between a licensed premises and a place of worship or school; providing for the application of this Act; providing a penalty; and generally relating to the sale of alcoholic beverages in the 45th Legislative District in Baltimore City.

BY adding to
Article 2B – Alcoholic Beverages
Section 16–509.1
Annotated Code of Maryland
(2011 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article 2B – Alcoholic Beverages

16–509.1.

(A) IN THE 45TH LEGISLATIVE DISTRICT IN BALTIMORE CITY, A LANDLORD MAY NOT RENT OUT TO A HOLDER OF A CLASS A ALCOHOLIC BEVERAGES LICENSE OF ANY TYPE A PREMISES TO BE USED FOR THE SALE OF ALCOHOLIC BEVERAGES IF THE LANDLORD KNOWS OR HAS REASON TO KNOW THAT THE SALE OF ALCOHOLIC BEVERAGES ON THE PREMISES WOULD VIOLATE A PROVISION IN THIS ARTICLE THAT REQUIRES A MINIMUM DISTANCE TO BE MAINTAINED BETWEEN A LICENSED PREMISES AND A PLACE OF WORSHIP OR SCHOOL.

(B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $1,000.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any premises rented out to be used for the sale of alcoholic beverages in the 45th Legislative District of Baltimore City before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 219

(Senate Bill 344)

AN ACT concerning

Health Occupations – Dental Hygienists – Local Anesthesia

FOR the purpose of authorizing a dental hygienist to administer certain local anesthesia by inferior alveolar nerve block under certain circumstances; requiring a dental hygienist to complete certain education and examination requirements before performing certain functions; requiring a dental hygienist to obtain certain education from an accredited dental hygiene program; requiring a dental hygienist who completed certain requirements before a certain date to take and complete a certain course and clinical examination; authorizing the State Board of Dental Examiners to adopt certain regulations; *requiring the Board to report to certain committees of the General Assembly on or before a certain date;* altering a certain definition; and generally relating to the administration of local anesthesia by dental hygienists.

BY repealing and reenacting, without amendments,
Article – Health Occupations
Section 4–101(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 4–101(k) and 4–205(a)(1)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY adding to
Article – Health Occupations
Section 4–206.3
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health Occupations

4–101.

(a) In this title the following words have the meanings indicated.

(k) "Practice dental hygiene" means to:

(1) Perform a preliminary dental examination;

(2) Perform a complete prophylaxis, including the removal of any deposit, accretion, or stain from the surface of a tooth or a restoration;

(3) Polish a tooth or a restoration;

(4) Chart cavities, restorations, missing teeth, periodontal conditions, and other features observed during preliminary examination, prophylaxis, or polishing;

(5) Apply a medicinal agent to a tooth for a prophylactic purpose;

(6) Take a dental X ray;

(7) Perform a manual curettage in conjunction with scaling and root planing;

(8) Administer local anesthesia in accordance with § 4–206.1 **OR § 4–206.3** of this title;

(9) Monitor, in accordance with § 4–206.2 of this title, a patient to whom nitrous oxide is administered; or

(10) Perform any other intraoral function that the Board authorizes by a rule or regulation adopted under § 4–206 of this title.

4–205.

(a) In addition to the powers set forth elsewhere in this title, the Board may:

(1) Adopt regulations governing:

(i) The administration of general anesthesia by a licensed dentist;

(ii) The administration of sedation by a licensed dentist;

(iii) The use of a dental assistant by a licensed dentist in performing intraoral procedures;

(iv) Subject to subsection (b) of this section, the issuance of a permit to a facility not otherwise regulated where a dentist administers or has general anesthesia or sedation administered;

(v) Subject to subsection (b) of this section, the issuance of a permit to a dentist who administers or has general anesthesia or sedation administered;

(vi) Reasonable requirements for the training and evaluation of a dentist before the dentist may administer general anesthesia or sedation other than nitrous oxide administered alone and not in conjunction with:

1. Another method of diminishing or eliminating pain; or

2. Medication used for diminishing or eliminating anxiety;

(vii) Reasonable requirements for:

1. The education, training, evaluation, and examination of a dental hygienist before the dental hygienist may perform manual curettage in conjunction with scaling and root planing; and

2. Performance by a dental hygienist of manual curettage in conjunction with scaling and root planing;

(viii) Reasonable requirements for:

1. The education, training, evaluation, and examination of a dental hygienist before the dental hygienist may administer local anesthesia under § 4–206.1 of this subtitle; and

2. Administering by a dental hygienist of local anesthesia under § 4–206.1 of this subtitle;

(ix) Reasonable requirements for:

1. The education, training, evaluation, and examination of a dental hygienist before a dental hygienist may monitor a patient to whom nitrous oxide is being administered, subject to § 4–206.2 of this subtitle; and

2. Monitoring by a dental hygienist, in accordance with § 4–206.2 of this subtitle, of a patient to whom nitrous oxide is being administered;

(X) REASONABLE REQUIREMENTS FOR THE EDUCATION, TRAINING, EVALUATION, AND EXAMINATION OF A DENTAL HYGIENIST BEFORE A DENTAL HYGIENIST MAY ADMINISTER LOCAL ANESTHESIA BY INFERIOR ALVEOLAR NERVE BLOCK UNDER § 4–206.3 OF THIS SUBTITLE;

[(x)**]** **(XI)** The discipline of a holder of any facility or administration permit for the administration of general anesthesia or sedation; and

[(xi)**]** **(XII)** The release of patient dental records;

4–206.3.

(A) SUBJECT TO THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION, A DENTAL HYGIENIST MAY ADMINISTER LOCAL ANESTHESIA BY INFERIOR ALVEOLAR NERVE BLOCK FOR THE PURPOSE OF ANESTHETIZING SOFT TISSUE TO FACILITATE THE PERFORMANCE OF DENTAL HYGIENE PROCEDURES, BUT NOT AS A MEDICAL SPECIALTY, PROVIDED THE ADMINISTRATION OF THE LOCAL ANESTHESIA IS UNDER THE SUPERVISION OF A DENTIST WHO:

(1) IS PHYSICALLY PRESENT ON THE PREMISES; AND

(2) PRESCRIBES THE ADMINISTRATION OF LOCAL ANESTHESIA BY THE DENTAL HYGIENIST.

(B) (1) BEFORE A DENTAL HYGIENIST MAY ADMINISTER LOCAL ANESTHESIA UNDER SUBSECTION (A) OF THIS SECTION, THE DENTAL HYGIENIST SHALL SUCCESSFULLY COMPLETE THE FOLLOWING:

(I) ANY EDUCATIONAL REQUIREMENTS ESTABLISHED BY THE BOARD; AND

(II) A WRITTEN AND CLINICAL EXAMINATION AS REQUIRED BY THE BOARD.

(2) A DENTAL HYGIENIST SHALL OBTAIN THE EDUCATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION FROM AN ACCREDITED DENTAL HYGIENE PROGRAM.

(3) A DENTAL HYGIENIST WHO SUCCESSFULLY COMPLETED THE EDUCATION REQUIREMENTS AND EXAMINATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION BEFORE OCTOBER 1, 2011, SHALL TAKE AND SUCCESSFULLY COMPLETE A REFRESHER COURSE AND A CLINICAL EXAMINATION FROM AN ACCREDITED DENTAL HYGIENE PROGRAM.

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1, 2015, the State Board of Dental Examiners shall report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee, in accordance with § 2–1246 of the State Government Article, on the implementation of this Act and how the Act has impacted the dental profession.

SECTION ~~2.~~ *3.* AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 220

(House Bill 172)

AN ACT concerning

Health Occupations – Dental Hygienists – Local Anesthesia

FOR the purpose of authorizing a dental hygienist to administer certain local anesthesia by inferior alveolar nerve block under certain circumstances; requiring a dental hygienist to complete certain education and examination requirements before performing certain functions; requiring a dental hygienist to obtain certain education from an accredited dental hygiene program; requiring a dental hygienist who completed certain requirements before a certain date to take and complete a certain course and clinical examination; authorizing the State Board of Dental Examiners to adopt certain regulations; requiring the Board to report to certain committees of the General Assembly on or before a certain date; altering a certain definition; and generally relating to the administration of local anesthesia by dental hygienists.

BY repealing and reenacting, without amendments,
Article – Health Occupations
Section 4–101(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 4–101(k) and 4–205(a)(1)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY adding to
Article – Health Occupations
Section 4–206.3
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health Occupations

4–101.

(a) In this title the following words have the meanings indicated.

(k) "Practice dental hygiene" means to:

(1) Perform a preliminary dental examination;

(2) Perform a complete prophylaxis, including the removal of any deposit, accretion, or stain from the surface of a tooth or a restoration;

(3) Polish a tooth or a restoration;

(4) Chart cavities, restorations, missing teeth, periodontal conditions, and other features observed during preliminary examination, prophylaxis, or polishing;

(5) Apply a medicinal agent to a tooth for a prophylactic purpose;

(6) Take a dental X ray;

(7) Perform a manual curettage in conjunction with scaling and root planing;

(8) Administer local anesthesia in accordance with § 4–206.1 **OR § 4–206.3** of this title;

(9) Monitor, in accordance with § 4–206.2 of this title, a patient to whom nitrous oxide is administered; or

(10) Perform any other intraoral function that the Board authorizes by a rule or regulation adopted under § 4–206 of this title.

4–205.

(a) In addition to the powers set forth elsewhere in this title, the Board may:

(1) Adopt regulations governing:

(i) The administration of general anesthesia by a licensed dentist;

(ii) The administration of sedation by a licensed dentist;

(iii) The use of a dental assistant by a licensed dentist in performing intraoral procedures;

(iv) Subject to subsection (b) of this section, the issuance of a permit to a facility not otherwise regulated where a dentist administers or has general anesthesia or sedation administered;

(v) Subject to subsection (b) of this section, the issuance of a permit to a dentist who administers or has general anesthesia or sedation administered;

(vi) Reasonable requirements for the training and evaluation of a dentist before the dentist may administer general anesthesia or sedation other than nitrous oxide administered alone and not in conjunction with:

1. Another method of diminishing or eliminating pain; or

2. Medication used for diminishing or eliminating anxiety;

(vii) Reasonable requirements for:

1. The education, training, evaluation, and examination of a dental hygienist before the dental hygienist may perform manual curettage in conjunction with scaling and root planing; and

2. Performance by a dental hygienist of manual curettage in conjunction with scaling and root planing;

(viii) Reasonable requirements for:

1. The education, training, evaluation, and examination of a dental hygienist before the dental hygienist may administer local anesthesia under § 4–206.1 of this subtitle; and

2. Administering by a dental hygienist of local anesthesia under § 4–206.1 of this subtitle;

(ix) Reasonable requirements for:

1. The education, training, evaluation, and examination of a dental hygienist before a dental hygienist may monitor a patient to whom nitrous oxide is being administered, subject to § 4–206.2 of this subtitle; and

2. Monitoring by a dental hygienist, in accordance with § 4–206.2 of this subtitle, of a patient to whom nitrous oxide is being administered;

(X) REASONABLE REQUIREMENTS FOR THE EDUCATION, TRAINING, EVALUATION, AND EXAMINATION OF A DENTAL HYGIENIST BEFORE A DENTAL HYGIENIST MAY ADMINISTER LOCAL ANESTHESIA BY INFERIOR ALVEOLAR NERVE BLOCK UNDER § 4–206.3 OF THIS SUBTITLE;

[(x)**] (XI)** The discipline of a holder of any facility or administration permit for the administration of general anesthesia or sedation; and

[(xi)**] (XII)** The release of patient dental records;

4–206.3.

(A) SUBJECT TO THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION, A DENTAL HYGIENIST MAY ADMINISTER LOCAL ANESTHESIA BY INFERIOR ALVEOLAR NERVE BLOCK FOR THE PURPOSE OF ANESTHETIZING SOFT TISSUE TO FACILITATE THE PERFORMANCE OF DENTAL HYGIENE PROCEDURES, BUT NOT AS A MEDICAL SPECIALTY, PROVIDED THE ADMINISTRATION OF THE LOCAL ANESTHESIA IS UNDER THE SUPERVISION OF A DENTIST WHO:

(1) IS PHYSICALLY PRESENT ON THE PREMISES; AND

(2) PRESCRIBES THE ADMINISTRATION OF LOCAL ANESTHESIA BY THE DENTAL HYGIENIST.

(B) (1) BEFORE A DENTAL HYGIENIST MAY ADMINISTER LOCAL ANESTHESIA UNDER SUBSECTION (A) OF THIS SECTION, THE DENTAL HYGIENIST SHALL SUCCESSFULLY COMPLETE THE FOLLOWING:

(I) ANY EDUCATIONAL REQUIREMENTS ESTABLISHED BY THE BOARD; AND

(II) A WRITTEN AND CLINICAL EXAMINATION AS REQUIRED BY THE BOARD.

(2) A DENTAL HYGIENIST SHALL OBTAIN THE EDUCATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION FROM AN ACCREDITED DENTAL HYGIENE PROGRAM.

(3) A DENTAL HYGIENIST WHO SUCCESSFULLY COMPLETED THE EDUCATION REQUIREMENTS AND EXAMINATION REQUIRED UNDER PARAGRAPH

(1) OF THIS SUBSECTION BEFORE OCTOBER 1, 2011, SHALL TAKE AND SUCCESSFULLY COMPLETE A REFRESHER COURSE AND A CLINICAL EXAMINATION FROM AN ACCREDITED DENTAL HYGIENE PROGRAM.

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1, 2015, the State Board of Dental Examiners shall report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee, in accordance with § 2–1246 of the State Government Article, on the implementation of this Act and how the Act has impacted the dental profession.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 221

(Senate Bill 350)

AN ACT concerning

Respiratory Care Practitioners – Practicing Polysomnography – Licensing Exceptions

FOR the purpose of providing that a licensed respiratory care practitioner has the right to practice respiratory care within the scope of practice of the respiratory care practitioner's license, including practicing respiratory care in a sleep laboratory; providing that the licensing requirements to practice polysomnography do not apply to a certain respiratory care practitioner licensed by the State Board of Physicians on or before a certain date; and generally relating to licensing exceptions to the practice of polysomnography by respiratory care practitioners.

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 14–5C–02 and 14–5C–08
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health Occupations

14–5C–02.

This subtitle does not limit:

(1) The right of an individual to practice a health occupation that the individual is authorized to practice under this article; **[**or**]**

(2) The right of a licensed home medical equipment provider to provide home medical equipment services as defined under Title 19, Subtitle 4A of the Health – General Article**; OR**

(3) THE RIGHT OF A LICENSED RESPIRATORY CARE PRACTITIONER TO PRACTICE RESPIRATORY CARE WITHIN THE SCOPE OF PRACTICE OF THE RESPIRATORY CARE PRACTITIONER'S LICENSE, INCLUDING PRACTICING RESPIRATORY CARE IN A SLEEP LABORATORY.

14–5C–08.

(a) Except as otherwise provided in this subtitle, on or after October 1, 2013, an individual shall be licensed by the Board before the individual may practice polysomnography in this State.

(b) This section does not apply to a student enrolled in an education program under § 14–5C–09(c)(3) of this subtitle while practicing polysomnography in that program.

(C) THIS SECTION DOES NOT APPLY TO A RESPIRATORY CARE PRACTITIONER WHO WAS LICENSED BY THE BOARD TO PRACTICE RESPIRATORY CARE ON OR BEFORE DECEMBER 31, 2012, AND WHOSE DUTIES INCLUDE PRACTICING POLYSOMNOGRAPHY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 222

(House Bill 833)

AN ACT concerning

Respiratory Care Practitioners – Practicing Polysomnography – Licensing Exceptions

FOR the purpose of providing that a licensed respiratory care practitioner has the right to practice respiratory care within the scope of practice of the respiratory care practitioner's license, including practicing respiratory care in a sleep laboratory; providing that the licensing requirements to practice polysomnography do not apply to a certain respiratory care practitioner licensed by the State Board of Physicians on or before a certain date; and generally relating to licensing exceptions to the practice of polysomnography by respiratory care practitioners.

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 14–5C–02 and 14–5C–08
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health Occupations

14–5C–02.

This subtitle does not limit:

(1) The right of an individual to practice a health occupation that the individual is authorized to practice under this article; **[**or**]**

(2) The right of a licensed home medical equipment provider to provide home medical equipment services as defined under Title 19, Subtitle 4A of the Health – General Article**; OR**

(3) THE RIGHT OF A LICENSED RESPIRATORY CARE PRACTITIONER TO PRACTICE RESPIRATORY CARE WITHIN THE SCOPE OF PRACTICE OF THE RESPIRATORY CARE PRACTITIONER'S LICENSE, INCLUDING PRACTICING RESPIRATORY CARE IN A SLEEP LABORATORY.

14–5C–08.

(a) Except as otherwise provided in this subtitle, on or after October 1, 2013, an individual shall be licensed by the Board before the individual may practice polysomnography in this State.

(b) This section does not apply to a student enrolled in an education program under § 14–5C–09(c)(3) of this subtitle while practicing polysomnography in that program.

(C) THIS SECTION DOES NOT APPLY TO A RESPIRATORY CARE PRACTITIONER WHO WAS LICENSED BY THE BOARD TO PRACTICE RESPIRATORY CARE ON OR BEFORE DECEMBER 31, 2012, AND WHOSE DUTIES INCLUDE PRACTICING POLYSOMNOGRAPHY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 223

(Senate Bill 377)

AN ACT concerning

Alcoholic Beverages – Baltimore City – False Advertising

FOR the purpose of prohibiting an alcoholic beverages licensee in Baltimore City from advertising falsely; requiring the Baltimore City Board of License Commissioners to enforce a prohibition on advertising falsely; defining a certain term; and generally relating to alcoholic beverages licensees in Baltimore City and false advertising.

BY repealing and reenacting, with amendments,
Article 2B – Alcoholic Beverages
Section 21–105
Annotated Code of Maryland
(2011 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article 2B – Alcoholic Beverages

21–105.

(a) This section applies only in Baltimore City.

(b) In this section, "publicly visible locations" include outdoor billboards, sides of buildings, and freestanding signboards.

(c) (1) The Mayor and City Council of Baltimore may adopt an ordinance restricting the placement of signs, posters, placards, devices, graphic displays, or any

other forms of advertising or on the sides of the building of the licensed premises that advertise alcoholic beverages in publicly visible locations if:

(i) The ordinance is necessary for the promotion of the welfare and temperance of minors exposed to advertisements for alcoholic beverages placed in publicly visible locations; and

(ii) The restrictions do not unduly burden legitimate business activities of persons licensed under this article to sell alcoholic beverages on a retail basis.

(2) The ordinance adopted by the Mayor and City Council of Baltimore City may not restrict:

(i) The placement of signs, including advertisements:

1. Inside licensed premises;

2. On commercial vehicles used for transporting alcoholic beverages; or

3. In conjunction with a 1–day alcoholic beverages license or a temporary license granted by the Board of License Commissioners;

(ii) Any sign that contains the name or slogan of the licensed premises that has been placed for the purpose of identifying the licensed premises;

(iii) Except for billboards and freestanding signboards, any sign for which zoning board approval or a minor privilege permit is required;

(iv) Any sign that contains a generic description of beer, wine, liquor, or spirits, or any other generic description of alcoholic beverages;

(v) Any neon or electrically charged sign on licensed premises that is provided as part of a promotion of a particular brand of alcoholic beverage;

(vi) Any sign on an MTA vehicle or a taxicab;

(vii) Any sign on property owned, leased, or operated by the Maryland Stadium Authority;

(viii) Any sign at Memorial Stadium;

(ix) Any sign at a facility that operates in accordance with a license issued under § 11–304 of the Business Regulation Article; or

(x) Any sign on property adjacent to an interstate highway.

(D) (1) (I) IN THIS SUBSECTION, "ADVERTISE FALSELY" MEANS TO USE ANY ADVERTISEMENT THAT IS UNTRUE, DECEPTIVE, OR MISLEADING IN A MATERIAL RESPECT.

(II) "ADVERTISE FALSELY" INCLUDES THE USE AND PLACEMENT OF AN ADVERTISEMENT BY A PERSON ON THE INTERNET THAT CONTAINS AN AFFIRMATIVE REPRESENTATION THAT AN ALCOHOLIC BEVERAGES LICENSEE MAY OFFER FOR SALE A CONTAINER OF ALCOHOLIC BEVERAGES THAT THE LICENSEE IS NOT AUTHORIZED TO SELL.

(2) AN ALCOHOLIC BEVERAGES LICENSEE MAY NOT ADVERTISE FALSELY IN THE CONDUCT OF ANY BUSINESS.

(3) THE BOARD OF LICENSE COMMISSIONERS SHALL ENFORCE THIS SUBSECTION.

[(d)**] (E)** A person who violates the provisions of this section is guilty of a misdemeanor and may be fined no more than $1,000.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 224

(Senate Bill 395)

AN ACT concerning

Health Occupations – Public Disclosure of Professional Credentials and Reports on Advertising Regulations and Policies

FOR the purpose of ~~requiring certain advertisements for health care services to identify and fully spell out the license or certification of certain health care practitioners; prohibiting a certain advertisement from being misleading; specifying what constitutes a misleading advertisement under this Act; requiring certain health care practitioners to disclose the practitioner's licensure or certification by wearing a certain identification tag; providing for the application of a certain provision of this Act; providing that health care practitioners that fail to comply with certain provisions of this Act are subject to certain disciplinary actions; authorizing the appropriate regulatory board to~~

~~investigate an alleged violation of certain provisions of this Act; requiring certain regulatory boards to adopt certain regulations;~~ prohibiting a physician from making certain representations to the public under certain circumstances; *authorizing the Board to approve a certain certifying board if the certifying board requires certain physicians to meet certain qualifications;* altering the authority of a physician to advertise; ~~defining certain terms;~~ requiring certain health occupation boards to submit certain information related to advertising by health care practitioners to certain committees of the General Assembly on or before a certain date; and generally relating to the public disclosure of professional credentials by health care practitioners.

~~BY adding to~~
~~Article – Health Occupations~~
~~Section 1–701 through 1–705 to be under the new subtitle "Subtitle 7. Public Disclosure of Professional Credentials"~~
~~Annotated Code of Maryland~~
~~(2009 Replacement Volume and 2011 Supplement)~~

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 14–503
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health Occupations

~~**SUBTITLE 7. PUBLIC DISCLOSURE OF PROFESSIONAL CREDENTIALS.**~~

~~**1–701.**~~

~~**(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**~~

~~**(B) "ADVERTISEMENT" MEANS ANY PRINTED, ELECTRONIC, OR ORAL COMMUNICATION OR STATEMENT THAT INCLUDES THE NAME OF A HEALTH CARE PRACTITIONER IN RELATION TO:**~~

~~**(1) THE HEALTH CARE PRACTITIONER'S PRACTICE OR PROFESSION; OR**~~

~~**(2) THE HEALTH CARE FACILITY AT WHICH THE HEALTH CARE PRACTITIONER IS EMPLOYED, VOLUNTEERS, OR OTHERWISE PROVIDES HEALTH CARE SERVICES.**~~

~~(C) "HEALTH CARE ENTITY" MEANS A BUSINESS ENTITY THAT PROVIDES HEALTH CARE SERVICES FOR THE:~~

~~(1) TESTING, DIAGNOSIS, OR TREATMENT OF HUMAN DISEASE OR DYSFUNCTION; OR~~

~~(2) DISPENSING OF DRUGS, MEDICAL DEVICES, MEDICAL APPLIANCES, OR MEDICAL GOODS FOR THE TREATMENT OF HUMAN DISEASE OR DYSFUNCTION.~~

~~(E) "HEALTH CARE PRACTITIONER" MEANS A PERSON WHO IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED UNDER THIS ARTICLE TO PROVIDE HEALTH CARE SERVICES IN THE ORDINARY COURSE OF BUSINESS, PRACTICE, OR THE PROFESSION.~~

~~(F) "HEALTH CARE SERVICE" MEANS MEDICAL PROCEDURES, TESTS, AND SERVICES PROVIDED TO A PATIENT BY OR THROUGH A HEALTH CARE ENTITY.~~

~~1–702.~~

~~(A) AN ADVERTISEMENT FOR HEALTH CARE SERVICES THAT NAMES A HEALTH CARE PRACTITIONER:~~

~~(1) SHALL IDENTIFY AND FULLY SPELL OUT THE LICENSE OR CERTIFICATION HELD BY THE HEALTH CARE PRACTITIONER; AND~~

~~(2) MAY NOT BE MISLEADING.~~

~~(B) AN ADVERTISEMENT IS MISLEADING FOR THE PURPOSES OF SUBSECTION (A) OF THIS SECTION IF THE HEALTH CARE PRACTITIONER KNOWINGLY AND WILLFULLY INCLUDES IN THE ADVERTISEMENT A COMMUNICATION OR REPRESENTATION THAT:~~

~~(1) MISSTATES OR FALSELY DESCRIBES THE HEALTH CARE PRACTITIONER'S PROFESSION, SKILLS, TRAINING, EXPERTISE, EDUCATION, LICENSURE, OR CERTIFICATION; OR~~

~~(2) HOLDS THE HEALTH CARE PRACTITIONER OUT AS HAVING SKILLS, TRAINING, EXPERTISE, EDUCATION, LICENSURE, OR CERTIFICATION THAT THE HEALTH CARE PRACTITIONER DOES NOT HAVE.~~

~~1–703.~~

~~(A) THIS SECTION DOES NOT APPLY TO A HEALTH CARE PRACTITIONER WHO WORKS IN A NONPATIENT CARE SETTING OR WHO DOES NOT DIRECTLY INTERACT WITH PATIENTS.~~

~~(B) A HEALTH CARE PRACTITIONER WHO PROVIDES HEALTH CARE SERVICES SHALL DISCLOSE THE HEALTH CARE PRACTITIONER'S LICENSURE OR CERTIFICATION BY WEARING AN IDENTIFICATION TAG DURING A PATIENT ENCOUNTER.~~

~~(C) THE IDENTIFICATION TAG REQUIRED TO BE WORN UNDER SUBSECTION (B) OF THIS SECTION SHALL INCLUDE, IN A FONT SIZE THAT CAN BE EASILY READ BY A PATIENT, THE FOLLOWING:~~

~~(1) THE FIRST AND LAST NAME OF THE HEALTH CARE PRACTITIONER; AND~~

~~(2) THE FULL SPELLING OF THE TYPE OF LICENSE OR CERTIFICATION HELD BY THE HEALTH CARE PRACTITIONER.~~

~~1–704.~~

~~EACH REGULATORY BOARD UNDER THIS ARTICLE SHALL ADOPT REGULATIONS TO IMPLEMENT THIS SUBTITLE.~~

~~1–705.~~

~~(A) A HEALTH CARE PRACTITIONER WHO FAILS TO COMPLY WITH THE PROVISIONS OF THIS SUBTITLE SHALL BE SUBJECT TO DISCIPLINARY ACTION BY THE APPROPRIATE REGULATORY BOARD.~~

~~(B) THE APPROPRIATE REGULATORY BOARD MAY INVESTIGATE AN ALLEGED VIOLATION OF THIS SUBTITLE IN ACCORDANCE WITH THE INVESTIGATIVE AUTHORITY GRANTED UNDER THIS ARTICLE.~~

14–503.

(A) A PHYSICIAN MAY NOT REPRESENT TO THE PUBLIC~~, THROUGH AN ADVERTISEMENT,~~ THAT THE PHYSICIAN IS CERTIFIED BY A PUBLIC OR PRIVATE BOARD, INCLUDING A MULTIDISCIPLINARY BOARD, OR THAT THE PHYSICIAN IS BOARD CERTIFIED UNLESS:

(1) THE ~~ADVERTISEMENT INCLUDES~~ PHYSICIAN DISCLOSES THE FULL NAME OF THE BOARD FROM WHICH THE PHYSICIAN IS CERTIFIED AND THE

NAME OF THE SPECIALTY OR SUBSPECIALTY IN WHICH THE PHYSICIAN IS CERTIFIED; AND

(2) THE CERTIFYING BOARD MEETS ONE OF THE FOLLOWING REQUIREMENTS:

(I) THE CERTIFYING BOARD IS:

1. A MEMBER OF THE AMERICAN BOARD OF MEDICAL SPECIALTIES; OR

2. AN AMERICAN OSTEOPATHIC ASSOCIATION CERTIFYING BOARD;

(II) THE CERTIFYING BOARD HAS BEEN APPROVED BY THE BOARD; OR

(III) THE CERTIFYING BOARD REQUIRES THAT, IN ORDER TO BE CERTIFIED, THE PHYSICIAN~~, IN ORDER TO BE CERTIFIED, COMPLETE~~:

1. COMPLETE A POSTGRADUATE TRAINING PROGRAM THAT:

~~1.~~ A. PROVIDES COMPLETE TRAINING IN THE SPECIALTY OR SUBSPECIALTY; AND

~~2.~~ B. IS ACCREDITED BY THE ACCREDITATION COUNCIL FOR GRADUATE MEDICAL EDUCATION OR THE AMERICAN OSTEOPATHIC ASSOCIATION; AND

2. BE CERTIFIED BY THE MEMBER BOARD OF THE AMERICAN BOARD OF MEDICAL SPECIALTIES OR THE AMERICAN OSTEOPATHIC ASSOCIATION IN THE TRAINING FIELD.

(B) THE BOARD MAY APPROVE A CERTIFYING BOARD UNDER SUBSECTION (A)(2)(II) OF THIS SECTION ONLY IF THE CERTIFYING BOARD REQUIRES THAT, IN ORDER TO BE CERTIFIED, THE PHYSICIAN:

(1) COMPLETE A POSTGRADUATE TRAINING PROGRAM THAT:

(I) PROVIDES COMPLETE TRAINING IN THE SPECIALTY OR SUBSPECIALTY BEING CERTIFIED; AND

(II) IS ACCREDITED BY THE ACCREDITATION COUNCIL FOR GRADUATE MEDICAL EDUCATION OR THE AMERICAN OSTEOPATHIC ASSOCIATION; AND

(2) BE CERTIFIED BY THE AMERICAN BOARD OF MEDICAL SPECIALTIES OR AMERICAN OSTEOPATHIC ASSOCIATION IN THE SAME TRAINING FIELD.

~~(B)~~ ***(C)*** A physician may advertise only as permitted by the rules and regulations of the Board **AND** ~~**IN ACCORDANCE WITH**~~ **SUBJECT TO SUBSECTION (A) OF THIS SECTION**.

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 31, 2012, each health occupation board established under the Health Occupations Article shall submit any existing regulations or policies governing advertising by the health care practitioners regulated by the board to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 225

(House Bill 957)

AN ACT concerning

Health Occupations – Public Disclosure of Professional Credentials and Reports on Advertising Regulations and Policies

FOR the purpose of ~~requiring certain advertisements for health care services to identify and fully spell out the license or certification of certain health care practitioners; prohibiting a certain advertisement from being misleading; specifying what constitutes a misleading advertisement under this Act; requiring certain health care practitioners to disclose the practitioner's licensure or certification by wearing a certain identification tag; providing for the application of a certain provision of this Act; providing that health care practitioners that fail to comply with certain provisions of this Act are subject to certain disciplinary actions; authorizing the appropriate regulatory board to investigate an alleged violation of certain provisions of this Act; requiring certain regulatory boards to adopt certain regulations;~~ prohibiting a physician

from making certain representations to the public under certain circumstances; authorizing the Board to approve a certain certifying board if the certifying board requires certain physicians to meet certain qualifications; altering the authority of a physician to advertise; ~~defining certain terms;~~ requiring certain health occupation boards to submit certain information related to advertising by health care practitioners to certain committees of the General Assembly on or before a certain date; and generally relating to the public disclosure of professional credentials by health care practitioners.

~~BY adding to~~
~~Article – Health Occupations~~
~~Section 1–701 through 1–705 to be under the new subtitle "Subtitle 7. Public Disclosure of Professional Credentials"~~
~~Annotated Code of Maryland~~
~~(2009 Replacement Volume and 2011 Supplement)~~

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 14–503
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health Occupations

~~**SUBTITLE 7. PUBLIC DISCLOSURE OF PROFESSIONAL CREDENTIALS.**~~

~~**1–701.**~~

~~**(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**~~

~~**(B) "ADVERTISEMENT" MEANS ANY PRINTED, ELECTRONIC, OR ORAL COMMUNICATION OR STATEMENT THAT INCLUDES THE NAME OF A HEALTH CARE PRACTITIONER IN RELATION TO:**~~

~~**(1) THE HEALTH CARE PRACTITIONER'S PRACTICE OR PROFESSION; OR**~~

~~**(2) THE HEALTH CARE FACILITY AT WHICH THE HEALTH CARE PRACTITIONER IS EMPLOYED, VOLUNTEERS, OR OTHERWISE PROVIDES HEALTH CARE SERVICES.**~~

~~(C) "HEALTH CARE ENTITY" MEANS A BUSINESS ENTITY THAT PROVIDES HEALTH CARE SERVICES FOR THE:~~

~~(1) TESTING, DIAGNOSIS, OR TREATMENT OF HUMAN DISEASE OR DYSFUNCTION; OR~~

~~(2) DISPENSING OF DRUGS, MEDICAL DEVICES, MEDICAL APPLIANCES, OR MEDICAL GOODS FOR THE TREATMENT OF HUMAN DISEASE OR DYSFUNCTION.~~

~~(E) "HEALTH CARE PRACTITIONER" MEANS A PERSON WHO IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED UNDER THIS ARTICLE TO PROVIDE HEALTH CARE SERVICES IN THE ORDINARY COURSE OF BUSINESS, PRACTICE, OR THE PROFESSION.~~

~~(F) "HEALTH CARE SERVICE" MEANS MEDICAL PROCEDURES, TESTS, AND SERVICES PROVIDED TO A PATIENT BY OR THROUGH A HEALTH CARE ENTITY.~~

~~1–702.~~

~~(A) AN ADVERTISEMENT FOR HEALTH CARE SERVICES THAT NAMES A HEALTH CARE PRACTITIONER:~~

~~(1) SHALL IDENTIFY AND FULLY SPELL OUT THE LICENSE OR CERTIFICATION HELD BY THE HEALTH CARE PRACTITIONER; AND~~

~~(2) MAY NOT BE MISLEADING.~~

~~(B) AN ADVERTISEMENT IS MISLEADING FOR THE PURPOSES OF SUBSECTION (A) OF THIS SECTION IF THE HEALTH CARE PRACTITIONER KNOWINGLY AND WILLFULLY INCLUDES IN THE ADVERTISEMENT A COMMUNICATION OR REPRESENTATION THAT:~~

~~(1) MISSTATES OR FALSELY DESCRIBES THE HEALTH CARE PRACTITIONER'S PROFESSION, SKILLS, TRAINING, EXPERTISE, EDUCATION, LICENSURE, OR CERTIFICATION; OR~~

~~(2) HOLDS THE HEALTH CARE PRACTITIONER OUT AS HAVING SKILLS, TRAINING, EXPERTISE, EDUCATION, LICENSURE, OR CERTIFICATION THAT THE HEALTH CARE PRACTITIONER DOES NOT HAVE.~~

~~1–703.~~

~~(A) THIS SECTION DOES NOT APPLY TO A HEALTH CARE PRACTITIONER WHO WORKS IN A NONPATIENT CARE SETTING OR WHO DOES NOT DIRECTLY INTERACT WITH PATIENTS.~~

~~(B) A HEALTH CARE PRACTITIONER WHO PROVIDES HEALTH CARE SERVICES SHALL DISCLOSE THE HEALTH CARE PRACTITIONER'S LICENSURE OR CERTIFICATION BY WEARING AN IDENTIFICATION TAG DURING A PATIENT ENCOUNTER.~~

~~(C) THE IDENTIFICATION TAG REQUIRED TO BE WORN UNDER SUBSECTION (B) OF THIS SECTION SHALL INCLUDE, IN A FONT SIZE THAT CAN BE EASILY READ BY A PATIENT, THE FOLLOWING:~~

~~(1) THE FIRST AND LAST NAME OF THE HEALTH CARE PRACTITIONER; AND~~

~~(2) THE FULL SPELLING OF THE TYPE OF LICENSE OR CERTIFICATION HELD BY THE HEALTH CARE PRACTITIONER.~~

~~1–704.~~

~~EACH REGULATORY BOARD UNDER THIS ARTICLE SHALL ADOPT REGULATIONS TO IMPLEMENT THIS SUBTITLE.~~

~~1–705.~~

~~(A) A HEALTH CARE PRACTITIONER WHO FAILS TO COMPLY WITH THE PROVISIONS OF THIS SUBTITLE SHALL BE SUBJECT TO DISCIPLINARY ACTION BY THE APPROPRIATE REGULATORY BOARD.~~

~~(B) THE APPROPRIATE REGULATORY BOARD MAY INVESTIGATE AN ALLEGED VIOLATION OF THIS SUBTITLE IN ACCORDANCE WITH THE INVESTIGATIVE AUTHORITY GRANTED UNDER THIS ARTICLE.~~

14–503.

(A) A PHYSICIAN MAY NOT REPRESENT TO THE PUBLIC~~, THROUGH AN ADVERTISEMENT,~~ THAT THE PHYSICIAN IS CERTIFIED BY A PUBLIC OR PRIVATE BOARD, INCLUDING A MULTIDISCIPLINARY BOARD, OR THAT THE PHYSICIAN IS BOARD CERTIFIED UNLESS:

(1) THE ~~ADVERTISEMENT INCLUDES~~ PHYSICIAN DISCLOSES THE FULL NAME OF THE BOARD FROM WHICH THE PHYSICIAN IS CERTIFIED AND THE

NAME OF THE SPECIALTY OR SUBSPECIALTY IN WHICH THE PHYSICIAN IS CERTIFIED; AND

(2) THE CERTIFYING BOARD MEETS ONE OF THE FOLLOWING REQUIREMENTS:

(I) THE CERTIFYING BOARD IS:

1. A MEMBER OF THE AMERICAN BOARD OF MEDICAL SPECIALTIES; OR

2. AN AMERICAN OSTEOPATHIC ASSOCIATION CERTIFYING BOARD;

(II) THE CERTIFYING BOARD HAS BEEN APPROVED BY THE BOARD; OR

(III) THE CERTIFYING BOARD REQUIRES THAT, IN ORDER TO BE CERTIFIED, THE PHYSICIAN~~, IN ORDER TO BE CERTIFIED, COMPLETE~~:

1. COMPLETE A POSTGRADUATE TRAINING PROGRAM THAT:

~~1.~~ A. PROVIDES COMPLETE TRAINING IN THE SPECIALTY OR SUBSPECIALTY; AND

~~2.~~ B. IS ACCREDITED BY THE ACCREDITATION COUNCIL FOR GRADUATE MEDICAL EDUCATION OR THE AMERICAN OSTEOPATHIC ASSOCIATION; AND

2. BE CERTIFIED BY THE MEMBER BOARD OF THE AMERICAN BOARD OF MEDICAL SPECIALTIES OR THE AMERICAN OSTEOPATHIC ASSOCIATION IN THE TRAINING FIELD.

(B) THE BOARD MAY APPROVE A CERTIFYING BOARD UNDER SUBSECTION (A)(2)(II) OF THIS SECTION ONLY IF THE CERTIFYING BOARD REQUIRES THAT, IN ORDER TO BE CERTIFIED, THE PHYSICIAN:

(1) COMPLETE A POSTGRADUATE TRAINING PROGRAM THAT:

(I) PROVIDES COMPLETE TRAINING IN THE SPECIALTY OR SUBSPECIALTY BEING CERTIFIED; AND

(II) IS ACCREDITED BY THE ACCREDITATION COUNCIL FOR GRADUATE MEDICAL EDUCATION OR THE AMERICAN OSTEOPATHIC ASSOCIATION; AND

(2) BE CERTIFIED BY THE AMERICAN BOARD OF MEDICAL SPECIALTIES OR AMERICAN OSTEOPATHIC ASSOCIATION IN THE SAME TRAINING FIELD.

~~(B)~~ **(C)** A physician may advertise only as permitted by the rules and regulations of the Board **AND** ~~IN ACCORDANCE WITH~~ **SUBJECT TO SUBSECTION (A) OF THIS SECTION**.

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 31, 2012, each health occupation board established under the Health Occupations Article shall submit any existing regulations or policies governing advertising by the health care practitioners regulated by the board to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 226

(Senate Bill 397)

AN ACT concerning

Estates and Trusts – Allowance for Funeral Expenses

FOR the purpose of defining the term "funeral expenses" for purposes of a certain allowance for payment from a decedent's estate; altering the amount for funeral expenses that a court may allow for a small estate; making stylistic changes; providing for the application of this Act; and generally relating to an allowance for funeral expenses.

BY repealing and reenacting, with amendments,
Article – Estates and Trusts
Section 8–106
Annotated Code of Maryland
(2011 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Estates and Trusts

8–106.

(A) IN THIS SECTION, "FUNERAL EXPENSES" INCLUDES THE COSTS OF A FUNERAL, A BURIAL, A CREMATION, A DISPOSITION OF THE DECEDENT'S REMAINS, A MEMORIAL, A MEMORIAL SERVICE, FOOD AND BEVERAGES RELATED TO BRINGING TOGETHER THE DECEDENT'S FAMILY AND FRIENDS FOR A WAKE OR PREFUNERAL OR POSTFUNERAL GATHERING OR MEAL, AND ANY OTHER REASONABLE EXPENSES AUTHORIZED BY THE DECEDENT'S WILL.

[(a)**] (B)** Subject to the priorities contained in § 8–105 of this subtitle, the personal representative shall pay the funeral expenses of the decedent within six months of the first appointment of a personal representative.

[(b)**] (C) (1)** Funeral expenses shall be allowed in the discretion of the court according to the condition and circumstances of the decedent.

(2) In no event may the allowance exceed $10,000 **[**for an estate administered under Title 5, Subtitle 3 or Subtitle 4 of this article, or $5,000 for a small estate administered under Title 5, Subtitle 6 of this article**]** unless the estate of the decedent is solvent and a special order of court has been obtained.

(3) If the estate is solvent and the will expressly empowers the personal representative to pay the expenses without an order of court, an allowance by the court is not required.

[(c)**] (D) (1)** If the funeral expenses are not paid within six months, the creditor may petition the court to require the personal representative to show cause why he should not be compelled to make the payment.

(2) If the court finds that the claim is valid, it shall fix the amount due and shall order the personal representative to make payment within ten days after the order is served upon **[**him**] THE PERSONAL REPRESENTATIVE**.

(3) If the personal representative does not have sufficient funds, the claimant may at a later date resubmit **[**his**] THE PERSONAL REPRESENTATIVE** petition when the personal representative has sufficient funds.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any estate opened before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 227

(House Bill 773)

AN ACT concerning

Estates and Trusts – Allowance for Funeral Expenses

FOR the purpose of defining the term "funeral expenses" for purposes of a certain allowance for payment from a decedent's estate; altering the amount for funeral expenses that a court may allow for a small estate; making stylistic changes; providing for the application of this Act; and generally relating to an allowance for funeral expenses.

BY repealing and reenacting, with amendments,
Article – Estates and Trusts
Section 8–106
Annotated Code of Maryland
(2011 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Estates and Trusts

8–106.

(A) IN THIS SECTION, "FUNERAL EXPENSES" INCLUDES THE COSTS OF A FUNERAL, A BURIAL, A CREMATION, A DISPOSITION OF THE DECEDENT'S REMAINS, A MEMORIAL, A MEMORIAL SERVICE, FOOD AND BEVERAGES RELATED TO BRINGING TOGETHER THE DECEDENT'S FAMILY AND FRIENDS FOR A WAKE OR PREFUNERAL OR POSTFUNERAL GATHERING OR MEAL, AND ANY OTHER REASONABLE EXPENSES AUTHORIZED BY THE DECEDENT'S WILL.

[(a)**] (B)** Subject to the priorities contained in § 8–105 of this subtitle, the personal representative shall pay the funeral expenses of the decedent within six months of the first appointment of a personal representative.

[(b)**] (C) (1)** Funeral expenses shall be allowed in the discretion of the court according to the condition and circumstances of the decedent.

(2) In no event may the allowance exceed $10,000 **[**for an estate administered under Title 5, Subtitle 3 or Subtitle 4 of this article, or $5,000 for a small estate administered under Title 5, Subtitle 6 of this article**]** unless the estate of the decedent is solvent and a special order of court has been obtained.

(3) If the estate is solvent and the will expressly empowers the personal representative to pay the expenses without an order of court, an allowance by the court is not required.

[(c)**] (D) (1)** If the funeral expenses are not paid within six months, the creditor may petition the court to require the personal representative to show cause why he should not be compelled to make the payment.

(2) If the court finds that the claim is valid, it shall fix the amount due and shall order the personal representative to make payment within ten days after the order is served upon **[**him**] THE PERSONAL REPRESENTATIVE**.

(3) If the personal representative does not have sufficient funds, the claimant may at a later date resubmit **[**his**] THE PERSONAL REPRESENTATIVE** petition when the personal representative has sufficient funds.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any estate opened before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 228

(Senate Bill 401)

AN ACT concerning

Motor Vehicles – Towing Practices and Procedures

FOR the purpose of ~~establishing a motor vehicle towing, recovery, and storage lien on a towed motor vehicle on behalf of the tower for certain towing, recovery, and storage charges; prohibiting a motor vehicle towing, recovery, and storage lienor~~

~~from selling the motor vehicle to which the lien is attached under certain circumstances; providing that a motor vehicle towing, recovery, and storage lienor may only sell a motor vehicle to which a lien is attached in a certain manner; requiring a motor vehicle towing, recovery, and storage lienor to return certain motor vehicle registration plates to the Motor Vehicle Administration under certain circumstances; requiring the Motor Vehicle Administration to provide a receipt for the return of certain motor vehicle registration plates; establishing certain notice and publication requirements for the public sale of a towed vehicle; requiring the Administration to issue a salvage certificate to the purchaser of an abandoned vehicle or a vehicle subject to a motor vehicle towing, recovery, and storage lien under certain circumstances; providing for the application process for a salvage certificate for an abandoned vehicle or a vehicle subject to a motor vehicle towing, recovery, and storage lien; requiring certain motor vehicle towing, recovery, and storage lienors to file a certain court action in a certain manner under certain circumstances; requiring the Motor Vehicle Administration to issue a certificate of title that contains a conspicuous "salvage" notation under certain circumstances;~~ clarifying the application of certain security requirements for tow trucks; altering certain security requirements for tow trucks; altering certain penalties for certain violations related to tow truck vehicle registration; providing for the statewide application of certain provisions of law governing the towing or removal of vehicles from parking lots; repealing a certain provision exempting abandoned vehicles from the application of certain provisions relating to the towing and removal of vehicles from parking lots; altering the content required on certain signage related to the towing, recovery, and storage of vehicles; altering the maximum distance that, and the locations to which, a vehicle towed from a parking lot may be transported for storage, subject to a certain exception; altering certain maximum amounts that a person may charge for towing, recovering, and storing a vehicle under certain circumstances; *authorizing a tower to charge certain persons for the actual costs of providing certain notice;* ~~authorizing a tower to charge certain persons for the actual costs of providing certain notice;~~ altering the time period within which a tower is required to provide certain notice to certain police departments; requiring a tower to provide certain notice to certain persons within a certain time period after towing a vehicle from a parking lot; requiring a tower to provide certain persons with certain itemized costs; requiring a tower to obtain certain photographic evidence from the parking lot owner before towing a vehicle from a parking lot; prohibiting a tower from towing a vehicle for a certain violation within a certain time period; *requiring the Motor Vehicle Administration to establish and maintain a database containing certain addresses for certain insurers and make the database available to any tower free of charge;* altering the storage facility to which a tower is required to transport a towed vehicle; prohibiting the removal of a towed vehicle from a certain storage facility for a certain time period; clarifying the required opportunity that certain persons must provide for the reclamation of a towed vehicle; requiring a tower to release a towed vehicle to certain persons under certain circumstances; requiring a storage facility for towed vehicles to accept payment in certain manners under certain

circumstances and to make an automatic teller machine available on the premises under certain circumstances; requiring a storage facility that is in possession of a towed vehicle to make the vehicle available to certain persons for certain purposes; altering the persons eligible to seek certain civil damages from a tower under certain circumstances; altering certain penalties for certain towing violations; establishing certain penalties for violations relating to motor vehicle towing, recovery, and storage liens; making a certain stylistic change; making a certain technical correction; ~~altering a certain definition;~~ and generally relating to motor vehicle towing practices and procedures.

~~BY repealing and reenacting, with amendments,~~
~~Article – Commercial Law~~
~~Section 16–202(e) and 16–207~~
~~Annotated Code of Maryland~~
~~(2005 Replacement Volume and 2011 Supplement)~~

~~BY repealing and reenacting, without amendments,~~
~~Article – Commercial Law~~
~~Section 16–206~~
~~Annotated Code of Maryland~~
~~(2005 Replacement Volume and 2011 Supplement)~~

BY repealing and reenacting, with amendments,
Article – Transportation
Section ~~11–152, 13–506(b), (e), and (f), 13–507(b),~~ 13–920, 21–10A–01 through 21–10A–06, and 27–101(c)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

~~BY adding to~~
~~Article – Transportation~~
~~Section 13–506(e)~~
~~Annotated Code of Maryland~~
~~(2009 Replacement Volume and 2011 Supplement)~~

BY repealing and reenacting, without amendments,
Article – Transportation
Section ~~13–507(a)(1) and (2) and~~ 27–101(a) and (b)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

~~Article – Commercial Law~~

~~16–202.~~

~~(c) (1) Any person who, with the consent of the owner, has custody of a motor vehicle and who, at the request of the owner, provides a service to or materials for the motor vehicle, has a lien on the motor vehicle for any charge incurred for any:~~

~~(i) Repair or rebuilding;~~

~~(ii) Storage; or~~

~~(iii) Tires or other parts or accessories.~~

~~(2) A lien is created under this subsection when any charges set out under [paragraph (1) of] this subsection giving rise to the lien are incurred.~~

~~(3) FOR A MOTOR VEHICLE WITH A GROSS VEHICLE WEIGHT RATING OF 10,000 POUNDS OR LESS, ANY PERSON WHO TOWS OR REMOVES FROM A PARKING LOT MOTOR VEHICLES ON BEHALF OF A PRIVATE PARKING LOT OWNER OR AGENT IN ACCORDANCE WITH TITLE 21, SUBTITLE 10A OF THE TRANSPORTATION ARTICLE HAS A LIEN ON THE MOTOR VEHICLE FOR ANY CHARGE INCURRED FOR THE TOWING, RECOVERY, OR STORAGE OF, AND PROVIDING ANY REQUIRED NOTICE REGARDING, THAT MOTOR VEHICLE.~~

~~16–206.~~

~~(a) (1) If the owner of property subject to a lien disputes any part of the charge for which the lien is claimed, he may institute appropriate judicial proceedings.~~

~~(2) Institution of the proceedings stays execution under the lien until a final judicial determination of the dispute.~~

~~(b) (1) If the owner of property subject to a lien disputes any part of the charge for which the lien is claimed, he immediately may repossess his property by filing a corporate bond for double the amount of the charge claimed.~~

~~(2) The bond shall be filed with and is subject to the approval of the clerk of the court of the county where the services or materials for which the lien is claimed were provided.~~

~~(3) The bond shall be conditioned on:~~

~~(i) Full payment of the final judgment of the claim, together with interest;~~

~~(ii) All costs incident to the bringing of suit; and~~

~~(iii) All cost and expenses which result from the enforcement of the lien and are incurred before the lienor was notified that the bond was filed.~~

~~(4) Filing of the bond stays execution under the lien until final judicial determination of the dispute.~~

~~(5) If service of process by a lienor on the owner is returned non est after filing of a bond, service may be made by publication as in the case of a suit against a nonresident.~~

~~(6) If suit is not instituted by the lienor within six months after the bond is filed, the bond is discharged.~~

~~16–207.~~

~~(a)~~ **~~(1)~~** **~~[If]~~** **~~SUBJECT TO SUBSECTION (G) OF THIS SECTION WITH RESPECT TO MOTOR VEHICLE TOWING, RECOVERY, AND STORAGE LIENS, AND EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF~~** ~~the charges which give rise to a lien are due and unpaid for 30 days and the lienor is in possession of the property subject to the lien, the lienor may sell the property to which the lien attaches at public sale. The sale shall be in a location convenient and accessible to the public and shall be held between the hours of 10 a.m. and 6 p.m.~~

~~(2) A MOTOR VEHICLE TOWING, RECOVERY, AND STORAGE LIENOR MAY NOT SELL THE MOTOR VEHICLE TO WHICH THE LIEN IS ATTACHED UNLESS:~~

~~(I) THE LOCAL JURISDICTION IN WHICH THE MOTOR VEHICLE WAS ACQUIRED LICENSES TOW TRUCK OPERATORS; AND~~

~~(II) THE LIENOR IS LICENSED FOR THE TOWING AND REMOVAL OF MOTOR VEHICLES BY THAT LOCAL JURISDICTION.~~

~~(3) A MOTOR VEHICLE TOWING, RECOVERY, AND STORAGE LIENOR MAY ONLY SELL A MOTOR VEHICLE TO WHICH A LIEN IS ATTACHED THROUGH AN AUCTIONEER.~~

~~(4) (I) IF A MOTOR VEHICLE TOWING, RECOVERY, AND STORAGE LIENOR SELLS A MOTOR VEHICLE TO WHICH A LIEN IS ATTACHED, THE LIENOR SHALL RETURN ANY REGISTRATION PLATES FOR THE MOTOR VEHICLE IN ITS POSSESSION TO THE MOTOR VEHICLE ADMINISTRATION.~~

~~(II) THE MOTOR VEHICLE ADMINISTRATION SHALL PROVIDE THE LIENOR WITH A RECEIPT FOR ANY MOTOR VEHICLE REGISTRATION PLATES RETURNED UNDER THIS PARAGRAPH.~~

~~(b) (1) [The] SUBJECT TO SUBSECTION (B–1)(1) AND (2) OF THIS SECTION, THE lienor shall publish notice of the time, place, and terms of the sale and a full description of the property to be sold once a week for the two weeks immediately preceding the sale in one or more newspapers of general circulation in the county where the sale is to be held.~~

~~(2) In addition, EXCEPT AS PROVIDED IN SUBSECTION (B–1)(3) OF THIS SECTION, the lienor shall send the notice by registered or certified mail at least 10 days before the sale to:~~

~~(i) The owner of the property, all holders of perfected security interests in the property and, in the case of a sale of a motor vehicle or mobile home, the Motor Vehicle Administration;~~

~~(ii) The person who incurred the charges which give rise to the lien, if the address of the owner is unknown and cannot be ascertained by the exercise of reasonable diligence; or~~

~~(iii) "General delivery" at the post office of the city or county where the business of the lienor is located, if the address of both the owner and the person who incurred the charges is unknown and cannot be ascertained by the exercise of reasonable diligence.~~

~~(B–1) FOR A MOTOR VEHICLE TOWING, RECOVERY, AND STORAGE LIEN:~~

~~(1) NOTICE REQUIRED UNDER SUBSECTION (B)(1) OF THIS SECTION SHALL INCLUDE THE NAMES OF THE OWNER OF THE MOTOR VEHICLE, THE INSURER OF RECORD, AND ANY PERFECTED SECURED PARTY;~~

~~(2) ANY REQUIRED NEWSPAPER PUBLICATION SHALL BE:~~

~~(I) PUBLISHED ONCE A WEEK FOR THE 3 WEEKS IMMEDIATELY PRECEDING THE PUBLIC SALE; AND~~

~~(II) PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY IN WHICH THE MOTOR VEHICLE WAS ACQUIRED;~~

~~(3) THE LIENOR ALSO SHALL SEND A NOTICE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND A NOTICE BY FIRST–CLASS MAIL AT LEAST 30 DAYS BEFORE THE PUBLIC SALE TO:~~

~~(I) THE LAST KNOWN REGISTERED OWNER OF THE MOTOR VEHICLE, THE INSURER OF RECORD, AND EACH SECURED PARTY, AS SHOWN IN THE RECORDS OF THE MOTOR VEHICLE ADMINISTRATION; OR~~

~~(II) IF THE ADDRESS OF THE OWNER IS UNKNOWN AND CANNOT BE DETERMINED BY THE EXERCISE OF REASONABLE DILIGENCE, THE PERSON WHO INCURRED THE CHARGES THAT GIVE RISE TO THE LIEN;~~

~~(4) THE NOTICE SHALL:~~

~~(I) STATE THAT THE MOTOR VEHICLE HAS BEEN TAKEN INTO CUSTODY;~~

~~(II) DESCRIBE THE YEAR, MAKE, MODEL, AND VEHICLE IDENTIFICATION NUMBER OF THE MOTOR VEHICLE;~~

~~(III) GIVE THE LOCATION OF THE STORAGE FACILITY WHERE THE MOTOR VEHICLE IS HELD;~~

~~(IV) INFORM THE OWNER AND ANY SECURED PARTY OF ANY RIGHT TO RECLAIM THE MOTOR VEHICLE WITHIN THE TIME REQUIRED; AND~~

~~(V) STATE THAT THE FAILURE OF THE OWNER, INSURER OF RECORD, OR SECURED PARTY TO EXERCISE THE RIGHT TO RECLAIM THE MOTOR VEHICLE IN THE TIME REQUIRED MAY RESULT IN A PUBLIC SALE OF THE VEHICLE; AND~~

~~(5) THE LIENOR SHALL PUBLISH ELECTRONIC NOTICE OF THE PUBLIC SALE ON A WEB SITE DETERMINED BY REGULATIONS OF THE MOTOR VEHICLE ADMINISTRATION.~~

~~(c) If a motor vehicle or mobile home which is subject to a lien is delivered by the lienor to the possession of a third party for storage, and the charges for storage are due and unpaid for 30 days or more, the third party holder is deemed to hold a perfected security interest in the motor vehicle or mobile home notwithstanding § 13–202 of the Transportation Article and may sell the motor vehicle or mobile home in the same manner as the lienor under this section if he has first published and sent notice as required of the lienor under this subtitle.~~

~~(d) (1) Except as provided in § 13–110 of the Transportation Article AND SUBSECTION (D–1) OF THIS SECTION, the Motor Vehicle Administration shall issue a CERTIFICATE OF title, free and clear of any lien, to the purchaser of any motor vehicle or mobile home sold under this section, if the holder of the lien on the motor vehicle or mobile home submits to the Motor Vehicle Administration a completed application for a certificate of title with:~~

~~(i) A copy of the newspaper publication required by subsection (b) of this section;~~

~~(ii) A copy of~~ **EACH OF** ~~the registered~~ **[**~~or certified letter~~**], CERTIFIED, OR FIRST–CLASS LETTERS** ~~required under~~ **[**~~subsection~~**] SUBSECTIONS** ~~(b)~~ **AND (B–1)** ~~of this section to be sent to holders of perfected security interests in the motor vehicle or mobile home~~**, THE INSURER OF RECORD,** ~~and the Motor Vehicle Administration, and the return card;~~

~~(iii) A copy of the registered or certified letters required by subsection (b) of this section to be sent to the owner of the motor vehicle or mobile home, and the return card;~~

~~(iv) If applicable, a written statement from the lienor that the lienor stored the vehicle in accordance with an agreement with an insurer;~~

~~(v) An auctioneer's receipt;~~

~~(vi) If applicable, certification by holders of perfected security interests;~~

~~(vii) In the case of mobile homes manufactured after 1976 and motor vehicles, a pencil tracing of the vehicle identification number or a statement certifying the vehicle identification number; and~~

~~(viii) Any other reasonable information required in accordance with regulations adopted by the Administration.~~

~~(2) The Department of Natural Resources shall issue a title, free and clear of any liens, to the purchaser of any boat sold under this section.~~

~~(D–1)~~ THE MOTOR VEHICLE ADMINISTRATION SHALL ISSUE A SALVAGE CERTIFICATE, FREE AND CLEAR OF ANY LIEN, TO THE PURCHASER OF ANY MOTOR VEHICLE SOLD UNDER THIS SECTION THAT IS SUBJECT TO A MOTOR VEHICLE TOWING, RECOVERY, AND STORAGE LIEN, IF THE HOLDER OF THE LIEN ON THE MOTOR VEHICLE SUBMITS TO THE MOTOR VEHICLE ADMINISTRATION A COMPLETED APPLICATION FOR A SALVAGE CERTIFICATE WITH:

~~(1)~~ THE DOCUMENTS A LIENOR IS REQUIRED TO SUBMIT WITH AN APPLICATION FOR A CERTIFICATE OF TITLE UNDER SUBSECTION (D)(1)(I) THROUGH (VI) OF THIS SECTION;

~~(2)~~ A DIGITAL IMAGE OF THE VEHICLE IDENTIFICATION NUMBER OR A STATEMENT CERTIFYING THE VEHICLE IDENTIFICATION NUMBER;

~~(3)~~ A COPY OF THE NATIONWIDE VEHICLE HISTORY REPORT;

~~**(4) IN THE CASE OF A MOTOR VEHICLE BEING PURCHASED BY A NONINDIVIDUAL, THE FEDERAL TAX IDENTIFICATION NUMBER OR THE MARYLAND COMPTROLLER TAX IDENTIFICATION NUMBER;**~~

~~**(5) THE DRIVER'S LICENSE OR IDENTIFICATION NUMBER AND STATE OF ISSUANCE OF THE PERSON APPLYING FOR THE SALVAGE CERTIFICATE; AND**~~

~~**(6) ANY OTHER REASONABLE INFORMATION REQUIRED IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE MOTOR VEHICLE ADMINISTRATION.**~~

~~(e) (1) If the notice required under § 16–203(b) of this subtitle was sent, the proceeds of a sale under this section shall be applied, in the following order, to:~~

~~(i) The expenses of giving notice and holding the sale, including reasonable attorney's fees;~~

~~(ii) Subject to subsection (f) of this section, storage fees of the third party holder;~~

~~(iii) The amount of the lien claimed exclusive of any storage fees except as provided in subsection (f)(2) of this section;~~

~~(iv) A purchase money security interest; and~~

~~(v) Any remaining secured parties of record who shall divide the remaining balance equally if there are insufficient funds to completely satisfy their respective interests, but not to exceed the amount of a security interest.~~

~~(2) Except as provided in paragraph (3) of this subsection, if the notice required under § 16–203(b) of this subtitle was not sent, the proceeds of a sale under this section shall be applied, in the following order, to:~~

~~(i) A purchase money security interest;~~

~~(ii) All additional holders of perfected security interests in the property;~~

~~(iii) The expenses of giving notice and holding the sale, including reasonable attorney's fees;~~

~~(iv) Subject to subsection (f) of this section, storage fees of the third party holder;~~

~~(v) The amount of the lien claimed exclusive of any storage fees except as provided in subsection (f)(2) of this section;~~

~~(vi) Any remaining secured parties of record who shall divide the remaining balance equally if there are insufficient funds to completely satisfy their respective interest, but not to exceed the amount of a security interest.~~

~~(3) For a motor vehicle lien created under this subtitle, if the notice required under § 16–203(b) of this subtitle was not sent:~~

~~(i) The proceeds of a sale under this section shall be applied in the order described in paragraph (1) of this subsection; and~~

~~(ii) The amount of the lien claimed in paragraph (1)(iii) of this subsection may not include any amount for storage charges incurred or imposed by the lienor.~~

~~(4) After application of the proceeds in accordance with paragraph (1) or (2) of this subsection, any remaining balance shall be paid to the owner of the property.~~

~~(f) (1) [If] EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, IF property is stored, storage fees of the third party holder may not exceed $5 per day or a total of $300.~~

~~(2) The exclusion or limitation of any storage fees as provided in subsection (e)(1)(iii) of this section and paragraph (1) of this subsection does not apply to any person who conducts auctions as a business in this State, and is required to maintain records under § 15–113 of the Transportation Article, and that person is also exempt from the maximum storage fee limits under this subsection.~~

~~(3) The notice requirements of § 16–203(b) of this subtitle do not apply when:~~

~~(i) The lienor conducts auctions as a business in this State and is required to maintain records under § 15–113 of the Transportation Article; and~~

~~(ii) The lien arises out of that business.~~

~~(4) FOR A MOTOR VEHICLE WITH A GROSS VEHICLE WEIGHT RATING OF 10,000 POUNDS OR LESS TOWED IN ACCORDANCE WITH TITLE 21, SUBTITLE 10A OF THE TRANSPORTATION ARTICLE, THE TOTAL TOWING AND STORAGE FEES MAY NOT EXCEED $1,200.~~

~~(G) FOR A MOTOR VEHICLE TOWING, RECOVERY, AND STORAGE LIEN ON A MOTOR VEHICLE THAT HAS AN AVERAGE WHOLESALE VALUE OF MORE THAN~~

~~**$5,000 AS SHOWN IN A NATIONAL PUBLICATION OF USED MOTOR VEHICLE VALUES ADOPTED FOR USE BY THE MOTOR VEHICLE ADMINISTRATION, THE LIENOR SHALL:**~~

~~**(1) FILE AN ACTION IN CIRCUIT COURT FOR A DECLARATORY JUDGMENT TO SELL THE MOTOR VEHICLE AND PROPERLY DISPOSE OF THE PROCEEDS OF THE SALE; AND**~~

~~**(2) PROPERLY JOIN ALL PARTIES IN THE ACTION, INCLUDING ANY SECURED PARTY AND INSURER OF RECORD.**~~

~~**(H) A PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION THAT GOVERN A MOTOR VEHICLE TOWING, RECOVERY, AND STORAGE LIEN IS SUBJECT TO A FINE NOT EXCEEDING $5,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.**~~

~~**Article – Transportation**~~

~~11–152.~~

~~(a) "Salvage" means any vehicle that:~~

~~(1) Has been damaged by collision, fire, flood, accident, trespass, or other occurrence to the extent that the cost to repair the vehicle for legal operation on a highway exceeds 75% of the fair market value of the vehicle prior to sustaining the damage, as determined under § 13–506(c)(4) of this article;~~

~~(2) Has been acquired by an insurance company as a result of a claim settlement;~~ ~~**[**or**]**~~

~~(3) Has been acquired by an automotive dismantler and recycler:~~

~~(i) As an abandoned vehicle, as defined under § 25–201 of this article; or~~

~~(ii) For rebuilding or for use as parts only~~**~~; OR~~**

~~**(4) HAS BEEN ACQUIRED AT A PUBLIC SALE:**~~

~~**(I) FOR ABANDONED VEHICLES UNDER TITLE 25, SUBTITLE 2 OF THIS ARTICLE; OR**~~

~~**(II) FOR VEHICLES SUBJECT TO A MOTOR VEHICLE TOWING, RECOVERY, AND STORAGE LIEN UNDER § 16–207 OF THE COMMERCIAL LAW ARTICLE.**~~

~~(b) For purposes of this section, a vehicle has not been acquired by an insurance company if an owner retains possession of the vehicle upon settlement of a claim concerning the vehicle by the insurance company.~~

~~13–506.~~

~~(b) The Administration shall issue a salvage certificate:~~

~~(1) To an insurance company or its authorized agent that:~~

~~(i) Is licensed to insure automobiles in this State;~~

~~(ii) Acquires a vehicle as the result of a claim settlement; and~~

~~(iii) Within 10 days after the date of settlement, applies for a salvage certificate as provided in subsection (c) of this section;~~

~~(2) To an automotive dismantler and recycler that:~~

~~(i) Acquires a salvage vehicle from a source other than an insurance company licensed to insure automobiles in this State;~~

~~(ii) Acquires a salvage vehicle by a means other than a transfer of a salvage certificate; and~~

~~(iii) Applies for a salvage certificate as provided in subsection (d) of this section;~~ **[**~~or~~**]**

~~(3)~~ **~~TO A PERSON WHO:~~**

~~(I) ACQUIRES AT A PUBLIC SALE:~~

~~1. AN ABANDONED VEHICLE UNDER TITLE 25, SUBTITLE 2 OF THIS ARTICLE; OR~~

~~2. A VEHICLE THAT IS SUBJECT TO A MOTOR VEHICLE TOWING, RECOVERY, AND STORAGE LIEN UNDER § 16–207 OF THE COMMERCIAL LAW ARTICLE; AND~~

~~(II) APPLIES FOR A SALVAGE CERTIFICATE AS PROVIDED IN SUBSECTION (E) OF THIS SECTION; OR~~

~~(4)~~ ~~To any other person who:~~

~~(i) Acquires or retains ownership of a vehicle that is salvage, as defined in § 11–152 of this article;~~

~~(ii) Applies for a salvage certificate on a form provided by the Administration; and~~

~~(iii) Pays a fee established by the Administration.~~

~~**(E) (1) A PERSON WHO ACQUIRES A VEHICLE AT A PUBLIC SALE DESCRIBED IN SUBSECTION (B)(3)(I) OF THIS SECTION MAY APPLY FOR A SALVAGE CERTIFICATE ON A FORM PROVIDED BY THE ADMINISTRATION.**~~

~~**(2) THE APPLICATION UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE ACCOMPANIED BY:**~~

~~**(I) THE DOCUMENT THROUGH WHICH OWNERSHIP OF THE VEHICLE WAS ACQUIRED;**~~

~~**(II) FOR A VEHICLE THAT WAS SUBJECT TO A MOTOR VEHICLE TOWING, RECOVERY, AND STORAGE LIEN, DOCUMENTATION REQUIRED UNDER § 16–207(D–1) OF THE COMMERCIAL LAW ARTICLE; AND**~~

~~**(III) A FEE ESTABLISHED BY THE ADMINISTRATION.**~~

~~**[**(e)**] (F)** The Administration shall maintain records to indicate that a vehicle:~~

~~(1) Was transferred as salvage; and~~

~~(2) May not be titled or registered for operation in this State except in accordance with §§ 13–506.1 and 13–507 of this subtitle.~~

~~**[**(f)**] (G)** The Administration shall establish a fee for:~~

~~(1) A duplicate salvage certificate; and~~

~~(2) A corrected salvage certificate.~~

~~13–507.~~

~~(a) (1) An application for a certificate of title of a vehicle for which a salvage certificate has been issued shall be made by the owner of the vehicle on a form that the Administration requires.~~

~~(2) An application under paragraph (1) of this subsection shall be accompanied by:~~

~~(i) Except as provided in subsection (e)(3) of this section, the salvage certificate for the vehicle;~~

~~(ii) A certificate of inspection issued by a county police department or the Department of State Police; and~~

~~(iii) A certificate of inspection as required under Title 23 of this article.~~

~~(b) (1) The certificate of title issued by the Administration shall be:~~

~~(i) Issued in the name of the applicant; and~~

~~(ii) In a form as provided in this subsection.~~

~~(2) (i) The Administration shall issue a certificate of title that contains a conspicuous notation that the vehicle is "rebuilt salvage" if the salvage certificate accompanying the application bears a notation under § 13–506(e)(2)(ii)1 of this subtitle.~~

~~(ii) The Administration may not issue a certificate of title for a vehicle if the salvage certificate for the vehicle bears a notation under § 13–506(e)(2)(ii)2 of this subtitle.~~

~~(3) The Administration shall issue a certificate of title that contains a conspicuous notation that the vehicle is "Flood Damaged" if the salvage certificate accompanying the application bears a notation under § 13–506(e)(2)(ii)4 of this subtitle.~~

~~(4) The Administration shall issue a certificate of title that contains a conspicuous notation that the vehicle is "X–Salvage" if the salvage certificate accompanying the application bears a notation under § 13–506(e)(2)(ii)5 of this subtitle or is issued under § 13–506(d)~~ **OR (E)** ~~of this subtitle.~~

Article – Transportation

13–920.

(a) (1) In this section, "tow truck" means a vehicle that:

(i) Is a Class E (truck) vehicle that is designed to lift, pull, or carry a vehicle by a hoist or mechanical apparatus;

(ii) Has a manufacturer's gross vehicle weight rating of 10,000 pounds or more; and

(iii) Is equipped as a tow truck or designed as a rollback as defined in § 11–151.1 of this article.

(2) In this section, "tow truck" does not include a truck tractor as defined in § 11–172 of this article.

(b) When registered with the Administration every tow truck as defined in this section is a Class T vehicle.

(c) A tow truck registered under this section may be used to tow vehicles for repair, storage, or removal from the highway.

(d) (1) Subject to the provisions of paragraph (2) of this subsection, for each vehicle registered under this section, the annual registration fee is based on the manufacturer's gross vehicle weight rating as follows:

Manufacturer's Gross Weight Rating (in Pounds)	Fee
10,000 (or less) to 26,000	$185.00
More than 26,000	$550.00

(2) (i) The annual registration fee for a vehicle registered under this section that is used for any purpose other than that described in subsection (c) of this section shall be determined under subparagraph (ii) of this paragraph if the maximum gross weight of the vehicle or combination of vehicles:

1. Exceeds 18,000 pounds and the vehicle has a manufacturer's gross weight rating of 26,000 pounds or less; or

2. Exceeds 35,000 pounds and the vehicle has a manufacturer's gross weight rating of more than 26,000 pounds.

(ii) The annual registration fee shall be the greater of:

1. The fees set forth in paragraph (1) of this subsection; or

2. The fees set forth in § 13–916(b) of this subtitle.

(e) Notwithstanding §§ 24–104.1, 24–108, and 24–109 of this article, a tow truck registered under this section, while engaged in a tow, may move a vehicle or vehicle combination on a highway for safety reasons if:

(1) The tow truck and the vehicle or vehicle combination being towed comply with all applicable statutory weight and size restrictions under Title 24 of this article when measured or weighed separately; and

(2) The vehicle or vehicle combination is being towed by the safest and shortest practical route possible to the vehicle's destination.

(f) Notwithstanding any other provision of this section, while engaged in towing, a tow truck registered under this section is subject to:

(1) Weight restrictions imposed on restricted bridges; and

(2) All applicable statutory weight and size restrictions under Title 24 of this article while being operated within the limits of Baltimore City, unless the vehicle is being operated on an interstate highway.

(g) Except for tow trucks operated by dealers, automotive dismantlers and recyclers, and scrap processors displaying special registration plates issued under this title, the vehicle shall display a distinctive registration plate as authorized by the Administration.

(h) Subject to § 25–111.1 of this article, a person who registers a tow truck under this section**, INCLUDING A DEALER, AN AUTOMOTIVE DISMANTLER AND RECYCLER, OR A SCRAP PROCESSOR WHO OPERATES A TOW TRUCK IN THE STATE,** or **A PERSON WHO** operates a tow truck in this State that is registered under the laws of another state**,** shall:

(1) Obtain commercial liability insurance in the amount **[**of at least $100,000 per person, $300,000 per occurrence bodily injury liability, and $100,000 per occurrence property damage liability**]** **REQUIRED BY FEDERAL LAW FOR TRANSPORTING PROPERTY IN INTERSTATE OR FOREIGN COMMERCE**; and

(2) Provide a federal employer identification number and, if applicable to the tow truck under federal requirements:

(i) A U.S. Department of Transportation motor carrier number; or

(ii) An Interstate Commerce Commission motor carrier authority number.

(i) (1) Except as provided under paragraph (2) of this subsection, a person may not operate a rollback in combination with a vehicle being towed unless the rollback is registered as a tow truck.

(2) This subsection does not apply to a vehicle that is registered and operated in accordance with § 13–621 or § 13–622 of this title.

(j) (1) This subsection applies only to a vehicle required to be registered in the State.

(2) A person may not operate a tow truck for hire unless the tow truck is registered under this section.

(3) **(I)** A person convicted of operating a tow truck in violation of this subsection shall be subject to a fine **[**of up to**]** **NOT EXCEEDING** $3,000 **OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH**.

(II) A TOW TRUCK THAT IS IMPROPERLY REGISTERED OR UNREGISTERED SHALL BE IMPOUNDED.

21–10A–01.

(a) In this subtitle, "parking lot" means a privately owned facility consisting of 3 or more spaces for motor vehicle parking that is:

(1) Accessible to the general public; and

(2) Intended by the owner of the facility to be used primarily by the owner's customers, clientele, residents, lessees, or guests.

(b) (1) This subtitle applies only to the towing or removal of vehicles from parking lots **[**in Baltimore City or Baltimore County**]**.

(2) Nothing in this subtitle prevents a local authority from exercising any power to adopt **[**ordinances**]** **LOCAL LAWS** or regulations relating to the registration or licensing of persons engaged in**, OR OTHERWISE REGULATING IN A MORE STRINGENT MANNER,** the parking, towing or removal, or impounding of vehicles.

~~(c) This subtitle does not apply to an abandoned vehicle as defined in § 25–201 of this article.~~

21–10A–02.

(a) The owner or operator of a parking lot or the owner's or operator's agent may not have a vehicle towed or otherwise removed from the parking lot unless the owner, operator, or agent has placed in conspicuous locations, as described in subsection (b) of this section, signs that:

(1) Are at least 24 inches high and 30 inches wide;

(2) Are clearly visible to the driver of a motor vehicle entering or being parked in the parking lot;

(3) State the location to which the vehicle will be towed or removed **AND THE NAME OF THE TOWING COMPANY**;

(4) State **[**the hours during which the vehicle may be reclaimed**]** **THAT STATE LAW REQUIRES THAT THE VEHICLE BE AVAILABLE FOR RECLAMATION 24 HOURS PER DAY, 7 DAYS PER WEEK**;

(5) State the maximum amount that the owner of the vehicle may be charged for the towing or removal of the vehicle; and

(6) Provide the telephone number of a person who can be contacted to arrange for the reclaiming of the vehicle by its owner or the owner's agent.

(b) The signs described in subsection (a) of this section shall be placed to provide at least 1 sign for every 7,500 square feet of parking space in the parking lot.

21–10A–03.

(A) A vehicle may not be towed or otherwise removed from a parking lot to a location that is **[**more**]:**

(1) SUBJECT TO SUBSECTION (B) OF THIS SECTION, MORE than **[**10**] 15** miles from the parking lot**; OR**

(2) OUTSIDE THE STATE.

(B) A LOCAL JURISDICTION MAY ESTABLISH A MAXIMUM DISTANCE FROM A PARKING LOT TO A TOWED VEHICLE STORAGE FACILITY THAT IS DIFFERENT THAN THAT ESTABLISHED UNDER SUBSECTION (A)(1) OF THIS SECTION.

21–10A–04.

(A) **[**A**]** **UNLESS OTHERWISE SET BY LOCAL LAW, A** person who undertakes the towing or removal of a vehicle from a parking lot:

(1) May not charge the owner of the **[**vehicle or**]** **VEHICLE,** the owner's agent**, THE INSURER OF RECORD, OR ANY SECURED PARTY MORE THAN**:

(i) **[**More than twice**]** **TWICE** the amount of the total fees normally charged or authorized by the political subdivision for the **PUBLIC SAFETY** impound towing of vehicles; **[**and**]**

(ii) **[**Except as provided in**]** **NOTWITHSTANDING** § 16–207(f)(1) of the Commercial Law Article, **[**more than $8 per day for storage**]** **THE FEE**

NORMALLY CHARGED OR AUTHORIZED BY THE POLITICAL SUBDIVISION FROM WHICH THE VEHICLE WAS TOWED FOR THE DAILY STORAGE OF IMPOUNDED VEHICLES;

(III) IF A POLITICAL SUBDIVISION DOES NOT ESTABLISH A FEE LIMIT FOR THE PUBLIC SAFETY TOWING, RECOVERY, OR STORAGE OF IMPOUNDED VEHICLES, ~~$300~~ $250 FOR TOWING AND RECOVERING A VEHICLE AND $30 PER DAY FOR VEHICLE STORAGE; ***AND***

(IV) THE ACTUAL COST OF PROVIDING NOTICE UNDER THIS SECTION ~~AND § 16–207 OF THE COMMERCIAL LAW ARTICLE; AND~~

~~(V) FOR A VEHICLE WITH A GROSS VEHICLE WEIGHT RATING OF 10,000 POUNDS OR LESS, $1,200~~ $1,000 ~~FOR THE TOTAL OF ALL COSTS RELATED TO VEHICLE TOWING, RECOVERY, AND STORAGE AS CALCULATED UNDER THIS SECTION~~;

(2) Shall notify the police department in the jurisdiction where the parking lot is located within **[**two hours**]** **1 HOUR** after towing or removing the vehicle from the parking lot, and shall provide the following information:

(i) A description of the vehicle including the vehicle's registration plate number and vehicle identification number;

(ii) The date and time the vehicle was towed or removed;

(iii) The reason the vehicle was towed or removed; and

(iv) The locations from which and to which the vehicle was towed or removed;

(3) SHALL NOTIFY THE OWNER, ANY SECURED PARTY, AND THE INSURER OF RECORD BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND FIRST–CLASS MAIL WITHIN ~~72 HOURS~~ ***3 DAYS, EXCLUSIVE OF DAYS THAT THE TOWING BUSINESS IS CLOSED,*** **AFTER TOWING OR REMOVING THE VEHICLE, AND SHALL PROVIDE THE SAME INFORMATION REQUIRED IN A NOTICE TO A POLICE DEPARTMENT UNDER ITEM (2) OF THIS ~~SECTION~~** ***SUBSECTION*****;**

(4) SHALL PROVIDE TO THE OWNER, ANY SECURED PARTY, AND THE INSURER OF RECORD THE ITEMIZED ACTUAL COSTS OF PROVIDING NOTICE UNDER THIS SECTION ~~AND § 16–207 OF THE COMMERCIAL LAW ARTICLE~~;

[(3)**]** **(5)** Before towing or removing the vehicle, shall have authorization of the parking lot owner which shall include:

(i) The name of the person authorizing the tow or removal; **[**and**]**

(ii) A statement that the vehicle is being towed or removed at the request of the parking lot owner; **AND**

(III) PHOTOGRAPHIC EVIDENCE OF THE VIOLATION OR EVENT THAT PRECIPITATED THE TOWING OF THE VEHICLE;

[(4)**] (6)** Shall obtain commercial liability insurance in the amount **[**of at least $20,000 per occurrence**] REQUIRED BY FEDERAL LAW FOR TRANSPORTING PROPERTY IN INTERSTATE OR FOREIGN COMMERCE** to cover the cost of any damage to the vehicle resulting from the person's negligence;

[(5) Shall obtain a surety bond in the amount of $20,000 to guarantee payment of any liability incurred under this subtitle;

(6)**] (7)** May not employ **OR OTHERWISE COMPENSATE** individuals, commonly referred to as "spotters", whose primary task is to report the presence of unauthorized parked vehicles for the purposes of towing or removal, and impounding; **[**and**]**

[(7)**] (8)** May not pay any remuneration to the owner**, AGENT, OR EMPLOYEE** of the parking lot**; AND**

(9) MAY NOT TOW A VEHICLE SOLELY FOR A VIOLATION OF FAILURE TO DISPLAY A VALID CURRENT REGISTRATION UNDER § 13–411 OF THIS ARTICLE UNTIL 72 HOURS AFTER A NOTICE OF VIOLATION IS PLACED ON THE VEHICLE.

(B) THE ADMINISTRATION SHALL:

(1) ESTABLISH AND MAINTAIN A DATABASE CONTAINING THE PROPER ADDRESS FOR PROVIDING NOTICE TO AN INSURER UNDER SUBSECTION (A)(3) OF THIS SECTION FOR EACH INSURER AUTHORIZED TO WRITE A VEHICLE LIABILITY INSURANCE POLICY IN THE STATE; AND

(2) MAKE THE DATABASE AVAILABLE TO ANY TOWER FREE OF CHARGE.

21–10A–05.

(A) [If**] SUBJECT TO SUBSECTION (B) OF THIS SECTION, IF** a vehicle is towed or otherwise removed from a parking lot, the person in possession of the vehicle **[**shall**]**:

(1) **[**Immediately**]** **SHALL IMMEDIATELY** deliver the vehicle directly to **[**a**]** **THE** storage facility **[**customarily used by the person undertaking the towing or removal of the vehicle**]** **STATED ON THE SIGNS POSTED IN ACCORDANCE WITH § 21–10A–02 OF THIS SUBTITLE**; **[**and**]**

(2) **MAY NOT MOVE THE TOWED VEHICLE FROM THAT STORAGE FACILITY TO ANOTHER STORAGE FACILITY FOR AT LEAST 72 HOURS; AND**

(3) **[**Provide**]** **SHALL PROVIDE** the owner of the vehicle or the owner's agent immediate and continuous opportunity, **24 HOURS PER DAY, 7 DAYS PER WEEK,** from the time the vehicle was received at the storage facility, to retake possession of the vehicle.

(B) BEFORE A VEHICLE IS REMOVED FROM A PARKING LOT, A TOWER WHO POSSESSES THE VEHICLE SHALL RELEASE THE VEHICLE TO THE OWNER OR AN AGENT OF THE OWNER:

(1) IF THE OWNER OR AGENT REQUESTS THAT THE TOWER RELEASE THE VEHICLE;

(2) IF THE VEHICLE CAN BE DRIVEN UNDER ITS OWN POWER;

(3) WHETHER OR NOT THE VEHICLE HAS BEEN LIFTED OFF THE GROUND; AND

(4) IF THE OWNER OR AGENT PAYS A DROP FEE TO THE TOWER IN AN AMOUNT NOT EXCEEDING 50% OF THE COST OF A FULL TOW.

(C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A STORAGE FACILITY THAT IS IN POSSESSION OF A TOWED VEHICLE SHALL:

(I) ACCEPT PAYMENT FOR OUTSTANDING TOWING, RECOVERY, OR STORAGE CHARGES BY CASH OR AT LEAST TWO MAJOR, NATIONALLY RECOGNIZED CREDIT CARDS; AND

(II) IF THE STORAGE FACILITY ACCEPTS ONLY CASH, HAVE AN OPERABLE AUTOMATIC TELLER MACHINE AVAILABLE ON THE PREMISES.

(2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, IF A STORAGE FACILITY IS UNABLE TO PROCESS A CREDIT CARD PAYMENT AND DOES NOT HAVE AN OPERABLE AUTOMATIC TELLER MACHINE ON THE PREMISES, THE STORAGE FACILITY SHALL ACCEPT A PERSONAL CHECK AS PAYMENT FOR OUTSTANDING TOWING, RECOVERY, AND STORAGE CHARGES.

(II) A STORAGE FACILITY MAY REFUSE TO ACCEPT A PERSONAL CHECK AS PAYMENT IF IT IS UNABLE TO PROCESS A CREDIT CARD FOR THE PAYMENT BECAUSE USE OF THE CREDIT CARD HAS BEEN DECLINED BY THE CREDIT CARD COMPANY.

(3) A STORAGE FACILITY THAT IS IN POSSESSION OF A TOWED VEHICLE SHALL MAKE THE VEHICLE AVAILABLE TO THE OWNER, THE OWNER'S AGENT, THE INSURER OF RECORD, OR A SECURED PARTY, UNDER THE SUPERVISION OF THE STORAGE FACILITY, FOR:

(I) INSPECTION; OR

(II) RETRIEVAL FROM THE VEHICLE OF PERSONAL PROPERTY THAT IS NOT ATTACHED TO THE VEHICLE.

21–10A–06.

Any person who undertakes the towing or removal of a vehicle from a parking lot in violation of any provision of this subtitle:

(1) Shall be liable for actual damages sustained by any person as a direct result of the violation; and

(2) Shall be liable to the vehicle owner**, A SECURED PARTY, AN INSURER, OR A SUCCESSOR IN INTEREST** for triple the amount paid by the owner or the owner's agent to retake possession of the vehicle.

27–101.

(a) It is a misdemeanor for any person to violate any of the provisions of the Maryland Vehicle Law unless the violation:

(1) Is declared to be a felony by the Maryland Vehicle Law or by any other law of this State; or

(2) Is punishable by a civil penalty under the applicable provision of the Maryland Vehicle Law.

(b) Except as otherwise provided in this section, any person convicted of a misdemeanor for the violation of any of the provisions of the Maryland Vehicle Law is subject to a fine of not more than $500.

(c) Any person who is convicted of a violation of any of the provisions of the following sections of this article is subject to a fine of not more than $500 or imprisonment for not more than 2 months or both:

(1) § 12–301(e) or (f) ("Special identification cards: Unlawful use of identification card prohibited");

(2) § 14–102 ("Taking or driving vehicle without consent of owner");

(3) § 14–104 ("Damaging or tampering with vehicle");

(4) § 14–107 ("Removed, falsified, or unauthorized identification number or registration card or plate");

(5) § 14–110 ("Altered or forged documents and plates");

(6) § 15–312 ("Dealers: Prohibited acts – Vehicle sales transactions");

(7) § 15–313 ("Dealers: Prohibited acts – Advertising practices");

(8) § 15–314 ("Dealers: Prohibited acts – Violation of licensing laws");

(9) § 15–411 ("Vehicle salesmen: Prohibited acts");

(10) § 15–502(c) ("Storage of certain vehicles by unlicensed persons prohibited");

(11) § 16–113(j) ("Violation of alcohol restriction");

(12) § 16–301, except § 16–301(a) or (b) ("Unlawful use of license");

(13) § 16–303(h) ("Licenses suspended under certain provisions of Code");

(14) § 16–303(i) ("Licenses suspended under certain provisions of the traffic laws or regulations of another state");

(15) § 18–106 ("Unauthorized use of rented motor vehicle");

(16) § 20–103 ("Driver to remain at scene – Accidents resulting only in damage to attended vehicle or property");

(17) § 20–104 ("Duty to give information and render aid");

(18) § 20–105 ("Duty on striking unattended vehicle or other property");

(19) § 20–108 ("False reports prohibited");

(20) § 21–206 ("Interference with traffic control devices or railroad signs and signals");

(21) As to a pedestrian in a marked crosswalk, § 21–502(a) ("Pedestrians' right–of–way in crosswalks: In general"), if the violation contributes to an accident;

(22) As to another vehicle stopped at a marked crosswalk, § 21–502(c) ("Passing of vehicle stopped for pedestrian prohibited"), if the violation contributes to an accident;

(23) Except as provided in subsections (f) and (q) of this section, § 21–902(b) ("Driving while impaired by alcohol");

(24) Except as provided in subsections (f) and (q) of this section, § 21–902(c) ("Driving while impaired by drugs or drugs and alcohol");

(25) § 21–902.1 ("Driving within 12 hours after arrest"); **[**or**]**

(26) **TITLE 21, SUBTITLE 10A ("TOWING OR REMOVAL OF VEHICLES FROM PARKING LOTS"); OR**

(27) § 27–107(d), (e), (f), or (g) ("Prohibited acts – Ignition interlock systems").

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 229

(Senate Bill 414)

AN ACT concerning

Juvenile Law – Taking Child into Custody – Arrest Warrant

FOR the purpose of authorizing ~~a law enforcement officer to take a child into custody with an arrest warrant issued by the court~~ an intake officer of the Department of Juvenile Services, after conducting a certain inquiry, to file with a court an application for an arrest warrant prepared by a law enforcement officer; providing certain requirements relating to an application for an arrest warrant under this Act; providing that an arrest warrant under this Act may only be issued by the court on a finding of probable cause; requiring an arrest warrant issued under this Act to direct the law enforcement officer to take immediate custody of the child who is the subject of the warrant; making a certain

conforming change; and generally relating to the authority of a law enforcement officer to take a child into custody.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 3–8A–14
Annotated Code of Maryland
(2006 Replacement Volume and 2011 Supplement)

BY adding to
Article – Courts and Judicial Proceedings
Section 3–8A–14.1
Annotated Code of Maryland
(2006 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

3–8A–14.

(a) A child may be taken into custody under this subtitle by any of the following methods:

(1) Pursuant to an order of the court;

(2) By a law enforcement officer pursuant to the law of arrest ~~**OR AN ARREST WARRANT ISSUED BY THE COURT**~~;

(3) By a law enforcement officer or other person authorized by the court if the officer or other person has reasonable grounds to believe that the child is in immediate danger from the child's surroundings and that the child's removal is necessary for the child's protection; ~~**or**~~

(4) By a law enforcement officer or other person authorized by the court if the officer or other person has reasonable grounds to believe that the child has run away from the child's parents, guardian, or legal custodian**; OR**

(5) IN ACCORDANCE WITH § 3–8A–14.1 OF THIS SUBTITLE.

(b) If a law enforcement officer takes a child into custody, the officer shall immediately notify, or cause to be notified, the child's parents, guardian, or custodian of the action. After making every reasonable effort to give notice, the law enforcement officer shall with all reasonable speed:

(1) Release the child to the child's parents, guardian, or custodian or to any other person designated by the court, upon their written promise to bring the child before the court when requested by the court, and such security for the child's appearance as the court may reasonably require, unless the child's placement in detention or shelter care is permitted and appears required by § 3–8A–15 of this subtitle; or

(2) Deliver the child to the court or a place of detention or shelter care designated by the court.

(c) If a parent, guardian, or custodian fails to bring the child before the court when requested, the court may issue a writ of attachment directing that the child be taken into custody and brought before the court. The court may proceed against the parent, guardian, or custodian for contempt.

3–8A–14.1.

(A) AFTER AN INQUIRY CONDUCTED IN ACCORDANCE WITH § 3–8A–10 OF THIS SUBTITLE, AN INTAKE OFFICER MAY FILE WITH THE COURT AN APPLICATION FOR AN ARREST WARRANT PREPARED BY A LAW ENFORCEMENT OFFICER.

(B) AN APPLICATION FOR AN ARREST WARRANT UNDER THIS SECTION SHALL BE:

(1) IN WRITING;

(2) SIGNED AND SWORN TO BY THE LAW ENFORCEMENT OFFICER; AND

(3) ACCOMPANIED BY AN AFFIDAVIT THAT SETS FORTH THE BASIS FOR THERE BEING PROBABLE CAUSE TO BELIEVE THAT:

(I) THE CHILD WHO IS THE SUBJECT OF THE WARRANT HAS COMMITTED A DELINQUENT ACT; AND

(II) UNLESS THE CHILD WHO IS THE SUBJECT OF THE WARRANT IS TAKEN INTO CUSTODY, THE CHILD:

1. IS LIKELY TO LEAVE THE JURISDICTION OF THE COURT;

2. MAY NOT BE APPREHENDED;

3. MAY CAUSE PHYSICAL INJURY OR PROPERTY DAMAGE TO ANOTHER; OR

4. MAY TAMPER WITH, DISPOSE OF, OR DESTROY EVIDENCE.

(C) AN ARREST WARRANT REQUESTED UNDER SUBSECTION (A) OF THIS SECTION MAY ONLY BE ISSUED BY THE COURT ON A FINDING OF PROBABLE CAUSE AND SHALL DIRECT THE LAW ENFORCEMENT OFFICER TO TAKE IMMEDIATE CUSTODY OF THE CHILD.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 230

(House Bill 598)

AN ACT concerning

Juvenile Law – Taking Child into Custody – Arrest Warrant

FOR the purpose of authorizing ~~a law enforcement officer to take a child into custody with an arrest warrant issued by the court~~ an intake officer of the Department of Juvenile Services, after conducting a certain inquiry, to file with a court an application for an arrest warrant prepared by a law enforcement officer; providing certain requirements relating to an application for an arrest warrant under this Act; providing that an arrest warrant under this Act may only be issued by the court on a finding of probable cause; requiring an arrest warrant issued under this Act to direct the law enforcement officer to take immediate custody of the child who is the subject of the warrant; making a certain conforming change; and generally relating to the authority of a law enforcement officer to take a child into custody.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 3–8A–14
Annotated Code of Maryland
(2006 Replacement Volume and 2011 Supplement)

BY adding to
Article – Courts and Judicial Proceedings

Section 3–8A–14.1
Annotated Code of Maryland
(2006 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

3–8A–14.

(a) A child may be taken into custody under this subtitle by any of the following methods:

(1) Pursuant to an order of the court;

(2) By a law enforcement officer pursuant to the law of arrest ~~**OR AN ARREST WARRANT ISSUED BY THE COURT**~~;

(3) By a law enforcement officer or other person authorized by the court if the officer or other person has reasonable grounds to believe that the child is in immediate danger from the child's surroundings and that the child's removal is necessary for the child's protection; ~~**or**~~

(4) By a law enforcement officer or other person authorized by the court if the officer or other person has reasonable grounds to believe that the child has run away from the child's parents, guardian, or legal custodian**; OR**

(5) IN ACCORDANCE WITH § 3–8A–14.1 OF THIS SUBTITLE.

(b) If a law enforcement officer takes a child into custody, the officer shall immediately notify, or cause to be notified, the child's parents, guardian, or custodian of the action. After making every reasonable effort to give notice, the law enforcement officer shall with all reasonable speed:

(1) Release the child to the child's parents, guardian, or custodian or to any other person designated by the court, upon their written promise to bring the child before the court when requested by the court, and such security for the child's appearance as the court may reasonably require, unless the child's placement in detention or shelter care is permitted and appears required by § 3–8A–15 of this subtitle; or

(2) Deliver the child to the court or a place of detention or shelter care designated by the court.

(c) If a parent, guardian, or custodian fails to bring the child before the court when requested, the court may issue a writ of attachment directing that the child be

taken into custody and brought before the court. The court may proceed against the parent, guardian, or custodian for contempt.

3–8A–14.1.

(A) AFTER AN INQUIRY CONDUCTED IN ACCORDANCE WITH § 3–8A–10 OF THIS SUBTITLE, AN INTAKE OFFICER MAY FILE WITH THE COURT AN APPLICATION FOR AN ARREST WARRANT PREPARED BY A LAW ENFORCEMENT OFFICER.

(B) AN APPLICATION FOR AN ARREST WARRANT UNDER THIS SECTION SHALL BE:

(1) IN WRITING;

(2) SIGNED AND SWORN TO BY THE LAW ENFORCEMENT OFFICER; AND

(3) ACCOMPANIED BY AN AFFIDAVIT THAT SETS FORTH THE BASIS FOR THERE BEING PROBABLE CAUSE TO BELIEVE THAT:

(I) THE CHILD WHO IS THE SUBJECT OF THE WARRANT HAS COMMITTED A DELINQUENT ACT; AND

(II) UNLESS THE CHILD WHO IS THE SUBJECT OF THE WARRANT IS TAKEN INTO CUSTODY, THE CHILD:

1. IS LIKELY TO LEAVE THE JURISDICTION OF THE COURT;

2. MAY NOT BE APPREHENDED;

3. MAY CAUSE PHYSICAL INJURY OR PROPERTY DAMAGE TO ANOTHER; OR

4. MAY TAMPER WITH, DISPOSE OF, OR DESTROY EVIDENCE.

(C) AN ARREST WARRANT REQUESTED UNDER SUBSECTION (A) OF THIS SECTION MAY ONLY BE ISSUED BY THE COURT ON A FINDING OF PROBABLE CAUSE AND SHALL DIRECT THE LAW ENFORCEMENT OFFICER TO TAKE IMMEDIATE CUSTODY OF THE CHILD.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 231

(Senate Bill 419)

AN ACT concerning

Criminal Law – Litter Control ~~Regulations and Penalties~~ Law – Enforcement

FOR the purpose of ~~clarifying an exception to the prohibition of improper litter disposal relating to disposal in receptacles or containers; altering certain penalties for improper litter disposal based on the amount of litter; requiring a court to notify a person who is convicted of a certain litter disposal offense that the person's driver's license may be suspended; requiring a court to notify the Motor Vehicle Administration of a certain violation involving litter disposal; requiring the Chief Judge of the District Court and the Administrative Office of the Courts, in conjunction with the Administration, to establish certain procedures;~~ changing the name used to cite a violation of the litter control law from "Litter Control Law" to "Illegal Dumping and Litter Control Law"; altering the agency authorized, in Baltimore City, to enforce certain provisions relating to illegal dumping and litter control through the use of surveillance systems; ~~authorizing for a first offense, and requiring for a second or subsequent offense, the Administration to suspend, for a certain period of time, the driver's license of a person who is convicted of a certain litter disposal offense; providing for a certain hearing on the request of a licensee under certain circumstances; altering certain definitions;~~ making certain conforming changes; and generally relating to litter control.

BY repealing and reenacting, without amendments,
Article – Criminal Law
Section 10–110(c)
Annotated Code of Maryland
(2002 Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section ~~10–110~~ 10–110(k) and 10–112
Annotated Code of Maryland
(2002 Volume and 2011 Supplement)

~~BY adding to~~
~~Article – Transportation~~
~~Section 16–206.2~~

~~Annotated Code of Maryland~~
~~(2009 Replacement Volume and 2011 Supplement)~~

~~BY repealing and reenacting, with amendments,~~
~~Article – Transportation~~
~~Section 26–305(a)~~
~~Annotated Code of Maryland~~
~~(2009 Replacement Volume and 2011 Supplement)~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Law

10–110.

~~(a) (1) In this section the following words have the meanings indicated.~~

~~(2) "Bi–county unit" means:~~

~~(i) the Maryland–National Capital Park and Planning Commission; or~~

~~(ii) the Washington Suburban Sanitary Commission.~~

~~(3) "Litter" means all rubbish, waste matter, refuse, garbage, trash, debris, dead animals, or other discarded materials of every kind and description.~~

~~(4) "Public or private property" means:~~

~~(i) the right–of–way of a road or highway;~~

~~(ii) a body of water or watercourse or the shores or beaches of a body of water or watercourse;~~

~~(iii) a park;~~

~~(iv) a parking facility;~~

~~(v) a playground;~~

~~(vi) public service company property or transmission line right–of–way;~~

~~(vii) a building;~~

~~(viii) a refuge or conservation or recreation area;~~

~~(ix) residential or farm property; [or]~~

~~(x) timberlands or a forest;~~

~~**(XI) TRASH RECEPTACLES NOT PROVIDED FOR PUBLIC USE; OR**~~

~~**(XII) PUBLIC TRASH RECEPTACLES CLEARLY MARKED WITH "NO DUMPING PERMITTED".**~~

~~(b) The General Assembly intends to:~~

~~(1) prohibit uniformly throughout the State the improper disposal of litter on public or private property; and~~

~~(2) curb the desecration of the beauty of the State and harm to the health, welfare, and safety of its citizens caused by the improper disposal of litter.~~

(c) A person may not:

(1) dispose of litter on a highway or perform an act that violates the State Vehicle Laws regarding disposal of litter, glass, and other prohibited substances on highways; or

(2) dispose or cause or allow the disposal of litter on public or private property unless:

(i) the property is designated by the State, a unit of the State, or a political subdivision of the State for the disposal of litter and the person is authorized by the proper public authority to use the property; ~~[~~or~~]~~

(ii) the litter is placed into a litter receptacle or container installed on the property ~~**FOR PUBLIC USE; OR**~~

~~**(III) THE LITTER IS PLACED IN A PRIVATELY OWNED LITTER RECEPTACLE OR CONTAINER WITH THE CONSENT OF THE LITTER RECEPTACLE OWNER**~~.

~~(d) If two or more individuals are occupying a motor vehicle, boat, airplane, or other conveyance from which litter is disposed in violation of subsection (c) of this section, and it cannot be determined which occupant is the violator:~~

~~(1) if present, the owner of the conveyance is presumed to be responsible for the violation; or~~

~~(2) if the owner of the conveyance is not present, the operator is presumed to be responsible for the violation.~~

~~(e) Notwithstanding any other law, if the facts of a case in which a person is charged with violating this section are sufficient to prove that the person is responsible for the violation, the owner of the property on which the violation allegedly occurred need not be present at a court proceeding regarding the case.~~

~~(f) (1) A person who violates this section is subject to the penalties provided in this subsection.~~

~~(2) (i) A person who disposes of litter in violation of this section in an amount not exceeding~~ **[**~~100 pounds or 27 cubic feet and not for commercial gain~~**] 1 POUND** ~~is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 30 days or a fine not exceeding $1,500 or both.~~

~~(ii) A person who disposes of litter in violation of this section in an amount exceeding~~ **[**~~100 pounds or 27 cubic feet, but not exceeding 500 pounds or 216 cubic feet, and not for commercial gain is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding $12,500 or both.~~

~~(iii) A person who disposes of litter in violation of this section in an amount exceeding 500 pounds or 216 cubic feet or in any amount for commercial gain~~**] 1 POUND** ~~is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding $30,000 or both.~~

~~(3) In addition to the penalties provided under paragraph (2) of this subsection, a court may order the violator to:~~

~~(i) remove or render harmless the litter disposed of in violation of this section;~~

~~(ii) repair or restore any property damaged by, or pay damages for, the disposal of the litter in violation of this section;~~

~~(iii) perform public service relating to the removal of litter disposed of in violation of this section or to the restoration of an area polluted by litter disposed of in violation of this section; or~~

~~(iv) reimburse the State, county, municipal corporation, or bi-county unit for its costs incurred in removing the litter disposed of in violation of this section.~~

~~(4)~~ **(I)** ~~**[**In addition to, or instead of, the penalties provided in paragraphs (2) and (3) of this subsection,~~**] IF A PERSON IS CONVICTED OF A**

~~VIOLATION UNDER THIS SECTION FOR DISPOSAL OF LITTER IN AN AMOUNT EXCEEDING 1 POUND AND THE PERSON USED A MOTOR VEHICLE IN THE COMMISSION OF THE VIOLATION,~~ the court ~~[~~may suspend for up to 7 days the license of the person to operate the type of conveyance used in the violation who is presumed to be responsible for the violation under subsection (d) of this section~~]~~ ~~SHALL:~~

~~1. NOTIFY THE PERSON THAT THE PERSON'S DRIVER'S LICENSE MAY BE SUSPENDED UNDER § 16–206.2 OF THE TRANSPORTATION ARTICLE; AND~~

~~2. NOTIFY THE MOTOR VEHICLE ADMINISTRATION OF THE VIOLATION.~~

~~(II) THE CHIEF JUDGE OF THE DISTRICT COURT AND THE ADMINISTRATIVE OFFICE OF THE COURTS, IN CONJUNCTION WITH THE MOTOR VEHICLE ADMINISTRATION, SHALL ESTABLISH UNIFORM PROCEDURES FOR REPORTING A VIOLATION UNDER THIS PARAGRAPH.~~

~~(g) A law enforcement unit, officer, or official of the State or a political subdivision of the State, or an enforcement unit, officer, or official of a commission of the State, or a political subdivision of the State, shall enforce compliance with this section.~~

~~(h) A unit that supervises State property shall:~~

~~(1) establish and maintain receptacles for the disposal of litter at appropriate locations where the public frequents the property;~~

~~(2) post signs directing persons to the receptacles and serving notice of the provisions of this section; and~~

~~(3) otherwise publicize the availability of litter receptacles and the requirements of this section.~~

~~(i) (1) Fines collected for violations of this section shall be disbursed:~~

~~(i) to the county or municipal corporation where the violation occurred; or~~

~~(ii) if the bi–county unit is the enforcement unit and the violations occurred on property over which the bi–county unit exercises jurisdiction, to the bi–county unit.~~

~~(2) Fines collected shall be used to pay for litter receptacles and posting signs as required by subsection (h) of this section and for other purposes relating to the removal or control of litter.~~

~~(j) (1) The legislative body of a municipal corporation may:~~

~~(i) prohibit littering; and~~

~~(ii) classify littering as a municipal infraction under Article 23A, § 3(b) of the Code.~~

~~(2) The governing body of Prince George's County may adopt an ordinance to prohibit littering under this section and, for violations of the ordinance, may impose criminal penalties and civil penalties that do not exceed the criminal penalties and civil penalties specified in subsection (f)(1) through (3) of this section.~~

(k) This section may be cited as the "**ILLEGAL DUMPING AND** Litter Control Law".

10–112.

(a) (1) In this section the following words have the meanings indicated.

(2) "Department" means the Baltimore City Department of **[**Public Works**] HOUSING AND COMMUNITY DEVELOPMENT, OR ANOTHER DEPARTMENT DESIGNATED BY THE MAYOR OF BALTIMORE CITY**.

(3) "Dumping site" means a location in Baltimore City that is:

(i) owned by the city or the State; and

(ii) identified by the Department as property that has been repeatedly used for the disposal of litter in violation of State law or a local law or ordinance.

(4) (i) "Owner" means the registered owner of a motor vehicle or a lessee of a motor vehicle under a lease of 6 months or more.

(ii) "Owner" does not include:

1. a motor vehicle rental or leasing company; or

2. a holder of a special registration plate issued under Title 13, Subtitle 9, Part III of the Transportation Article.

(5) "Surveillance image" means an image recorded by a surveillance system:

(i) on:

1. a photograph;

2. a micrograph;

3. an electronic image;

4. videotape; or

5. any other medium;

(ii) showing the front or rear of a motor vehicle, and, on at least one image or portion of the tape, clearly identifying the registration plate number of the motor vehicle; and

(iii) showing an individual committing a violation of the State **ILLEGAL DUMPING AND** litter control law or a local law or ordinance relating to the unlawful disposal of litter.

(6) "Surveillance system" means a collection of one or more cameras located at a dumping site that produces a surveillance image.

(b) This section applies to a violation of the State **ILLEGAL DUMPING AND** litter control law or a local law or ordinance relating to the unlawful disposal of litter that occurs at a dumping site monitored by a surveillance system.

(c) The Department may:

(1) place surveillance systems at dumping sites; and

(2) use surveillance images to enforce the provisions of the State **ILLEGAL DUMPING AND** litter control law or a local law or ordinance relating to the unlawful disposal of litter.

(d) (1) Unless the individual committing a violation received a citation from a police officer at the time of the violation, the owner of the vehicle used to commit the violation, or in accordance with subsection (g)(4) of this section, the individual committing the violation, is subject to a civil penalty if the violation and the motor vehicle used to commit the violation are recorded on a surveillance image by a surveillance system while the individual is committing a violation of the State **ILLEGAL DUMPING AND** litter control law or a local law or ordinance relating to the unlawful disposal of litter.

(2) A civil penalty under this subsection may not exceed $1,000.

(3) For purposes of this section, the District Court, in consultation with the Department, shall prescribe:

(i) a uniform citation form consistent with subsection (e)(1) of this section and § 7–302 of the Courts Article; and

(ii) a civil penalty, which shall be indicated on the citation, to be paid by persons who choose to prepay the civil penalty without appearing in District Court.

(e) (1) Subject to the provisions of paragraphs (2) through (4) of this subsection, the Department shall mail to the owner liable under subsection (d) of this section a citation that shall include:

(i) the name and address of the registered owner of the vehicle;

(ii) the registration number of the motor vehicle involved in the violation;

(iii) the violation charged;

(iv) the location where the violation occurred;

(v) the date and time of the violation;

(vi) a copy of the surveillance image;

(vii) the amount of the civil penalty imposed and the date by which the civil penalty must be paid;

(viii) a signed statement by a duly authorized agent of the Department that, based on inspection of surveillance images, the motor vehicle was being used by an individual who was committing a violation of the State **ILLEGAL DUMPING AND** litter control law or a local law or ordinance relating to the unlawful disposal of litter;

(ix) a statement that surveillance images are evidence of a violation of the State **ILLEGAL DUMPING AND** litter control law or a local law or ordinance relating to the unlawful disposal of litter;

(x) information advising the person alleged to be liable under this section of the manner and time in which liability as alleged in the citation may be contested in the District Court; and

(xi) information advising the person alleged to be liable under this section that failure to pay the civil penalty or to contest liability in a timely manner:

1. is an admission of liability;

2. may result in the refusal by the Motor Vehicle Administration to register the motor vehicle; and

3. may result in the suspension of the motor vehicle registration.

(2) The Department may mail a warning notice instead of a citation to the owner liable under subsection (d) of this section.

(3) Except as provided in subsection (g)(4) of this section, the Department may not mail a citation to a person who is not an owner.

(4) Except as provided in subsection (g)(4) of this section, a citation issued under this section shall be mailed no later than 2 weeks after the alleged violation.

(5) A person who receives a citation under paragraph (1) of this subsection may:

(i) pay the civil penalty, in accordance with the instructions on the citation, directly to Baltimore City; or

(ii) elect to stand trial in the District Court for the alleged violation.

(f) (1) A certificate alleging that a violation of the State **ILLEGAL DUMPING AND** litter control law or a local law or ordinance relating to the unlawful disposal of litter occurred, sworn to or affirmed by a duly authorized agent of the Department, based on inspection of surveillance images produced by a surveillance system, shall be evidence of the facts contained in the certificate and shall be admissible in a proceeding alleging a violation under this section.

(2) Adjudication of liability shall be based on a preponderance of the evidence.

(g) (1) The District Court may consider in defense of a violation:

(i) subject to paragraph (2) of this subsection, that:

1. the motor vehicle was stolen before the violation occurred and was not under the control or possession of the owner at the time of the violation; or

2. the registration plates of the motor vehicle were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation;

(ii) subject to paragraph (3) of this subsection, evidence that the person named in the citation was not the person in the surveillance image committing the violation of the State **ILLEGAL DUMPING AND** litter control law or a local law or ordinance relating to the unlawful disposal of litter; and

(iii) any other issues and evidence that the District Court deems pertinent.

(2) In order to assert a defense under paragraph (1)(i) of this subsection, the owner shall submit proof that a police report regarding the stolen motor vehicle or registration plates was filed in a timely manner.

(3) In order to satisfy the evidentiary burden under paragraph (1)(ii) of this subsection, the person named in the citation shall provide to the District Court evidence to the satisfaction of the court of the identity of the person in the surveillance image who was actually committing the violation, including, at a minimum, the person's name and current address.

(4) (i) If the District Court finds that the person named in the citation did not commit the violation or receives evidence under paragraph (3) of this subsection identifying the person who committed the violation, the clerk of the court shall provide the Department with a copy of any evidence substantiating who was operating the vehicle at the time of the violation.

(ii) On receipt of substantiating evidence from the District Court under subparagraph (i) of this paragraph, the Department may issue a citation as provided in subsection (e) of this section to the person that the evidence indicates committed the violation.

(iii) A citation issued under subparagraph (ii) of this paragraph shall be mailed no later than 2 weeks after the receipt of the evidence from the District Court.

(h) If the person named in the citation does not pay the civil penalty and does not contest the violation, the Motor Vehicle Administration may:

(1) refuse to register the motor vehicle cited in the violation; or

(2) suspend the registration of the motor vehicle cited in the violation.

(i) A violation for which a civil penalty is imposed under this section:

(1) may not be recorded by the Motor Vehicle Administration on the driving record of the owner or the driver of the motor vehicle; and

(2) may be treated as a parking violation for purposes of § 26–305 of the Transportation Article.

(j) In consultation with the Department, the Chief Judge of the District Court shall adopt procedures for the issuance of citations, the trial of civil violations, and the collection of civil penalties under this section.

~~**Article – Transportation**~~

~~**16–206.2.**~~

~~**(A) SUBJECT TO THE PROVISIONS OF SUBSECTION (B) OF THIS SECTION, ON RECEIPT OF NOTICE DESCRIBED UNDER § 10–110(F) OF THE CRIMINAL LAW ARTICLE THAT AN INDIVIDUAL LICENSED IN THE STATE HAS BEEN CONVICTED OF A VIOLATION UNDER § 10–110 OF THE CRIMINAL LAW ARTICLE FOR DISPOSAL OF LITTER IN AN AMOUNT EXCEEDING 1 POUND AND THE INDIVIDUAL USED A MOTOR VEHICLE IN THE COMMISSION OF THE VIOLATION, THE ADMINISTRATION:**~~

~~**(1) FOR A FIRST VIOLATION, MAY SUSPEND THE INDIVIDUAL'S LICENSE FOR UP TO 60 DAYS; AND**~~

~~**(2) FOR A SECOND OR SUBSEQUENT VIOLATION, SHALL SUSPEND THE INDIVIDUAL'S LICENSE FOR NO LESS THAN 60 DAYS AND NOT MORE THAN 1 YEAR.**~~

~~**(B) SUBJECT TO THE PROVISIONS OF TITLE 12, SUBTITLE 2 OF THIS ARTICLE, A LICENSEE MAY REQUEST A HEARING ON A SUSPENSION UNDER THIS SECTION.**~~

~~26–305.~~

~~(a) The Administration may not register or transfer the registration of any vehicle involved in a parking violation under this subtitle, a violation under any federal parking regulation that applies to property in this State under the jurisdiction of the U.S. government, a violation of § 21–202(h) of this article as determined under § 21–202.1 of this article or Title 21, Subtitle 8 of this article as determined under § 21–809 or § 21–810 of this article, or a violation of the State **ILLEGAL DUMPING AND** litter control law or a local law or ordinance adopted by Baltimore City relating to the unlawful disposal of litter as determined under § 10–112 of the Criminal Law Article, if:~~

~~(1) It is notified by a political subdivision or authorized State agency that the person cited for the violation under this subtitle, § 21–202.1, § 21–809, or § 21–810 of this article, or § 10–112 of the Criminal Law Article has failed to either:~~

~~(i) Pay the fine for the violation by the date specified in the citation; or~~

~~(ii) File a notice of his intention to stand trial for the violation;~~

~~(2) It is notified by the District Court that a person who has elected to stand trial for the violation under this subtitle, under § 21–202.1, § 21–809, or § 21–810 of this article, or under § 10–112 of the Criminal Law Article has failed to appear for trial; or~~

~~(3) It is notified by a U.S. District Court that a person cited for a violation under a federal parking regulation:~~

~~(i) Has failed to pay the fine for the violation by the date specified in the federal citation; or~~

~~(ii) Either has failed to file a notice of the person's intention to stand trial for the violation, or, if electing to stand trial, has failed to appear for trial.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 232

(Senate Bill 425)

AN ACT concerning

Harford County – Tax Sales – Auctioneer Fees

FOR the purpose of altering the auctioneer's fee in Harford County allowed as an expense relating to certain tax sales of property; and generally relating to tax sales of property in Harford County.

BY repealing and reenacting, without amendments,
Article – Tax – Property
Section 14–813(e)(1)(iv)
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Tax – Property
Section 14–813(e)(2)(i) and (ix)
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Tax – Property

14–813.

(e) (1) The following expenses relating to the sale shall be allowed, all of which are liens on the property to be sold:

(iv) the auctioneer's fee, as provided in paragraph (2) of this subsection;

(2) The auctioneer's fee allowed in paragraph (1) of this subsection shall be:

(i) except in Baltimore City, Caroline County, Carroll County, Cecil County, Dorchester County, Garrett County, **HARFORD COUNTY,** Howard County, Kent County, Prince George's County, Queen Anne's County, Somerset County, Talbot County, Wicomico County, or Worcester County:

1. for any date when 1, 2, or 3 properties are sold, an amount not to exceed $10; and

2. for any date when 4 or more properties are sold, $3 for each property sold;

(ix) in Caroline County, **HARFORD COUNTY,** Howard County, Prince George's County, and Talbot County, $10 for each property sold.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 233

(Senate Bill 433)

AN ACT concerning

Labor and Employment – User Name and Password Privacy Protection <u>and Exclusions</u>

FOR the purpose of prohibiting an employer from requesting or requiring that an employee or applicant disclose any user name, password, or other means for accessing a personal account or service through certain electronic communications devices; prohibiting an employer from taking, or threatening to take, certain disciplinary actions for an employee's refusal to disclose certain password and related information; prohibiting an employer from failing or refusing to hire an applicant as a result of the applicant's refusal to disclose certain password and related information; <u>prohibiting an employee from downloading certain unauthorized information or data to certain Web sites or Web–based accounts; providing that an employer, based on the receipt of certain information regarding the use of certain Web sites or certain Web–based accounts, is not prevented from conducting certain investigations for certain purposes;</u> defining certain terms; and generally relating to employment and privacy protection.

BY adding to
Article – Labor and Employment
Section 3–712
Annotated Code of Maryland
(2008 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Labor and Employment

3–712.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "APPLICANT" MEANS AN APPLICANT FOR EMPLOYMENT.

(3) (I) "ELECTRONIC COMMUNICATIONS DEVICE" MEANS ANY DEVICE THAT USES ELECTRONIC SIGNALS TO CREATE, TRANSMIT, AND RECEIVE INFORMATION.

(II) "ELECTRONIC COMMUNICATIONS DEVICE" INCLUDES COMPUTERS, TELEPHONES, PERSONAL DIGITAL ASSISTANTS, AND OTHER SIMILAR DEVICES.

(4) (I) "EMPLOYER" MEANS:

1. A PERSON ENGAGED IN A BUSINESS, AN INDUSTRY, A PROFESSION, A TRADE, OR OTHER ENTERPRISE IN THE STATE; OR

2. A UNIT OF STATE OR LOCAL GOVERNMENT.

(II) "EMPLOYER" INCLUDES AN AGENT, A REPRESENTATIVE, AND A DESIGNEE OF THE EMPLOYER.

(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN EMPLOYER MAY NOT REQUEST OR REQUIRE THAT AN EMPLOYEE OR APPLICANT DISCLOSE ANY USER NAME, PASSWORD, OR OTHER MEANS FOR ACCESSING A PERSONAL ACCOUNT OR SERVICE THROUGH AN ELECTRONIC COMMUNICATIONS DEVICE.

(2) AN EMPLOYER MAY REQUIRE AN EMPLOYEE TO DISCLOSE ANY USER NAME, PASSWORD, OR OTHER MEANS FOR ACCESSING NONPERSONAL ACCOUNTS OR SERVICES THAT PROVIDE ACCESS TO THE EMPLOYER'S INTERNAL COMPUTER OR INFORMATION SYSTEMS.

(C) AN EMPLOYER MAY NOT:

(1) DISCHARGE, DISCIPLINE, OR OTHERWISE PENALIZE OR THREATEN TO DISCHARGE, DISCIPLINE, OR OTHERWISE PENALIZE AN EMPLOYEE FOR AN EMPLOYEE'S REFUSAL TO DISCLOSE ANY INFORMATION SPECIFIED IN SUBSECTION (B)(1) OF THIS SECTION; OR

(2) FAIL OR REFUSE TO HIRE ANY APPLICANT AS A RESULT OF THE APPLICANT'S REFUSAL TO DISCLOSE ANY INFORMATION SPECIFIED IN SUBSECTION (B)(1) OF THIS SECTION.

(D) AN EMPLOYEE MAY NOT DOWNLOAD UNAUTHORIZED EMPLOYER PROPRIETARY INFORMATION OR FINANCIAL DATA TO AN EMPLOYEE'S PERSONAL WEB SITE, AN INTERNET WEB SITE, A WEB–BASED ACCOUNT, OR A SIMILAR ACCOUNT.

(E) THIS SECTION DOES NOT PREVENT AN EMPLOYER:

(1) BASED ON THE RECEIPT OF INFORMATION ABOUT THE USE OF A PERSONAL WEB SITE, INTERNET WEB SITE, WEB–BASED ACCOUNT, OR SIMILAR ACCOUNT BY AN EMPLOYEE FOR BUSINESS PURPOSES, FROM CONDUCTING AN INVESTIGATION FOR THE PURPOSE OF ENSURING

COMPLIANCE WITH APPLICABLE SECURITIES OR FINANCIAL LAW, OR REGULATORY REQUIREMENTS; OR

(2) BASED ON THE RECEIPT OF INFORMATION ABOUT THE UNAUTHORIZED DOWNLOADING OF AN EMPLOYER'S PROPRIETARY INFORMATION OR FINANCIAL DATA TO A PERSONAL WEB SITE, INTERNET WEB SITE, WEB–BASED ACCOUNT, OR SIMILAR ACCOUNT BY AN EMPLOYEE, FROM INVESTIGATING AN EMPLOYEE'S ACTIONS UNDER SUBSECTION (D) OF THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 234

(House Bill 964)

AN ACT concerning

Labor and Employment – User Name and Password Privacy Protection and Exclusions

FOR the purpose of prohibiting an employer from requesting or requiring that an employee or applicant disclose any user name, password, or other means for accessing a personal account or service through certain electronic communications devices; prohibiting an employer from taking, or threatening to take, certain disciplinary actions for an employee's refusal to disclose certain password and related information; prohibiting an employer from failing or refusing to hire an applicant as a result of the applicant's refusal to disclose certain password and related information; prohibiting an employee from downloading certain unauthorized information or data to certain Web sites or Web–based accounts; providing that an employer, based on the receipt of certain information regarding the use of certain Web sites or certain Web–based accounts, is not prevented from conducting certain investigations for certain purposes; defining certain terms; and generally relating to employment and privacy protection.

BY adding to
Article – Labor and Employment
Section 3–712
Annotated Code of Maryland
(2008 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Labor and Employment

3–712.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "APPLICANT" MEANS AN APPLICANT FOR EMPLOYMENT.

(3) (I) "ELECTRONIC COMMUNICATIONS DEVICE" MEANS ANY DEVICE THAT USES ELECTRONIC SIGNALS TO CREATE, TRANSMIT, AND RECEIVE INFORMATION.

(II) "ELECTRONIC COMMUNICATIONS DEVICE" INCLUDES COMPUTERS, TELEPHONES, PERSONAL DIGITAL ASSISTANTS, AND OTHER SIMILAR DEVICES.

(4) (I) "EMPLOYER" MEANS:

1. A PERSON ENGAGED IN A BUSINESS, AN INDUSTRY, A PROFESSION, A TRADE, OR OTHER ENTERPRISE IN THE STATE; OR

2. A UNIT OF STATE OR LOCAL GOVERNMENT.

(II) "EMPLOYER" INCLUDES AN AGENT, A REPRESENTATIVE, AND A DESIGNEE OF THE EMPLOYER.

(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN EMPLOYER MAY NOT REQUEST OR REQUIRE THAT AN EMPLOYEE OR APPLICANT DISCLOSE ANY USER NAME, PASSWORD, OR OTHER MEANS FOR ACCESSING A PERSONAL ACCOUNT OR SERVICE THROUGH AN ELECTRONIC COMMUNICATIONS DEVICE.

(2) AN EMPLOYER MAY REQUIRE AN EMPLOYEE TO DISCLOSE ANY USER NAME, PASSWORD, OR OTHER MEANS FOR ACCESSING NONPERSONAL ACCOUNTS OR SERVICES THAT PROVIDE ACCESS TO THE EMPLOYER'S INTERNAL COMPUTER OR INFORMATION SYSTEMS.

(C) AN EMPLOYER MAY NOT:

(1) DISCHARGE, DISCIPLINE, OR OTHERWISE PENALIZE OR THREATEN TO DISCHARGE, DISCIPLINE, OR OTHERWISE PENALIZE AN EMPLOYEE FOR AN EMPLOYEE'S REFUSAL TO DISCLOSE ANY INFORMATION SPECIFIED IN SUBSECTION (B)(1) OF THIS SECTION; OR

(2) FAIL OR REFUSE TO HIRE ANY APPLICANT AS A RESULT OF THE APPLICANT'S REFUSAL TO DISCLOSE ANY INFORMATION SPECIFIED IN SUBSECTION (B)(1) OF THIS SECTION.

(D) AN EMPLOYEE MAY NOT DOWNLOAD UNAUTHORIZED EMPLOYER PROPRIETARY INFORMATION OR FINANCIAL DATA TO AN EMPLOYEE'S PERSONAL WEB SITE, AN INTERNET WEB SITE, A WEB–BASED ACCOUNT, OR A SIMILAR ACCOUNT.

(E) THIS SECTION DOES NOT PREVENT AN EMPLOYER:

(1) BASED ON THE RECEIPT OF INFORMATION ABOUT THE USE OF A PERSONAL WEB SITE, INTERNET WEB SITE, WEB–BASED ACCOUNT, OR SIMILAR ACCOUNT BY AN EMPLOYEE FOR BUSINESS PURPOSES, FROM CONDUCTING AN INVESTIGATION FOR THE PURPOSE OF ENSURING COMPLIANCE WITH APPLICABLE SECURITIES OR FINANCIAL LAW, OR REGULATORY REQUIREMENTS; OR

(2) BASED ON THE RECEIPT OF INFORMATION ABOUT THE UNAUTHORIZED DOWNLOADING OF AN EMPLOYER'S PROPRIETARY INFORMATION OR FINANCIAL DATA TO A PERSONAL WEB SITE, INTERNET WEB SITE, WEB–BASED ACCOUNT, OR SIMILAR ACCOUNT BY AN EMPLOYEE, FROM INVESTIGATING AN EMPLOYEE'S ACTIONS UNDER SUBSECTION (D) OF THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 235

(Senate Bill 442)

AN ACT concerning

Program Open Space – Local Projects – Funding for Development

FOR the purpose of limiting the dispersal of certain Program Open Space funding to the costs associated with development projects and the construction of recreational facilities under certain circumstances; ~~repealing a certain requirement that, to obtain a certain percentage of State funding, certain land acquired within a priority funding area be limited in the amount of impervious surface on the land;~~ exempting certain indoor recreational facilities from certain funding limits if the Department of Natural Resources makes a certain determination; and generally relating to development of local projects under Program Open Space.

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 5–905(c)
Annotated Code of Maryland
(2005 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Natural Resources

5–905.

(c) (1) (i) One half of any local governing body's annual apportionment shall be used for acquisition or development projects provided that up to 20 percent of the funds authorized for acquisition or development projects under this subparagraph may be used for capital renewal as defined in § 5–901 of this subtitle.

(ii) If the Department and the Department of Planning certify that acquisition goals set forth in the current, approved local land preservation and recreation plan have been met and that such acreage attainment equals or exceeds the minimum recommended acreage goals developed for that jurisdiction under the Maryland Land Preservation and Recreation Plan, a local governing body may use up to 100 percent of its future annual apportionment for development projects, provided that up to 20 percent of the funds authorized for use for development projects under this subparagraph may be used for capital renewal.

(iii) If a county determines that it qualifies for the additional funds for development and capital renewal projects under subparagraph (ii) of this paragraph, before the due date for all local governing bodies to submit revised local land preservation and recreation plans, that county may submit an interim local land preservation and recreation plan:

1. Prior to the submission under subsection (b)(2) of this section; and

2. In addition to the submission required under subsection (b)(2).

(iv) If a county qualifies for the additional funds for development projects under subparagraph (ii) of this paragraph, 25% of the funds may be used only for:

1. Land acquisition;

2. Repair or renovation of existing recreational facilities or structures; or

3. Subject to subparagraph (ii) of this paragraph, capital renewal.

(2) The State shall provide 100 percent of the total project cost of each approved local acquisition project or, if federal funds are provided, 100 percent of the difference between the total project cost and the federal contribution.

(3) (i) Except as provided in subparagraph (iii) of this paragraph, if the local governing body is unable to obtain federal funds pursuant to § 5–906 of this subtitle, for each approved local development project the State shall provide:

1. 75 percent of the total project cost; or

2. If the Department has certified pursuant to paragraph (1) of this subsection that acquisition goals have been met, 90 percent of the total project cost.

(ii) Except as provided in subparagraph (iii) of this paragraph, if federal funds are provided on any **[**acquisition or**]** development project cost, the State shall provide 50 percent of the difference between the total project cost and the federal contribution. Subject to the limitation that total State funds, when added to every other available fund, may not exceed 100 percent of a project's cost, the minimum State contribution to a project shall be 25 percent. If the federal funds are less than 50 percent of the total project cost, the State shall provide an amount equal to the difference between the federal contribution and:

1. 75 percent of the total project cost; or

2. If the Department has certified pursuant to paragraph (1) of this subsection that acquisition goals have been met, 90 percent of the total project cost.

(iii) 1. ~~[~~Subject to the requirement in subsubparagraph 3 of this subparagraph, if~~]~~ **IF** a local governing body uses its funds appropriated under § 5–903(b)(1) of this subtitle to **[**acquire land**]** **BUILD A RECREATIONAL FACILITY**

within a priority funding area, as defined in § 5–7B–02 of the State Finance and Procurement Article, the State shall provide 90 percent of the total project cost.

2. **[**If**]** **SUBJECT TO SUBSUBPARAGRAPH ~~3~~ 4 OF THIS SUBPARAGRAPH, IF** a local governing body uses its funds appropriated under § 5–903(b)(1) of this subtitle to construct an indoor recreational facility that is not ancillary and necessary for outdoor recreation, and will be located outside of a priority funding area, as defined in § 5–7B–02 of the State Finance and Procurement Article, the State shall provide 50 percent of the total project cost.

~~[~~3. The State shall provide 90 percent of the total project cost under subsubparagraph 1 of this subparagraph if the local governing body agrees to limit the amount of impervious surface on the land acquired within a priority funding area, as defined in § 5–7B–02 of the State Finance and Procurement Article, to no more than 10 percent of the land.~~]~~

~~3.~~ 4. THE 50% FUNDING LIMIT UNDER SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH DOES NOT APPLY IF THE ~~INDOOR RECREATIONAL FACILITY IS DESIGNED TO SERVICE TWO OR MORE PRIORITY FUNDING AREAS CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE LOCAL GOVERNMENT AS VERIFIED BY THE LOCAL PLANNING AND ZONING AGENCY~~ DEPARTMENT DETERMINES THAT:

A. THE INDOOR RECREATIONAL FACILITY IS DESIGNED TO SERVE MULTIPLE PRIORITY FUNDING AREAS, AS DEFINED IN § 5–7B–02 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, OR MULTIPLE CENSUS DESIGNATED PLACES WITHIN A PRIORITY FUNDING AREA;

B. THE INDOOR RECREATIONAL FACILITY CONTAINS EQUIPMENT OR FACILITIES, INCLUDING A SWIMMING POOL, THAT CANNOT BE SUPPORTED IN MULTIPLE LOCATIONS; AND

C. THE APPLICABLE LOCAL GOVERNMENT PLANNING AND ZONING AGENCY HAS VERIFIED THAT THE LOCATION OF THE INDOOR RECREATIONAL FACILITY IS CONSISTENT WITH THE LOCAL GOVERNMENT'S COMPREHENSIVE PLAN.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 236

(House Bill 1058)

AN ACT concerning

Program Open Space – Local Projects – Funding for Development

FOR the purpose of limiting the dispersal of certain Program Open Space funding to the costs associated with development projects and the construction of recreational facilities under certain circumstances; ~~repealing a certain requirement that, to obtain a certain percentage of State funding, certain land acquired within a priority funding area be limited in the amount of impervious surface on the land;~~ exempting certain indoor recreational facilities from certain funding limits if the Department of Natural Resources makes a certain determination; and generally relating to development of local projects under Program Open Space.

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 5–905(c)
Annotated Code of Maryland
(2005 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Natural Resources

5–905.

(c) (1) (i) One half of any local governing body's annual apportionment shall be used for acquisition or development projects provided that up to 20 percent of the funds authorized for acquisition or development projects under this subparagraph may be used for capital renewal as defined in § 5–901 of this subtitle.

(ii) If the Department and the Department of Planning certify that acquisition goals set forth in the current, approved local land preservation and recreation plan have been met and that such acreage attainment equals or exceeds the minimum recommended acreage goals developed for that jurisdiction under the Maryland Land Preservation and Recreation Plan, a local governing body may use up to 100 percent of its future annual apportionment for development projects, provided that up to 20 percent of the funds authorized for use for development projects under this subparagraph may be used for capital renewal.

(iii) If a county determines that it qualifies for the additional funds for development and capital renewal projects under subparagraph (ii) of this

paragraph, before the due date for all local governing bodies to submit revised local land preservation and recreation plans, that county may submit an interim local land preservation and recreation plan:

1. Prior to the submission under subsection (b)(2) of this section; and

2. In addition to the submission required under subsection (b)(2).

(iv) If a county qualifies for the additional funds for development projects under subparagraph (ii) of this paragraph, 25% of the funds may be used only for:

1. Land acquisition;

2. Repair or renovation of existing recreational facilities or structures; or

3. Subject to subparagraph (ii) of this paragraph, capital renewal.

(2) The State shall provide 100 percent of the total project cost of each approved local acquisition project or, if federal funds are provided, 100 percent of the difference between the total project cost and the federal contribution.

(3) (i) Except as provided in subparagraph (iii) of this paragraph, if the local governing body is unable to obtain federal funds pursuant to § 5–906 of this subtitle, for each approved local development project the State shall provide:

1. 75 percent of the total project cost; or

2. If the Department has certified pursuant to paragraph (1) of this subsection that acquisition goals have been met, 90 percent of the total project cost.

(ii) Except as provided in subparagraph (iii) of this paragraph, if federal funds are provided on any **[**acquisition or**]** development project cost, the State shall provide 50 percent of the difference between the total project cost and the federal contribution. Subject to the limitation that total State funds, when added to every other available fund, may not exceed 100 percent of a project's cost, the minimum State contribution to a project shall be 25 percent. If the federal funds are less than 50 percent of the total project cost, the State shall provide an amount equal to the difference between the federal contribution and:

1. 75 percent of the total project cost; or

2. If the Department has certified pursuant to paragraph (1) of this subsection that acquisition goals have been met, 90 percent of the total project cost.

(iii) 1. ~~[~~Subject to the requirement in subsubparagraph 3 of this subparagraph, if~~]~~ ~~IF~~ a local governing body uses its funds appropriated under § 5–903(b)(1) of this subtitle to **[**acquire land**]** **BUILD A RECREATIONAL FACILITY** within a priority funding area, as defined in § 5–7B–02 of the State Finance and Procurement Article, the State shall provide 90 percent of the total project cost.

2. **[**If**]** **SUBJECT TO SUBSUBPARAGRAPH ~~3~~ 4 OF THIS SUBPARAGRAPH, IF** a local governing body uses its funds appropriated under § 5–903(b)(1) of this subtitle to construct an indoor recreational facility that is not ancillary and necessary for outdoor recreation, and will be located outside of a priority funding area, as defined in § 5–7B–02 of the State Finance and Procurement Article, the State shall provide 50 percent of the total project cost.

~~[~~3. The State shall provide 90 percent of the total project cost under subsubparagraph 1 of this subparagraph if the local governing body agrees to limit the amount of impervious surface on the land acquired within a priority funding area, as defined in § 5–7B–02 of the State Finance and Procurement Article, to no more than 10 percent of the land.~~]~~

~~3.~~ 4. THE 50% FUNDING LIMIT UNDER SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH DOES NOT APPLY IF THE ~~INDOOR RECREATIONAL FACILITY IS DESIGNED TO SERVICE TWO OR MORE PRIORITY FUNDING AREAS CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE LOCAL GOVERNMENT AS VERIFIED BY THE LOCAL PLANNING AND ZONING AGENCY~~ DEPARTMENT DETERMINES THAT:

A. THE INDOOR RECREATIONAL FACILITY IS DESIGNED TO SERVE MULTIPLE PRIORITY FUNDING AREAS, AS DEFINED IN § 5–7B–02 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, OR MULTIPLE CENSUS DESIGNATED PLACES WITHIN A PRIORITY FUNDING AREA;

B. THE INDOOR RECREATIONAL FACILITY CONTAINS EQUIPMENT OR FACILITIES, INCLUDING A SWIMMING POOL, THAT CANNOT BE SUPPORTED IN MULTIPLE LOCATIONS; AND

C. THE APPLICABLE LOCAL GOVERNMENT PLANNING AND ZONING AGENCY HAS VERIFIED THAT THE LOCATION OF THE INDOOR RECREATIONAL FACILITY IS CONSISTENT WITH THE LOCAL GOVERNMENT'S COMPREHENSIVE PLAN.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 237

(Senate Bill 446)

AN ACT concerning

Sales and Use Tax – Sales of Dyed Diesel Fuel

FOR the purpose of providing that for the sale of certain diesel fuel the sales and use tax is to be applied to a certain percentage of the gross receipts; defining certain terms; creating a collection exception for certain diesel fuel sales by certain marinas; requiring certain marinas to assume or absorb the sales and use tax imposed on a retail sale or use and to pay the sales and use tax on behalf of the buyer; and generally relating to the sales and use tax on certain sales of certain diesel fuel by certain marinas.

BY adding to
Article – Tax – General
Section 11–104(h) and 11–410
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 11–302
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Tax – General

11–104.

(H) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(II) "DYED DIESEL FUEL" MEANS DIESEL FUEL THAT IS DYED UNDER U.S. ENVIRONMENTAL PROTECTION AGENCY RULES FOR HIGH SULFUR DIESEL FUEL OR IS DYED UNDER INTERNAL REVENUE SERVICE RULES FOR NONTAXABLE USE.

(III) "MARINA" MEANS A PERSON WHO MAINTAINS A PLACE OF BUSINESS WHERE MOTOR FUEL IS SOLD PRIMARILY TO VESSELS.

(2) IF A RETAIL SALE OF DYED DIESEL FUEL IS MADE BY A MARINA, THE SALES AND USE TAX RATE IS 6%, APPLIED TO 94.5% OF THE GROSS RECEIPTS FROM THE DYED DIESEL FUEL SALES.

11–302.

For each retail sale or sale for use other than a sale under § 11–405 **[**or**],** § 11–406**, OR § 11–410** of this title, the sales and use tax shall be:

(1) stated separately from the sale price; and

(2) shown separately from the sale price on any record of a sale:

(i) at the time of the sale;

(ii) when the vendor issues evidence of the sale; or

(iii) when the vendor uses evidence of the sale.

11–410.

A MARINA THAT SELLS DYED DIESEL FUEL, AS DEFINED IN § 11–104(H) OF THIS TITLE:

(1) SHALL PAY THE SALES AND USE TAX TO THE COMPTROLLER; AND

(2) MAY NOT COLLECT THE SALES AND USE TAX FROM THE BUYER AS A SEPARATELY STATED ITEM.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 238

(House Bill 434)

AN ACT concerning

Sales and Use Tax – Sales of Dyed Diesel Fuel

FOR the purpose of providing that for the sale of certain diesel fuel the sales and use tax is to be applied to a certain percentage of the gross receipts; defining certain terms; creating a collection exception for certain diesel fuel sales by certain marinas; requiring certain marinas to assume or absorb the sales and use tax imposed on a retail sale or use and to pay the sales and use tax on behalf of the buyer; and generally relating to the sales and use tax on certain sales of certain diesel fuel by certain marinas.

BY adding to
Article – Tax – General
Section 11–104(h) and 11–410
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 11–302
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Tax – General

11–104.

(H) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(II) "DYED DIESEL FUEL" MEANS DIESEL FUEL THAT IS DYED UNDER U.S. ENVIRONMENTAL PROTECTION AGENCY RULES FOR HIGH SULFUR DIESEL FUEL OR IS DYED UNDER INTERNAL REVENUE SERVICE RULES FOR NONTAXABLE USE.

(III) "MARINA" MEANS A PERSON WHO MAINTAINS A PLACE OF BUSINESS WHERE MOTOR FUEL IS SOLD PRIMARILY TO VESSELS.

(2) IF A RETAIL SALE OF DYED DIESEL FUEL IS MADE BY A MARINA, THE SALES AND USE TAX RATE IS 6%, APPLIED TO 94.5% OF THE GROSS RECEIPTS FROM THE DYED DIESEL FUEL SALES.

11–302.

For each retail sale or sale for use other than a sale under § 11–405 **[**or**],** § 11–406**, OR § 11–410** of this title, the sales and use tax shall be:

(1) stated separately from the sale price; and

(2) shown separately from the sale price on any record of a sale:

(i) at the time of the sale;

(ii) when the vendor issues evidence of the sale; or

(iii) when the vendor uses evidence of the sale.

11–410.

A MARINA THAT SELLS DYED DIESEL FUEL, AS DEFINED IN § 11–104(H) OF THIS TITLE:

(1) SHALL PAY THE SALES AND USE TAX TO THE COMPTROLLER; AND

(2) MAY NOT COLLECT THE SALES AND USE TAX FROM THE BUYER AS A SEPARATELY STATED ITEM.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 239

(Senate Bill 453)

AN ACT concerning

Wrongful Death and Survival Causes of Action – Criminal Homicide – Time Limits for Bringing Civil Action

FOR the purpose of providing that a wrongful death cause of action or survival cause of action arising from conduct that constitutes a criminal homicide under State or federal law accrues at a certain time under certain circumstances; establishing a presumption that a party should have discovered the identity of a person who contributed to a criminal homicide under certain circumstances; providing for the application of this Act; and generally relating to certain time limits for bringing certain civil actions concerning a criminal homicide.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 3–904(g)(1)
Annotated Code of Maryland
(2006 Replacement Volume and 2011 Supplement)

BY adding to
Article – Courts and Judicial Proceedings
Section 3–904(g)(3) and 5–203.1
Annotated Code of Maryland
(2006 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

3–904.

(g) (1) Except as provided in paragraph (2) **OR (3)** of this subsection, an action under this subtitle shall be filed within three years after the death of the injured person.

(3) (I) THIS PARAGRAPH APPLIES ONLY TO A WRONGFUL DEATH CAUSE OF ACTION ARISING FROM CONDUCT THAT WOULD CONSTITUTE A CRIMINAL HOMICIDE UNDER STATE OR FEDERAL LAW.

(II) IF KNOWLEDGE OF A CAUSE OF ACTION OR THE IDENTITY OF A PERSON WHOSE WRONGFUL ACT CONTRIBUTED TO A HOMICIDE IS KEPT FROM A PARTY BY THE CONDUCT OF AN ADVERSE PARTY OR AN ACCESSORY OR ACCOMPLICE OF AN ADVERSE PARTY:

1. THE CAUSE OF ACTION SHALL BE DEEMED TO ACCRUE AT THE TIME THE PARTY DISCOVERED OR SHOULD HAVE DISCOVERED BY THE EXERCISE OF ORDINARY DILIGENCE THE HOMICIDE AND THE IDENTITY OF THE PERSON WHO CONTRIBUTED TO THE HOMICIDE;

2. A PRESUMPTION SHALL EXIST THAT THE PARTY SHOULD HAVE DISCOVERED BY THE EXERCISE OF ORDINARY DILIGENCE THE IDENTITY OF THE PERSON WHO CONTRIBUTED TO THE HOMICIDE AFTER:

A. A CHARGING DOCUMENT IS FILED AGAINST THE PERSON ALLEGED TO HAVE PARTICIPATED IN THE HOMICIDE; AND

B. THE CHARGING DOCUMENT IS UNSEALED AND AVAILABLE TO THE PUBLIC; AND

3. AN ACTION UNDER THIS SUBTITLE SHALL BE FILED WITHIN 3 YEARS AFTER THE DATE THAT THE CAUSE OF ACTION ACCRUES.

5–203.1.

(A) THIS SECTION APPLIES ONLY TO A SURVIVAL CAUSE OF ACTION ARISING FROM CONDUCT THAT CONSTITUTES A CRIMINAL HOMICIDE UNDER STATE OR FEDERAL LAW.

(B) IF KNOWLEDGE OF A CAUSE OF ACTION CONCERNING A HOMICIDE OR THE IDENTITY OF A PERSON WHO CONTRIBUTED TO THE HOMICIDE IS KEPT FROM A PARTY BY THE CONDUCT OF AN ADVERSE PARTY OR AN ACCESSORY OR ACCOMPLICE OF AN ADVERSE PARTY:

(1) THE CAUSE OF ACTION SHALL BE DEEMED TO ACCRUE AT THE TIME THE PARTY DISCOVERED OR SHOULD HAVE DISCOVERED BY THE EXERCISE OF ORDINARY DILIGENCE THE HOMICIDE AND THE IDENTITY OF THE PERSON WHO CONTRIBUTED TO THE HOMICIDE; AND

(2) A PRESUMPTION SHALL EXIST THAT THE PARTY SHOULD HAVE DISCOVERED BY THE EXERCISE OF ORDINARY DILIGENCE THE IDENTITY OF THE PERSON WHO CONTRIBUTED TO THE HOMICIDE AFTER:

(I) A CHARGING DOCUMENT IS FILED AGAINST THE PERSON ALLEGED TO HAVE PARTICIPATED IN THE HOMICIDE; AND

(II) THE CHARGING DOCUMENT IS UNSEALED AND AVAILABLE TO THE PUBLIC.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply retroactively and shall be applied to and interpreted to affect any action that is not barred by application of any time condition or limit before October 1, 2012, but may not revive any action that was barred by application of any time condition or limit before October 1, 2012.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 240

(House Bill 707)

AN ACT concerning

Wrongful Death and Survival Causes of Action – Criminal Homicide – Time Limits for Bringing Civil Action

FOR the purpose of providing that a wrongful death cause of action or survival cause of action arising from conduct that constitutes a criminal homicide under State or federal law accrues at a certain time under certain circumstances; establishing a presumption that a party should have discovered the identity of a person who contributed to a criminal homicide under certain circumstances; providing for the application of this Act; and generally relating to certain time limits for bringing certain civil actions concerning a criminal homicide.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 3–904(g)(1)
Annotated Code of Maryland
(2006 Replacement Volume and 2011 Supplement)

BY adding to
Article – Courts and Judicial Proceedings
Section 3–904(g)(3) and 5–203.1
Annotated Code of Maryland
(2006 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

3–904.

(g) (1) Except as provided in paragraph (2) **OR (3)** of this subsection, an action under this subtitle shall be filed within three years after the death of the injured person.

(3) (I) THIS PARAGRAPH APPLIES ONLY TO A WRONGFUL DEATH CAUSE OF ACTION ARISING FROM CONDUCT THAT WOULD CONSTITUTE A CRIMINAL HOMICIDE UNDER STATE OR FEDERAL LAW.

(II) IF KNOWLEDGE OF A CAUSE OF ACTION OR THE IDENTITY OF A PERSON WHOSE WRONGFUL ACT CONTRIBUTED TO A HOMICIDE IS KEPT FROM A PARTY BY THE CONDUCT OF AN ADVERSE PARTY OR AN ACCESSORY OR ACCOMPLICE OF AN ADVERSE PARTY:

1. THE CAUSE OF ACTION SHALL BE DEEMED TO ACCRUE AT THE TIME THE PARTY DISCOVERED OR SHOULD HAVE DISCOVERED BY THE EXERCISE OF ORDINARY DILIGENCE THE HOMICIDE AND THE IDENTITY OF THE PERSON WHO CONTRIBUTED TO THE HOMICIDE;

2. A PRESUMPTION SHALL EXIST THAT THE PARTY SHOULD HAVE DISCOVERED BY THE EXERCISE OF ORDINARY DILIGENCE THE IDENTITY OF THE PERSON WHO CONTRIBUTED TO THE HOMICIDE AFTER:

A. A CHARGING DOCUMENT IS FILED AGAINST THE PERSON ALLEGED TO HAVE PARTICIPATED IN THE HOMICIDE; AND

B. THE CHARGING DOCUMENT IS UNSEALED AND AVAILABLE TO THE PUBLIC; AND

3. AN ACTION UNDER THIS SUBTITLE SHALL BE FILED WITHIN 3 YEARS AFTER THE DATE THAT THE CAUSE OF ACTION ACCRUES.

5–203.1.

(A) THIS SECTION APPLIES ONLY TO A SURVIVAL CAUSE OF ACTION ARISING FROM CONDUCT THAT CONSTITUTES A CRIMINAL HOMICIDE UNDER STATE OR FEDERAL LAW.

(B) IF KNOWLEDGE OF A CAUSE OF ACTION CONCERNING A HOMICIDE OR THE IDENTITY OF A PERSON WHO CONTRIBUTED TO THE HOMICIDE IS KEPT FROM A PARTY BY THE CONDUCT OF AN ADVERSE PARTY OR AN ACCESSORY OR ACCOMPLICE OF AN ADVERSE PARTY:

(1) THE CAUSE OF ACTION SHALL BE DEEMED TO ACCRUE AT THE TIME THE PARTY DISCOVERED OR SHOULD HAVE DISCOVERED BY THE EXERCISE OF ORDINARY DILIGENCE THE HOMICIDE AND THE IDENTITY OF THE PERSON WHO CONTRIBUTED TO THE HOMICIDE; AND

(2) A PRESUMPTION SHALL EXIST THAT THE PARTY SHOULD HAVE DISCOVERED BY THE EXERCISE OF ORDINARY DILIGENCE THE IDENTITY OF THE PERSON WHO CONTRIBUTED TO THE HOMICIDE AFTER:

(I) A CHARGING DOCUMENT IS FILED AGAINST THE PERSON ALLEGED TO HAVE PARTICIPATED IN THE HOMICIDE; AND

(II) THE CHARGING DOCUMENT IS UNSEALED AND AVAILABLE TO THE PUBLIC.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply retroactively and shall be applied to and interpreted to affect any action that is not barred by application of any time condition or limit before October 1, 2012, but may not revive any action that was barred by application of any time condition or limit before October 1, 2012.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 241

(Senate Bill 479)

AN ACT concerning

Health Occupations – Physician Assistants – Patient's Access to Supervising Physician

FOR the purpose of ~~requiring certain patients to have access to certain physicians who supervise certain physician assistants under certain circumstances;~~ repealing a requirement that certain patients be seen by certain physicians who supervise certain physician assistants under certain circumstances; requiring certain delegation agreements to contain a certain statement; and generally relating to a patient's access to a physician assistant's supervising physician.

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 15–301 and 15–302(b)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, without amendments,
Article – Health Occupations
Section 15–302(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health Occupations

15–301.

(a) Nothing in this title may be construed to authorize a physician assistant to practice independent of a primary or alternate supervising physician.

(b) A license issued to a physician assistant shall limit the physician assistant's scope of practice to medical acts:

(1) Delegated by the primary or alternate supervising physician;

(2) Appropriate to the education, training, and experience of the physician assistant;

(3) Customary to the practice of the primary or alternate supervising physician; and

(4) Consistent with the delegation agreement filed with the Board.

(c) Patient services that may be provided by a physician assistant include:

(1) (i) Taking complete, detailed, and accurate patient histories; and

(ii) Reviewing patient records to develop comprehensive medical status reports;

(2) Performing physical examinations and recording all pertinent patient data;

(3) Interpreting and evaluating patient data as authorized by the primary or alternate supervising physician for the purpose of determining management and treatment of patients;

(4) Initiating requests for or performing diagnostic procedures as indicated by pertinent data and as authorized by the supervising physician;

(5) Providing instructions and guidance regarding medical care matters to patients;

(6) Assisting the primary or alternate supervising physician in the delivery of services to patients who require medical care in the home and in health care institutions, including:

(i) Recording patient progress notes;

(ii) Issuing diagnostic orders; and

(iii) Transcribing or executing specific orders at the direction of the primary or alternate supervising physician; and

(7) Exercising prescriptive authority under a delegation agreement and in accordance with § 15–302.2 of this subtitle.

(d) (1) Except as otherwise provided in this title, an individual shall be licensed by the Board before the individual may practice as a physician assistant.

(2) Except as otherwise provided in this title, a physician may not supervise a physician assistant in the performance of delegated medical acts without filing a completed delegation agreement with the Board.

(3) Except as otherwise provided in this title or in a medical emergency, a physician assistant may not perform any medical act for which:

(i) The individual has not been licensed; and

(ii) The medical acts have not been delegated by a primary or alternate supervising physician.

(e) A physician assistant is the agent of the primary or alternate supervising physician in the performance of all practice–related activities, including the oral, written, or electronic ordering of diagnostic, therapeutic, and other medical services.

(f) Except as provided in subsection (g) of this section, the following individuals may practice as a physician assistant without a license:

(1) A physician assistant student enrolled in a physician assistant educational program that is accredited by the Accreditation Review Commission on Education for the Physician Assistant or its successor and approved by the Board; or

(2) A physician assistant employed in the service of the federal government while performing duties incident to that employment.

(g) A physician may not delegate prescriptive authority to a physician assistant student in a training program that is accredited by the Accreditation Review Commission on Education for the Physician Assistant or its successor.

(h) (1) If a medical act that is to be delegated under this section is a part of the practice of a health occupation that is regulated under this article by another board, any rule or regulation concerning that medical act shall be adopted jointly by the State Board of Physicians and the board that regulates the other health occupation.

(2) If the two boards cannot agree on a proposed rule or regulation, the proposal shall be submitted to the Secretary for a final decision.

~~(i) Notwithstanding the provisions of this section, a patient being treated regularly~~ **[**~~for a life–threatening, chronic, degenerative, or disabling condition shall be seen initially by~~**] SHALL HAVE ACCESS TO** ~~the supervising physician~~ **[**~~and as~~**]:**

~~**(1) ON REQUEST; OR**~~

~~**(2) AS** frequently as the patient's **CLINICAL** condition requires~~**[**~~, but no less than within every five appointments or within 180 days, whichever occurs first~~**]**~~.~~

15–302.

(a) A physician may delegate medical acts to a physician assistant only after:

(1) A delegation agreement has been executed and filed with the Board; and

(2) Any advanced duties have been authorized as required under subsection (c) of this section.

(b) The delegation agreement shall contain:

(1) A description of the qualifications of the primary supervising physician and physician assistant;

(2) A description of the settings in which the physician assistant will practice;

(3) A description of the continuous physician supervision mechanisms that are reasonable and appropriate to the practice setting;

(4) A description of the delegated medical acts that are within the primary or alternate supervising physician's scope of practice and require specialized education or training that is consistent with accepted medical practice;

(5) An attestation that all medical acts to be delegated to the physician assistant are within the scope of practice of the primary or alternate supervising physician and appropriate to the physician assistant's education, training, and level of competence;

(6) An attestation of continuous supervision of the physician assistant by the primary supervising physician through the mechanisms described in the delegation agreement;

(7) An attestation by the primary supervising physician of the physician's acceptance of responsibility for any care given by the physician assistant;

(8) A description prepared by the primary supervising physician of the process by which the physician assistant's practice is reviewed appropriate to the practice setting and consistent with current standards of acceptable medical practice;

(9) An attestation by the primary supervising physician that the physician will respond in a timely manner when contacted by the physician assistant; **[**and**]**

(10) THE FOLLOWING STATEMENT: "THE PRIMARY SUPERVISING PHYSICIAN AND THE PHYSICIAN ASSISTANT ATTEST THAT:

(I) THEY WILL ESTABLISH A PLAN FOR THE TYPES OF CASES THAT REQUIRE A PHYSICIAN PLAN OF CARE OR REQUIRE THAT THE PATIENT INITIALLY OR PERIODICALLY BE SEEN BY THE SUPERVISING PHYSICIAN; AND

(II) THE PATIENT WILL BE PROVIDED ACCESS TO THE SUPERVISING PHYSICIAN ON REQUEST"; AND

[(10)**]** **(11)** Any other information deemed necessary by the Board to carry out the provisions of this subtitle.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 242

(House Bill 584)

AN ACT concerning

Health Occupations – Physician Assistants – Patient's Access to Supervising Physician

FOR the purpose of ~~requiring certain patients to have access to certain physicians who supervise certain physician assistants under certain circumstances;~~ repealing a requirement that certain patients be seen by certain physicians who supervise certain physician assistants under certain circumstances; requiring certain delegation agreements to contain a certain statement; and generally relating to a patient's access to a physician assistant's supervising physician.

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 15–301 and 15–302(b)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, without amendments,
Article – Health Occupations
Section 15–302(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health Occupations

15–301.

(a) Nothing in this title may be construed to authorize a physician assistant to practice independent of a primary or alternate supervising physician.

(b) A license issued to a physician assistant shall limit the physician assistant's scope of practice to medical acts:

(1) Delegated by the primary or alternate supervising physician;

(2) Appropriate to the education, training, and experience of the physician assistant;

(3) Customary to the practice of the primary or alternate supervising physician; and

(4) Consistent with the delegation agreement filed with the Board.

(c) Patient services that may be provided by a physician assistant include:

(1) (i) Taking complete, detailed, and accurate patient histories; and

(ii) Reviewing patient records to develop comprehensive medical status reports;

(2) Performing physical examinations and recording all pertinent patient data;

(3) Interpreting and evaluating patient data as authorized by the primary or alternate supervising physician for the purpose of determining management and treatment of patients;

(4) Initiating requests for or performing diagnostic procedures as indicated by pertinent data and as authorized by the supervising physician;

(5) Providing instructions and guidance regarding medical care matters to patients;

(6) Assisting the primary or alternate supervising physician in the delivery of services to patients who require medical care in the home and in health care institutions, including:

(i) Recording patient progress notes;

(ii) Issuing diagnostic orders; and

(iii) Transcribing or executing specific orders at the direction of the primary or alternate supervising physician; and

(7) Exercising prescriptive authority under a delegation agreement and in accordance with § 15–302.2 of this subtitle.

(d) (1) Except as otherwise provided in this title, an individual shall be licensed by the Board before the individual may practice as a physician assistant.

(2) Except as otherwise provided in this title, a physician may not supervise a physician assistant in the performance of delegated medical acts without filing a completed delegation agreement with the Board.

(3) Except as otherwise provided in this title or in a medical emergency, a physician assistant may not perform any medical act for which:

(i) The individual has not been licensed; and

(ii) The medical acts have not been delegated by a primary or alternate supervising physician.

(e) A physician assistant is the agent of the primary or alternate supervising physician in the performance of all practice–related activities, including the oral, written, or electronic ordering of diagnostic, therapeutic, and other medical services.

(f) Except as provided in subsection (g) of this section, the following individuals may practice as a physician assistant without a license:

(1) A physician assistant student enrolled in a physician assistant educational program that is accredited by the Accreditation Review Commission on Education for the Physician Assistant or its successor and approved by the Board; or

(2) A physician assistant employed in the service of the federal government while performing duties incident to that employment.

(g) A physician may not delegate prescriptive authority to a physician assistant student in a training program that is accredited by the Accreditation Review Commission on Education for the Physician Assistant or its successor.

(h) (1) If a medical act that is to be delegated under this section is a part of the practice of a health occupation that is regulated under this article by another board, any rule or regulation concerning that medical act shall be adopted jointly by the State Board of Physicians and the board that regulates the other health occupation.

(2) If the two boards cannot agree on a proposed rule or regulation, the proposal shall be submitted to the Secretary for a final decision.

~~(i) Notwithstanding the provisions of this section, a patient being treated regularly~~ **[**~~for a life–threatening, chronic, degenerative, or disabling condition shall be seen initially by~~**] SHALL HAVE ACCESS TO** ~~the supervising physician~~ **[**~~and as~~**]:**

~~(1) ON REQUEST; OR~~

~~(2) AS~~ ~~frequently as the patient's~~ **CLINICAL** ~~condition requires~~**[**~~, but no less than within every five appointments or within 180 days, whichever occurs first~~**]**~~.~~

15–302.

(a) A physician may delegate medical acts to a physician assistant only after:

(1) A delegation agreement has been executed and filed with the Board; and

(2) Any advanced duties have been authorized as required under subsection (c) of this section.

(b) The delegation agreement shall contain:

(1) A description of the qualifications of the primary supervising physician and physician assistant;

(2) A description of the settings in which the physician assistant will practice;

(3) A description of the continuous physician supervision mechanisms that are reasonable and appropriate to the practice setting;

(4) A description of the delegated medical acts that are within the primary or alternate supervising physician's scope of practice and require specialized education or training that is consistent with accepted medical practice;

(5) An attestation that all medical acts to be delegated to the physician assistant are within the scope of practice of the primary or alternate supervising physician and appropriate to the physician assistant's education, training, and level of competence;

(6) An attestation of continuous supervision of the physician assistant by the primary supervising physician through the mechanisms described in the delegation agreement;

(7) An attestation by the primary supervising physician of the physician's acceptance of responsibility for any care given by the physician assistant;

(8) A description prepared by the primary supervising physician of the process by which the physician assistant's practice is reviewed appropriate to the practice setting and consistent with current standards of acceptable medical practice;

(9) An attestation by the primary supervising physician that the physician will respond in a timely manner when contacted by the physician assistant; **[**and**]**

(10) THE FOLLOWING STATEMENT: "THE PRIMARY SUPERVISING PHYSICIAN AND THE PHYSICIAN ASSISTANT ATTEST THAT:

(I) THEY WILL ESTABLISH A PLAN FOR THE TYPES OF CASES THAT REQUIRE A PHYSICIAN PLAN OF CARE OR REQUIRE THAT THE PATIENT INITIALLY OR PERIODICALLY BE SEEN BY THE SUPERVISING PHYSICIAN; AND

(II) THE PATIENT WILL BE PROVIDED ACCESS TO THE SUPERVISING PHYSICIAN ON REQUEST"; AND

[(10)**] (11)** Any other information deemed necessary by the Board to carry out the provisions of this subtitle.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 243

(Senate Bill 489)

AN ACT concerning

Bail Bondsmen – ~~Qualifications for Licensure –~~ Acceptance of Installment Contracts

FOR the purpose of ~~establishing certain qualifications for licensure as a bail bondsman;~~ authorizing certain bail bondsmen to arrange to accept payment for the premium charged for a bail bond in installments; providing that, if a bail bondsman arranges to accept payment of a bail bond premium in installments, the installment agreement shall include certain information; requiring a bail bondsman to secure a certain affidavit of surety containing certain information under certain circumstances; requiring a bail bondsman, if arranging to accept payment of a bail bond premium in installments, to take certain actions and keep certain records; requiring a bail bondsman to keep certain records in a certain location and to make certain records available to the Maryland Insurance Commissioner for inspection; requiring bail bondsmen to certify to the Commissioner at a certain time the accuracy and truth of certain records; providing certain penalties for certain violations of this Act; providing for the application of this Act; and generally relating to the regulation of surety bondsmen.

BY repealing and reenacting, without amendments,
Article – Criminal Procedure
Section 5–203

Annotated Code of Maryland
(2008 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Insurance
Section 10–302 ~~and 10–305~~
Annotated Code of Maryland
(2011 Replacement Volume)

BY adding to
Article – Insurance
Section 10–309
Annotated Code of Maryland
(2011 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Procedure

5–203.

(a) (1) Subject to paragraph (2) of this subsection, a circuit court may adopt rules setting the terms and conditions of bail bonds filed in that court and rules on the qualifications of and fees charged by bail bondsmen.

(2) Notwithstanding any other law or rule to the contrary, if expressly authorized by the court, a defendant or a private surety acting for the defendant may post a bail bond by executing it in the full penalty amount and depositing with the clerk of court the greater of 10% of the penalty amount or $25.

(3) A bail bond commissioner may be appointed to carry out rules adopted under this section.

(4) A violation of a rule adopted under this section is contempt of court and shall be punished in accordance with Title 15, Chapter 200 of the Maryland Rules.

(5) A person may not engage in the business of becoming a surety for compensation on bail bonds in criminal cases unless the person is:

(i) approved in accordance with any rules adopted under this section; and

(ii) if required under the Insurance Article, licensed in accordance with the Insurance Article.

(b) (1) In the circuit courts in the Seventh Judicial Circuit, a bail bondsman approved under subsection (a) of this section shall pay a license fee of 1% of the gross value of all bail bonds written in all courts of the circuit, if the fee is approved by the court of the county in which it applies.

(2) The fee shall be paid to the court as required by the rules of court and shall be used to pay the expenses of carrying out this section.

(3) Any absolute bail bond forfeitures collected may be used to pay the expenses of carrying out this section.

Article – Insurance

10–302.

[This**]** **EXCEPT AS PROVIDED IN § 10–309 OF THIS SUBTITLE, THIS** subtitle does not apply to bail bondsmen that provide bail bondsman services under § 5–203 of the Criminal Procedure Article.

~~10–305.~~

~~**(A)** An applicant for a license must be an individual who meets the requirements for acting as a property and casualty insurance producer under Subtitle 1 of this title.~~

~~**(B)** **TO QUALIFY FOR A LICENSE, AN APPLICANT MUST:**~~

~~**(1)** **HAVE BEEN EMPLOYED REGULARLY BY A LICENSED BAIL BONDSMAN FOR A PERIOD TOTALING AT LEAST 1 YEAR; AND**~~

~~**(2)** **CERTIFY TO THE COMMISSIONER THAT THE APPLICANT HAS COMPLETED THE PERIOD OF EMPLOYMENT REQUIRED UNDER THIS SUBSECTION.**~~

10–309.

(A) THIS SECTION APPLIES TO BAIL BONDSMEN LICENSED UNDER THIS SUBTITLE AND TO BAIL BONDSMEN THAT PROVIDE BAIL BONDSMAN SERVICES UNDER § 5–203 OF THE CRIMINAL PROCEDURE ARTICLE.

(B) A BAIL BONDSMAN MAY ARRANGE TO ACCEPT PAYMENT FOR THE PREMIUM CHARGED FOR A BAIL BOND IN INSTALLMENTS.

(C) IF A BAIL BONDSMAN ARRANGES TO ACCEPT PAYMENT FOR THE PREMIUM CHARGED FOR A BAIL BOND IN INSTALLMENTS, THE INSTALLMENT AGREEMENT SHALL INCLUDE:

(1) THE TOTAL AMOUNT OF THE PREMIUM OWED;

(2) THE AMOUNT OF ANY DOWN PAYMENT MADE;

(3) THE BALANCE AMOUNT OWED TO THE BAIL BONDSMAN OR THE BAIL BONDSMAN'S INSURER;

(4) THE AMOUNT AND DUE DATE OF EACH INSTALLMENT PAYMENT; AND

(5) THE TOTAL NUMBER OF INSTALLMENT PAYMENTS REQUIRED TO PAY THE AMOUNT ~~FINANCED~~ DUE.

(D) IF A BAIL BONDSMAN ARRANGES TO ACCEPT PAYMENT OF THE PREMIUM CHARGED FOR A BAIL BOND IN INSTALLMENTS, THE BAIL BONDSMAN SHALL:

(1) SECURE A SIGNED AFFIDAVIT OF SURETY BY THE DEFENDANT OR THE INSURER CONTAINING THE INFORMATION REQUIRED UNDER SUBSECTION (C) OF THIS SECTION AND PROVIDE THE AFFIDAVIT OF SURETY TO THE COURT;

(2) TAKE ALL NECESSARY STEPS TO COLLECT THE TOTAL AMOUNT OWED BY THE INSURED, INCLUDING SEEKING REMEDIES PROVIDED BY LAW FOR THE COLLECTION OF DEBTS; AND

(3) KEEP AND MAINTAIN RECORDS OF ALL COLLECTION ATTEMPTS, INSTALLMENT AGREEMENTS, AND AFFIDAVITS OF SURETY.

(E) (1) THE BAIL BONDSMAN SHALL KEEP AND MAINTAIN THE RECORDS REQUIRED UNDER THIS SECTION IN AN OFFICE THAT IS GENERALLY ACCESSIBLE TO THE PUBLIC DURING NORMAL BUSINESS HOURS.

(2) THE BAIL BONDSMAN SHALL MAKE THE RECORDS REQUIRED UNDER THIS SECTION AVAILABLE TO THE COMMISSIONER FOR INSPECTION.

(3) EACH YEAR, EACH BAIL BONDSMAN SHALL CERTIFY TO THE COMMISSIONER THAT THE RECORDS REQUIRED TO BE KEPT AND MAINTAINED UNDER THIS SECTION ARE ACCURATE AND TRUE.

(F) IF A BAIL BONDSMAN VIOLATES ANY PROVISION OF THIS SECTION, THE COMMISSIONER MAY TAKE ANY ACTIONS AUTHORIZED UNDER § 10–126 OF THIS TITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 244

(House Bill 742)

AN ACT concerning

Bail Bondsmen – ~~Qualifications for Licensure –~~ Acceptance of Installment Contracts

FOR the purpose of ~~establishing certain qualifications for licensure as a bail bondsman;~~ authorizing certain bail bondsmen to arrange to accept payment for the premium charged for a bail bond in installments; providing that, if a bail bondsman arranges to accept payment of a bail bond premium in installments, the installment agreement shall include certain information; requiring a bail bondsman to secure a certain affidavit of surety containing certain information under certain circumstances; requiring a bail bondsman, if arranging to accept payment of a bail bond premium in installments, to take certain actions and keep certain records; requiring a bail bondsman to keep certain records in a certain location and to make certain records available to the Maryland Insurance Commissioner for inspection; requiring bail bondsmen to certify to the Commissioner at a certain time the accuracy and truth of certain records; providing certain penalties for certain violations of this Act; providing for the application of this Act; and generally relating to the regulation of surety bondsmen.

BY repealing and reenacting, without amendments,
Article – Criminal Procedure
Section 5–203
Annotated Code of Maryland
(2008 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Insurance
Section 10–302 ~~and 10–305~~
Annotated Code of Maryland
(2011 Replacement Volume)

BY adding to
Article – Insurance
Section 10–309
Annotated Code of Maryland
(2011 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Procedure

5–203.

(a) (1) Subject to paragraph (2) of this subsection, a circuit court may adopt rules setting the terms and conditions of bail bonds filed in that court and rules on the qualifications of and fees charged by bail bondsmen.

(2) Notwithstanding any other law or rule to the contrary, if expressly authorized by the court, a defendant or a private surety acting for the defendant may post a bail bond by executing it in the full penalty amount and depositing with the clerk of court the greater of 10% of the penalty amount or $25.

(3) A bail bond commissioner may be appointed to carry out rules adopted under this section.

(4) A violation of a rule adopted under this section is contempt of court and shall be punished in accordance with Title 15, Chapter 200 of the Maryland Rules.

(5) A person may not engage in the business of becoming a surety for compensation on bail bonds in criminal cases unless the person is:

(i) approved in accordance with any rules adopted under this section; and

(ii) if required under the Insurance Article, licensed in accordance with the Insurance Article.

(b) (1) In the circuit courts in the Seventh Judicial Circuit, a bail bondsman approved under subsection (a) of this section shall pay a license fee of 1% of the gross value of all bail bonds written in all courts of the circuit, if the fee is approved by the court of the county in which it applies.

(2) The fee shall be paid to the court as required by the rules of court and shall be used to pay the expenses of carrying out this section.

(3) Any absolute bail bond forfeitures collected may be used to pay the expenses of carrying out this section.

Article – Insurance

10–302.

[This**]** **EXCEPT AS PROVIDED IN § 10–309 OF THIS SUBTITLE, THIS** subtitle does not apply to bail bondsmen that provide bail bondsman services under § 5–203 of the Criminal Procedure Article.

~~10–305.~~

~~**(A)** An applicant for a license must be an individual who meets the requirements for acting as a property and casualty insurance producer under Subtitle 1 of this title.~~

~~**(B)** **TO QUALIFY FOR A LICENSE, AN APPLICANT MUST:**~~

~~**(1)** **HAVE BEEN EMPLOYED REGULARLY BY A LICENSED BAIL BONDSMAN FOR A PERIOD TOTALING AT LEAST 1 YEAR; AND**~~

~~**(2)** **CERTIFY TO THE COMMISSIONER THAT THE APPLICANT HAS COMPLETED THE PERIOD OF EMPLOYMENT REQUIRED UNDER THIS SUBSECTION.**~~

10–309.

(A) THIS SECTION APPLIES TO BAIL BONDSMEN LICENSED UNDER THIS SUBTITLE AND TO BAIL BONDSMEN THAT PROVIDE BAIL BONDSMAN SERVICES UNDER § 5–203 OF THE CRIMINAL PROCEDURE ARTICLE.

(B) A BAIL BONDSMAN MAY ARRANGE TO ACCEPT PAYMENT FOR THE PREMIUM CHARGED FOR A BAIL BOND IN INSTALLMENTS.

(C) IF A BAIL BONDSMAN ARRANGES TO ACCEPT PAYMENT FOR THE PREMIUM CHARGED FOR A BAIL BOND IN INSTALLMENTS, THE INSTALLMENT AGREEMENT SHALL INCLUDE:

(1) THE TOTAL AMOUNT OF THE PREMIUM OWED;

(2) THE AMOUNT OF ANY DOWN PAYMENT MADE;

(3) THE BALANCE AMOUNT OWED TO THE BAIL BONDSMAN OR THE BAIL BONDSMAN'S INSURER;

(4) THE AMOUNT AND DUE DATE OF EACH INSTALLMENT PAYMENT; AND

(5) THE TOTAL NUMBER OF INSTALLMENT PAYMENTS REQUIRED TO PAY THE AMOUNT ~~FINANCED~~ DUE.

(D) IF A BAIL BONDSMAN ARRANGES TO ACCEPT PAYMENT OF THE PREMIUM CHARGED FOR A BAIL BOND IN INSTALLMENTS, THE BAIL BONDSMAN SHALL:

(1) SECURE A SIGNED AFFIDAVIT OF SURETY BY THE DEFENDANT OR THE INSURER CONTAINING THE INFORMATION REQUIRED UNDER SUBSECTION (C) OF THIS SECTION AND PROVIDE THE AFFIDAVIT OF SURETY TO THE COURT;

(2) TAKE ALL NECESSARY STEPS TO COLLECT THE TOTAL AMOUNT OWED BY THE INSURED, INCLUDING SEEKING REMEDIES PROVIDED BY LAW FOR THE COLLECTION OF DEBTS; AND

(3) KEEP AND MAINTAIN RECORDS OF ALL COLLECTION ATTEMPTS, INSTALLMENT AGREEMENTS, AND AFFIDAVITS OF SURETY.

(E) (1) THE BAIL BONDSMAN SHALL KEEP AND MAINTAIN THE RECORDS REQUIRED UNDER THIS SECTION IN AN OFFICE THAT IS GENERALLY ACCESSIBLE TO THE PUBLIC DURING NORMAL BUSINESS HOURS.

(2) THE BAIL BONDSMAN SHALL MAKE THE RECORDS REQUIRED UNDER THIS SECTION AVAILABLE TO THE COMMISSIONER FOR INSPECTION.

(3) EACH YEAR, EACH BAIL BONDSMAN SHALL CERTIFY TO THE COMMISSIONER THAT THE RECORDS REQUIRED TO BE KEPT AND MAINTAINED UNDER THIS SECTION ARE ACCURATE AND TRUE.

(F) IF A BAIL BONDSMAN VIOLATES ANY PROVISION OF THIS SECTION, THE COMMISSIONER MAY TAKE ANY ACTIONS AUTHORIZED UNDER § 10–126 OF THIS TITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 245

(Senate Bill 506)

AN ACT concerning

Vehicle Laws – Provisional Driver's Licenses – Driver Education Requirements

FOR the purpose of reducing the period of time that certain individuals at least a certain age who hold a learner's instructional permit are required to wait before taking certain examinations for a provisional driver's license; ~~establishing that~~ *altering* certain driving practice requirements ~~and a requirement to complete a certain driver skills log book~~ before taking certain examinations for a provisional driver's license ~~do not~~ *that* apply to an individual at least a certain age; and generally relating to driver education requirements for obtaining a provisional driver's license.

BY repealing and reenacting, with amendments,
Article – Transportation
Section 16–105(d) and 16–111(b)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Transportation

16–105.

(d) (1) This subsection applies to an individual who:

(i) Seeks to obtain an original driver's license under this subtitle; and

(ii) Does not qualify for a learner's instructional permit under subsection (e) of this section.

(2) An individual **UNDER THE AGE OF 25 YEARS** who holds a learner's instructional permit may not take a driver skills examination or driver road examination for a provisional license:

(i) Sooner than 9 months following the later of:

1. The date that the individual first obtains the learner's instructional permit; or

2. The date the individual was convicted of, or granted probation before judgment under § 6–220 of the Criminal Procedure Article for, a moving violation;

(ii) Until after successful completion of:

1. The driver education program approved under Subtitle 5 of this title, consisting of at least 30 hours of classroom instruction and at least 6 hours of highway driving instruction; and

2. At least 60 hours, 10 hours of which must occur during the period beginning 30 minutes before sunset and ending 30 minutes after sunrise, of behind–the–wheel driving practice supervised by an individual who:

A. Holds a valid driver's license;

B. Is at least 21 years old; and

C. Has been licensed to drive for at least 3 years; and

(iii) Unless the individual submits, in accordance with the Administration's regulations, a completed skills log book signed by:

1. Each supervising driver who certifies that the individual has satisfactorily demonstrated a required skill and has completed the driving practice requirements of item (ii)2 of this paragraph; and

2. If a signature of a parent, guardian, or other person is required under § 16–107 of this subtitle, the parent, guardian, or other person who signs the individual's application under that section.

(3) AN INDIVIDUAL AT LEAST 25 YEARS OLD WHO HOLDS A LEARNER'S INSTRUCTIONAL PERMIT AND HAS NOT BEEN CONVICTED OF, OR GRANTED PROBATION BEFORE JUDGMENT FOR, A MOVING VIOLATION MAY NOT TAKE A DRIVER SKILLS EXAMINATION OR DRIVER ROAD EXAMINATION FOR A PROVISIONAL LICENSE:

(I) SOONER THAN 45 DAYS FOLLOWING THE DATE THAT THE INDIVIDUAL FIRST OBTAINS THE LEARNER'S INSTRUCTIONAL PERMIT; ~~AND~~

(II) UNTIL AFTER SUCCESSFUL COMPLETION OF ~~A~~*:*

1. ***A*** **STANDARD DRIVER EDUCATION PROGRAM APPROVED UNDER SUBTITLE 5 OF THIS TITLE, CONSISTING OF AT LEAST 30**

HOURS OF CLASSROOM INSTRUCTION AND AT LEAST 6 HOURS OF HIGHWAY DRIVING INSTRUCTION*; AND*

2. AT LEAST 14 HOURS, 3 HOURS OF WHICH MUST OCCUR DURING THE PERIOD BEGINNING 30 MINUTES BEFORE SUNSET AND ENDING 30 MINUTES AFTER SUNRISE, OF BEHIND–THE–WHEEL DRIVING PRACTICE SUPERVISED BY AN INDIVIDUAL WHO:

A. HOLDS A VALID DRIVER'S LICENSE;

B. IS AT LEAST 21 YEARS OLD; AND

C. HAS BEEN LICENSED TO DRIVE FOR AT LEAST 3 YEARS; AND

***(III) UNLESS THE INDIVIDUAL SUBMITS, IN ACCORDANCE WITH THE ADMINISTRATION'S REGULATIONS, A COMPLETED SKILLS LOG BOOK SIGNED BY EACH SUPERVISING DRIVER WHO CERTIFIES THAT THE INDIVIDUAL HAS SATISFACTORILY DEMONSTRATED A REQUIRED SKILL AND HAS COMPLETED THE DRIVING PRACTICE REQUIREMENTS UNDER THIS PARAGRAPH*.**

(4) AN INDIVIDUAL AT LEAST 25 YEARS OLD WHO HOLDS A LEARNER'S INSTRUCTIONAL PERMIT AND HAS BEEN CONVICTED OF, OR GRANTED PROBATION BEFORE JUDGMENT FOR, AT LEAST ONE MOVING VIOLATION MAY NOT TAKE A DRIVER SKILLS EXAMINATION OR DRIVER ROAD EXAMINATION FOR A PROVISIONAL LICENSE:

(I) SOONER THAN 9 MONTHS FOLLOWING THE MOST RECENT DATE THE INDIVIDUAL WAS CONVICTED OF, OR GRANTED PROBATION BEFORE JUDGMENT FOR, A MOVING VIOLATION; ~~AND~~

(II) UNTIL AFTER SUCCESSFUL COMPLETION OF ~~A~~*:*

1. A* STANDARD DRIVER EDUCATION PROGRAM APPROVED UNDER SUBTITLE 5 OF THIS TITLE, CONSISTING OF AT LEAST 30 HOURS OF CLASSROOM INSTRUCTION AND AT LEAST 6 HOURS OF HIGHWAY DRIVING INSTRUCTION*; AND

2. AT LEAST 14 HOURS, 3 HOURS OF WHICH MUST OCCUR DURING THE PERIOD BEGINNING 30 MINUTES BEFORE SUNSET AND ENDING 30 MINUTES AFTER SUNRISE, OF BEHIND–THE–WHEEL DRIVING PRACTICE SUPERVISED BY AN INDIVIDUAL WHO:

A. HOLDS A VALID DRIVER'S LICENSE;

B. IS AT LEAST 21 YEARS OLD; AND

C. HAS BEEN LICENSED TO DRIVE FOR AT LEAST 3 YEARS; AND

(III) UNLESS THE INDIVIDUAL SUBMITS, IN ACCORDANCE WITH THE ADMINISTRATION'S REGULATIONS, A COMPLETED SKILLS LOG BOOK SIGNED BY EACH SUPERVISING DRIVER WHO CERTIFIES THAT THE INDIVIDUAL HAS SATISFACTORILY DEMONSTRATED A REQUIRED SKILL AND HAS COMPLETED THE DRIVING PRACTICE REQUIREMENTS UNDER THIS PARAGRAPH.

[(3)**] (5)** A learner's instructional permit issued to an individual described in paragraph (1) of this subsection expires 2 years after the date of issuance.

16–111.

(b) An applicant is entitled to receive a provisional license if the applicant:

(1) Meets the minimum age required under § 16–103(c)(2) of this subtitle;

(2) Satisfies the learner's instructional permit requirements under § 16–105(d)(2)**, (3), OR (4)** of this subtitle;

(3) Passes a driver skills or driver road examination administered under this subtitle;

(4) Surrenders any learner's instructional permit issued to the applicant; and

(5) Pays the fee established under this subtitle.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 246

(House Bill 292)

AN ACT concerning

Vehicle Laws – Provisional Driver's Licenses – Driver Education Requirements

FOR the purpose of reducing the period of time that certain individuals at least a certain age who hold a learner's instructional permit are required to wait before taking certain examinations for a provisional driver's license; ~~establishing that~~ altering certain driving practice requirements ~~and a requirement to complete a certain driver skills log book~~ before taking certain examinations for a provisional driver's license ~~do not~~ that apply to an individual at least a certain age; and generally relating to driver education requirements for obtaining a provisional driver's license.

BY repealing and reenacting, with amendments,
Article – Transportation
Section 16–105(d) and 16–111(b)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Transportation

16–105.

(d) (1) This subsection applies to an individual who:

(i) Seeks to obtain an original driver's license under this subtitle; and

(ii) Does not qualify for a learner's instructional permit under subsection (e) of this section.

(2) An individual **UNDER THE AGE OF 25 YEARS** who holds a learner's instructional permit may not take a driver skills examination or driver road examination for a provisional license:

(i) Sooner than 9 months following the later of:

1. The date that the individual first obtains the learner's instructional permit; or

2. The date the individual was convicted of, or granted probation before judgment under § 6–220 of the Criminal Procedure Article for, a moving violation;

(ii) Until after successful completion of:

1. The driver education program approved under Subtitle 5 of this title, consisting of at least 30 hours of classroom instruction and at least 6 hours of highway driving instruction; and

2. At least 60 hours, 10 hours of which must occur during the period beginning 30 minutes before sunset and ending 30 minutes after sunrise, of behind–the–wheel driving practice supervised by an individual who:

A. Holds a valid driver's license;

B. Is at least 21 years old; and

C. Has been licensed to drive for at least 3 years; and

(iii) Unless the individual submits, in accordance with the Administration's regulations, a completed skills log book signed by:

1. Each supervising driver who certifies that the individual has satisfactorily demonstrated a required skill and has completed the driving practice requirements of item (ii)2 of this paragraph; and

2. If a signature of a parent, guardian, or other person is required under § 16–107 of this subtitle, the parent, guardian, or other person who signs the individual's application under that section.

(3) AN INDIVIDUAL AT LEAST 25 YEARS OLD WHO HOLDS A LEARNER'S INSTRUCTIONAL PERMIT AND HAS NOT BEEN CONVICTED OF, OR GRANTED PROBATION BEFORE JUDGMENT FOR, A MOVING VIOLATION MAY NOT TAKE A DRIVER SKILLS EXAMINATION OR DRIVER ROAD EXAMINATION FOR A PROVISIONAL LICENSE:

(I) SOONER THAN 45 DAYS FOLLOWING THE DATE THAT THE INDIVIDUAL FIRST OBTAINS THE LEARNER'S INSTRUCTIONAL PERMIT; ~~AND~~

(II) UNTIL AFTER SUCCESSFUL COMPLETION OF ~~A~~:

1. A STANDARD DRIVER EDUCATION PROGRAM APPROVED UNDER SUBTITLE 5 OF THIS TITLE, CONSISTING OF AT LEAST 30 HOURS OF CLASSROOM INSTRUCTION AND AT LEAST 6 HOURS OF HIGHWAY DRIVING INSTRUCTION; AND

2. AT LEAST ~~10~~ *14* HOURS, 3 HOURS OF WHICH MUST OCCUR DURING THE PERIOD BEGINNING 30 MINUTES BEFORE SUNSET AND ENDING 30 MINUTES AFTER SUNRISE, OF BEHIND–THE–WHEEL DRIVING PRACTICE SUPERVISED BY AN INDIVIDUAL WHO:

A. HOLDS A VALID DRIVER'S LICENSE;

B. IS AT LEAST 21 YEARS OLD; AND

C. HAS BEEN LICENSED TO DRIVE FOR AT LEAST 3 YEARS; AND

(III) UNLESS THE INDIVIDUAL SUBMITS, IN ACCORDANCE WITH THE ADMINISTRATION'S REGULATIONS, A COMPLETED SKILLS LOG BOOK SIGNED BY EACH SUPERVISING DRIVER WHO CERTIFIES THAT THE INDIVIDUAL HAS SATISFACTORILY DEMONSTRATED A REQUIRED SKILL AND HAS COMPLETED THE DRIVING PRACTICE REQUIREMENTS UNDER THIS PARAGRAPH.

(4) AN INDIVIDUAL AT LEAST 25 YEARS OLD WHO HOLDS A LEARNER'S INSTRUCTIONAL PERMIT AND HAS BEEN CONVICTED OF, OR GRANTED PROBATION BEFORE JUDGMENT FOR, AT LEAST ONE MOVING VIOLATION MAY NOT TAKE A DRIVER SKILLS EXAMINATION OR DRIVER ROAD EXAMINATION FOR A PROVISIONAL LICENSE:

(I) SOONER THAN 9 MONTHS FOLLOWING THE MOST RECENT DATE THE INDIVIDUAL WAS CONVICTED OF, OR GRANTED PROBATION BEFORE JUDGMENT FOR, A MOVING VIOLATION; ~~AND~~

(II) UNTIL AFTER SUCCESSFUL COMPLETION OF ~~A~~:

1. A STANDARD DRIVER EDUCATION PROGRAM APPROVED UNDER SUBTITLE 5 OF THIS TITLE, CONSISTING OF AT LEAST 30 HOURS OF CLASSROOM INSTRUCTION AND AT LEAST 6 HOURS OF HIGHWAY DRIVING INSTRUCTION; AND

2. AT LEAST ~~10~~ *14* HOURS, 3 HOURS OF WHICH MUST OCCUR DURING THE PERIOD BEGINNING 30 MINUTES BEFORE SUNSET AND ENDING 30 MINUTES AFTER SUNRISE, OF BEHIND–THE–WHEEL DRIVING PRACTICE SUPERVISED BY AN INDIVIDUAL WHO:

A. HOLDS A VALID DRIVER'S LICENSE;

B. IS AT LEAST 21 YEARS OLD; AND

C. HAS BEEN LICENSED TO DRIVE FOR AT LEAST 3 YEARS; AND

(III) UNLESS THE INDIVIDUAL SUBMITS, IN ACCORDANCE WITH THE ADMINISTRATION'S REGULATIONS, A COMPLETED SKILLS LOG BOOK SIGNED BY EACH SUPERVISING DRIVER WHO CERTIFIES THAT THE INDIVIDUAL HAS SATISFACTORILY DEMONSTRATED A REQUIRED SKILL AND HAS COMPLETED THE DRIVING PRACTICE REQUIREMENTS UNDER THIS PARAGRAPH.

[(3)**] (5)** A learner's instructional permit issued to an individual described in paragraph (1) of this subsection expires 2 years after the date of issuance.

16–111.

(b) An applicant is entitled to receive a provisional license if the applicant:

(1) Meets the minimum age required under § 16–103(c)(2) of this subtitle;

(2) Satisfies the learner's instructional permit requirements under § 16–105(d)(2)**, (3), OR (4)** of this subtitle;

(3) Passes a driver skills or driver road examination administered under this subtitle;

(4) Surrenders any learner's instructional permit issued to the applicant; and

(5) Pays the fee established under this subtitle.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 247

(Senate Bill 514)

AN ACT concerning

Public Safety – Law Enforcement Handgun Disposal – Deceased Officers

FOR the purpose of authorizing a law enforcement agency to transfer the handgun of a law enforcement officer who is killed or dies in the performance of duty to ~~certain members of the deceased officer's family or to the deceased officer's~~

~~estate; authorizing a law enforcement agency to render the handgun of a deceased officer inoperable before transfer~~ the next of kin of the deceased officer under certain circumstances; and generally relating to the disposal of handguns by law enforcement agencies.

BY repealing and reenacting, with amendments,
Article – Public Safety
Section 3–501
Annotated Code of Maryland
(2011 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Public Safety

3–501.

(a) In this section, "manufacturer" has the meaning stated in § 5–131(a)(2) of this article.

(b) **[**A**]** **EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A** law enforcement agency seeking to dispose of a handgun owned by the agency shall:

(1) destroy the handgun;

(2) sell, exchange, or transfer the handgun to another law enforcement agency for official use by that agency;

(3) sell the handgun to a retired police employee in accordance with § 2–415(c) of this article;

(4) sell the handgun to the law enforcement officer to whom the handgun was assigned; or

(5) sell, exchange, or transfer the handgun to a manufacturer.

(C) ~~(1)~~ IF A LAW ENFORCEMENT OFFICER IS KILLED OR DIES IN THE PERFORMANCE OF DUTY, A LAW ENFORCEMENT AGENCY MAY TRANSFER THE HANDGUN OF THE DECEASED OFFICER TO:

~~**(I) A MEMBER OF THE IMMEDIATE FAMILY OF THE DECEASED OFFICER; OR**~~

~~**(II) THE ESTATE OF THE DECEASED OFFICER.**~~

~~(2) A LAW ENFORCEMENT AGENCY MAY RENDER THE HANDGUN OF THE DECEASED OFFICER INOPERABLE BEFORE TRANSFERRING THE HANDGUN~~ **THE NEXT OF KIN OF THE DECEASED OFFICER, IF:**

~~(1)~~ **THE REQUIREMENTS OF TITLE 5, SUBTITLE 1 OF THIS ARTICLE RELATING TO FIREARMS APPLICATIONS ARE MET~~; AND~~**

~~(2) THE HANDGUN OF THE DECEASED OFFICER IS RENDERED INOPERABLE BEFORE THE TRANSFER OF THE HANDGUN~~.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 248

(House Bill 396)

AN ACT concerning

Public Safety – Law Enforcement Handgun Disposal – Deceased Officers

FOR the purpose of authorizing a law enforcement agency to transfer the handgun of a law enforcement officer who is killed or dies in the performance of duty to ~~certain members of the deceased officer's family or to the deceased officer's estate; authorizing a law enforcement agency to render the handgun of a deceased officer inoperable before transfer~~ the next of kin of the deceased officer under certain circumstances; and generally relating to the disposal of handguns by law enforcement agencies.

BY repealing and reenacting, with amendments,
Article – Public Safety
Section 3–501
Annotated Code of Maryland
(2011 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Public Safety

3–501.

(a) In this section, "manufacturer" has the meaning stated in § 5–131(a)(2) of this article.

(b) **[**A**]** **EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A** law enforcement agency seeking to dispose of a handgun owned by the agency shall:

(1) destroy the handgun;

(2) sell, exchange, or transfer the handgun to another law enforcement agency for official use by that agency;

(3) sell the handgun to a retired police employee in accordance with § 2–415(c) of this article;

(4) sell the handgun to the law enforcement officer to whom the handgun was assigned; or

(5) sell, exchange, or transfer the handgun to a manufacturer.

(C) ~~(1)~~ IF A LAW ENFORCEMENT OFFICER IS KILLED OR DIES IN THE PERFORMANCE OF DUTY, A LAW ENFORCEMENT AGENCY MAY TRANSFER THE HANDGUN OF THE DECEASED OFFICER TO:

~~**(I) A MEMBER OF THE IMMEDIATE FAMILY OF THE DECEASED OFFICER IF THE PERSON HAS A PERMIT TO CARRY, WEAR, OR TRANSPORT A HANDGUN UNDER § 5–303 OF THIS ARTICLE; OR**~~

~~**(II) THE ESTATE OF THE DECEASED OFFICER.**~~

~~**(2) A LAW ENFORCEMENT AGENCY MAY RENDER THE HANDGUN OF THE DECEASED OFFICER INOPERABLE BEFORE TRANSFERRING THE HANDGUN**~~ **THE NEXT OF KIN OF THE DECEASED OFFICER, IF THE REQUIREMENTS OF TITLE 5, SUBTITLE 1 OF THIS ARTICLE RELATING TO FIREARMS APPLICATIONS ARE MET.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 249

(Senate Bill 521)

AN ACT concerning

Justice's Law

FOR the purpose of expanding the list of persons who can be convicted of first–degree child abuse under certain circumstances; increasing the maximum penalty for first–degree child abuse resulting in death of the victim; increasing the maximum penalty for a subsequent conviction of child abuse resulting in death of the victim; and generally relating to child abuse.

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 3–601
Annotated Code of Maryland
(2002 Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Law

3–601.

(a) (1) In this section the following words have the meanings indicated.

(2) "Abuse" means physical injury sustained by a minor as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the minor's health or welfare is harmed or threatened by the treatment or act.

(3) "Family member" means a relative of a minor by blood, adoption, or marriage.

(4) "Household member" means a person who lives with or is a regular presence in a home of a minor at the time of the alleged abuse.

(5) "Severe physical injury" means:

(i) brain injury or bleeding within the skull;

(ii) starvation; or

(iii) physical injury that:

1. creates a substantial risk of death; or

2. causes permanent or protracted serious:

A. disfigurement;

B. loss of the function of any bodily member or organ; or

C. impairment of the function of any bodily member or organ.

(b) (1) A parent**, FAMILY MEMBER, HOUSEHOLD MEMBER,** or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause abuse to the minor that:

(i) results in the death of the minor; or

(ii) causes severe physical injury to the minor.

(2) Except as provided in subsection (c) of this section, a person who violates paragraph (1) of this subsection is guilty of the felony of child abuse in the first degree and on conviction is subject to:

(i) imprisonment not exceeding 25 years; or

(ii) if the violation results in the death of the victim, imprisonment **[**not exceeding 30 years**]** **NOT EXCEEDING** ~~**LIFE IN PRISON**~~ **40 YEARS**.

(c) A person who violates this section after being convicted of a previous violation of this section is guilty of a felony and on conviction is subject to:

(1) imprisonment not exceeding 25 years; or

(2) if the violation results in the death of the victim, imprisonment **[**not exceeding 30 years**]** **NOT EXCEEDING** ~~**LIFE IN PRISON**~~ **40 YEARS**.

(d) (1) (i) A parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause abuse to the minor.

(ii) A household member or family member may not cause abuse to a minor.

(2) Except as provided in subsection (c) of this section, a person who violates paragraph (1) of this subsection is guilty of the felony of child abuse in the second degree and on conviction is subject to imprisonment not exceeding 15 years.

(e) A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation of this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 250

(House Bill 604)

AN ACT concerning

Justice's Law

FOR the purpose of expanding the list of persons who can be convicted of first–degree child abuse under certain circumstances; increasing the maximum penalty for first–degree child abuse resulting in death of the victim; increasing the maximum penalty for a subsequent conviction of child abuse resulting in death of the victim; and generally relating to child abuse.

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 3–601
Annotated Code of Maryland
(2002 Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Law

3–601.

(a) (1) In this section the following words have the meanings indicated.

(2) "Abuse" means physical injury sustained by a minor as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the minor's health or welfare is harmed or threatened by the treatment or act.

(3) "Family member" means a relative of a minor by blood, adoption, or marriage.

(4) "Household member" means a person who lives with or is a regular presence in a home of a minor at the time of the alleged abuse.

(5) "Severe physical injury" means:

(i) brain injury or bleeding within the skull;

(ii) starvation; or

(iii) physical injury that:

1. creates a substantial risk of death; or

2. causes permanent or protracted serious:

A. disfigurement;

B. loss of the function of any bodily member or organ; or

C. impairment of the function of any bodily member or organ.

(b) (1) A parent**, FAMILY MEMBER, HOUSEHOLD MEMBER,** or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause abuse to the minor that:

(i) results in the death of the minor; or

(ii) causes severe physical injury to the minor.

(2) Except as provided in subsection (c) of this section, a person who violates paragraph (1) of this subsection is guilty of the felony of child abuse in the first degree and on conviction is subject to:

(i) imprisonment not exceeding 25 years; or

(ii) if the violation results in the death of the victim, imprisonment **[**not exceeding 30 years**]** **NOT EXCEEDING** ~~**LIFE IN PRISON**~~ **40 YEARS**.

(c) A person who violates this section after being convicted of a previous violation of this section is guilty of a felony and on conviction is subject to:

(1) imprisonment not exceeding 25 years; or

(2) if the violation results in the death of the victim, imprisonment **[**not exceeding 30 years**]** **NOT EXCEEDING ~~LIFE IN PRISON~~ 40 YEARS**.

(d) (1) (i) A parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause abuse to the minor.

(ii) A household member or family member may not cause abuse to a minor.

(2) Except as provided in subsection (c) of this section, a person who violates paragraph (1) of this subsection is guilty of the felony of child abuse in the second degree and on conviction is subject to imprisonment not exceeding 15 years.

(e) A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation of this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 251

(Senate Bill 529)

AN ACT concerning

Motor Vehicles – Use of Text Messaging Device While Driving

FOR the purpose of establishing that a certain prohibition against an individual who is under a certain age using a wireless communication device while operating a motor vehicle does not apply to the use of a wireless communication device as a text messaging device; making certain technical corrections; altering a certain definition; and generally relating to the use of a text messaging device while driving.

BY repealing and reenacting, with amendments,
Article – Transportation
Section 21–1124 and 21–1124.1
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Transportation

21–1124.

(a) (1) In this section the following words have the meanings indicated.

(2) "9–1–1 system" has the meaning stated in § 1–301 of the Public Safety Article.

(3) "Wireless communication device" means**[**:

(i) A**]** **A** handheld or hands–free device used to access a wireless telephone service**[**; or

(ii) A text messaging device**]**.

(b) This section does not apply to the use of a wireless communication device **[**to**]:**

(1) TO contact a 9–1–1 system**; OR**

(2) AS A TEXT MESSAGING DEVICE AS DEFINED IN § 21–1124.1 OF THIS SUBTITLE.

(c) **[**A holder of a learner's instructional permit or a provisional driver's license**]** **AN INDIVIDUAL** who is under the age of 18 years may not use a wireless communication device while operating a motor vehicle.

(d) A police officer may enforce this section only as a secondary action when the police officer detains a driver for a suspected violation of another provision of the Code.

(e) (1) If the Administration receives satisfactory evidence that an individual has violated this section, the Administration:

(i) May suspend the individual's driver's license for not more than 90 days; and

(ii) May issue a restricted license for the period of suspension that is limited to driving a motor vehicle:

1. In the course of the individual's employment;

2. For the purpose of driving to or from a place of employment; or

3. For the purpose of driving to or from school.

(2) An individual may request a hearing as provided for a suspension or revocation under Title 12, Subtitle 2 of this article.

21–1124.1.

(a) (1) In this section the following words have the meanings indicated.

(2) "9–1–1 system" has the meaning stated in § 1–301 of the Public Safety Article.

(3) "Text messaging device" means a hand held device used to send a text message or an electronic message via a short message service, wireless telephone service, or electronic communication network.

(b) Subject to subsection (c) of this section, **[**a person**]** **AN INDIVIDUAL** may not use a text messaging device to write, send, or read a text message or an electronic message while operating a motor vehicle in the travel portion of the roadway.

(c) This section does not apply to the use of:

(1) A global positioning system; or

(2) A text messaging device to contact a 9–1–1 system.

(D) (1) IF THE ADMINISTRATION RECEIVES SATISFACTORY EVIDENCE THAT AN INDIVIDUAL WHO IS UNDER THE AGE OF 18 YEARS HAS VIOLATED THIS SECTION, THE ADMINISTRATION:

(I) MAY SUSPEND THE INDIVIDUAL'S DRIVER'S LICENSE FOR NOT MORE THAN 90 DAYS; AND

(II) MAY ISSUE A RESTRICTED LICENSE FOR THE PERIOD OF SUSPENSION THAT IS LIMITED TO DRIVING A MOTOR VEHICLE:

1. IN THE COURSE OF THE INDIVIDUAL'S EMPLOYMENT;

2. FOR THE PURPOSE OF DRIVING TO OR FROM A PLACE OF EMPLOYMENT; OR

3. FOR THE PURPOSE OF DRIVING TO OR FROM SCHOOL.

(2) AN INDIVIDUAL MAY REQUEST A HEARING AS PROVIDED FOR A SUSPENSION OR REVOCATION UNDER TITLE 12, SUBTITLE 2 OF THIS ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 252

(House Bill 55)

AN ACT concerning

Motor Vehicles – Use of Text Messaging Device While Driving

FOR the purpose of establishing that a certain prohibition against an individual who is under a certain age using a wireless communication device while operating a motor vehicle does not apply to the use of a wireless communication device as a text messaging device; making certain technical corrections; altering a certain definition; and generally relating to the use of a text messaging device while driving.

BY repealing and reenacting, with amendments,
Article – Transportation
Section 21–1124 and 21–1124.1
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Transportation

21–1124.

(a) (1) In this section the following words have the meanings indicated.

(2) "9–1–1 system" has the meaning stated in § 1–301 of the Public Safety Article.

(3) "Wireless communication device" means**[**:

(i) A**]** **A** handheld or hands–free device used to access a wireless telephone service**[**; or

(ii) A text messaging device**]**.

(b) This section does not apply to the use of a wireless communication device **[**to**]:**

(1) TO contact a 9–1–1 system**; OR**

(2) AS A TEXT MESSAGING DEVICE AS DEFINED IN § 21–1124.1 OF THIS SUBTITLE.

(c) **[**A holder of a learner's instructional permit or a provisional driver's license**]** **AN INDIVIDUAL** who is under the age of 18 years may not use a wireless communication device while operating a motor vehicle.

(d) A police officer may enforce this section only as a secondary action when the police officer detains a driver for a suspected violation of another provision of the Code.

(e) (1) If the Administration receives satisfactory evidence that an individual has violated this section, the Administration:

(i) May suspend the individual's driver's license for not more than 90 days; and

(ii) May issue a restricted license for the period of suspension that is limited to driving a motor vehicle:

1. In the course of the individual's employment;

2. For the purpose of driving to or from a place of employment; or

3. For the purpose of driving to or from school.

(2) An individual may request a hearing as provided for a suspension or revocation under Title 12, Subtitle 2 of this article.

21–1124.1.

(a) (1) In this section the following words have the meanings indicated.

(2) "9–1–1 system" has the meaning stated in § 1–301 of the Public Safety Article.

(3) "Text messaging device" means a hand held device used to send a text message or an electronic message via a short message service, wireless telephone service, or electronic communication network.

(b) Subject to subsection (c) of this section, **[**a person**]** **AN INDIVIDUAL** may not use a text messaging device to write, send, or read a text message or an electronic message while operating a motor vehicle in the travel portion of the roadway.

(c) This section does not apply to the use of:

(1) A global positioning system; or

(2) A text messaging device to contact a 9–1–1 system.

(D) (1) IF THE ADMINISTRATION RECEIVES SATISFACTORY EVIDENCE THAT AN INDIVIDUAL WHO IS UNDER THE AGE OF 18 YEARS HAS VIOLATED THIS SECTION, THE ADMINISTRATION:

(I) MAY SUSPEND THE INDIVIDUAL'S DRIVER'S LICENSE FOR NOT MORE THAN 90 DAYS; AND

(II) MAY ISSUE A RESTRICTED LICENSE FOR THE PERIOD OF SUSPENSION THAT IS LIMITED TO DRIVING A MOTOR VEHICLE:

1. IN THE COURSE OF THE INDIVIDUAL'S EMPLOYMENT;

2. FOR THE PURPOSE OF DRIVING TO OR FROM A PLACE OF EMPLOYMENT; OR

3. FOR THE PURPOSE OF DRIVING TO OR FROM SCHOOL.

(2) AN INDIVIDUAL MAY REQUEST A HEARING AS PROVIDED FOR A SUSPENSION OR REVOCATION UNDER TITLE 12, SUBTITLE 2 OF THIS ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 253

(Senate Bill 531)

AN ACT concerning

Property and Casualty Insurance – Underwriting Period – Discovery of Material Risk Factor

FOR the purpose of requiring an insurer that discovers a certain material risk factor during a certain underwriting period to recalculate the premium for a policy or binder of personal insurance, commercial property insurance, or commercial liability insurance under certain circumstances; requiring the insurer to provide certain written notice to the insured on a certain form if the insurer recalculates the premium for the policy or binder based on the discovery of a certain material risk factor; requiring an insurer, at the time of a certain application or when a certain policy or binder is issued, to provide a certain written notice of its ability to recalculate a certain premium during a certain period; providing that certain provisions of law requiring insurers to send certain notice of a premium increase for a policy of private passenger motor vehicle liability insurance do not apply to an increase in premium made by an insurer during the underwriting period under certain circumstances; defining a certain term; making stylistic changes; providing for the application of this Act; providing for a delayed effective date; and generally relating to the recalculation of the premium for a policy or binder of property and casualty insurance during the underwriting period.

BY repealing and reenacting, with amendments,
Article – Insurance
Section 12–106 and 27–614(b)
Annotated Code of Maryland
(2011 Replacement Volume)

BY repealing and reenacting, without amendments,
Article – Insurance
Section 27–614(a) and (c)(1) and (2)
Annotated Code of Maryland
(2011 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Insurance

12–106.

(a) **(1)** **[**In this section, "personal insurance" means property insurance or casualty insurance issued to an individual, trust, estate, or similar entity that is intended to insure against loss arising principally from the personal, noncommercial activities of the insured.**]** **IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(2) (I) "MATERIAL RISK FACTOR" MEANS A RISK FACTOR THAT:

1. WAS INCORRECTLY RECORDED OR NOT DISCLOSED BY THE INSURED IN AN APPLICATION FOR INSURANCE;

2. WAS IN EXISTENCE ON THE DATE OF THE APPLICATION; AND

3. MODIFIES THE PREMIUM CHARGED ON THE POLICY OR BINDER IN ACCORDANCE WITH THE RATES AND SUPPLEMENTARY RATING INFORMATION FILED BY THE INSURER UNDER TITLE 11, SUBTITLE 3 OF THIS ARTICLE.

(II) "MATERIAL RISK FACTOR" DOES NOT INCLUDE:

1. INFORMATION THAT CONSTITUTES A MATERIAL MISREPRESENTATION; OR

2. A CHANGE INITIATED BY AN INSURED, INCLUDING ANY REQUEST BY THE INSURED THAT RESULTS IN A CHANGE IN COVERAGE, CHANGE IN DEDUCTIBLE, OR OTHER CHANGE TO A POLICY.

(3) "PERSONAL INSURANCE" MEANS PROPERTY INSURANCE OR CASUALTY INSURANCE ISSUED TO AN INDIVIDUAL, TRUST, ESTATE, OR SIMILAR ENTITY THAT IS INTENDED TO INSURE AGAINST LOSS ARISING PRINCIPALLY FROM THE PERSONAL, NONCOMMERCIAL ACTIVITIES OF THE INSURED.

(b) This section applies only to a binder or policy, other than a renewal policy, of personal insurance, commercial property insurance, and commercial liability insurance.

(c) A binder or policy is subject to a 45–day underwriting period beginning on the effective date of coverage.

(d) **(1)** An insurer may cancel a binder or policy during the underwriting period if the risk does not meet the underwriting standards of the insurer.

(2) IF THE INSURER DISCOVERS A MATERIAL RISK FACTOR DURING THE UNDERWRITING PERIOD, THE INSURER SHALL RECALCULATE THE PREMIUM FOR THE POLICY OR BINDER BASED ON THE MATERIAL RISK FACTOR AS LONG AS THE RISK CONTINUES TO MEET THE UNDERWRITING STANDARDS OF THE INSURER IN ACCORDANCE WITH THE RATES AND SUPPLEMENTARY RATING INFORMATION FILED BY THE INSURER UNDER TITLE 11, SUBTITLE 3 OF THIS ARTICLE.

(3) AN INSURER THAT RECALCULATES A PREMIUM UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL PROVIDE A WRITTEN NOTICE TO THE INSURED ON A FORM APPROVED BY THE COMMISSIONER THAT STATES:

(I) THE AMOUNT OF THE RECALCULATED PREMIUM;

(II) THE REASON FOR THE ~~RECALCULATION OF~~ INCREASE OR REDUCTION IN THE PREMIUM; AND

(III) ~~THAT THE INSURED MAY CANCEL~~ THE INSURED'S RIGHT TO TERMINATE THE POLICY.

(e) If applicable, at the time of application or when a binder or policy is issued, an insurer shall provide written notice of its ability to cancel a binder or policy **OR RECALCULATE THE PREMIUM FROM THE EFFECTIVE DATE OF THE POLICY** during the underwriting period.

(f) (1) Except as provided in paragraph (2) of this subsection, a notice of cancellation under this section shall:

(i) be in writing;

(ii) have an effective date not less than 15 days after mailing;

(iii) state clearly and specifically the insurer's actual reason for the cancellation; and

(iv) be sent by certificate of mail to the named insured's last known address.

(2) A notice of cancellation under this section for nonpayment of premium shall:

(i) be in writing;

(ii) have an effective date of not less than 10 days after mailing;

(iii) state the insurer's intent to cancel for nonpayment of premium; and

(iv) be sent by certificate of mail to the named insured's last known address.

(g) A binder or other contract for temporary insurance:

(1) may be made orally or in writing; and

(2) except as superseded by the clear and express terms of the binder, is considered to include:

(i) all the usual terms of the policy as to which the binder was given; and

(ii) the applicable endorsements designated in the binder.

(h) A binder is no longer valid after the policy as to which it was given is issued.

(i) (1) If a binder is given to a consumer borrower to satisfy a lender's requirement that the borrower obtain property insurance or credit loss insurance as a condition of making a loan secured by a first mortgage or first deed of trust on an interest in owner–occupied residential real property, the insurer or its insurance producer shall include in or with the binder:

(i) the name and address of the insured consumer borrower;

(ii) the name and address of the lender;

(iii) a description of the insured residential real property;

(iv) a provision that the binder may not be canceled within the term of the binder unless the lender and the insured borrower receive written notice at least 15 days before the cancellation;

(v) except in the case of the renewal of a policy after the closing of a loan, a paid receipt for the full amount of the applicable premium; and

(vi) the amount of coverage.

(2) With respect to a binder given under this subsection, an insurer:

(i) if the binder is to be canceled, shall give the lender and the insured consumer borrower at least 15 days' written notice before the cancellation; and

(ii) within 45 days after the date the binder was given, shall issue a policy of insurance or provide the required notice of cancellation of the binder.

27–614.

(a) In this section, "increase in premium" and "premium increase" include an increase in total premium for a policy due to:

(1) a surcharge;

(2) retiering or other reclassification of an insured; or

(3) removal or reduction of a discount.

(b) (1) This section applies only to private passenger motor vehicle liability insurance.

(2) This section does not apply to the Maryland Automobile Insurance Fund.

(3) THIS SECTION DOES NOT APPLY TO AN INCREASE IN PREMIUM MADE BY AN INSURER DURING THE 45–DAY UNDERWRITING PERIOD IN ACCORDANCE WITH § 12–106(D)(2) AND (3) OF THIS ARTICLE.

(c) (1) Except as provided in paragraph (2) of this subsection, at least 45 days before the effective date of an increase in the total premium for a policy of private passenger motor vehicle liability insurance, the insurer shall send written notice of the premium increase to the insured at the last known address of the insured by certificate of mail.

(2) The notice required by paragraph (1) of this subsection need not be given if the premium increase is part of a general increase in premiums that is filed in accordance with Title 11 of this article and does not result from a reclassification of the insured.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all policies and contracts of personal insurance, commercial property insurance, and commercial liability insurance issued, delivered, or renewed in the State on or after ~~October 1, 2012~~ ~~January~~ *October* 1, 2013.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October 1, 2012~~ ~~January~~ *October* 1, 2013.

Approved by the Governor, May 2, 2012.

Chapter 254

(Senate Bill 546)

AN ACT concerning

Financial Institutions – Mortgage Lenders and Mortgage Loan Originators

FOR the purpose of providing that an applicant for a mortgage lender license or a mortgage loan originator license shall complete, sign, and submit an application in accordance with the process that the Commissioner of Financial Regulation requires; providing that the applicants shall provide certain information to the Commissioner; making certain mortgage lender and mortgage loan originator license fees nonrefundable; requiring a mortgage lender licensee to provide proof to the Commissioner of satisfying certain minimum net worth requirements within a certain time period; altering the initial license term and renewal period for a mortgage lender license; altering certain reporting requirements for mortgage lender licensees; requiring a mortgage lender who is exempt from certain licensing requirements to submit certain reports to the Nationwide Mortgage Licensing System and Registry on behalf of certain persons; altering the circumstances under which an individual is prohibited from acting as a mortgage loan originator under a certain name or for a certain employer; prohibiting an individual from acting as an affiliated insurance producer–mortgage loan originator under a certain name or for a certain employer unless the individual takes certain actions; requiring a certain mortgage loan originator licensee who ceases to be employed by a certain financial institution to notify the Commissioner within a certain time period; requiring a certain mortgage loan originator licensee's license to be placed into nonactive status under certain circumstances; providing that it is a violation of certain provisions of law to engage in any activity for which a certain mortgage loan originator license is required while the license is in nonactive status; requiring a certain mortgage loan originator license that is in nonactive status to remain in nonactive status until the licensee takes certain actions; authorizing the Commissioner to issue a certain mortgage loan originator license to an individual who is not employed by a certain financial institution under certain circumstances; repealing certain obsolete provisions of law; making certain stylistic and conforming changes; and generally relating to the regulation of mortgage lenders and mortgage loan originators.

BY repealing and reenacting, with amendments,
Article – Financial Institutions
Section 11–507(a), (b), and (d), 11–508.1, 11–511(a) and (b), 11–513.1, 11–603(c), 11–604(b) and (c), and 11–608(a)
Annotated Code of Maryland
(2011 Replacement Volume and 2011 Supplement)

BY repealing

Article – Financial Institutions
Section 11–603.1(l)
Annotated Code of Maryland
(2011 Replacement Volume and 2011 Supplement)

BY adding to
Article – Financial Institutions
Section 11–603.1(l) and (m)
Annotated Code of Maryland
(2011 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Financial Institutions

11–507.

(a) (1) To apply for a license, an applicant shall**:**

(I) [complete**]** **COMPLETE**, sign, and submit to the Commissioner an application made under oath **[**on**]** **IN** the form**, AND IN ACCORDANCE WITH THE PROCESS,** that the Commissioner requires**; AND**

(II) PROVIDE ALL INFORMATION THAT THE COMMISSIONER REQUESTS.

(2) The applicant shall comply with all conditions and provisions of the application for licensure and be issued a license before acting as a mortgage lender at a particular location.

(b) With each application, the applicant shall pay to the Commissioner the following fees:

(1) A nonrefundable investigation fee set by the Commissioner; and

(2) A **NONREFUNDABLE** license fee set by the Commissioner.

(d) For each license for which an applicant applies, the applicant shall:

(1) Submit a separate application;

(2) Pay a separate **NONREFUNDABLE** license fee;

(3) Pay any application processing fee or other fees that the Nationwide Mortgage Licensing System and Registry imposes in connection with the application;

(4) If applicable, pay the surcharge; and

(5) File a separate surety bond or other financial guaranty under § 11–508 of this subtitle.

11–508.1.

(a) An applicant for a new license or for the renewal of a license shall satisfy the Commissioner that the applicant or licensee has, and at all times will maintain, a minimum net worth computed according to generally accepted accounting principles or, with respect to an applicant or licensee described in item (1) of this subsection, any other recognized comprehensive basis of accounting approved by the Commissioner:

(1) In the case of an applicant or licensee that does not lend money secured by a dwelling or residential real estate, in the amount of $25,000; and

(2) In the case of an applicant or licensee that lends money secured by a dwelling or residential real estate, in the amount of:

(i) $25,000, if the applicant or licensee, in the 12 months prior to the license application or the renewal application, lent in the aggregate not more than $1,000,000 secured by a dwelling or residential real estate;

(ii) $50,000, if the applicant or licensee, in the 12 months prior to the license application or the renewal application, lent in the aggregate more than $1,000,000, but not more than $5,000,000 secured by a dwelling or residential real estate;

(iii) $100,000, if the applicant or licensee, in the 12 months prior to the license application or the renewal application, lent in the aggregate more than $5,000,000, but not more than $10,000,000 secured by a dwelling or residential real estate; and

(iv) $250,000, if the applicant or licensee, in the 12 months prior to the license application or the renewal application, lent in the aggregate more than $10,000,000 secured by a dwelling or residential real estate.

(b) (1) Subject to paragraphs (2) and (3) of this subsection, the minimum net worth requirements under subsection (a)(2) of this section may be satisfied by the applicant or licensee having:

(i) Cash on deposit with a bank or depository institution;

(ii) A line of credit from a bank or depository institution;

(iii) Other assets; or

(iv) A combination of cash, a line of credit, or other assets.

(2) If cash is used toward satisfying the minimum net worth requirements under subsection (a)(2) of this section, the applicant or licensee shall submit to the Commissioner a bank letter verifying:

(i) The account balance;

(ii) The type of account in which the funds are held; and

(iii) That the funds are not encumbered or hypothecated in any way.

(3) (i) If a line of credit is used toward satisfying the minimum net worth requirements under subsection (a)(2) of this section, the applicant or licensee shall submit to the Commissioner a copy of the line of credit agreement and the promissory note.

(ii) A line of credit may not be used toward satisfying more than 75% of the minimum net worth requirements under subsection (a)(2) of this section.

(C) A LICENSEE SHALL PROVIDE TO THE COMMISSIONER PROOF OF SATISFYING MINIMUM NET WORTH REQUIREMENTS UNDER SUBSECTION (A) OF THIS SECTION WITHIN 90 DAYS AFTER THE LAST DAY OF THE LICENSEE'S MOST RECENT FISCAL YEAR.

11–511.

(a) Subject to any regulations the Commissioner adopts in connection with the transition to the Nationwide Mortgage Licensing System and Registry, an initial license term shall:

(1) **[**Be for a maximum period of 1 year;**]**

[(2)**]** Begin on the day the license is issued; and

[(3)**] (2)** Expire on December 31 of the year **[**the**]:**

(I) THE license is issued**, IF THE LICENSE IS ISSUED BEFORE NOVEMBER 1; OR**

(II) SUCCEEDING THE YEAR THAT THE LICENSE IS ISSUED, IF THE LICENSE IS ISSUED ON OR AFTER NOVEMBER 1.

(b) At least **[**30**]** **60** days before its expiration, a license may be renewed if the licensee:

(1) Otherwise is entitled to be licensed;

(2) Pays to the Commissioner a **NONREFUNDABLE** renewal fee set by the Commissioner;

(3) Files a bond or bond continuation certificate for the amount required under § 11–508 of this subtitle; and

(4) Submits to the Commissioner:

(i) A renewal application on the form that the Commissioner requires; and

(ii) Satisfactory evidence of compliance with any continuing education requirements set by regulations adopted by the Commissioner.

11–513.1.

(A) A licensee shall submit to the Nationwide Mortgage Licensing System and Registry a **CALL** report **[**of condition**]** once each **[**calendar year**]** **QUARTER** on the date, in the form, and containing the information required by the Nationwide Mortgage Licensing System and Registry.

(B) A MORTGAGE LENDER WHO IS EXEMPT FROM LICENSING UNDER THIS SUBTITLE SHALL SUBMIT THE CALL REPORTS REQUIRED UNDER SUBSECTION (A) OF THIS SECTION ON BEHALF OF ITS MORTGAGE LOAN ORIGINATORS~~, EXCEPT FOR A MORTGAGE LOAN ORIGINATOR WHO IS EMPLOYED DIRECTLY BY THE EXEMPT MORTGAGE LENDER OR BY AN AFFILIATE OF THE EXEMPT MORTGAGE LENDER~~ *LICENSED UNDER SUBTITLE 6 OF THIS TITLE*.

11–603.

(c) (1) The Commissioner shall include on each license:

(i) The name of the licensee;

(ii) The name of the licensee's employer; and

(iii) The unique identifier of the licensee if the licensee has been issued a unique identifier.

(2) An individual may not act as a mortgage loan originator under a name or for an employer that is different from the name and employer that appear on the license unless the licensee:

(i) Notifies the Commissioner in writing in advance of a change in the licensee's name or the licensee's employer;

(ii) Pays to the Commissioner a license amendment fee set by the Commissioner for each notice provided under this paragraph; **AND**

(iii) **[**Returns to the Commissioner the licensee's license, or an affidavit stating that the license has been lost or destroyed; and

(iv)**]** In the case of a new employer, **[**submits to the Commissioner a notarized statement from the licensee's new employer**]** **AMENDS THE SPONSORSHIP INFORMATION ON THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY BY SUBMITTING THE AMENDMENT, IN THE FORM REQUIRED BY THE COMMISSIONER, TO INDICATE** that the licensee is an employee of the new employer.

(3) If a licensee ceases to be employed by a licensed mortgage lender or by a person exempt from licensing as a mortgage lender, the licensee shall notify the Commissioner within 10 business days, and the license shall be placed into nonactive status.

(4) During the time that a license is in nonactive status, it is a violation of this subtitle for the licensee to engage in any activity for which a license is required under this subtitle.

(5) The license shall remain in nonactive status until the licensee:

(i) Notifies the Commissioner in writing that the licensee has obtained employment with a licensed mortgage lender or with a person exempt from licensing as a mortgage lender; and

(ii) Has complied with the requirements set forth in paragraph (2) of this subsection.

11–603.1.

[(l) An affiliated insurance producer–mortgage loan originator who holds a mortgage lender license under § 11–506(c) of this title on July 1, 2009, may continue to originate mortgages under a valid mortgage lender license until December 31, 2009, provided that the affiliated insurance producer–mortgage loan originator takes the

actions necessary to participate in the Nationwide Mortgage Licensing System and Registry, as required by the Commissioner.**]**

(L) (1) AN INDIVIDUAL MAY NOT ACT AS AN AFFILIATED INSURANCE PRODUCER–MORTGAGE LOAN ORIGINATOR UNDER A NAME OR FOR AN EMPLOYER THAT IS DIFFERENT FROM THE NAME AND EMPLOYER THAT APPEAR ON THE LICENSE UNLESS THE LICENSEE:

(I) NOTIFIES THE COMMISSIONER IN WRITING IN ADVANCE OF A CHANGE IN THE LICENSEE'S NAME OR THE LICENSEE'S EMPLOYER;

(II) PAYS TO THE COMMISSIONER A LICENSE AMENDMENT FEE SET BY THE COMMISSIONER FOR EACH NOTICE PROVIDED UNDER ITEM (I) THIS PARAGRAPH; AND

(III) IN THE CASE OF A NEW EMPLOYER, AMENDS THE SPONSORSHIP INFORMATION ON THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY BY SUBMITTING THE AMENDMENT IN THE FORM REQUIRED BY THE COMMISSIONER TO INDICATE THAT THE LICENSEE IS AN EMPLOYEE OF THE NEW EMPLOYER.

(2) IF A LICENSEE CEASES TO BE EMPLOYED BY A FINANCIAL INSTITUTION APPROVED BY THE COMMISSIONER UNDER SUBSECTION (B) OF THIS SECTION, THE LICENSEE SHALL NOTIFY THE COMMISSIONER WITHIN 10 BUSINESS DAYS, AND THE LICENSE SHALL BE PLACED INTO NONACTIVE STATUS.

(3) DURING THE TIME THAT A LICENSE IS IN NONACTIVE STATUS, IT IS A VIOLATION OF THIS SUBTITLE FOR THE LICENSEE TO ENGAGE IN ANY ACTIVITY FOR WHICH A LICENSE IS REQUIRED UNDER THIS SUBTITLE.

(4) THE LICENSE SHALL REMAIN IN NONACTIVE STATUS UNTIL THE LICENSEE:

(I) NOTIFIES THE COMMISSIONER IN WRITING THAT THE LICENSEE HAS OBTAINED EMPLOYMENT WITH A FINANCIAL INSTITUTION THAT IS APPROVED BY THE COMMISSIONER UNDER SUBSECTION (B) OF THIS SECTION; AND

(II) HAS COMPLIED WITH THE REQUIREMENTS SET FORTH IN PARAGRAPH (1) OF THIS SUBSECTION.

(M) THE COMMISSIONER MAY ISSUE A LICENSE UNDER THIS SUBTITLE TO AN INDIVIDUAL WHO IS NOT EMPLOYED BY A FINANCIAL INSTITUTION APPROVED BY THE COMMISSIONER UNDER SUBSECTION (B) OF THIS SECTION,

PROVIDED THAT THE LICENSE IS PLACED INTO AND REMAINS IN NONACTIVE STATUS UNTIL THE LICENSEE:

(1) NOTIFIES THE COMMISSIONER IN WRITING THAT THE LICENSEE HAS OBTAINED EMPLOYMENT WITH A FINANCIAL INSTITUTION APPROVED BY THE COMMISSIONER UNDER SUBSECTION (B) OF THIS SECTION; AND

(2) HAS COMPLIED WITH THE REQUIREMENTS SET FORTH IN SUBSECTION (L)(1) OF THIS SECTION.

11–604.

(b) (1) To apply for a license, an applicant shall **[**complete**]:**

(I) COMPLETE, sign, and submit to the Commissioner an application made under oath **[**on**]** IN the form**, AND IN ACCORDANCE WITH THE PROCESS,** that the Commissioner requires**; AND**

(II) PROVIDE ALL INFORMATION AS REQUESTED BY THE COMMISSIONER.

(2) The applicant shall comply with all conditions and provisions of the application for a license.

(c) With each application, the applicant shall pay to the Commissioner:

(1) A nonrefundable investigation fee set by the Commissioner; and

(2) A **NONREFUNDABLE** license fee set by the Commissioner.

11–608.

(a) If the Commissioner denies an application, the Commissioner:

(1) Within 10 days, shall notify the applicant, in writing, of the denial; **AND**

(2) **[**Shall refund the license fee; and

(3)**]** Shall keep the **LICENSE FEE AND THE** investigation fee.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 255

(Senate Bill 550)

AN ACT concerning

Health – Cottage Food Businesses – Requirements

FOR the purpose of providing that a cottage food business is not required, under certain circumstances, to be licensed by the Department of Health and Mental Hygiene; providing that the owner of a cottage food business may sell only cottage food products that are stored on certain premises and prepackaged with a certain label; requiring the owner of a cottage food business to comply with certain county and municipal laws and ordinances; authorizing the Department to investigate certain complaints; authorizing a representative of the Department to enter and inspect, under certain circumstances, the premises of a cottage food business for a certain purpose; prohibiting the owner of a cottage food business from refusing to grant certain access to the premises and interfering with a certain inspection; providing that an investigation of a cottage food business conducted under a certain provision of this Act may include sampling of a cottage food product for certain purposes; requiring the Department to adopt regulations to carry out this Act; providing that a person who violates this Act is not subject to certain penalties; providing that certain provisions of this Act do not exempt a cottage food business from certain tax laws; providing for the application of this Act; defining certain terms; altering certain definitions; and generally relating to cottage food businesses.

BY repealing and reenacting, without amendments,
Article – Health – General
Section 21–301(a) and (f)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY adding to
Article – Health – General
Section 21–301(b–1) and (b–2) and 21–330.1
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 21–301(g) and (h) and 21–1214
Annotated Code of Maryland

(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General

21–301.

(a) In this subtitle the following words have the meanings indicated.

(B–1) "COTTAGE FOOD BUSINESS" MEANS A BUSINESS THAT:

(1) PRODUCES OR PACKAGES COTTAGE FOOD PRODUCTS IN A RESIDENTIAL KITCHEN; ~~AND~~

(2) SELLS THE COTTAGE FOOD PRODUCTS IN ACCORDANCE WITH § 21–330.1 OF THIS SUBTITLE AND REGULATIONS ADOPTED BY THE DEPARTMENT; AND

(3) HAS ANNUAL REVENUES FROM THE SALE OF COTTAGE FOOD PRODUCTS IN AN AMOUNT NOT EXCEEDING $25,000.

(B–2) ~~(1)~~ "COTTAGE FOOD PRODUCT" MEANS A NONHAZARDOUS FOOD, AS SPECIFIED IN REGULATIONS ADOPTED BY THE DEPARTMENT, THAT IS SOLD ~~BY A COTTAGE FOOD BUSINESS~~ AT A FARMER'S MARKET OR PUBLIC EVENT IN ACCORDANCE WITH § 21–330.1 OF THIS SUBTITLE AND REGULATIONS ADOPTED BY THE DEPARTMENT.

~~(2) "COTTAGE FOOD PRODUCT" DOES NOT INCLUDE A POTENTIALLY HAZARDOUS FOOD, AS DEFINED IN COMAR 10.15.03.02.~~

(f) "Food establishment" means:

(1) A food service facility; or

(2) A food processing plant.

(g) (1) "Food processing plant" means any place used for, or in connection with, the commercial manufacturing, preparing, processing, packaging, canning, freezing, storing, distributing, labeling, or holding of food or drink for human consumption.

(2) "Food processing plant" includes:

(i) A bakery plant;

(ii) A cannery;

(iii) A confectionery plant;

(iv) A crab meat picking plant;

(v) A food manufacturing plant;

(vi) A food warehouse or distribution center;

(vii) A frozen food processing plant;

(viii) An ice manufacturing plant;

(ix) A shellfish plant;

(x) A soft drink manufacturing plant; or

(xi) A bottled water plant.

(3) "Food processing plant" does not include **[**a**]:**

(I) A warehouse or distribution center that:

[(i)**]** **1.** Does not process food; and

[(ii)**]** **2.** Stores only sealed containers of whole bean, ground or instant coffee, leaf or instant teas, nondairy dehydrated whiteners, sugar, or sugar–free sweeteners**; OR**

(II) A COTTAGE FOOD BUSINESS.

(h) (1) "Food service facility" means:

(i) A place where food or drink is prepared for sale or service on the premises or elsewhere; or

(ii) Any operation where food is served to or provided for the public, with or without charge.

(2) "Food service facility" does not include:

(i) A kitchen in a private home where food is prepared at no charge for guests in the home, for guests at a social gathering, or for service to unemployed, homeless, or other disadvantaged populations;

(ii) A food preparation or serving area where only nonpotentially hazardous food, as defined by the United States Food and Drug Administration, is prepared or served only by an excluded organization; **[**or**]**

(iii) A location in a farmer's market or at a public festival or event where raw agricultural products, as defined in § 21–304(d)(1)(iii) of this subtitle, are sold**; OR**

(IV) A COTTAGE FOOD BUSINESS.

21–330.1.

(A) THIS SECTION DOES NOT:

(1) APPLY TO A FOOD ESTABLISHMENT THAT IS REQUIRED TO HAVE A LICENSE UNDER § 21–305 OF THIS SUBTITLE; OR

(2) EXEMPT A COTTAGE FOOD BUSINESS FROM ANY APPLICABLE STATE OR FEDERAL TAX LAWS.

(B) A COTTAGE FOOD BUSINESS IS NOT REQUIRED TO BE LICENSED BY THE DEPARTMENT IF THE OWNER OF THE COTTAGE FOOD BUSINESS COMPLIES WITH THIS SECTION.

(C) THE OWNER OF A COTTAGE FOOD BUSINESS MAY SELL ONLY COTTAGE FOOD PRODUCTS THAT ARE:

(1) STORED ON THE PREMISES OF THE COTTAGE FOOD BUSINESS; AND

(2) PREPACKAGED WITH A LABEL THAT CONTAINS:

(I) THE FOLLOWING INFORMATION:

1. THE NAME AND ADDRESS OF THE COTTAGE FOOD BUSINESS;

2. THE NAME OF THE COTTAGE FOOD PRODUCT;

3. THE INGREDIENTS OF THE COTTAGE FOOD PRODUCT IN DESCENDING ORDER OF THE AMOUNT OF EACH INGREDIENT BY WEIGHT;

4. THE NET WEIGHT OR NET VOLUME OF THE COTTAGE FOOD PRODUCT;

5. ALLERGEN INFORMATION AS SPECIFIED BY FEDERAL LABELING REQUIREMENTS; AND

6. IF ANY NUTRITIONAL CLAIM IS MADE, NUTRITIONAL INFORMATION AS SPECIFIED BY FEDERAL LABELING REQUIREMENTS; AND

(II) THE FOLLOWING STATEMENT PRINTED IN 10 POINT OR LARGER TYPE IN A COLOR THAT PROVIDES A CLEAR CONTRAST TO THE BACKGROUND OF THE LABEL: "MADE BY A COTTAGE FOOD BUSINESS THAT IS NOT SUBJECT TO MARYLAND'S FOOD SAFETY REGULATIONS.".

(D) THE OWNER OF A COTTAGE FOOD BUSINESS SHALL COMPLY WITH ALL APPLICABLE COUNTY AND MUNICIPAL LAWS AND ORDINANCES REGULATING THE PREPARATION, PROCESSING, STORAGE, AND SALE OF COTTAGE FOOD PRODUCTS.

(E) (1) THE DEPARTMENT MAY INVESTIGATE ANY COMPLAINT ALLEGING THAT A COTTAGE FOOD BUSINESS HAS VIOLATED THIS SECTION.

(2) ON RECEIPT OF A COMPLAINT, A REPRESENTATIVE OF THE DEPARTMENT, AT A REASONABLE TIME, MAY ENTER AND INSPECT THE PREMISES OF A COTTAGE FOOD BUSINESS TO DETERMINE COMPLIANCE WITH THIS SECTION.

(3) THE OWNER OF A COTTAGE FOOD BUSINESS MAY NOT:

(I) REFUSE TO GRANT ACCESS TO A REPRESENTATIVE WHO REQUESTS TO ENTER AND INSPECT THE PREMISES OF THE COTTAGE FOOD BUSINESS UNDER PARAGRAPH (2) OF THIS SUBSECTION; OR

(II) INTERFERE WITH ANY INSPECTION UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(4) AN INVESTIGATION OF A COTTAGE FOOD BUSINESS CONDUCTED UNDER THIS SUBSECTION MAY INCLUDE SAMPLING OF A COTTAGE FOOD PRODUCT TO DETERMINE IF THE COTTAGE FOOD PRODUCT IS MISBRANDED OR ADULTERATED.

(F) THE DEPARTMENT SHALL ADOPT REGULATIONS TO CARRY OUT THIS SECTION.

21–1214.

(a) **(1) [**Any**]** **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, ANY** person who violates any provision of Subtitle 3 of this title or any rule or regulation adopted under Subtitle 3 of this title is guilty of a misdemeanor and on conviction is subject to:

[(1)**]** **(I)** For a first offense, a fine not exceeding $1,000 or imprisonment not exceeding 90 days, or both; and

[(2)**]** **(II)** For a second offense, a fine not exceeding $2,500 or imprisonment not exceeding 1 year, or both.

(2) A PERSON WHO VIOLATES § 21–330.1 OF THIS TITLE IS NOT SUBJECT TO PARAGRAPH (1) OF THIS SUBSECTION.

(b) In addition to any criminal penalties imposed under this section, a person who violates any provision of Subtitle 3 of this title or any rule or regulation adopted under Subtitle 3 of this title or any term, condition, or limitation of any license or registration issued under Subtitle 3 of this title:

(1) Is liable for a civil penalty not exceeding $5,000, to be collected in a civil action in the District Court for any county; and

(2) May be enjoined from continuing the violation.

(c) Each day on which a violation occurs is a separate violation under this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 256

(House Bill 399)

AN ACT concerning

Health – Cottage Food Businesses – Requirements

FOR the purpose of providing that a cottage food business is not required, under certain circumstances, to be licensed by the Department of Health and Mental Hygiene; providing that the owner of a cottage food business may sell only cottage food products that are stored on certain premises and prepackaged with a certain label; requiring the owner of a cottage food business to comply with certain county and municipal laws and ordinances; authorizing the Department to investigate certain complaints; authorizing a representative of the Department to enter and inspect, under certain circumstances, the premises of a cottage food business for a certain purpose; prohibiting the owner of a cottage food business from refusing to grant certain access to the premises and interfering with a certain inspection; providing that an investigation of a cottage food business conducted under a certain provision of this Act may include sampling of a cottage food product for certain purposes; requiring the Department to adopt regulations to carry out this Act; providing that a person who violates this Act is not subject to certain penalties; providing that certain provisions of this Act do not exempt a cottage food business from certain tax laws; providing for the application of this Act; defining certain terms; altering certain definitions; and generally relating to cottage food businesses.

BY repealing and reenacting, without amendments,
Article – Health – General
Section 21–301(a) and (f)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY adding to
Article – Health – General
Section 21–301(b–1) and (b–2) and 21–330.1
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 21–301(g) and (h) and 21–1214
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General

21–301.

(a) In this subtitle the following words have the meanings indicated.

(B–1) "COTTAGE FOOD BUSINESS" MEANS A BUSINESS THAT:

(1) PRODUCES OR PACKAGES COTTAGE FOOD PRODUCTS IN A RESIDENTIAL KITCHEN; ~~AND~~

(2) SELLS THE COTTAGE FOOD PRODUCTS IN ACCORDANCE WITH § 21–330.1 OF THIS SUBTITLE AND REGULATIONS ADOPTED BY THE DEPARTMENT; AND

(3) HAS ANNUAL ~~SALES~~ REVENUES ~~OF~~ *FROM THE SALE OF COTTAGE FOOD PRODUCTS IN* AN AMOUNT NOT EXCEEDING $25,000.

(B–2) ~~(1)~~ "COTTAGE FOOD PRODUCT" MEANS A NONHAZARDOUS FOOD, AS SPECIFIED IN REGULATIONS ADOPTED BY THE DEPARTMENT, THAT IS SOLD ~~BY A COTTAGE FOOD BUSINESS~~ AT A FARMER'S MARKET OR PUBLIC EVENT IN ACCORDANCE WITH § 21–330.1 OF THIS SUBTITLE AND REGULATIONS ADOPTED BY THE DEPARTMENT.

~~(2) "COTTAGE FOOD PRODUCT" DOES NOT INCLUDE A POTENTIALLY HAZARDOUS FOOD, AS DEFINED IN COMAR 10.15.03.02.~~

(f) "Food establishment" means:

(1) A food service facility; or

(2) A food processing plant.

(g) (1) "Food processing plant" means any place used for, or in connection with, the commercial manufacturing, preparing, processing, packaging, canning, freezing, storing, distributing, labeling, or holding of food or drink for human consumption.

(2) "Food processing plant" includes:

(i) A bakery plant;

(ii) A cannery;

(iii) A confectionery plant;

(iv) A crab meat picking plant;

(v) A food manufacturing plant;

(vi) A food warehouse or distribution center;

(vii) A frozen food processing plant;

(viii) An ice manufacturing plant;

(ix) A shellfish plant;

(x) A soft drink manufacturing plant; or

(xi) A bottled water plant.

(3) "Food processing plant" does not include **[**a**]:**

(I) A warehouse or distribution center that:

[(i)**]** **1.** Does not process food; and

[(ii)**]** **2.** Stores only sealed containers of whole bean, ground or instant coffee, leaf or instant teas, nondairy dehydrated whiteners, sugar, or sugar–free sweeteners**; OR**

(II) A COTTAGE FOOD BUSINESS.

(h) (1) "Food service facility" means:

(i) A place where food or drink is prepared for sale or service on the premises or elsewhere; or

(ii) Any operation where food is served to or provided for the public, with or without charge.

(2) "Food service facility" does not include:

(i) A kitchen in a private home where food is prepared at no charge for guests in the home, for guests at a social gathering, or for service to unemployed, homeless, or other disadvantaged populations;

(ii) A food preparation or serving area where only nonpotentially hazardous food, as defined by the United States Food and Drug Administration, is prepared or served only by an excluded organization; **[**or**]**

(iii) A location in a farmer's market or at a public festival or event where raw agricultural products, as defined in § 21–304(d)(1)(iii) of this subtitle, are sold**; OR**

(IV) A COTTAGE FOOD BUSINESS.

21–330.1.

(A) THIS SECTION DOES NOT:

(1) APPLY TO A FOOD ESTABLISHMENT THAT IS REQUIRED TO HAVE A LICENSE UNDER § 21–305 OF THIS SUBTITLE; OR

(2) EXEMPT A COTTAGE FOOD BUSINESS FROM ANY APPLICABLE STATE OR FEDERAL TAX LAWS.

(B) A COTTAGE FOOD BUSINESS IS NOT REQUIRED TO BE LICENSED BY THE DEPARTMENT IF THE OWNER OF THE COTTAGE FOOD BUSINESS COMPLIES WITH THIS SECTION.

(C) THE OWNER OF A COTTAGE FOOD BUSINESS MAY SELL ONLY COTTAGE FOOD PRODUCTS THAT ARE:

(1) STORED ON THE PREMISES OF THE COTTAGE FOOD BUSINESS; AND

(2) PREPACKAGED WITH A LABEL THAT CONTAINS:

(I) THE FOLLOWING INFORMATION:

1. THE NAME AND ADDRESS OF THE COTTAGE FOOD BUSINESS;

2. THE NAME OF THE COTTAGE FOOD PRODUCT;

3. THE INGREDIENTS OF THE COTTAGE FOOD PRODUCT IN DESCENDING ORDER OF THE AMOUNT OF EACH INGREDIENT BY WEIGHT;

4. THE NET WEIGHT OR NET VOLUME OF THE COTTAGE FOOD PRODUCT;

5. ALLERGEN INFORMATION AS SPECIFIED BY FEDERAL LABELING REQUIREMENTS; AND

6. IF ANY NUTRITIONAL CLAIM IS MADE, NUTRITIONAL INFORMATION AS SPECIFIED BY FEDERAL LABELING REQUIREMENTS; AND

(II) THE FOLLOWING STATEMENT PRINTED IN 10 POINT OR LARGER TYPE IN A COLOR THAT PROVIDES A CLEAR CONTRAST TO THE

BACKGROUND OF THE LABEL: "MADE BY A COTTAGE FOOD BUSINESS THAT IS NOT SUBJECT TO MARYLAND'S FOOD SAFETY REGULATIONS.".

(D) THE OWNER OF A COTTAGE FOOD BUSINESS SHALL COMPLY WITH ALL APPLICABLE COUNTY AND MUNICIPAL LAWS AND ORDINANCES REGULATING THE PREPARATION, PROCESSING, STORAGE, AND SALE OF COTTAGE FOOD PRODUCTS.

(E) (1) THE DEPARTMENT MAY INVESTIGATE ANY COMPLAINT ALLEGING THAT A COTTAGE FOOD BUSINESS HAS VIOLATED THIS SECTION.

(2) ON RECEIPT OF A COMPLAINT, A REPRESENTATIVE OF THE DEPARTMENT, AT A REASONABLE TIME, MAY ENTER AND INSPECT THE PREMISES OF A COTTAGE FOOD BUSINESS TO DETERMINE COMPLIANCE WITH THIS SECTION.

(3) THE OWNER OF A COTTAGE FOOD BUSINESS MAY NOT:

(I) REFUSE TO GRANT ACCESS TO A REPRESENTATIVE WHO REQUESTS TO ENTER AND INSPECT THE PREMISES OF THE COTTAGE FOOD BUSINESS UNDER PARAGRAPH (2) OF THIS SUBSECTION; OR

(II) INTERFERE WITH ANY INSPECTION UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(4) AN INVESTIGATION OF A COTTAGE FOOD BUSINESS CONDUCTED UNDER THIS SUBSECTION MAY INCLUDE SAMPLING OF A COTTAGE FOOD PRODUCT TO DETERMINE IF THE COTTAGE FOOD PRODUCT IS MISBRANDED OR ADULTERATED.

(F) THE DEPARTMENT SHALL ADOPT REGULATIONS TO CARRY OUT THIS SECTION.

21–1214.

(a) **(1) [**Any**]** **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, ANY** person who violates any provision of Subtitle 3 of this title or any rule or regulation adopted under Subtitle 3 of this title is guilty of a misdemeanor and on conviction is subject to:

[(1)**]** **(I)** For a first offense, a fine not exceeding $1,000 or imprisonment not exceeding 90 days, or both; and

[(2)**]** **(II)** For a second offense, a fine not exceeding $2,500 or imprisonment not exceeding 1 year, or both.

(2) A PERSON WHO VIOLATES § 21–330.1 OF THIS TITLE IS NOT SUBJECT TO PARAGRAPH (1) OF THIS SUBSECTION.

(b) In addition to any criminal penalties imposed under this section, a person who violates any provision of Subtitle 3 of this title or any rule or regulation adopted under Subtitle 3 of this title or any term, condition, or limitation of any license or registration issued under Subtitle 3 of this title:

(1) Is liable for a civil penalty not exceeding $5,000, to be collected in a civil action in the District Court for any county; and

(2) May be enjoined from continuing the violation.

(c) Each day on which a violation occurs is a separate violation under this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 257

(Senate Bill 551)

AN ACT concerning

Procurement – Required Disclosure – Conflict Minerals Originated in the Democratic Republic of the Congo

FOR the purpose of prohibiting a unit of State government from procuring supplies or services from persons that fail to disclose in a certain manner as required by federal law certain information relating to conflict minerals that originated in the Democratic Republic of the Congo or its neighboring countries; requiring a unit of State government to provide notice of the prohibition in any solicitation for supplies or services; defining certain terms; and generally relating to required disclosure of information related to conflict minerals originated in the Democratic Republic of the Congo or its neighboring countries.

BY adding to
Article – State Finance and Procurement
Section 14–413
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – State Finance and Procurement

14–413.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "CONFLICT MINERAL" MEANS A MINERAL OR MINERAL DERIVATIVE DETERMINED UNDER FEDERAL LAW TO BE FINANCING HUMAN CONFLICT.

(II) "CONFLICT MINERAL" INCLUDES COLUMBITE–TANTALITE (COLTAN), CASSITERITE, GOLD, WOLFRAMRITE, OR DERIVATIVES OF THESE MINERALS.

(3) "NONCOMPLIANT PERSON" MEANS A PERSON:

(I) THAT IS REQUIRED TO DISCLOSE UNDER FEDERAL LAW INFORMATION RELATING TO CONFLICT MINERALS THAT ORIGINATED IN THE DEMOCRATIC REPUBLIC OF THE CONGO OR ITS NEIGHBORING COUNTRIES; AND

(II) FOR WHICH THE DISCLOSURE IS NOT FILED, IS CONSIDERED UNDER FEDERAL LAW TO BE AN UNRELIABLE DETERMINATION, OR CONTAINS FALSE INFORMATION.

(B) A UNIT MAY NOT KNOWINGLY PROCURE SUPPLIES OR SERVICES FROM A NONCOMPLIANT PERSON.

(C) IN ANY SOLICITATION FOR SUPPLIES OR SERVICES, A UNIT SHALL PROVIDE NOTICE OF THE REQUIREMENTS OF THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 258

(House Bill 425)

AN ACT concerning

Procurement – Required Disclosure – Conflict Minerals Originated in the Democratic Republic of the Congo

FOR the purpose of prohibiting a unit of State government from procuring supplies or services from persons that fail to disclose in a certain manner as required by federal law certain information relating to conflict minerals that originated in the Democratic Republic of the Congo or its neighboring countries; requiring a unit of State government to provide notice of the prohibition in any solicitation for supplies or services; defining certain terms; and generally relating to required disclosure of information related to conflict minerals originated in the Democratic Republic of the Congo or its neighboring countries.

BY adding to
Article – State Finance and Procurement
Section 14–413
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – State Finance and Procurement

14–413.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "CONFLICT MINERAL" MEANS A MINERAL OR MINERAL DERIVATIVE DETERMINED UNDER FEDERAL LAW TO BE FINANCING HUMAN CONFLICT.

(II) "CONFLICT MINERAL" INCLUDES COLUMBITE–TANTALITE (COLTAN), CASSITERITE, GOLD, WOLFRAMRITE, OR DERIVATIVES OF THESE MINERALS.

(3) "NONCOMPLIANT PERSON" MEANS A PERSON:

(I) THAT IS REQUIRED TO DISCLOSE UNDER FEDERAL LAW INFORMATION RELATING TO CONFLICT MINERALS THAT ORIGINATED IN THE DEMOCRATIC REPUBLIC OF THE CONGO OR ITS NEIGHBORING COUNTRIES; AND

(II) FOR WHICH THE DISCLOSURE IS NOT FILED, IS CONSIDERED UNDER FEDERAL LAW TO BE AN UNRELIABLE DETERMINATION, OR CONTAINS FALSE INFORMATION.

(B) A UNIT MAY NOT KNOWINGLY PROCURE SUPPLIES OR SERVICES FROM A NONCOMPLIANT PERSON.

(C) IN ANY SOLICITATION FOR SUPPLIES OR SERVICES, A UNIT SHALL PROVIDE NOTICE OF THE REQUIREMENTS OF THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 259

(Senate Bill 565)

AN ACT concerning

Criminal Procedure – Sex Offender Registration Requirements – Kidnapping

FOR the purpose of altering the offenses for which a person can be required to register on a certain registry; providing for the application of this Act; and generally relating to sex offender registration requirements and the crime of kidnapping.

BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section 11–701(q)
Annotated Code of Maryland
(2008 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Procedure

11–701.

(q) "Tier III sex offender" means a person who has been convicted of:

(1) conspiring to commit, attempting to commit, or committing a violation of:

(i) § 2–201(a)(4)(viii), (x), or (xi) of the Criminal Law Article;

(ii) § 3–303, § 3–304, § 3–305, § 3–306, § 3–307(a)(1) or (2), § 3–309, § 3–310, § 3–311, § 3–312, § 3–315, § 3–323, **[**§ 3–502,**]** or § 3–602 of the Criminal Law Article; **[**or**]**

(III) § 3–502 OF THE CRIMINAL LAW ARTICLE, IF THE VICTIM IS A MINOR;

(IV) § 3–502 OF THE CRIMINAL LAW ARTICLE, IF THE VICTIM IS AN ADULT, AND THE PERSON HAS BEEN ORDERED BY THE COURT TO REGISTER UNDER THIS SUBTITLE; OR

[(iii)**] (V)** the common law offense of sodomy or § 3–322 of the Criminal Law Article if the offense was committed with force or threat of force;

(2) conspiring to commit, attempting to commit, or committing a violation of § 3–307(a)(3), § 3–314, § 3–503, or § 3–603 of the Criminal Law Article, if the victim is under the age of 14 years;

(3) conspiring to commit, attempting to commit, or committing the common law offense of false imprisonment, if the victim is a minor;

(4) conspiring to commit, attempting to commit, or committing an offense that would require the person to register as a tier I or tier II sex offender after the person was already registered as a tier II sex offender;

(5) a crime committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection; or

(6) a crime in a court of Canada, Great Britain, Australia, New Zealand, or any other foreign country where the United States Department of State has determined in its Country Reports on Human Rights Practices that an independent judiciary generally or vigorously enforced the right to a fair trial during the year in which the conviction occurred that, if the crime were committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply retroactively and shall be applied to and interpreted to affect all persons convicted of kidnapping under § 3–502 of the Criminal Law Article who have been required to register on the State Sex Offender Registry since the enactment of Chapters 174 and 175 of 2010.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 260

(House Bill 942)

AN ACT concerning

Criminal Procedure – Sex Offender Registration Requirements – Kidnapping

FOR the purpose of altering the offenses for which a person can be required to register on a certain registry; providing for the application of this Act; and generally relating to sex offender registration requirements and the crime of kidnapping.

BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section 11–701(q)
Annotated Code of Maryland
(2008 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Procedure

11–701.

(q) "Tier III sex offender" means a person who has been convicted of:

(1) conspiring to commit, attempting to commit, or committing a violation of:

(i) § 2–201(a)(4)(viii), (x), or (xi) of the Criminal Law Article;

(ii) § 3–303, § 3–304, § 3–305, § 3–306, § 3–307(a)(1) or (2), § 3–309, § 3–310, § 3–311, § 3–312, § 3–315, § 3–323, **[**§ 3–502,**]** or § 3–602 of the Criminal Law Article; **[**or**]**

(III) § 3–502 OF THE CRIMINAL LAW ARTICLE, IF THE VICTIM IS A MINOR;

(IV) § 3–502 OF THE CRIMINAL LAW ARTICLE, IF THE VICTIM IS AN ADULT, AND THE PERSON HAS BEEN ORDERED BY THE COURT TO REGISTER UNDER THIS SUBTITLE; OR

[(iii)**] (V)** the common law offense of sodomy or § 3–322 of the Criminal Law Article if the offense was committed with force or threat of force;

(2) conspiring to commit, attempting to commit, or committing a violation of § 3–307(a)(3), § 3–314, § 3–503, or § 3–603 of the Criminal Law Article, if the victim is under the age of 14 years;

(3) conspiring to commit, attempting to commit, or committing the common law offense of false imprisonment, if the victim is a minor;

(4) conspiring to commit, attempting to commit, or committing an offense that would require the person to register as a tier I or tier II sex offender after the person was already registered as a tier II sex offender;

(5) a crime committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection; or

(6) a crime in a court of Canada, Great Britain, Australia, New Zealand, or any other foreign country where the United States Department of State has determined in its Country Reports on Human Rights Practices that an independent judiciary generally or vigorously enforced the right to a fair trial during the year in which the conviction occurred that, if the crime were committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply retroactively and shall be applied to and interpreted to affect all persons convicted of kidnapping under § 3–502 of the Criminal Law Article who have been required to register on the State Sex Offender Registry since the enactment of Chapters 174 and 175 of 2010.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2012.

Approved by the Governor, May 2, 2012.