Laws

of the

State of Maryland

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

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Chapter 415

(Senate Bill 19)

AN ACT concerning

Vehicle Laws – ~~Gross Weight Limits~~ Exceptional Hauling Permits – Farm ~~Vehicles and Vehicles Carrying Farm~~ Products

FOR the purpose of ~~allowing~~ authorizing the State Highway Administration to issue permits for certain vehicles ~~that are registered as farm vehicles or that are~~ carrying certain ~~farm products, and that are loaded in a certain location, a certain gross weight limit tolerance under~~ products and loads of certain maximum weights to operate in certain areas in certain circumstances and subject to certain conditions; expanding the scope of a certain permitting process for certain vehicles that carry certain forest products to include certain vehicles that carry certain farm products; repealing a certain separate permitting process for certain vehicles that carry certain milk products; altering certain fees for permits for certain vehicles that carry certain products; altering certain time periods in which certain permits for certain vehicles that carry certain products are valid; defining a certain term; and generally relating to ~~gross weight limits for farm vehicles and~~ exceptional hauling permits for vehicles carrying farm products.

BY repealing and reenacting, without amendments,
Article – Agriculture
Section 10–601(c)
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Transportation
Section ~~24–109~~ 24–113.2
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing
Article – Transportation
Section 24–113.3
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Agriculture

10–601.

(c) "Farm product" means any agricultural, horticultural, vegetable, or fruit product of the soil, including livestock, meats, marine food products, poultry, eggs, dairy products, wool, hides, feathers, nuts, honey, and every product of farm, forest, orchard, garden or water, but does not include canned, frozen, dried, or pickled products.

Article – Transportation

~~24–109.~~

~~(a) (1) In this section the following words have the meanings indicated.~~

~~(2) "Single axle weight" means the total weight transmitted by all wheels whose centers may be included between 2 parallel transverse vertical planes 40 inches apart extending across the full width of the vehicle.~~

~~(3) "Tandem axle weight" means the total weight transmitted to the road by 2 or more consecutive axles whose centers may be included between parallel vertical planes spaced more than 40 inches apart but not more than 96 inches apart extending across the full width of the vehicle.~~

~~(b) Notwithstanding any other provisions of this title, the overall gross weight on a group of 2 or more consecutive axles may not exceed an amount produced by application of the following formula:~~

$$W = 500 \left(\frac{LN}{N-1} + 12N + 36 \right)$$

~~where "W" = overall gross weight on any group of 2 or more consecutive axles to the nearest 500 pounds, "L" = distance in feet measured horizontally between the vertical centerlines of the extreme of any group of 2 or more consecutive axles, and "N" = number of axles in group under consideration, except that 2 consecutive sets of tandem axles may carry a gross load of 34,000 pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem axles is 36 feet or more; provided, that such overall gross weight may not exceed eighty thousand (80,000) pounds, including any enforcement or statutory tolerances.~~

~~(c) The following table indicates the permissible overall gross weights based upon the above formula:~~

~~Distance in feet~~

~~between the extremes of any group of 2 or more consecutive axles~~	~~2 axles~~	~~3 axles~~	~~4 axles~~	~~5 axles~~	~~6 axles~~	~~7 axles~~
~~4~~	~~34,000~~					
~~5~~	~~34,000~~					
~~6~~	~~34,000~~					
~~7~~	~~34,000~~					
~~8 and less~~	~~34,000~~	~~34,000~~				
~~More than 8~~	~~38,000~~	~~42,000~~				
~~9~~	~~39,000~~	~~42,500~~				
~~10~~	~~40,000~~	~~43,500~~				
~~11~~		~~44,000~~				
~~12~~		~~45,000~~	~~50,000~~			
~~13~~		~~45,500~~	~~50,500~~			
~~14~~		~~46,500~~	~~51,500~~			
~~15~~		~~47,000~~	~~52,000~~			
~~16~~		~~48,000~~	~~52,500~~	~~58,000~~		
~~17~~		~~48,500~~	~~53,500~~	~~58,500~~		
~~18~~		~~49,500~~	~~54,000~~	~~59,000~~		
~~19~~		~~50,000~~	~~54,500~~	~~60,000~~		
~~20~~		~~51,000~~	~~55,500~~	~~60,500~~	~~66,000~~	
~~21~~		~~51,500~~	~~56,000~~	~~61,000~~	~~66,500~~	
~~22~~		~~52,500~~	~~56,500~~	~~61,500~~	~~67,000~~	
~~23~~		~~53,000~~	~~57,500~~	~~62,500~~	~~68,000~~	
~~24~~		~~54,000~~	~~58,000~~	~~63,000~~	~~68,500~~	~~74,000~~
~~25~~		~~54,500~~	~~58,500~~	~~63,500~~	~~69,000~~	~~74,500~~
~~26~~		~~55,500~~	~~59,500~~	~~64,000~~	~~69,500~~	~~75,000~~
~~27~~		~~56,000~~	~~60,000~~	~~65,000~~	~~70,000~~	~~75,500~~
~~28~~		~~57,000~~	~~60,500~~	~~65,500~~	~~71,000~~	~~76,500~~
~~29~~		~~57,500~~	~~61,500~~	~~66,000~~	~~71,500~~	~~77,000~~
~~30~~		~~58,500~~	~~62,000~~	~~66,500~~	~~72,000~~	~~77,500~~
~~31~~		~~59,000~~	~~62,500~~	~~67,500~~	~~72,500~~	~~78,000~~
~~32~~		~~60,000~~	~~63,500~~	~~68,000~~	~~73,000~~	~~78,500~~
~~33~~			~~64,000~~	~~68,500~~	~~74,000~~	~~79,000~~
~~34~~			~~64,500~~	~~69,000~~	~~74,500~~	~~80,000~~
~~35~~			~~65,500~~	~~70,000~~	~~75,000~~	
~~36~~	~~Exception: See subsection (b), this~~		~~(66,000)~~	~~70,500~~	~~75,500~~	

	~~section~~		
~~37~~	~~(66,500)~~	~~71,000~~	~~76,000~~
~~38~~	~~(67,500)~~	~~72,000~~	~~77,000~~
~~39~~	~~68,000~~	~~72,500~~	~~77,500~~
~~40~~	~~68,500~~	~~73,000~~	~~78,000~~
~~41~~	~~69,500~~	~~73,500~~	~~78,500~~
~~42~~	~~70,000~~	~~74,000~~	~~79,000~~
~~43~~	~~70,500~~	~~75,000~~	~~80,000~~
~~44~~	~~71,500~~	~~75,500~~	
~~45~~	~~72,000~~	~~76,000~~	
~~46~~	~~72,500~~	~~76,500~~	
~~47~~	~~73,500~~	~~77,500~~	
~~48~~	~~74,000~~	~~78,000~~	
~~49~~	~~74,500~~	~~78,500~~	
~~50~~	~~75,500~~	~~79,000~~	
~~51~~	~~76,000~~	~~80,000~~	
~~52~~	~~76,500~~		
~~53~~	~~77,500~~		
~~54~~	~~78,000~~		
~~55~~	~~78,500~~		
~~56~~	~~79,500~~		
~~57~~	~~80,000~~		

~~(d) The gross weight of any vehicle or combination of vehicles may not exceed the following limits:~~

~~Number of axles~~	~~Gross weight (in pounds)~~
~~Three or less~~	~~55,000~~
~~Four~~	~~66,000~~
~~Five as provided for in § 13–916 or § 13–923 of this article~~	~~80,000~~

~~(e) A trailer with metal tires and a gross weight of more than 6,000 pounds may not be moved on a highway.~~

~~(f) (1) Except on interstate highways, a single unit vehicle with 3 axles, or a combination of vehicles with a trailer less than 32 feet long or a semitrailer less than 45 feet long, either registered as a farm vehicle or carrying farm products as defined under § 10–601 of the Agriculture Article that were loaded in fields or other off–highway locations, is permitted **A GROSS WEIGHT AND** an axle load limit tolerance of 5 percent from subsections (b) and (c) of this section, except during harvest time when **A GROSS WEIGHT LIMIT TOLERANCE OF 5 PERCENT AND** an axle load limit tolerance of 15 percent from subsections (b) and (c) of this section **[**is**] ARE** permitted for a vehicle carrying the following agricultural products:~~

~~(i) Wheat, for the period from June 1 to August 15;~~

~~(ii) Corn, for the period from July 1 to December 1;~~

~~(iii) Soybeans, for the period from September 1 to December 31; and~~

~~(iv) Vegetable crops, for the period from June 1 to October 31.~~

~~(2) (i) Except on interstate highways, a single unit vehicle with at least 3 axles or a combination of vehicles with a trailer length of less than 32 feet carrying forest products that have been loaded in forests or other similar off–highway locations is permitted an axle load limit tolerance of 10 percent from subsections (b) and (c) of this section, except for the period from June 1 through September 30 when an axle load limit tolerance of 15 percent from subsections (b) and (c) of this section is permitted.~~

~~(ii) Except on interstate highways, a combination of vehicles with a semitrailer length of 45 feet or less carrying forest products that have been loaded in forests or other similar off–highway locations is permitted an axle load limit tolerance of 5 percent from subsections (b) and (c) of this section, except for the period from June 1 through September 30 when an axle load limit tolerance of 15 percent from subsections (b) and (c) of this section is permitted.~~

24–113.2.

(a) **[**An**]** **UNLESS OTHERWISE PROVIDED BY FEDERAL LAW, AN** exceptional hauling permit issued under this section is **NOT** valid **[**only in:

(1) Allegany County and Garrett County; and

(2) Dorchester County, Somerset County, Talbot County, Wicomico County, and Worcester County**]** **ON THE INTERSTATE HIGHWAY SYSTEM, AS DEFINED IN § 8–101(J) OF THIS ARTICLE**.

(b) Notwithstanding any other provision of this title, the State Highway Administration may issue an exceptional hauling permit for a combination of vehicles that:

(1) Carries **[**forestry products**]** **FARM PRODUCTS AS DEFINED IN § 10–601(C) OF THE AGRICULTURE ARTICLE** that:

(i) Are loaded in fields or other off–highway locations; and

(ii) Are the only load of the vehicle; and

(2) Has an axle configuration of not less than six axles and a front–to–rear centerline axle spacing of not less than 50 feet.

(c) A combination of vehicles operating under the authority of an exceptional hauling permit issued under subsection (b) of this section shall:

(1) Comply with the following weight limits:

(i) A maximum of 20,000 pounds gross weight on a single axle;

(ii) For any consecutive axle configuration of two or more axles on individual vehicles in the combination, the maximum gross weight specified in § 24–109(c) of this subtitle; and

(iii) A maximum of 87,000 pounds gross combination weight;

(2) Twice each year, submit to and pass a North American Standard Driver/Vehicle Level 1 inspection; and

(3) Be allowed a load limit tolerance of only 1,000 pounds for gross combination weight and 15% for axle weights.

(d) While operating a combination of vehicles under the authority of an exceptional hauling permit issued under subsection (b) of this section, a person may not:

(1) Violate a highway restriction issued by a competent authority;

(2) Operate the combination of vehicles on the interstate highway system, as defined in § 8–101(j) of this article;

(3) Operate the combination of vehicles if the combination of vehicles exceeds any tire weight rating or tire speed restriction adopted under § 25–111 of this article; or

(4) Fail to comply with the terms and conditions of the exceptional hauling permit.

(e) While operating a combination of vehicles under the authority of an exceptional hauling permit issued under subsection (b) of this section, a person shall have in the person's possession:

(1) The original exceptional hauling permit issued for the vehicle; and

(2) For each vehicle in the combination of vehicles, a copy of a valid North American Standard Driver/Vehicle Level 1 inspection report issued within the preceding 180 days that shows no out–of–service violations.

(f) (1) A violation of this section, regulations adopted to implement this section, or the terms and conditions of an exceptional hauling permit issued under subsection (b) of this section shall:

(i) Void the authority granted under the exceptional hauling permit;

(ii) Subject the vehicle to all weight requirements and tolerances specified in this article; and

(iii) For a violation of a weight restriction specified in this section that exceeds 5,000 pounds, subject the exceptional hauling permit to immediate confiscation by an officer or authorized civilian employee of the Department of State Police, an officer of the Maryland Transportation Authority Police, or any police officer.

(2) A person who confiscates an exceptional hauling permit under paragraph (1) of this subsection shall immediately notify the State Highway Administration.

(3) On notification of the confiscation of an exceptional hauling permit, the State Highway Administration shall review the confiscation, verify the violation of a weight restriction, and, if the State Highway Administration determines that a violation did occur, revoke the permit.

(4) An owner or operator of a combination of vehicles may appeal the revocation of an exceptional hauling permit to the State Highway Administrator or the Administrator's designee.

(g) (1) On request from the State Highway Administrator or the Administrator's designee, weight and delivery records of the holder of an exceptional hauling permit that are kept in the normal course of business shall be provided by:

(i) The holder of the exceptional hauling permit; or

(ii) A facility that receives **[**forestry**]** **FARM** products**, AS DEFINED IN § ~~8–101(J)~~ *10–601(C)* OF THE AGRICULTURE ARTICLE,** delivered by a vehicle operating under the authority of an exceptional hauling permit.

(2) If the holder of an exceptional hauling permit or a facility that receives **[**forestry**]** **FARM** products does not comply with a request under this subsection, the State Highway Administration may:

(i) Suspend the holder's exceptional hauling permit; or

(ii) Prohibit a vehicle from delivering **[**forestry**]** **FARM** products under the authority of the exceptional hauling permit to the noncompliant facility.

(h) (1) An applicant for an exceptional hauling permit shall pay to the State Highway Administration:

(i) **1.** **[**$500**]** **$250** for the issuance of a new **ANNUAL** permit or the annual renewal **[**of a permit**]**; **OR**

2. $30 FOR THE ISSUANCE OF A 30 DAY PERMIT;

(ii) $1,000 for the reinstatement of a permit that was revoked under subsection (f)(3) of this section for a first violation; and

(iii) $5,000 for the reinstatement of a permit that was revoked under subsection (f)(3) of this section for a second or subsequent violation within the prior 24 months.

(2) A fee paid under this subsection is nonrefundable.

(i) Except as otherwise provided in this section, an exceptional hauling permit is valid for**:**

(1) 1 year from the date of issuance **FOR AN ANNUAL PERMIT; OR**

(2) 30 CONSECUTIVE DAYS FOR A 30 DAY PERMIT.

(j) In consultation with the Secretary of State Police, the State Highway Administration shall adopt regulations to implement this section.

(k) (1) An exceptional hauling permit is issued under this section at the discretion of the State Highway Administrator.

(2) The State Highway Administrator may stop issuing or renewing exceptional hauling permits under this section if the Administrator determines that the use of the permits is adversely affecting any part of the State highway system.

(3) The State Highway Administrator shall promptly report to the General Assembly, in accordance with § 2–1246 of the State Government Article, regarding any decision to stop issuing or renewing exceptional hauling permits under this section and the reason for the decision.

[24–113.3.

(a) An exceptional milk hauling permit issued under this section is valid only in Allegany County, Anne Arundel County, Baltimore County, Carroll County,

Frederick County, Garrett County, Howard County, Montgomery County, Prince George's County, and Washington County.

(b) Notwithstanding any other provision of this title, the State Highway Administration may issue an exceptional milk hauling permit for a combination of vehicles that:

(1) Carries to a processing plant raw liquid milk that is the only load on the vehicle and is loaded from bulk liquid milk storage tanks at one or more farm locations; and

(2) Has an axle configuration of not less than six axles and a front–to–rear centerline axle spacing of not less than 50 feet.

(c) A combination of vehicles operating under the authority of an exceptional milk hauling permit issued under subsection (b) of this section shall:

(1) Comply with the following weight limits:

(i) A maximum of 20,000 pounds gross weight on a single axle;

(ii) For any consecutive axle configuration of two or more axles on individual vehicles in a combination, the weight specified in § 24–109(c) of this subtitle; and

(iii) A maximum of 87,000 pounds gross combination weight;

(2) Twice each year, submit to and pass a North American Standard Driver/Vehicle Level 1 inspection; and

(3) Be allowed a load limit tolerance of only 1,000 pounds for gross combination weight and 15% for axle weights.

(d) While operating a combination of vehicles under the authority of an exceptional milk hauling permit issued under subsection (b) of this section, a person may not:

(1) Violate a highway restriction issued by a competent authority;

(2) Operate the combination of vehicles on the interstate highway system, as defined in § 8–101(j) of this article;

(3) Operate the combination of vehicles if the combination of vehicles exceeds any tire weight rating or tire speed restriction adopted under § 25–111 of this article; or

(4) Fail to comply with the terms and conditions of the exceptional milk hauling permit.

(e) While operating a combination of vehicles under the authority of an exceptional milk hauling permit issued under subsection (b) of this section, a person shall have in the person's possession:

(1) The original exceptional milk hauling permit issued for the vehicle; and

(2) For each vehicle in the combination of vehicles, a copy of a valid North American Standard Driver/Vehicle Level 1 inspection report issued within the preceding 180 days that shows no out–of–service violations.

(f) (1) A violation of this section, regulations adopted to implement this section, or the terms and conditions of an exceptional milk hauling permit issued under subsection (b) of this section shall:

(i) Void the authority granted under the exceptional milk hauling permit;

(ii) Subject the vehicle to all weight requirements and tolerances specified in this article; and

(iii) For a violation of a weight restriction specified in this section that exceeds 5,000 pounds, subject the exceptional milk hauling permit to immediate confiscation by an officer or authorized civilian employee of the Department of State Police, an officer of the Maryland Transportation Authority Police, or any police officer.

(2) A person who confiscates an exceptional milk hauling permit under paragraph (1) of this subsection shall immediately notify the State Highway Administration.

(3) On notification of the confiscation of an exceptional milk hauling permit, the State Highway Administration shall review the confiscation, verify the violation of a weight restriction, and, if the State Highway Administration determines that a violation did occur, revoke the permit.

(4) An owner or operator of a combination of vehicles may appeal the revocation of an exceptional milk hauling permit to the State Highway Administrator or the Administrator's designee.

(g) (1) On request from the State Highway Administrator or the Administrator's designee, weight and delivery records of the holder of an exceptional milk hauling permit that are kept in the normal course of business shall be provided by:

(i) The holder of the exceptional milk hauling permit;

(ii) A facility that receives raw liquid milk delivered by a vehicle operating under the authority of an exceptional milk hauling permit; or

(iii) A producer of raw liquid milk having the product transported under the authority of an exceptional milk hauling permit.

(2) If the holder of an exceptional milk hauling permit, a facility that receives raw liquid milk, or a producer of raw liquid milk does not comply with a request under this subsection, the State Highway Administration may:

(i) Suspend the holder's exceptional milk hauling permit; or

(ii) Prohibit a vehicle from picking up from the producer or delivering to the noncompliant facility raw liquid milk under the authority of the exceptional milk hauling permit.

(h) (1) An applicant for an exceptional milk hauling permit shall pay to the State Highway Administration:

(i) $500 for the issuance of a new permit or the annual renewal of a permit;

(ii) $1,000 for the reinstatement of a permit that was revoked under subsection (f)(3) of this section for a first violation; and

(iii) $5,000 for the reinstatement of a permit that was revoked under subsection (f)(3) of this section for a second or subsequent violation within the prior 24 months.

(2) A fee paid under this subsection is nonrefundable.

(i) Except as otherwise provided in this section, an exceptional milk hauling permit is valid for 1 year from the date of issuance.

(j) In consultation with the Secretary of State Police, the State Highway Administration shall adopt regulations to implement this section.]

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ June 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 416

(Senate Bill 75)

AN ACT concerning

Commercial Law – Maryland Consumer Protection Act – Scope

FOR the purpose of expanding the scope of the Maryland Consumer Protection Act by altering the definition of "consumer" to include an individual who sells or offers for sale to a merchant certain consumer goods~~, consumer services,~~ or consumer realty and the definition of "merchant" to include a person who directly or indirectly purchases or offers to purchase any consumer goods or consumer realty and whose business includes paying off consumer debt in connection with the purchase of consumer goods or consumer realty; prohibiting a person from engaging in a certain unfair or deceptive trade practice in the purchase or offer for purchase by a certain merchant of consumer goods~~, consumer services,~~ or consumer realty; and generally relating to the Maryland Consumer Protection Act.

BY repealing and reenacting, without amendments,
Article – Commercial Law
Section 13–101(a)
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Commercial Law
Section 13–101(c) and (g) and 13–303
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

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

Article – Commercial Law

13–101.

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

(c) (1) "Consumer" means an actual or prospective purchaser, lessee, or recipient of consumer goods, consumer services, consumer realty, or consumer credit.

(2) "Consumer" includes:

(i) A co–obligor or surety for a consumer; **[**or**]**

(ii) A licensee or recipient of computer information or computer programs under a consumer contract as defined in § 22–102 of this article**; OR**

(III) AN INDIVIDUAL WHO SELLS OR OFFERS FOR SALE TO A MERCHANT CONSUMER GOODS~~, CONSUMER SERVICES,~~ OR CONSUMER REALTY THAT THE INDIVIDUAL ACQUIRED PRIMARILY FOR PERSONAL, HOUSEHOLD, FAMILY, OR AGRICULTURAL PURPOSES.

(g) **(1)** "Merchant" means a person who directly or indirectly either offers or makes available to consumers any consumer goods, consumer services, consumer realty, or consumer credit.

(2) "MERCHANT" INCLUDES A PERSON:

(I) WHO DIRECTLY OR INDIRECTLY PURCHASES OR OFFERS TO PURCHASE ANY CONSUMER GOODS OR CONSUMER REALTY FROM A CONSUMER; AND

(II) WHOSE BUSINESS INCLUDES PAYING OFF CONSUMER DEBT IN CONNECTION WITH THE PURCHASE OF ANY CONSUMER GOODS OR CONSUMER REALTY FROM A CONSUMER.

13–303.

A person may not engage in any unfair or deceptive trade practice, as defined in this subtitle or as further defined by the Division, in:

(1) The sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services;

(2) The offer for sale, lease, rental, loan, or bailment of consumer goods, consumer realty, or consumer services;

(3) The extension of consumer credit; **[**or**]**

(4) The collection of consumer debts**; OR**

(5) THE PURCHASE OR OFFER FOR PURCHASE ~~BY A MERCHANT~~ OF CONSUMER ~~GOODS,~~ GOODS OR CONSUMER REALTY~~, OR CONSUMER SERVICES~~ FROM A CONSUMER BY A MERCHANT WHOSE BUSINESS INCLUDES PAYING OFF CONSUMER DEBT IN CONNECTION WITH THE PURCHASE OF ANY CONSUMER GOODS OR CONSUMER REALTY FROM A CONSUMER.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 417

(House Bill 128)

AN ACT concerning

Commercial Law – Maryland Consumer Protection Act – Scope

FOR the purpose of expanding the scope of the Maryland Consumer Protection Act by altering the definition of "consumer" to include an individual who sells or offers for sale to a merchant certain consumer goods~~, consumer services,~~ or consumer realty and the definition of "merchant" to include a person who directly or indirectly purchases or offers to purchase any consumer goods or consumer realty and whose business includes paying off consumer debt in connection with the purchase of consumer goods or consumer realty; prohibiting a person from engaging in a certain unfair or deceptive trade practice in the purchase or offer for purchase by a certain merchant of consumer goods~~, consumer services,~~ or consumer realty; and generally relating to the Maryland Consumer Protection Act.

BY repealing and reenacting, without amendments,
Article – Commercial Law
Section 13–101(a)
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Commercial Law
Section 13–101(c) and (g) and 13–303
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

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

Article – Commercial Law

13–101.

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

(c) (1) "Consumer" means an actual or prospective purchaser, lessee, or recipient of consumer goods, consumer services, consumer realty, or consumer credit.

(2) "Consumer" includes:

(i) A co–obligor or surety for a consumer; **[**or**]**

(ii) A licensee or recipient of computer information or computer programs under a consumer contract as defined in § 22–102 of this article**; OR**

(III) AN INDIVIDUAL WHO SELLS OR OFFERS FOR SALE TO A MERCHANT CONSUMER GOODS~~, CONSUMER SERVICES,~~ OR CONSUMER REALTY THAT THE INDIVIDUAL ACQUIRED PRIMARILY FOR PERSONAL, HOUSEHOLD, FAMILY, OR AGRICULTURAL PURPOSES.

(g) **(1)** "Merchant" means a person who directly or indirectly either offers or makes available to consumers any consumer goods, consumer services, consumer realty, or consumer credit.

(2) "MERCHANT" INCLUDES A PERSON:

(I) WHO DIRECTLY OR INDIRECTLY PURCHASES OR OFFERS TO PURCHASE ANY CONSUMER GOODS OR CONSUMER REALTY FROM A CONSUMER; AND

(II) WHOSE BUSINESS INCLUDES PAYING OFF CONSUMER DEBT IN CONNECTION WITH THE PURCHASE OF ANY CONSUMER GOODS OR CONSUMER REALTY FROM A CONSUMER.

13–303.

A person may not engage in any unfair or deceptive trade practice, as defined in this subtitle or as further defined by the Division, in:

(1) The sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services;

(2) The offer for sale, lease, rental, loan, or bailment of consumer goods, consumer realty, or consumer services;

(3) The extension of consumer credit; **[**or**]**

(4) The collection of consumer debts**; OR**

(5) THE PURCHASE OR OFFER FOR PURCHASE ~~BY A MERCHANT~~ OF CONSUMER ~~GOODS,~~ GOODS OR CONSUMER REALTY~~, OR CONSUMER SERVICES~~ FROM A CONSUMER BY A MERCHANT WHOSE BUSINESS INCLUDES PAYING OFF CONSUMER DEBT IN CONNECTION WITH THE PURCHASE OF ANY CONSUMER GOODS OR CONSUMER REALTY FROM A CONSUMER.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 418

(Senate Bill 88)

AN ACT concerning

Maryland Insurance Administration – Program Evaluation

FOR the purpose of requiring that an evaluation under the Maryland Program Evaluation Act of the Maryland Insurance Administration and the statutes and regulations that relate to the Administration be performed on or before a certain date; and generally relating to the Maryland Insurance Administration.

BY repealing and reenacting, without amendments,
Article – State Government
Section 8–403(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 8–403(b)(32)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

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:

(32) Insurance Administration (§§ 2–101 and 2–103 of the Insurance Article: July 1, **[**2012**] 2018**);

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 419

(Senate Bill 90)

AN ACT concerning

State Board of Podiatric Medical Examiners – Sunset Extension and Program Evaluation

FOR the purpose of continuing the State Board of Podiatric Medical 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 Podiatric Medical Examiners.

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 16–602
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – State Government
Section 8–403(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 8–403(b)(52)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health Occupations

16–602.

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, **[**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:

(52) Podiatric Medical Examiners, State Board of (§ 16–201 of the Health Occupations Article: July 1, **[**2011**] 2021**);

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1, 2015, the State Board of Podiatric Medical 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, regarding the status of the Board and the regulation of podiatry in the State. The report shall include information for the years fiscal 2011 through fiscal 2015, inclusive, that addresses:

(1) the number of podiatrists licensed by the Board;

(2) whether the Board has implemented any new requirements for the licensure, certification, or registration of individuals who practice or assist in the

practice of podiatry, and the number of individuals licensed, certified, or registered as a result of any new requirements implemented by the Board;

(3) the number of complaints received by the Board for individuals who practice or assist in the practice of podiatry and the resolution of the complaints;

(4) a summary of any major legislative or regulatory changes impacting podiatry, including changes to fees charged by the Board; and

(5) an update on the Board's finances including the revenue and expenditures for each fiscal year.

SECTION ~~2.~~ *3.* AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 420

(Senate Bill 102)

AN ACT concerning

Caroline County – Alcoholic Beverages Act of 2011

FOR the purpose of increasing the number of times a Class BWTS beer and wine (on–premises) tasting or sampling license may be granted in a calendar year to a person in Caroline County; altering the hours of sale for certain licensees in the county; requiring that a licensee in the county or an employee of the licensee be certified by an approved alcohol awareness program and, except under certain circumstances, be present during the hours in which alcohol may be sold; making a stylistic change; and generally relating to alcoholic beverages in Caroline County.

BY repealing and reenacting, without amendments,
Article 2B – Alcoholic Beverages
Section 8–404.2(a) and (b) and 13–101(c)(1)
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article 2B – Alcoholic Beverages
Section 8–404.2(i), 8–507.1(g), 11–301(a) and (d)(2), 11–302(a), (c), and (d), 11–303(a) and (d)(4), 11–506, and 13–101(c)(2)
Annotated Code of Maryland

(2005 Replacement Volume and 2010 Supplement)

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

Article 2B – Alcoholic Beverages

8–404.2.

(a) This section applies only in Caroline County.

(b) The Board of License Commissioners may issue a 1–day Class BWTS beer and wine (on–premises) tasting or sampling license.

(i) A Class BWTS license may not be granted to a person more than **[**12**] 26** times in a calendar year.

8–507.1.

(g) The hours and days for sale for a Class GC 7–day (golf course) beer, wine and liquor license are **[**as follows:

(1) Monday through Saturday from 6 a.m. to 2 a.m. the following day; and

(2) Sunday from 1 p.m. to 12 midnight**] FROM 6 A.M. TO 2 A.M. THE FOLLOWING DAY, ON MONDAY THROUGH SUNDAY**.

11–301.

(a) (1) Except as otherwise provided in this subsection, the hours during which the privileges conferred by a Class A beer license may be exercised are from 6 a.m. to midnight, on every day except Sunday.

(2) IN CAROLINE COUNTY, THE HOURS OF OPERATION ARE FROM 6 A.M. TO 2 A.M. THE FOLLOWING DAY, ON MONDAY THROUGH SUNDAY.

[(2)**] (3)** In Frederick County, the hours of operation are:

(i) On Monday through Saturday, from 6 a.m. to 2 a.m. the following day; and

(ii) On Sunday, from 11 a.m. to 2 a.m. the following day.

[(3)**] (4)** In Montgomery County the hours are as provided in § 11–516(d)(1).

[(4)**] (5)** In Prince George's County the hours are from 6 a.m. to 2 a.m. on the day following, except on Sunday when sales are not permitted after 2 a.m.

[(5)**] (6)** In Washington County, the hours of sale are as provided under § 11–522 of this article.

(d) (2) In Caroline County the hours are from 6 a.m. **[**Monday through Saturday until 1 a.m. on the following day (including Sunday)**] TO 2 A.M. THE FOLLOWING DAY, ON MONDAY THROUGH SUNDAY**.

11–302.

(a) (1) Except as otherwise provided in this subsection, the hours during which the privileges conferred by a Class A beer and light wine license may be exercised are from 6 a.m. to midnight on every day except Sunday.

(2) In the Park Heights Redevelopment Area that is specified in the Park Heights Master Plan adopted by Baltimore City in 2006, the hours of sale begin at 9 a.m. each day.

(3) IN CAROLINE COUNTY, THE HOURS OF OPERATION ARE FROM 6 A.M. TO 2 A.M. THE FOLLOWING DAY, ON MONDAY THROUGH SUNDAY.

[(3)**] (4)** In Frederick County, the hours of operation are:

(i) On Monday through Saturday, from 6 a.m. to 2 a.m. the following day; and

(ii) On Sunday, from 11 a.m. to 2 a.m. the following day.

[(4)**] (5)** In Montgomery County the hours are as provided in § 11–516(d)(1).

[(5)**] (6)** In Prince George's County the hours are from 6 a.m. to 2 a.m. on the following day except on Sunday when sales are not permitted after 2 a.m.

(c) (1) The hours during which the privileges conferred by a Class C beer and light wine license may be exercised are from 6 a.m. to midnight.

(2) Except as otherwise provided in subsections (h) and (i) of this section, in Baltimore City the hours are from 6 a.m. to 2 a.m. on the following day.

(3) In Baltimore County the hours are from 6 a.m. to 2 a.m. on the following day.

(4) IN CAROLINE COUNTY, THE HOURS OF OPERATION ARE FROM 6 A.M. TO 2 A.M. THE FOLLOWING DAY, ON MONDAY THROUGH SUNDAY.

[(4)**] (5)** In Montgomery County, except as provided in § 11–516 of this article, sales may not be made before 11 a.m.

[(5)**] (6)** In Prince George's County the hours are from 6 a.m. to 2 a.m. on the following day.

(d) (1) The hours during which the privileges conferred by a Class D beer and light wine license may be exercised are from 6 a.m. to midnight.

(2) Except as otherwise provided in subsections (h), (i), and (j) of this section, in Baltimore City the hours are from 6 a.m. to 1 a.m. on the following day.

(3) In Baltimore County the hours are from 6 a.m. to 2 a.m. Monday through Sunday.

(4) IN CAROLINE COUNTY, THE HOURS OF OPERATION ARE FROM 6 A.M. TO 2 A.M. THE FOLLOWING DAY, ON MONDAY THROUGH SUNDAY.

[(4)**] (5)** In Montgomery County, except as provided in § 11–516 of this article, the hours for on–sale are from 9 a.m. on any day to 1 a.m. on the following day.

[(5)**] (6)** In Prince George's County the hours are from 6 a.m. to 2 a.m. on the following day.

[(6)**] (7)** In Wicomico County, notwithstanding the provisions of paragraph (1) of this subsection, the hours on Sunday are from noon to midnight only by bowling alleys as defined in § 1–102(b)(4) of this article.

11–303.

(a) (1) The hours during which the privileges conferred by a Class A beer, wine and liquor license may be exercised are from 6 a.m. to midnight, on every day except Sunday.

(2) The provisions of paragraph (1) of this subsection are superseded as follows:

(i) In Annapolis, the hours may be fixed by the Mayor, Counselor, and Aldermen of the City of Annapolis;

(ii) In the Park Heights Redevelopment Area that is specified in the Park Heights Master Plan adopted by Baltimore City in 2006, the hours of sale begin at 9 a.m. each day;

(III) IN CAROLINE COUNTY, THE HOURS OF OPERATION ARE FROM 6 A.M. TO 2 A.M. THE FOLLOWING DAY, ON MONDAY THROUGH SUNDAY;

[(iii)**] (IV)** In Carroll County, the privileges conferred by a Class A beer, wine and liquor license may be exercised from 11 a.m. to 6 p.m. on Sunday;

[(iv)**] (V)** In Frederick County holders of a Class A beer, wine and liquor (off–sale) license may sell beer, wine and liquor for off–premises consumption on:

1. Monday through Saturday, from 6 a.m. to 2 a.m. the following day; and

2. Sunday, from 11 a.m. to 2 a.m. the following day, if they hold a special Sunday opening permit;

[(v)**] (VI)** In Kent County, the provisions of § 11–515 of this article apply;

[(vi)**] (VII)** In St. Mary's County, holders of a Class A–1 license may sell on Sunday; and

[(vii)**] (VIII)** In Talbot County, the hours are from 8 a.m. to 12 midnight.

(d) (4) In Caroline County the hours **[**on Monday through Saturday are from 6 a.m. to 2 a.m. on the following day (including Sunday) for a 6–day license holder. For a 7–day license holder the hours on Monday through Saturday are from 6 a.m. to 2 a.m. the following day (including Sunday), and on Sunday, from 1 p.m. to midnight**] FOR A 6–DAY LICENSE HOLDER AND A 7–DAY LICENSE HOLDER ARE FROM 6 A.M. TO 2 A.M. THE FOLLOWING DAY**.

11–506.

Notwithstanding any other provision of this subtitle, in Caroline County the following licensees may sell alcoholic beverages **[**between the hours of 12 o'clock midnight and 2 o'clock a.m. and between 12 o'clock noon and 12 o'clock midnight on Sunday**] FROM 6 A.M. TO 2 A.M. THE FOLLOWING DAY, ON MONDAY THROUGH SUNDAY**:

(1) Class B and C beer;

(2) Class H beer and light wine;

(3) Class B beer, wine and liquor (7 day); and

(4) Class C beer, wine and liquor.

13–101.

(c) (1) A holder of any class of retail alcoholic beverages license or an employee designated by the holder shall complete training in an approved alcohol awareness program. The training shall be valid for a period of 4 years, and the holder shall complete retraining in an approved program for each successive 4–year period.

(2) (i) This paragraph applies only in the following jurisdictions:

1. Howard County;

2. Montgomery County;

3. Kent County;

4. Washington County; **[**and**]**

5. CAROLINE COUNTY; AND

[5.**]6.** Except as provided in subparagraph (ii) of this paragraph, Wicomico County.

(ii) This paragraph does not apply to a licensee in Wicomico County with a Class C license.

(iii) The licensee or a person who is employed in a supervisory capacity designated by the licensee:

1. Shall be certified by an approved alcohol awareness program; and

2. Except as otherwise provided in subparagraph (iv) of this paragraph, be present during the hours in which alcohol may be sold.

(iv) 1. In Howard County, Kent County, Washington County, and Wicomico County, the person certified by an approved alcohol awareness program may be absent from the licensed premises for a bona fide personal or business reason or an emergency, if the absence lasts for **[**no**]** **NOT** more than 2 hours.

2. IN CAROLINE COUNTY, THE PERSON CERTIFIED BY AN APPROVED ALCOHOL AWARENESS PROGRAM MAY BE ABSENT FROM THE LICENSED PREMISES FOR A BONA FIDE EMERGENCY, IF THE ABSENCE LASTS FOR NOT MORE THAN 2 HOURS.

[2.**]3.** The Board of License Commissioners shall require the licensee to keep a log book on the licensed premises that contains documentation of each temporary absence, the length of time of the absence, and the reason for the absence, in the form required by the Board of License Commissioners.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 421

(Senate Bill 104)

AN ACT concerning

Judith P. Hoyer Early Child Care and Education Enhancement Program – Annual Report

FOR the purpose of requiring the State Department of Education to include in a certain annual report certain information relating to the Judith P. Hoyer Early Child Care and Education Enhancement Program and the participating agencies and programs; *altering the date on or before which the report is to be submitted;* and generally relating to reporting requirements of the State Department of Education.

BY repealing and reenacting, with amendments,
Article – Education
Section 5–217
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

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

Article – Education

5–217.

(a) (1) In this section the following words have the meanings indicated.

(2) "Accreditation" means the determination that a program meets quality standards defined by the accrediting agency beyond State child care regulations.

(3) "Accrediting agency" means a State agency or national organization that has developed a recognized accrediting process.

(4) "Credentialing" means the process through which an individual is awarded a professional certificate based on education and experience.

(5) "Early Child Care and Education Enhancement Grant" means a grant that is distributed under subsection (e) of this section.

(6) "Full day" means a period of time during the day that:

(i) Meets the needs of families; and

(ii) Is not less than 7 hours or more than 12 hours per day.

(7) "Judy Center" means a site where comprehensive early child care and education services are provided to young children and their families for the purpose of promoting school readiness through collaboration with participating agencies and programs.

(8) "Judy Center Grant" means a grant that is distributed under subsection (d) of this section.

(9) "Local management board" means a local management board as defined under § 8–101(j) of the Human Services Article.

(10) "Participating agencies and programs" includes:

(i) Public prekindergarten and kindergarten programs;

(ii) Head Start programs;

(iii) Family literacy programs and services;

(iv) Local infants and toddlers programs;

(v) Child care centers and family child care homes;

(vi) Family support centers;

(vii) Healthy family sites;

(viii) Parent involvement programs;

(ix) Early childhood programs affiliated with institutions of higher education; and

(x) Other home visiting, community health, family support services, and child care resource and referral agencies.

(11) "Program" means the Judith P. Hoyer Early Child Care and Education Enhancement Program established under this section.

(b) (1) There is a Judith P. Hoyer Early Child Care and Education Enhancement Program in the Department.

(2) The purpose of the Program is to promote school readiness through the development and expansion of collaborative approaches to the delivery of high quality, comprehensive, full–day early child care and education programs and family support services.

(c) (1) The Program shall be funded as provided in the State budget.

(2) Funds that are allocated to the Program in the State budget may be used:

(i) To cover the costs incurred by the Department in implementing and administering the Program;

(ii) For Judy Center Grants, as provided under subsection (d) of this section;

(iii) For Early Child Care and Education Enhancement Grants, as provided under subsection (e) of this section; and

(iv) To fund the statewide implementation of the Department's Early Childhood Assessment System, as provided under subsection (f) of this section.

(d) The Department may distribute a Judy Center Grant to a county board if the county board submits an application to the Department that includes:

(1) A memorandum of understanding between the county board, the participating agencies and programs, and, in the discretion of the county board, the local management board that includes:

(i) The terms of the collaboration to be undertaken by the county board, the participating agencies and programs, and, if applicable, the local

management board, including the roles and responsibilities of each of these entities; and

(ii) A plan for establishing ongoing communication between private service providers and public school early education programs; and

(2) Documentation that shows that:

(i) The Department's Early Childhood Assessment System will be implemented at the Center;

(ii) All participating agencies and programs that provide early child care and education services through the Center have voluntarily obtained accreditation or, by the date of the Grant application, have voluntarily initiated and are actively pursuing the process of obtaining accreditation; and

(iii) The Center will provide comprehensive, full–day early child care and education services and family support services.

(e) (1) The Department may distribute an Early Child Care and Education Enhancement Grant to a county board to be used to purchase early child care and education services and family support services from providers that have voluntarily obtained accreditation or have voluntarily initiated and are actively pursuing accreditation.

(2) The Department may distribute an Early Child Care and Education Enhancement Grant to a private provider of early child care and education services to be used:

(i) To assist the provider in voluntarily obtaining accreditation; or

(ii) For professional development activities leading to increased competency and appropriate credentialing that is related to early child care and education services.

(f) The Department may distribute funds to a county board for the purpose of implementing the Department's Early Childhood Assessment System in the county's public schools.

(g) (1) The Department shall:

(i) Establish application procedures for obtaining Judy Center Grants and Early Child Care and Education Enhancement Grants as provided under this section;

(ii) Supervise and monitor the use of Grant funds distributed under this section; and

(iii) Evaluate whether Grant recipients are meeting annual benchmarks established by the Department.

(2) For Judy Center Grants, the Department may award multiyear funding.

(h) A county board that is selected to receive a Judy Center Grant or an Early Child Care and Education Enhancement Grant for the purpose of purchasing early child care and education services shall:

(1) Administer the Grant award;

(2) Submit fiscal and program reports as required by the Department; and

(3) Coordinate the involvement of participating agencies and programs in any evaluation process conducted by the Department.

(i) Grants awarded under this section may not be used:

(1) To supplant existing funding for any services provided by participating agencies and programs; or

(2) For capital improvements.

(j) The Department shall select through a competitive bidding process and supervise an evaluator who shall design and implement an evaluation process to measure the effectiveness of:

(1) The Judy Centers; and

(2) Early child care and education services and family support services that are purchased with funds from Early Child Care and Education Enhancement Grants.

(k) The Department shall submit to the Governor and, subject to § 2–1246 of the State Government Article, the General Assembly:

(1) On or before **[**January**]** **NOVEMBER** 1 of each year, a report on the implementation of the Program **AND THE PARTICIPATING AGENCIES AND PROGRAMS**, including a description of the Program's **AND THE PARTICIPATING AGENCIES' AND PROGRAMS'** expenditures**, ENROLLMENT, AND STATEWIDE**

PERFORMANCE DATA, INCLUDING SCHOOL READINESS DATA DISAGGREGATED BY PROGRAM AND BY JURISDICTION; and

(2) On or before January 1, 2004, a separate report that includes an evaluation, based on objective performance criteria established by the Department, of the effectiveness of:

(i) The Judy Centers; and

(ii) Early child care and education services and family support services that are purchased with funds from Early Child Care and Education Enhancement Grants.

(l) The Department may adopt regulations as necessary to implement the Program.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 422

(Senate Bill 124)

AN ACT concerning

Flag Display on State House Grounds – ~~Honor and Remember and POW/MIA Flags~~ *POW/MIA Flag and a Flag to Honor and Remember Individuals Who Died in the Line of Duty*

FOR the purpose of requiring that ~~the Honor and Remember flag~~ *a certain flag* be flown on the State House grounds on certain days each year; altering the days on which the POW/MIA flag is to be flown on State House grounds; requiring the State House Trust to determine the site on the State House grounds where ~~the Honor and Remember~~ *a certain* flag will be flown; defining a certain term; and generally relating to the display of the ~~Honor and Remember and POW/MIA flags~~ *POW/MIA flag and a flag to honor and remember individuals who died in the line of duty* on the State House grounds.

BY repealing and reenacting, with amendments,
Article – State Government
Section 13–205
Annotated Code of Maryland

(2009 Replacement Volume and 2010 Supplement)

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

Article – State Government

13–205.

(a) **(1)** In this section**[**,**]** **THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(2) "FLAG TO HONOR AND REMEMBER MEMBERS OF THE ARMED FORCES WHO DIED IN THE LINE OF DUTY" MEANS:

(I) A FLAG CREATED BY HONOR AND REMEMBER, INC.; OR

(II) THE FLAG DESIGNATED BY THE UNITED STATES CONGRESS AS THE OFFICIAL SYMBOL TO HONOR AND REMEMBER MEMBERS OF THE ARMED FORCES WHO DIED IN THE LINE OF DUTY.

~~(2)~~ ***(3)*** "POW/MIA flag" means the POW/MIA flag of the National League of Families of American Prisoners and Missing in Southeast Asia.

~~(3) "HONOR AND REMEMBER FLAG" MEANS THE HONOR AND REMEMBER FLAG CREATED BY HONOR AND REMEMBER, INC., AND DESIGNATED BY THE UNITED STATES CONGRESS AS THE OFFICIAL SYMBOL TO RECOGNIZE AND HONOR MEMBERS OF THE ARMED FORCES WHO DIED IN THE LINE OF DUTY.~~

(b) ***(1)*** ~~Each~~ ***SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, EACH*** year, the POW/MIA flag **AND** ~~THE HONOR AND REMEMBER FLAG~~ ***A FLAG TO HONOR AND REMEMBER MEMBERS OF THE ARMED FORCES WHO DIED IN THE LINE OF DUTY*** shall be flown on the State House grounds on:

~~(1)~~ ***(I)*** **THE THIRD SATURDAY IN MAY, FOR ARMED FORCES DAY;**

~~(2)~~ ***(II)*** May 30, for Memorial Day;

[(2)**]** ~~(3)~~ ***(III)*** the day that the United States Congress designates for the observance of Memorial Day if other than May 30;

[(3)**]** ~~(4)~~ ***(IV)*** the Saturday and Sunday that are closest to May 30, unless the United States Congress designates another day for the observance of

Memorial Day, in which case, the Saturday and Sunday that are closest to the day designated by the United States Congress;

~~(5)~~ ***(V)*** **JULY 4, FOR INDEPENDENCE DAY;**

[(4)**]** ~~(6)~~ ***(VI)*** the third Friday in September, for POW/MIA Recognition Day;

[(5)**]** ~~(7)~~ ***(VII)*** November 11, for Veterans' Day;

[(6)**]** ~~(8)~~ ***(VIII)*** the day that the United States Congress designates for the observance of Veterans' Day if other than November 11; and

[(7)**]** ~~(9)~~ ***(IX)*** the Saturday and Sunday that are closest to November 11, unless the United States Congress designates another day for the observance of Veterans' Day, in which case, the Saturday and Sunday that are closest to the day designated by the United States Congress.

(2) IF THE UNITED STATES CONGRESS DESIGNATES A FLAG AS THE OFFICIAL SYMBOL TO HONOR AND REMEMBER MEMBERS OF THE ARMED FORCES WHO DIED IN THE LINE OF DUTY, THE FLAG DESIGNATED BY CONGRESS SHALL BE FLOWN IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That the State House Trust shall determine the site on the State House grounds where ~~the Honor and Remember flag~~ *a flag to honor and remember members of the armed forces who died in the line of duty* will be flown as required by § 13–205 of the State Government Article, as enacted by Section 1 of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 423

(Senate Bill 139)

AN ACT concerning

Family Law – Grounds for Absolute Divorce ~~– Time Requirements~~

FOR the purpose of altering ~~certain grounds~~ a certain ground for absolute divorce by reducing the amount of time required for the parties to have lived separate and

apart without cohabitation; repealing a certain ground for divorce; making a conforming change; and generally relating to grounds for absolute divorce.

BY repealing and reenacting, with amendments,
Article – Family Law
Section 7–103(a) and (c)
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

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

Article – Family Law

7–103.

(a) The court may decree an absolute divorce on the following grounds:

(1) adultery;

(2) desertion, if:

(i) the desertion has continued for 12 months without interruption before the filing of the application for divorce;

(ii) the desertion is deliberate and final; and

(iii) there is no reasonable expectation of reconciliation;

(3) ~~voluntary separation, if:~~

~~(i) the parties voluntarily have lived separate and apart without cohabitation for **[**12**]** **6** months without interruption before the filing of the application for divorce; and~~

~~(ii) there is no reasonable expectation of reconciliation;~~

~~(4)~~ conviction of a felony or misdemeanor in any state or in any court of the United States if before the filing of the application for divorce the defendant has:

(i) been sentenced to serve at least 3 years or an indeterminate sentence in a penal institution; and

(ii) served 12 months of the sentence;

~~(5)~~ **(4)** **[**2–year**]** **12–MONTH** separation, when the parties have lived separate and apart without cohabitation for **[**2 years**]** **12 MONTHS** without interruption before the filing of the application for divorce;

~~(6)~~ **(5)** insanity if:

(i) the insane spouse has been confined in a mental institution, hospital, or other similar institution for at least 3 years before the filing of the application for divorce;

(ii) the court determines from the testimony of at least 2 physicians who are competent in psychiatry that the insanity is incurable and there is no hope of recovery; and

(iii) 1 of the parties has been a resident of this State for at least 2 years before the filing of the application for divorce;

~~(7)~~ **(6)** cruelty of treatment toward the complaining party or a minor child of the complaining party, if there is no reasonable expectation of reconciliation; or

~~(8)~~ **(7)** excessively vicious conduct toward the complaining party or a minor child of the complaining party, if there is no reasonable expectation of reconciliation.

(c) Res judicata with respect to another ground under this section is not a bar to either party obtaining an absolute divorce on the ground of **[**2–year**]** **12–MONTH** separation.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 424

(House Bill 402)

AN ACT concerning

Family Law – Grounds for Absolute Divorce ~~– Time Requirements~~

FOR the purpose of altering ~~certain grounds~~ a certain ground for absolute divorce by reducing the amount of time required for the parties to have lived separate and

apart without cohabitation; repealing a certain ground for divorce; making a conforming change; and generally relating to grounds for absolute divorce.

BY repealing and reenacting, with amendments,
Article – Family Law
Section 7–103(a) and (c)
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

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

Article – Family Law

7–103.

(a) The court may decree an absolute divorce on the following grounds:

(1) adultery;

(2) desertion, if:

(i) the desertion has continued for 12 months without interruption before the filing of the application for divorce;

(ii) the desertion is deliberate and final; and

(iii) there is no reasonable expectation of reconciliation;

(3) ~~voluntary separation, if:~~

~~(i) the parties voluntarily have lived separate and apart without cohabitation for **[**12**]** **6** months without interruption before the filing of the application for divorce; and~~

~~(ii) there is no reasonable expectation of reconciliation;~~

~~(4)~~ conviction of a felony or misdemeanor in any state or in any court of the United States if before the filing of the application for divorce the defendant has:

(i) been sentenced to serve at least 3 years or an indeterminate sentence in a penal institution; and

(ii) served 12 months of the sentence;

~~(5)~~ **(4)** **[**2–year**] 12–MONTH** separation, when the parties have lived separate and apart without cohabitation for **[**2 years**] 12 MONTHS** without interruption before the filing of the application for divorce;

~~(6)~~ **(5)** insanity if:

(i) the insane spouse has been confined in a mental institution, hospital, or other similar institution for at least 3 years before the filing of the application for divorce;

(ii) the court determines from the testimony of at least 2 physicians who are competent in psychiatry that the insanity is incurable and there is no hope of recovery; and

(iii) 1 of the parties has been a resident of this State for at least 2 years before the filing of the application for divorce;

~~(7)~~ **(6)** cruelty of treatment toward the complaining party or a minor child of the complaining party, if there is no reasonable expectation of reconciliation; or

~~(8)~~ **(7)** excessively vicious conduct toward the complaining party or a minor child of the complaining party, if there is no reasonable expectation of reconciliation.

(c) Res judicata with respect to another ground under this section is not a bar to either party obtaining an absolute divorce on the ground of **[**2–year**] 12–MONTH** separation.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 425

(Senate Bill 154)

AN ACT concerning

Health Insurance – Ambulance Service Providers – ~~Assignment of Benefits~~ *Direct Reimbursement*

FOR the purpose of requiring health insurers, nonprofit health service plans, and health maintenance organizations to reimburse an ambulance service provider directly for certain covered services under certain circumstances; providing that an insured, a subscriber, or an enrollee of certain health insurance carriers may not be liable to certain ambulance service providers for certain services under certain circumstances; prohibiting certain ambulance service providers from taking certain actions against an insured, a subscriber, or an enrollee under certain circumstances; authorizing the ambulance service providers to collect certain payments from an insured, a subscriber, or an enrollee under certain circumstances; ~~requiring a health maintenance organization to reimburse certain ambulance service providers in accordance with certain provisions of law; prohibiting a certain allowed amount for a~~ *prohibiting a health maintenance organization's allowed amount for certain health care services provided by a certain ambulance service provider from being less than a certain amount, notwithstanding certain provisions of law; prohibiting an insurer's or nonprofit health service plan's allowed amount for a certain* health care service provided by a certain ambulance service provider from being less than a certain amount; ~~requiring~~ *authorizing* the Maryland Insurance Commissioner to adopt regulations to implement *certain provisions of* this Act; *requiring the Maryland Health Care Commission to provide certain reports to certain legislative committees on or before certain dates; providing for a delayed effective date; providing for the termination of this Act;* providing for the application of this Act; defining certain terms; and generally relating to reimbursement by insurers, nonprofit health service plans, and health maintenance organizations for transportation by ambulance.

BY adding to
Article – Health – General
Section 19–706(kkkk)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – Insurance
Section 15–138
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

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

Article – Health – General

19–706.

(KKKK) THE PROVISIONS OF § 15–138 OF THE INSURANCE ARTICLE APPLY TO HEALTH MAINTENANCE ORGANIZATIONS.

Article – Insurance

15–138.

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

(2) "AMBULANCE" MEANS ANY CONVEYANCE DESIGNED AND CONSTRUCTED OR MODIFIED AND EQUIPPED TO BE USED, MAINTAINED, OR OPERATED TO TRANSPORT INDIVIDUALS WHO ARE SICK, INJURED, WOUNDED, OR OTHERWISE INCAPACITATED.

(3) "AMBULANCE SERVICE PROVIDER" MEANS A PROVIDER OF AMBULANCE SERVICES THAT:

(I) IS OWNED, OPERATED, OR UNDER THE JURISDICTION OF A POLITICAL SUBDIVISION OF THE STATE OR A VOLUNTEER FIRE COMPANY OR VOLUNTEER RESCUE SQUAD; OR

(II) HAS CONTRACTED TO PROVIDE AMBULANCE SERVICES FOR A POLITICAL SUBDIVISION OF THE STATE.

(4) "ASSIGNMENT OF BENEFITS" MEANS THE TRANSFER BY AN INSURED, A SUBSCRIBER, OR AN ENROLLEE OF HEALTH CARE COVERAGE REIMBURSEMENT BENEFITS OR OTHER RIGHTS UNDER A HEALTH INSURANCE POLICY OR CONTRACT.

(5) "CARRIER" MEANS:

(I) AN INSURER THAT PROVIDES BENEFITS ON AN EXPENSE–INCURRED BASIS;

(II) A NONPROFIT HEALTH SERVICE PLAN; OR

(III) A HEALTH MAINTENANCE ORGANIZATION.

(6) "NONPREFERRED PROVIDER" HAS THE MEANING STATED IN § 14–201 OF THIS ARTICLE.

(7) "PREFERRED PROVIDER" HAS THE MEANING STATED IN § 14–201 OF THIS ARTICLE.

(8) "PREFERRED PROVIDER INSURANCE POLICY" HAS THE MEANING STATED IN § 14–201 OF THIS ARTICLE.

(B) THIS SECTION APPLIES TO INDIVIDUAL OR GROUP POLICIES OR CONTRACTS ISSUED OR DELIVERED IN THE STATE BY A CARRIER.

~~(B)~~ *(C)* *(1)* ~~A~~ *EXCEPT FOR A HEALTH MAINTENANCE ORGANIZATION, A* CARRIER SHALL REIMBURSE *DIRECTLY* AN AMBULANCE SERVICE PROVIDER THAT OBTAINS AN ASSIGNMENT OF BENEFITS FROM AN INSURED, A SUBSCRIBER, OR AN ENROLLEE ~~DIRECTLY~~ FOR COVERED SERVICES PROVIDED TO THE INSURED, SUBSCRIBER, ENROLLEE, OR ANY OTHER INDIVIDUAL COVERED BY A POLICY OR CONTRACT ISSUED BY THE CARRIER.

(2) A HEALTH MAINTENANCE ORGANIZATION SHALL REIMBURSE AN AMBULANCE SERVICE PROVIDER DIRECTLY FOR COVERED SERVICES PROVIDED TO A SUBSCRIBER, ENROLLEE, OR ANY OTHER INDIVIDUAL COVERED BY A POLICY OR CONTRACT ISSUED BY THE HEALTH MAINTENANCE ORGANIZATION.

~~(C)~~ *(D)* (1) THIS SUBSECTION APPLIES TO AN AMBULANCE SERVICE PROVIDER THAT RECEIVES DIRECT REIMBURSEMENT UNDER SUBSECTION ~~(B)~~ *(C)* OF THIS SECTION.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, AN INSURED, A SUBSCRIBER, OR AN ENROLLEE MAY NOT BE LIABLE TO AN AMBULANCE SERVICE PROVIDER FOR COVERED SERVICES.

(3) AN AMBULANCE SERVICE PROVIDER OR A REPRESENTATIVE OF THE AMBULANCE SERVICE PROVIDER MAY NOT:

(I) COLLECT OR ATTEMPT TO COLLECT FROM AN INSURED, A SUBSCRIBER, OR AN ENROLLEE OF A CARRIER ANY MONEY OWED TO THE AMBULANCE SERVICE PROVIDER BY THE CARRIER FOR COVERED SERVICES RENDERED TO THE INSURED, SUBSCRIBER, OR ENROLLEE BY THE AMBULANCE SERVICE PROVIDER; OR

(II) MAINTAIN ANY ACTION AGAINST AN INSURED, A SUBSCRIBER, OR AN ENROLLEE OF A CARRIER TO COLLECT OR ATTEMPT TO COLLECT ANY MONEY OWED TO THE AMBULANCE SERVICE PROVIDER BY THE CARRIER FOR COVERED SERVICES RENDERED TO THE INSURED, SUBSCRIBER, OR ENROLLEE BY THE AMBULANCE SERVICE PROVIDER.

(4) AN AMBULANCE SERVICE PROVIDER OR A REPRESENTATIVE OF THE AMBULANCE SERVICE PROVIDER MAY COLLECT OR ATTEMPT TO COLLECT FROM AN INSURED, A SUBSCRIBER, OR AN ENROLLEE OF A CARRIER:

(I) ANY COPAYMENT, DEDUCTIBLE, OR COINSURANCE AMOUNT OWED BY THE INSURED, SUBSCRIBER, OR ENROLLEE FOR COVERED SERVICES RENDERED TO THE INSURED, SUBSCRIBER, OR ENROLLEE BY THE AMBULANCE SERVICE PROVIDER;

(II) IF MEDICARE IS THE PRIMARY INSURER AND THE CARRIER IS THE SECONDARY INSURER, ANY AMOUNT UP TO THE MEDICARE–APPROVED OR LIMITING AMOUNT, AS SPECIFIED UNDER THE FEDERAL SOCIAL SECURITY ACT, THAT IS NOT OWED TO THE AMBULANCE SERVICE PROVIDER BY MEDICARE OR THE CARRIER AFTER COORDINATION OF BENEFITS HAS BEEN COMPLETED, FOR ~~MEDICARE–COVERED~~ *MEDICARE COVERED* SERVICES RENDERED TO THE INSURED, SUBSCRIBER, OR ENROLLEE BY THE AMBULANCE SERVICE PROVIDER; AND

(III) ANY PAYMENT OR CHARGE FOR SERVICES THAT ARE NOT COVERED SERVICES.

~~(D)~~ *(E)* (1) ~~A HEALTH MAINTENANCE ORGANIZATION SHALL REIMBURSE AN AMBULANCE SERVICE PROVIDER THAT RECEIVES DIRECT REIMBURSEMENT UNDER SUBSECTION (B) OF THIS SECTION AND IS NOT UNDER WRITTEN CONTRACT WITH THE HEALTH MAINTENANCE ORGANIZATION IN ACCORDANCE WITH § 19–710.1 OF THE HEALTH – GENERAL ARTICLE~~ *NOTWITHSTANDING § 19–710.1 OF THE HEALTH – GENERAL ARTICLE, A HEALTH MAINTENANCE ORGANIZATION'S ALLOWED AMOUNT FOR A COVERED HEALTH CARE SERVICE PROVIDED BY AN AMBULANCE SERVICE PROVIDER THAT IS NOT UNDER WRITTEN CONTRACT WITH THE HEALTH MAINTENANCE ORGANIZATION MAY NOT BE LESS THAN THE ALLOWED AMOUNT PAID TO AN AMBULANCE SERVICE PROVIDER THAT IS UNDER WRITTEN CONTRACT WITH THE HEALTH MAINTENANCE ORGANIZATION FOR THE SAME COVERED SERVICE IN THE SAME GEOGRAPHIC REGION, AS DEFINED BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES.*

(2) AN INSURER'S OR NONPROFIT HEALTH SERVICE PLAN'S ALLOWED AMOUNT FOR A HEALTH CARE SERVICE COVERED UNDER A PREFERRED PROVIDER INSURANCE POLICY AND PROVIDED BY AN AMBULANCE SERVICE PROVIDER THAT IS A NONPREFERRED PROVIDER MAY NOT BE LESS THAN THE ALLOWED AMOUNT PAID TO AN AMBULANCE SERVICE PROVIDER WHO IS A PREFERRED PROVIDER FOR THE SAME HEALTH CARE SERVICE IN THE SAME GEOGRAPHIC REGION, *AS DEFINED BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES.*

~~(E)~~ *(F)* **THE COMMISSIONER ~~SHALL~~ *MAY* ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.**

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Health Care Commission shall report, in accordance with § 2–1246 of the State Government Article, to the Senate Finance Committee and the House Health and Government Operations Committee on the changes occurring after the effective date of this Act, for services provided by ambulance service providers, in:

(1) the number of claims received;

(2) the number of claims paid; and

(3) the amount of claims paid.

(b) In its report, the Commission shall report separately on:

(1) the changes for services provided by in–network ambulance service providers; and

(2) the changes for services provided by out–of–network ambulance service providers.

(c) The Commission shall provide an interim report on or before January 1, 2014, and a final report on or before January 1, 2015.

SECTION ~~2.~~ *3.* AND BE IT FURTHER ENACTED, That this Act shall apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after ~~October 1, 2011~~ *January 1, 2012*.

SECTION ~~3.~~ *4.* AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October 1, 2011.~~ *January 1, 2012. It shall remain effective for a period of 3 years and 6 months and, at the end of June 30, 2015, 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 19, 2011.

Chapter 426

(House Bill 83)

AN ACT concerning

Health Insurance – Ambulance Service Providers – Direct Reimbursement

FOR the purpose of requiring health insurers, nonprofit health service plans, and health maintenance organizations to reimburse an ambulance service provider directly for certain covered services~~; providing that an ambulance service provider is entitled to direct reimbursement under certain circumstances;~~ under certain circumstances; providing that an insured, a subscriber, or an enrollee of certain health insurance carriers may not be liable to certain ambulance service providers for certain services under certain circumstances; prohibiting certain ambulance service providers from taking certain actions against an insured, a subscriber, or an enrollee under certain circumstances; authorizing the ambulance service providers to collect certain payments from an insured, a subscriber, or an enrollee under certain circumstances; prohibiting a health maintenance organization's allowed amount for certain health care services provided by a certain ambulance service provider from being less than a certain amount, notwithstanding certain provisions of law; prohibiting an insurer's or nonprofit health service plan's allowed amount for a certain health care service provided by a certain ambulance service provider from being less than a certain amount; authorizing the Maryland Insurance Commissioner to adopt regulations to implement certain provisions of this Act; requiring the Maryland Health Care Commission to provide certain reports to certain legislative committees on or before certain dates; providing for a delayed effective date; providing for the termination of this Act; providing for the application of this Act; defining ~~a certain term~~ certain terms; and generally relating to reimbursement by insurers, nonprofit health service plans, and health maintenance organizations for transportation by ambulance.

BY adding to
Article – Health – General
Section 19–706(kkkk)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – Insurance
Section ~~15–716~~ 15–138
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

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

Article – Health – General

19–706.

(KKKK) THE PROVISIONS OF ~~§ 15–716~~ § 15–138 OF THE INSURANCE ARTICLE APPLY TO HEALTH MAINTENANCE ORGANIZATIONS.

Article – Insurance

~~15–716.~~

~~(A) IN THIS SECTION, "AMBULANCE" MEANS ANY CONVEYANCE DESIGNED AND CONSTRUCTED OR MODIFIED AND EQUIPPED TO BE USED, MAINTAINED, OR OPERATED TO TRANSPORT INDIVIDUALS WHO ARE SICK, INJURED, WOUNDED, OR OTHERWISE INCAPACITATED.~~

~~(B) THIS SECTION APPLIES TO EACH INDIVIDUAL OR GROUP HEALTH INSURANCE POLICY OR CONTRACT THAT IS ISSUED OR DELIVERED IN THE STATE BY AN INSURER, NONPROFIT HEALTH SERVICE PLAN, OR HEALTH MAINTENANCE ORGANIZATION.~~

~~(C) AN INSURER, NONPROFIT HEALTH SERVICE PLAN, OR HEALTH MAINTENANCE ORGANIZATION SHALL REIMBURSE AN AMBULANCE SERVICE PROVIDER DIRECTLY FOR COVERED SERVICES PROVIDED TO THE INSURED OR ANY OTHER INDIVIDUAL COVERED BY THE POLICY OR CONTRACT.~~

~~(D) AN AMBULANCE SERVICE PROVIDER IS ENTITLED TO DIRECT REIMBURSEMENT UNDER THIS SECTION WHETHER OR NOT:~~

~~(1) THE AMBULANCE THAT PROVIDED THE SERVICE IS OWNED, OPERATED, OR UNDER THE JURISDICTION OF A UNIT OF STATE GOVERNMENT, A POLITICAL SUBDIVISION OF THE STATE, OR A VOLUNTEER FIRE COMPANY OR VOLUNTEER RESCUE SQUAD;~~

~~(2) THE TRANSPORTATION BY AMBULANCE IS IN RESPONSE TO AN EMERGENCY MEDICAL CONDITION; OR~~

~~(3) THE AMBULANCE SERVICE PROVIDER IS AN IN–NETWORK OR OUT–OF–NETWORK PROVIDER.~~

15–138.

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

(2) "AMBULANCE" MEANS ANY CONVEYANCE DESIGNED AND CONSTRUCTED OR MODIFIED AND EQUIPPED TO BE USED, MAINTAINED, OR

OPERATED TO TRANSPORT INDIVIDUALS WHO ARE SICK, INJURED, WOUNDED, OR OTHERWISE INCAPACITATED.

(3) "AMBULANCE SERVICE PROVIDER" MEANS A PROVIDER OF AMBULANCE SERVICES THAT:

(I) IS OWNED, OPERATED, OR UNDER THE JURISDICTION OF A POLITICAL SUBDIVISION OF THE STATE OR A VOLUNTEER FIRE COMPANY OR VOLUNTEER RESCUE SQUAD; OR

(II) HAS CONTRACTED TO PROVIDE AMBULANCE SERVICES FOR A POLITICAL SUBDIVISION OF THE STATE.

(4) "ASSIGNMENT OF BENEFITS" MEANS THE TRANSFER BY AN INSURED, A SUBSCRIBER, OR AN ENROLLEE OF HEALTH CARE COVERAGE REIMBURSEMENT BENEFITS OR OTHER RIGHTS UNDER A HEALTH INSURANCE POLICY OR CONTRACT.

(5) "CARRIER" MEANS:

(I) AN INSURER THAT PROVIDES BENEFITS ON AN EXPENSE–INCURRED BASIS;

(II) A NONPROFIT HEALTH SERVICE PLAN; OR

(III) A HEALTH MAINTENANCE ORGANIZATION.

(6) "NONPREFERRED PROVIDER" HAS THE MEANING STATED IN § 14–201 OF THIS ARTICLE.

(7) "PREFERRED PROVIDER" HAS THE MEANING STATED IN § 14–201 OF THIS ARTICLE.

(8) "PREFERRED PROVIDER INSURANCE POLICY" HAS THE MEANING STATED IN § 14–201 OF THIS ARTICLE.

(B) THIS SECTION APPLIES TO INDIVIDUAL OR GROUP POLICIES OR CONTRACTS ISSUED OR DELIVERED IN THE STATE BY A CARRIER.

(C) (1) EXCEPT FOR A HEALTH MAINTENANCE ORGANIZATION, A CARRIER SHALL REIMBURSE DIRECTLY AN AMBULANCE SERVICE PROVIDER THAT OBTAINS AN ASSIGNMENT OF BENEFITS FROM AN INSURED, A SUBSCRIBER, OR AN ENROLLEE FOR COVERED SERVICES PROVIDED TO THE

INSURED, SUBSCRIBER, ENROLLEE, OR ANY OTHER INDIVIDUAL COVERED BY A POLICY OR CONTRACT ISSUED BY THE CARRIER.

(2) A HEALTH MAINTENANCE ORGANIZATION SHALL REIMBURSE AN AMBULANCE SERVICE PROVIDER DIRECTLY FOR COVERED SERVICES PROVIDED TO A SUBSCRIBER, ENROLLEE, OR ANY OTHER INDIVIDUAL COVERED BY A POLICY OR CONTRACT ISSUED BY THE HEALTH MAINTENANCE ORGANIZATION.

(D) (1) THIS SUBSECTION APPLIES TO AN AMBULANCE SERVICE PROVIDER THAT RECEIVES DIRECT REIMBURSEMENT UNDER SUBSECTION (C) OF THIS SECTION.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, AN INSURED, A SUBSCRIBER, OR AN ENROLLEE MAY NOT BE LIABLE TO AN AMBULANCE SERVICE PROVIDER FOR COVERED SERVICES.

(3) AN AMBULANCE SERVICE PROVIDER OR A REPRESENTATIVE OF THE AMBULANCE SERVICE PROVIDER MAY NOT:

(I) COLLECT OR ATTEMPT TO COLLECT FROM AN INSURED, A SUBSCRIBER, OR AN ENROLLEE OF A CARRIER ANY MONEY OWED TO THE AMBULANCE SERVICE PROVIDER BY THE CARRIER FOR COVERED SERVICES RENDERED TO THE INSURED, SUBSCRIBER, OR ENROLLEE BY THE AMBULANCE SERVICE PROVIDER; OR

(II) MAINTAIN ANY ACTION AGAINST AN INSURED, A SUBSCRIBER, OR AN ENROLLEE OF A CARRIER TO COLLECT OR ATTEMPT TO COLLECT ANY MONEY OWED TO THE AMBULANCE SERVICE PROVIDER BY THE CARRIER FOR COVERED SERVICES RENDERED TO THE INSURED, SUBSCRIBER, OR ENROLLEE BY THE AMBULANCE SERVICE PROVIDER.

(4) AN AMBULANCE SERVICE PROVIDER OR A REPRESENTATIVE OF THE AMBULANCE SERVICE PROVIDER MAY COLLECT OR ATTEMPT TO COLLECT FROM AN INSURED, A SUBSCRIBER, OR AN ENROLLEE OF A CARRIER:

(I) ANY COPAYMENT, DEDUCTIBLE, OR COINSURANCE AMOUNT OWED BY THE INSURED, SUBSCRIBER, OR ENROLLEE FOR COVERED SERVICES RENDERED TO THE INSURED, SUBSCRIBER, OR ENROLLEE BY THE AMBULANCE SERVICE PROVIDER;

(II) IF MEDICARE IS THE PRIMARY INSURER AND THE CARRIER IS THE SECONDARY INSURER, ANY AMOUNT UP TO THE MEDICARE–APPROVED OR LIMITING AMOUNT, AS SPECIFIED UNDER THE

FEDERAL SOCIAL SECURITY ACT, THAT IS NOT OWED TO THE AMBULANCE SERVICE PROVIDER BY MEDICARE OR THE CARRIER AFTER COORDINATION OF BENEFITS HAS BEEN COMPLETED, FOR MEDICARE COVERED SERVICES RENDERED TO THE INSURED, SUBSCRIBER, OR ENROLLEE BY THE AMBULANCE SERVICE PROVIDER; AND

(III) ANY PAYMENT OR CHARGE FOR SERVICES THAT ARE NOT COVERED SERVICES.

(E) (1) NOTWITHSTANDING § 19–710.1 OF THE HEALTH – GENERAL ARTICLE, A HEALTH MAINTENANCE ORGANIZATION'S ALLOWED AMOUNT FOR A COVERED HEALTH CARE SERVICE PROVIDED BY AN AMBULANCE SERVICE PROVIDER THAT IS NOT UNDER WRITTEN CONTRACT WITH THE HEALTH MAINTENANCE ORGANIZATION MAY NOT BE LESS THAN THE ALLOWED AMOUNT PAID TO AN AMBULANCE SERVICE PROVIDER THAT IS UNDER WRITTEN CONTRACT WITH THE HEALTH MAINTENANCE ORGANIZATION FOR THE SAME COVERED SERVICE IN THE SAME GEOGRAPHIC REGION, AS DEFINED BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES.

(2) AN INSURER'S OR NONPROFIT HEALTH SERVICE PLAN'S ALLOWED AMOUNT FOR A HEALTH CARE SERVICE COVERED UNDER A PREFERRED PROVIDER INSURANCE POLICY AND PROVIDED BY AN AMBULANCE SERVICE PROVIDER THAT IS A NONPREFERRED PROVIDER MAY NOT BE LESS THAN THE ALLOWED AMOUNT PAID TO AN AMBULANCE SERVICE PROVIDER WHO IS A PREFERRED PROVIDER FOR THE SAME HEALTH CARE SERVICE IN THE SAME GEOGRAPHIC REGION, AS DEFINED BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES.

(F) THE COMMISSIONER MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Health Care Commission shall report, in accordance with § 2–1246 of the State Government Article, to the Senate Finance Committee and the House Health and Government Operations Committee on the changes occurring after the effective date of this Act, for services provided by ambulance service providers, in:

(1) the number of claims received;

(2) the number of claims paid; and

(3) the amount of claims paid.

(b) In its report, the Commission shall report separately on:

(1) the changes for services provided by in–network ambulance service providers; and

(2) the changes for services provided by out–of–network ambulance service providers.

(c) The Commission shall provide an interim report on or before January 1, 2014, and a final report on or before January 1, 2015.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after ~~October 1, 2011~~ January 1, 2012.

SECTION ~~3.~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October 1, 2011.~~ January 1, 2012. It shall remain effective for a period of 3 years and 6 months and, at the end of June 30, 2015, 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 19, 2011.

Chapter 427

(Senate Bill 159)

AN ACT concerning

Natural Resources – Oyster Poaching – Hearing

FOR the purpose of providing that a certain person who receives a citation for a certain offense related to unlawfully taking oysters may have a certain license revoked under certain circumstances; establishing certain grounds for the revocation of a certain license; requiring the Department of Natural Resources to hold a certain hearing under certain circumstances in accordance with the Administrative Procedure Act; requiring the Department to revoke a person's license to catch oysters under certain circumstances; authorizing certain aggrieved persons to obtain judicial review of a certain decision; prohibiting a certain person from engaging or working in a certain fishery under certain circumstances; and generally relating to unlawfully taking oysters and license revocation.

BY adding to
Article – Natural Resources
Section 4–1210
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

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

Article – Natural Resources

4–1210.

(A) (1) IN ADDITION TO ANY OTHER PENALTY OR FINE PROVIDED IN THIS TITLE, A PERSON WHO HOLDS A LICENSE TO CATCH OYSTERS UNDER § 4–701 OF THIS TITLE AND RECEIVES A CITATION FOR AN OFFENSE LISTED UNDER PARAGRAPH (2) OF THIS SUBSECTION MAY HAVE THE LICENSE REVOKED IN ACCORDANCE WITH THIS SECTION.

(2) THE FOLLOWING OFFENSES, COMMITTED IN VIOLATION OF THIS TITLE OR OF ANY REGULATION ADOPTED UNDER THIS TITLE, ARE GROUNDS FOR REVOCATION OF A LICENSE TO CATCH OYSTERS UNDER THIS SECTION:

(I) TAKING OYSTERS LOCATED MORE THAN 200 FEET WITHIN A CLOSED OR PROHIBITED AREA;

(II) TAKING OYSTERS WITH GEAR THAT IS PROHIBITED IN THAT AREA;

(III) TAKING OYSTERS OUTSIDE OF A TIME RESTRICTION FOR THE HARVEST OF OYSTERS BY MORE THAN 1 HOUR;

(IV) TAKING OYSTERS DURING CLOSED SEASONS; AND

(V) TAKING OYSTERS FROM A LEASED AREA BY A PERSON OTHER THAN THE LEASEHOLDER OR THE LEASEHOLDER'S DESIGNEE.

(B) (1) WITHIN 60 DAYS AFTER A PERSON WHO HOLDS A LICENSE TO CATCH OYSTERS UNDER § 4–701 OF THIS TITLE RECEIVES A CITATION FOR AN OFFENSE LISTED UNDER SUBSECTION (A) OF THIS SECTION, THE DEPARTMENT SHALL HOLD A HEARING ON THE MATTER IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT UNDER TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(2) AFTER A HEARING IS CONDUCTED UNDER PARAGRAPH (1) OF THIS SUBSECTION, IF THE PRESIDING OFFICER FINDS OR CONCLUDES THAT THE PERSON KNOWINGLY HAS COMMITTED AN OFFENSE LISTED UNDER SUBSECTION

(A)(2) OF THIS SECTION, THE DEPARTMENT SHALL REVOKE THE PERSON'S LICENSE TO CATCH OYSTERS.

(C) A PERSON WHO IS AGGRIEVED BY THE FINAL DECISION OF THE DEPARTMENT MAY OBTAIN JUDICIAL REVIEW OF THE DECISION IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT UNDER TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(D) A PERSON WHOSE LICENSE HAS BEEN REVOKED IN ACCORDANCE WITH THIS SECTION MAY NOT ENGAGE OR WORK IN THE FISHERY FOR WHICH THE LICENSE WAS REVOKED WHETHER OR NOT IT REQUIRES THE USE OF ANOTHER LICENSE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 428

(House Bill 273)

AN ACT concerning

Natural Resources – Oyster Poaching – Hearing

FOR the purpose of providing that a certain person who receives a citation for a certain offense related to unlawfully taking oysters may have a certain license revoked under certain circumstances; establishing certain grounds for the revocation of a certain license; requiring the Department of Natural Resources to hold a certain hearing under certain circumstances in accordance with the Administrative Procedure Act; requiring the Department to revoke a person's license to catch oysters under certain circumstances; authorizing certain aggrieved persons to obtain judicial review of a certain decision; prohibiting a certain person from engaging or working in a certain fishery under certain circumstances; and generally relating to unlawfully taking oysters and license revocation.

BY adding to
Article – Natural Resources
Section 4–1210
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

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

Article – Natural Resources

4–1210.

(A) (1) IN ADDITION TO ANY OTHER PENALTY OR FINE PROVIDED IN THIS TITLE, A PERSON WHO HOLDS A LICENSE TO CATCH OYSTERS UNDER § 4–701 OF THIS TITLE AND RECEIVES A CITATION FOR AN OFFENSE LISTED UNDER PARAGRAPH (2) OF THIS SUBSECTION MAY HAVE THE LICENSE REVOKED IN ACCORDANCE WITH THIS SECTION.

(2) THE FOLLOWING OFFENSES, COMMITTED IN VIOLATION OF THIS TITLE OR OF ANY REGULATION ADOPTED UNDER THIS TITLE, ARE GROUNDS FOR REVOCATION OF A LICENSE TO CATCH OYSTERS UNDER THIS SECTION:

(I) TAKING OYSTERS LOCATED MORE THAN 200 FEET WITHIN A CLOSED OR PROHIBITED AREA;

(II) TAKING OYSTERS WITH GEAR THAT IS PROHIBITED IN THAT AREA;

(III) TAKING OYSTERS OUTSIDE OF A TIME RESTRICTION FOR THE HARVEST OF OYSTERS BY MORE THAN 1 HOUR;

(IV) TAKING OYSTERS DURING CLOSED SEASONS; AND

(V) TAKING OYSTERS FROM A LEASED AREA BY A PERSON OTHER THAN THE LEASEHOLDER OR THE LEASEHOLDER'S DESIGNEE.

(B) (1) WITHIN 60 DAYS AFTER A PERSON WHO HOLDS A LICENSE TO CATCH OYSTERS UNDER § 4–701 OF THIS TITLE RECEIVES A CITATION FOR AN OFFENSE LISTED UNDER SUBSECTION (A) OF THIS SECTION, THE DEPARTMENT SHALL HOLD A HEARING ON THE MATTER IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT UNDER TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(2) AFTER A HEARING IS CONDUCTED UNDER PARAGRAPH (1) OF THIS SUBSECTION, IF THE PRESIDING OFFICER FINDS OR CONCLUDES THAT THE PERSON KNOWINGLY HAS COMMITTED AN OFFENSE LISTED UNDER SUBSECTION (A)(2) OF THIS SECTION, THE DEPARTMENT SHALL REVOKE THE PERSON'S LICENSE TO CATCH OYSTERS.

(C) A PERSON WHO IS AGGRIEVED BY THE FINAL DECISION OF THE DEPARTMENT MAY OBTAIN JUDICIAL REVIEW OF THE DECISION IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT UNDER TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(D) A PERSON WHOSE LICENSE HAS BEEN REVOKED IN ACCORDANCE WITH THIS SECTION MAY NOT ENGAGE OR WORK IN THE FISHERY FOR WHICH THE LICENSE WAS REVOKED WHETHER OR NOT IT REQUIRES THE USE OF ANOTHER LICENSE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 429

(Senate Bill 163)

AN ACT concerning

~~Charles County~~ *Allegany County, Baltimore City, Charles County,* and Frederick County – ~~Board~~ Boards of Elections – Membership

FOR the purpose of increasing the number of regular members and eliminating substitute members on *the Allegany County Board of Elections, the Baltimore City Board of Elections,* the Charles County Board of Elections, and the Frederick County Board of Elections; requiring the members of the ~~board~~ boards to be of certain political parties; requiring that a vacancy on the ~~board~~ boards be filled in a certain manner; making a conforming change; making a stylistic change; providing for the effective date of this Act; and generally relating to *the Allegany County Board of Elections, the Baltimore City Board of Elections,* the Charles County Board of Elections, and the Frederick County Board of Elections.

BY repealing and reenacting, without amendments,
Article – Election Law
Section 2–201(a) and (b) and ~~2–204(a)(9) and (11)~~ *2–204(a)(3), (9), and (11)*
Annotated Code of Maryland
(2010 Replacement Volume)
(As enacted by Chapter 344 of the Acts of the General Assembly of 2010)

BY repealing and reenacting, with amendments,

Article – Election Law
Section 2–201(l) and 2–204(b)(2)(ii)
Annotated Code of Maryland
(2010 Replacement Volume)
(As enacted by Chapter 344 of the Acts of the General Assembly of 2010)

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

Article – Election Law

2–201.

(a) (1) There is a county board of elections in each county of the State.

(2) Each local board and its staff is subject to the direction and authority of the State Board and is accountable to the State Board for its actions in all matters regarding the implementation of the requirements of this article and any applicable federal law.

(b) (1) Except as provided in subsections (j), (k), and (l) of this section, each local board consists of three regular members and two substitute members.

(2) Two regular members and one substitute member shall be of the majority party, and one regular member and one substitute member shall be of the principal minority party.

(3) Except as provided in subsection (l) of this section, in the event of the absence of a regular member or a vacancy in the office of a regular member, the substitute member of the same political party shall exercise the powers and duties of a regular member until the regular member returns or the vacancy is filled as prescribed in subsection (h) of this section.

(l) (1) In ***ALLEGANY COUNTY, BALTIMORE CITY,*** **CHARLES COUNTY, FREDERICK COUNTY, SOMERSET COUNTY,** Wicomico County, **AND** Worcester County, **[**and Somerset County,**]** the local board consists of five regular members.

(2) Three regular members shall be of the majority party, and two regular members shall be of the principal minority party.

(3) (i) If a vacancy occurs on the local board, the Governor shall appoint an eligible person from the same political party as the predecessor member to fill the vacancy in accordance with subsection (g) of this section for the remainder of the unexpired term and until a successor is appointed and qualifies.

(ii) An appointment made while the Senate of Maryland is not in session shall be considered temporary until the appointee is confirmed by the Senate.

2–204.

(a) Each regular member of a local board shall receive the salary and reimbursement of expenses provided in the county budget, but in no event may the annual compensation be less than the following amounts:

(3) in Baltimore City, $11,000 for the president and $10,000 for other regular members;

(9) in Charles County, $800;

(11) in Frederick County, $5,500 for the president and $5,000 for other regular members;

(b) (2) (ii) 1. ~~In Baltimore City, a substitute member shall be paid $200 for each meeting that the substitute member attends.~~

~~2.~~ In Calvert County, a substitute member shall be paid at least $50 for each meeting that the substitute member attends.

~~3.~~ **[**In Frederick County, a substitute member shall be paid $4,500 annually.

4.**]** ***2.*** In Garrett County, a substitute member shall be paid the amount set by the County Commissioners under Chapter 91 of the Public Local Laws of Garrett County.

[5.**]** ~~4.~~ ***3.*** In Kent County, a substitute member shall be paid at least $50 for each meeting that the substitute member attends.

[6.**]** ~~5.~~ ***4.*** In Washington County, a substitute member shall be paid $75 for each meeting that the substitute member attends.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October 1~~ June 6, 2011.

Approved by the Governor, May 19, 2011.

Chapter 430

(Senate Bill 188)

AN ACT concerning

Recreational Fishing Licenses – Exemption ~~for Disabled Armed Forces Members~~

FOR the purpose of ~~creating an~~ authorizing the Department of Natural Resources to issue an annual exemption from the requirement to obtain a recreational fishing license under certain circumstances ~~for a person who serves in the armed forces and has a service–connected disability~~ to a governmental entity or nonprofit organization to take individuals serving or who have served in the armed forces with physical or mental disabilities fishing in certain waters; providing that the exemption applies to certain individuals attending to a certain disabled individual; requiring an application for the exemption to be submitted to the Department on a certain form; requiring a certain governmental entity or nonprofit organization to submit a certain report containing certain information within a certain time frame; clarifying that the exemption applies to certain fishing activities; and generally relating to exemptions from the requirement to obtain a recreational fishing license.

~~BY adding to~~
~~Article – Natural Resources~~
~~Section 4–217.1~~
~~Annotated Code of Maryland~~
~~(2005 Replacement Volume and 2010 Supplement)~~

~~BY repealing and reenacting, without amendments,~~
~~Article – Natural Resources~~
~~Section 4–604(b) and 4–614(a)(1)~~
~~Annotated Code of Maryland~~
~~(2005 Replacement Volume and 2010 Supplement)~~

~~BY repealing and reenacting, with amendments,~~
~~Article – Natural Resources~~
~~Section 4–604(c), 4–614(a)(2), and 4–745(a)(1)~~
~~Annotated Code of Maryland~~
~~(2005 Replacement Volume and 2010 Supplement)~~

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 4–217
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

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

Article – Natural Resources

~~**4–217.1.**~~

~~**(A) A PERSON SERVING IN THE ARMED FORCES OF THE UNITED STATES WHO HAS A SERVICE–CONNECTED DISABILITY MAY FISH IN THE WATERS OF THE STATE FOR RECREATION WITHOUT OBTAINING A LICENSE OR AN APPLICABLE STAMP IF, WHILE FISHING, THE PERSON POSSESSES VALID MILITARY IDENTIFICATION.**~~

~~**(B) THE FISHING ACTIVITIES AUTHORIZED UNDER THIS SECTION INCLUDE:**~~

~~**(1) ANGLING ON THE NONTIDAL WATERS OF THE STATE WITHOUT HOLDING AN ANGLER'S LICENSE UNDER § 4–604 OF THIS TITLE;**~~

~~**(2) ANGLING FOR TROUT ON THE NONTIDAL WATERS OF THE STATE WITHOUT HOLDING A TROUT STAMP UNDER § 4–614 OF THIS TITLE; AND**~~

~~**(3) FISHING FOR FINFISH IN THE CHESAPEAKE BAY AND ITS TRIBUTARIES OR IN THE STATE WATERS OF THE ATLANTIC OCEAN AND THE ATLANTIC COASTAL BAYS AND THEIR TRIBUTARIES WITHOUT HOLDING A CHESAPEAKE BAY AND COASTAL SPORT FISHING LICENSE UNDER § 4–745 OF THIS TITLE.**~~

~~4–604.~~

~~(b) Any person 16 years old or older shall secure an angler's license to fish in the nontidal waters of the State. An angler's license entitles the holder to fish in the nontidal waters of the State only during the open season.~~

~~(c) An angler's license is not required of the following:~~

~~(1) The owner or tenant of land bordering on nontidal water, his spouse and children, or the spouse of any child who resides on the land with the owner or tenant when he fishes in nontidal water adjoining his land;~~

~~(2) Any resident serving in the armed forces of the United States, while on leave in the State, during his leave period, if, while angling, he possesses a copy of his official leave orders;~~

~~(3) A person who fishes in nontidal waters of the State on free fishing days designated by the Secretary;~~

~~(4) A person holding a current resident consolidated senior sport fishing license issued under § 4–216 of this title;~~ **[**~~or~~**]**

~~(5) A person authorized by a disability exemption issued under § 4–217 of this title~~**; OR**

~~(6) A PERSON SERVING IN THE ARMED FORCES OF THE UNITED STATES WHO HAS A SERVICE–CONNECTED DISABILITY AND POSSESSES VALID MILITARY IDENTIFICATION AS PROVIDED UNDER § 4–217.1 OF THIS TITLE.~~

~~4–614.~~

~~(a) (1) Except as provided in paragraph (2) of this subsection, a person may not fish in a special catch–and–return trout management area or possess trout while fishing in nontidal waters unless the person first obtains a trout stamp in addition to an angler's license.~~

~~(2) A trout stamp is not required of the following:~~

~~(i) A holder of a current resident consolidated senior sport fishing license issued under § 4–216 of this title;~~

~~(ii) A holder of a lifetime complimentary angler's license for service disabled veterans or former prisoners of war issued under § 4–607(a)(2) of this subtitle;~~

~~(iii) A person authorized by a disability exemption issued under § 4–217 of this title;~~

~~(iv) A resident serving in the armed forces of the United States while on leave if the resident possesses a copy of the resident's official leave order while fishing;~~ **[**~~or~~**]**

~~(v)~~ **~~A PERSON SERVING IN THE ARMED FORCES OF THE UNITED STATES WHO HAS A SERVICE–CONNECTED DISABILITY AND POSSESSES VALID MILITARY IDENTIFICATION AS PROVIDED UNDER § 4–217.1 OF THIS TITLE; OR~~**

~~(VI) A person under 16 years of age.~~

~~4–745.~~

~~(a) (1) Except as provided in subsections (c) and (d) of this section and~~ **[**~~§~~**]** **~~§§~~** ~~4–217~~ **~~AND 4–217.1~~** ~~of this title, a person may not fish for finfish in the Chesapeake Bay or in its tributaries up to tidal boundaries or in State waters of the Atlantic Ocean and the Atlantic coastal bays and tributaries without first obtaining a~~

~~Chesapeake Bay and coastal sport fishing license or registration issued under subsection (d)(3) of this section and possessing evidence of the license or registration.~~

4–217.

(a) (1) The Department may issue a 1–day license exemption to a nonprofit organization to take individuals with physical or mental disabilities fishing from shore in the tidal or nontidal waters of the State.

(2) The primary caregiver or representative of the organization attending to the disabled individuals is included in the license exemption **UNDER THIS SUBSECTION**.

[(b)**]** **(3)** Application for a license exemption for an organization attending to disabled individuals shall state the location, time, and day of the event and the number of individuals covered by the exemption.

(B) (1) THE DEPARTMENT MAY ISSUE AN ANNUAL LICENSE EXEMPTION TO A GOVERNMENTAL ENTITY OR A NONPROFIT ORGANIZATION TO TAKE INDIVIDUALS WITH PHYSICAL OR MENTAL DISABILITIES WHO ARE SERVING OR HAVE SERVED IN THE ARMED FORCES FISHING IN THE TIDAL OR NONTIDAL WATERS OF THE STATE.

(2) THE PRIMARY CAREGIVER OR REPRESENTATIVE OF THE GOVERNMENTAL ENTITY OR A NONPROFIT ORGANIZATION ATTENDING TO A DISABLED INDIVIDUAL UNDER THIS SUBSECTION IS INCLUDED IN THE LICENSE EXEMPTION.

(3) AN APPLICATION FOR A LICENSE EXEMPTION FOR A GOVERNMENTAL ENTITY OR A NONPROFIT ORGANIZATION ATTENDING TO A DISABLED INDIVIDUAL UNDER THIS SUBSECTION SHALL BE MADE ON A FORM PROVIDED BY THE DEPARTMENT.

(4) A GOVERNMENTAL ENTITY OR A NONPROFIT ORGANIZATION WITH AN EXEMPTION UNDER THIS SUBSECTION SHALL SUBMIT A REPORT TO THE DEPARTMENT BY JANUARY 1 OF THE YEAR FOLLOWING THE EXEMPTION PERIOD THAT STATES:

(I) THE LOCATIONS FISHED UNDER THE EXEMPTION;

(II) THE DATES THE EXEMPTION WAS USED; AND

(III) THE NUMBER OF INDIVIDUALS WHO WERE COVERED BY THE EXEMPTION.

(c) The primary caregiver or representative of the **GOVERNMENTAL ENTITY OR NONPROFIT** organization **EXEMPTED UNDER SUBSECTIONS (A) OR (B) OF THIS SECTION** shall have in possession the letter of exemption from the Director of the Fisheries Service while the organization is engaged in fishing activity.

(d) An individual covered under **[**the organization's**]** **A** license exemption **UNDER SUBSECTION (A) OR (B) OF THIS SECTION** may:

(1) Engage in angling on the nontidal waters of the State without holding an angler's license under § 4–604 of this title;

(2) Engage in angling for trout on the nontidal waters of the State without holding a trout stamp under § 4–614 of this title; and

(3) Fish for finfish in the Chesapeake Bay and its tributaries or in the State waters of the Atlantic Ocean and the Atlantic coastal bays and tributaries without holding a Chesapeake Bay and coastal sport fishing license under § 4–745 of this title.

(e) An angler's license is not required of the following:

(1) A convalescent patient of a veterans' hospital hospitalized for a service–connected disability who fishes in waters of the State if the patient secures a permit issued by a special service officer of the American Red Cross under authority granted by the Department;

(2) A patient who is under treatment by a State–approved mental health facility and an individual who attends or resides in a State–approved retardation facility; or

(3) A caregiver, family member, or designee of a mental health care facility or private group home of a patient who is under treatment by a State–approved mental health facility, if:

(i) The administrator of the mental health care facility, or treating physician or psychologist provides the Department with a letter stating that the caregiver or family member is the primary caretaker of the patient; or

(ii) The individual accompanying the patient carries a copy of the letter described under item (i) of this paragraph, or a professional license or certificate of a health care professional involved in the care of the patient.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 431

(Senate Bill 199)

AN ACT concerning

State Retirement and Pension System – Direct Mailings by Retiree Organizations ~~– Repeal of Sunset Provision~~

FOR the purpose of requiring a retiree organization to submit certain information to the Board of Trustees of the State Retirement and Pension System; requiring the Board of Trustees to review certain direct mailing materials before submitting retiree data to a mail processing center; altering the definition of "retiree organization" to expand the definition to include any organization in which State retirees participate and whose primary purpose is representing or providing services to those retirees; providing for the application of certain provisions of this Act; repealing the termination of certain provisions of law that allow retiree organizations to send direct mailings to retirees of the State Retirement and Pension System; providing for the effective date of certain provisions of this Act; and generally relating to direct mailings by retiree organizations to retirees of the State Retirement and Pension System.

BY repealing and reenacting, ~~without~~ with amendments,
Article – State Personnel and Pensions
Section 21–128 ~~and 21–504(c)~~
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – State Personnel and Pensions
Section 21–128
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)
(As enacted by Section 1 of this Act)

BY repealing and reenacting, with amendments,
Chapter 714 of the Acts of the General Assembly of 2010
Section 2

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

Article – State Personnel and Pensions

21–128.

(a) In this section, "retiree organization" means the Maryland Retired School Personnel Association.

(b) (1) A retiree organization may submit only one request in both April and October of each year to the Board of Trustees to assist the retiree organization in performing direct mailings to retirees of the several systems who are members of the retiree organization or eligible to become members of the retiree organization.

(2) The direct mailings may not be for the purpose of supporting or opposing any political party, ballot measure, or candidate in any election, including any State general or primary election or any election within the retiree organization.

(3) (i) The Board of Trustees shall provide the retiree data for addressing envelopes only to the mail processing center under a secure data share agreement with the mail processing center under which neither the retiree organization nor any other entity has direct access to any names or addresses.

(ii) If the Board of Trustees provides any retiree data to a mail processing center under subparagraph (i) of this paragraph, the Board of Trustees is not required to notify a retiree whose data is released of the provisions of § 21–504 of this title.

(4) (I) A RETIREE ORGANIZATION SHALL PROVIDE THE BOARD OF TRUSTEES WITH COPIES OF ALL MATERIALS THAT WILL BE INCLUDED IN THE DIRECT MAILING.

(II) THE BOARD OF TRUSTEES SHALL REVIEW THE MATERIALS PROVIDED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH BEFORE PROVIDING ANY RETIREE DATA TO A MAIL PROCESSING CENTER.

(c) The direct mailing shall provide retirees of the several systems who are members of the retiree organization or eligible to become members of the retiree organization with information that explains the services offered by the retiree organization.

(d) (1) A retiree organization is solely responsible for the procurement of a mail processing center under this section.

(2) The retiree organization shall provide all printed materials to be mailed and envelopes to a mail processing center.

(3) The retiree organization is responsible for paying all costs for generating mailing labels, inserting materials into envelopes, sealing, labeling, and delivering materials to be mailed to a bulk mail center or post office.

(4) The retiree organization is responsible for all postage costs involved for the direct mailings.

(e) The Board of Trustees is not liable for the content of any direct mailing sent under this section.

(f) On or before December 31 of each year, the Board of Trustees shall submit a report in accordance with § 2–1246 of the State Government Article to the Joint Committee on Pensions that includes a summary of any complaints received by the State Retirement Agency regarding any mailing received by a retiree under this section.

~~21–504.~~

~~(e) (1) Except as provided in § 21–128 of this title, before the release of a name, the Board of Trustees shall notify the individual of the provisions of this section.~~

~~(2) If an individual notifies the Board of Trustees that the individual does not want the individual's name or address released to an employee organization, the Board of Trustees may not release the name or address.~~

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

Article – State Personnel and Pensions

21–128.

(a) In this section, "retiree organization" means **[**the Maryland Retired School Personnel Association**]** **AN ORGANIZATION IN WHICH STATE RETIREES PARTICIPATE AND THAT HAS AS ONE OF ITS PRIMARY PURPOSES, REPRESENTING OR PROVIDING SERVICES TO STATE RETIREES**.

(B) THIS SECTION APPLIES TO ANY RETIREE ORGANIZATION THAT HAS THE LEGAL AUTHORITY TO PROVIDE SERVICES TO RETIREES OF THE SEVERAL SYSTEMS.

[(b)**] (C)** (1) A retiree organization may submit only one request in both April and October of each year to the Board of Trustees to assist the retiree organization in performing direct mailings to retirees of the several systems who are members of the retiree organization or eligible to become members of the retiree organization.

(2) The direct mailings may not be for the purpose of supporting or opposing any political party, ballot measure, or candidate in any election, including any State general or primary election or any election within the retiree organization.

(3) (i) The Board of Trustees shall provide the retiree data for addressing envelopes only to the mail processing center under a secure data share agreement with the mail processing center under which neither the retiree organization nor any other entity has direct access to any names or addresses.

(ii) If the Board of Trustees provides any retiree data to a mail processing center under subparagraph (i) of this paragraph, the Board of Trustees is not required to notify a retiree whose data is released of the provisions of § 21–504 of this title.

(4) (i) A retiree organization shall provide the Board of Trustees with copies of all materials that will be included in the direct mailing.

(ii) The Board of Trustees shall review the materials provided under subparagraph (i) of this paragraph before providing any retiree data to a mail processing center.

[(c)**] (D)** The direct mailing shall provide retirees of the several systems who are members of the retiree organization or eligible to become members of the retiree organization with information that explains the services offered by the retiree organization.

[(d)**] (E)** (1) A retiree organization is solely responsible for the procurement of a mail processing center under this section.

(2) The retiree organization shall provide all printed materials to be mailed and envelopes to a mail processing center.

(3) The retiree organization is responsible for paying all costs for generating mailing labels, inserting materials into envelopes, sealing, labeling, and delivering materials to be mailed to a bulk mail center or post office.

(4) The retiree organization is responsible for all postage costs involved for the direct mailings.

[(e)**] (F)** The Board of Trustees is not liable for the content of any direct mailing sent under this section.

[(f)**] (G)** On or before December 31 of each year, the Board of Trustees shall submit a report in accordance with § 2–1246 of the State Government Article to the Joint Committee on Pensions that includes a summary of any complaints received by the State Retirement Agency regarding any mailing received by a retiree under this section.

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

Chapter 714 of the Acts of 2010

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2010. **[**It shall remain effective for a period 1 year and, at the end of June 30, 2011, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.**]**

SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect July 1, 2012.

SECTION ~~2.~~ 5. AND BE IT FURTHER ENACTED, That, except as provided in Section 4 of this Act, this Act shall take effect June 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 432

(House Bill 249)

AN ACT concerning

State Retirement and Pension System – Direct Mailings by Retiree Organizations ~~– Repeal of Sunset Provision~~

FOR the purpose of ~~providing that certain retiree organizations may make a certain number of requests during a certain period of time to the Board of Trustees of the State Retirement and Pension System for certain retiree information that is necessary for certain direct mailings by the retiree organizations;~~ *requiring a retiree organization to submit certain information to the Board of Trustees of the State Retirement and Pension System; requiring the Board of Trustees to review certain direct mailing materials before submitting retiree data to a mail processing center; altering the definition of "retiree organization" to expand the definition to include any organization in which State retirees participate and whose primary purpose is representing or providing services to those retirees; providing for the application of certain provisions of this Act;* repealing the termination of certain provisions of law that allow retiree organizations to send direct mailings to retirees of the State Retirement and Pension System; ~~defining a certain term;~~ providing for the effective date *of certain provisions* of this Act; and generally relating to direct mailings by retiree organizations to retirees of the State Retirement and Pension System.

BY repealing and reenacting, ~~without~~ with amendments,

Article – State Personnel and Pensions
Section 21–128 ~~and 21–504(c)~~
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – State Personnel and Pensions
Section 21–128
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)
(As enacted by Section 1 of this Act)

BY repealing and reenacting, with amendments,
Chapter 714 of the Acts of the General Assembly of 2010
Section 2

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

Article – State Personnel and Pensions

21–128.

(a) In this section, "retiree organization" means the Maryland Retired School Personnel Association.

(b) (1) A retiree organization may submit only one request in both April and October of each year to the Board of Trustees to assist the retiree organization in performing direct mailings to retirees of the several systems who are members of the retiree organization or eligible to become members of the retiree organization.

(2) The direct mailings may not be for the purpose of supporting or opposing any political party, ballot measure, or candidate in any election, including any State general or primary election or any election within the retiree organization.

(3) (i) The Board of Trustees shall provide the retiree data for addressing envelopes only to the mail processing center under a secure data share agreement with the mail processing center under which neither the retiree organization nor any other entity has direct access to any names or addresses.

(ii) If the Board of Trustees provides any retiree data to a mail processing center under subparagraph (i) of this paragraph, the Board of Trustees is not required to notify a retiree whose data is released of the provisions of § 21–504 of this title.

(4) (I) A RETIREE ORGANIZATION SHALL PROVIDE THE BOARD OF TRUSTEES WITH COPIES OF ALL MATERIALS THAT WILL BE INCLUDED IN THE DIRECT MAILING.

(II) THE BOARD OF TRUSTEES SHALL REVIEW THE MATERIALS PROVIDED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH BEFORE PROVIDING ANY RETIREE DATA TO A MAIL PROCESSING CENTER.

(c) The direct mailing shall provide retirees of the several systems who are members of the retiree organization or eligible to become members of the retiree organization with information that explains the services offered by the retiree organization.

(d) (1) A retiree organization is solely responsible for the procurement of a mail processing center under this section.

(2) The retiree organization shall provide all printed materials to be mailed and envelopes to a mail processing center.

(3) The retiree organization is responsible for paying all costs for generating mailing labels, inserting materials into envelopes, sealing, labeling, and delivering materials to be mailed to a bulk mail center or post office.

(4) The retiree organization is responsible for all postage costs involved for the direct mailings.

(e) The Board of Trustees is not liable for the content of any direct mailing sent under this section.

(f) On or before December 31 of each year, the Board of Trustees shall submit a report in accordance with § 2–1246 of the State Government Article to the Joint Committee on Pensions that includes a summary of any complaints received by the State Retirement Agency regarding any mailing received by a retiree under this section.

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

Article – State Personnel and Pensions

21–128.

(a) In this section, "retiree organization" means ~~the Maryland Retired School Personnel Association~~ **AN ORGANIZATION IN WHICH STATE RETIREES PARTICIPATE AND THAT HAS AS ONE OF ITS PRIMARY PURPOSES, REPRESENTING OR PROVIDING SERVICES TO STATE RETIREES.**

(B) THIS SECTION APPLIES TO ANY RETIREE ORGANIZATION THAT HAS THE LEGAL AUTHORITY TO PROVIDE SERVICES TO RETIREES OF THE SEVERAL SYSTEMS.

~~(b)~~ **(C)** (1) A retiree organization may submit only one request in both April and October of each year to the Board of Trustees to assist the retiree organization in performing direct mailings to retirees of the several systems who are members of the retiree organization or eligible to become members of the retiree organization.

(2) The direct mailings may not be for the purpose of supporting or opposing any political party, ballot measure, or candidate in any election, including any State general or primary election or any election within the retiree organization.

(3) (i) The Board of Trustees shall provide the retiree data for addressing envelopes only to the mail processing center under a secure data share agreement with the mail processing center under which neither the retiree organization nor any other entity has direct access to any names or addresses.

(ii) If the Board of Trustees provides any retiree data to a mail processing center under subparagraph (i) of this paragraph, the Board of Trustees is not required to notify a retiree whose data is released of the provisions of § 21–504 of this title.

(4) (i) A retiree organization shall provide the Board of Trustees with copies of all materials that will be included in the direct mailing.

(ii) The Board of Trustees shall review the materials provided under subparagraph (i) of this paragraph before providing any retiree data to a mail processing center.

~~(c)~~ **(D)** The direct mailing shall provide retirees of the several systems who are members of the retiree organization or eligible to become members of the retiree organization with information that explains the services offered by the retiree organization.

~~(d)~~ **(E)** (1) A retiree organization is solely responsible for the procurement of a mail processing center under this section.

(2) The retiree organization shall provide all printed materials to be mailed and envelopes to a mail processing center.

(3) The retiree organization is responsible for paying all costs for generating mailing labels, inserting materials into envelopes, sealing, labeling, and delivering materials to be mailed to a bulk mail center or post office.

(4) The retiree organization is responsible for all postage costs involved for the direct mailings.

~~(e)~~ **(F)** The Board of Trustees is not liable for the content of any direct mailing sent under this section.

~~(f)~~ **(G)** On or before December 31 of each year, the Board of Trustees shall submit a report in accordance with § 2–1246 of the State Government Article to the Joint Committee on Pensions that includes a summary of any complaints received by the State Retirement Agency regarding any mailing received by a retiree under this section.

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

~~21–504.~~

~~(e) (1) Except as provided in § 21–128 of this title, before the release of a name, the Board of Trustees shall notify the individual of the provisions of this section.~~

~~(2) If an individual notifies the Board of Trustees that the individual does not want the individual's name or address released to an employee organization, the Board of Trustees may not release the name or address.~~

Chapter 714 of the Acts of 2010

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2010. **[**It shall remain effective for a period 1 year and, at the end of June 30, 2011, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.**]**

SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect July 1, 2012.

SECTION ~~2.~~ *5.* AND BE IT FURTHER ENACTED, That*, except as provided in Section 4 of this Act,* this Act shall take effect ~~June 1, 2011~~ ~~July 1, 2012~~ *June 1, 2011*.

Approved by the Governor, May 19, 2011.

Chapter 433

(Senate Bill 203)

AN ACT concerning

Health Care Decisions Act – "Medical Orders for Life–Sustaining Treatment" Form

FOR the purpose of repealing certain provisions of law relating to the "Instructions on Current Life–Sustaining Treatment Options" form; requiring the Department of Health and Mental Hygiene, in conjunction with the Maryland Institute for Emergency Medical Services Systems and the State Board of Physicians, to develop and periodically revise a "Medical Orders for Life–Sustaining Treatment" form and instructions for its completion and use; requiring that the form and instructions be developed in consultation with certain individuals and groups; requiring that the form be suitable for containing certain medical orders; providing that the form is not an advance directive; requiring certain health care facilities and authorizing other health care providers to use a "Medical Orders for Life–Sustaining Treatment" form; requiring certain health care facilities ~~and authorizing other health care providers~~ to ~~use~~ accept and update or complete a "Medical Orders for Life–Sustaining Treatment" form for certain patients during the admission process or, under certain circumstances, during an inpatient hospital stay; requiring certain health care facilities and health care providers, when updating or completing a "Medical Orders for Life–Sustaining Treatment" form, to offer certain individuals the opportunity to participate in ~~the completion of a~~ updating or completing the "Medical Orders for Life–Sustaining Treatment" form; requiring health care facilities to note in a patient's medical record when certain individuals decline to participate in ~~the completion of a~~ updating or completing the "Medical Orders for Life–Sustaining Treatment" form; requiring, under certain circumstances, that certain health care facilities offer any physician or nurse practitioner selected by the patient the opportunity to participate in updating or completing a "Medical Orders for Life–Sustaining Treatment" form; requiring, under certain circumstances, that certain health care facilities provide certain information to certain individuals; requiring, under certain circumstances, that a "Medical Orders for Life–Sustaining Treatment" form be consistent with certain health care decisions of certain individuals; requiring a health care facility to comply with the "Medical Orders for Life–Sustaining Treatment" form under certain circumstances; requiring certain health care providers to keep the "Medical Orders for Life–Sustaining Treatment" form in the patient's medical record; requiring that the "Medical Orders for Life–Sustaining Treatment" form accompany certain patients and be given to certain individuals ~~under certain circumstances~~ within a certain time period; requiring that the most recent "Medical Orders for Life–Sustaining Treatment" form be followed if there is a conflict between forms; authorizing a health care provider to rely in good faith on the presumed validity of a "Medical Orders for Life–Sustaining Treatment" form; requiring the Department to adopt certain regulations; requiring the Department to make the "Medical Orders for Life–Sustaining Treatment" ~~form and~~ form, certain instructions, and training materials available on the Department's Web site; authorizing the Department to print and distribute the form ~~and~~, instructions, and training materials; requiring that a "Medical Orders

for Life–Sustaining Treatment" form containing an order that resuscitation not be attempted be given the same effect as an emergency medical services "do not resuscitate order"; specifying that orders regarding life–sustaining treatment executed in another state are to be deemed valid under certain circumstances and construed in a certain manner; repealing the requirement that a nursing home offer patients an "Instructions on Current Life–Sustaining Treatment Options" form; requiring ~~certain health care facilities~~ nursing homes and assisted living programs, on or before a certain date, to complete a "Medical Orders for Life–Sustaining Treatment" form for certain patients admitted to the health care facility before a certain date, and to offer the patients or certain other individuals an opportunity to participate in the completion of the form; altering a certain definition; defining a certain term; and generally relating to health care decisions and the "Medical Orders for Life–Sustaining Treatment" form.

BY repealing
Article – Health – General
Section ~~5–602(f)(4)~~ 5–602(f)(3) and (4) and 5–608.1
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 5–608, 5–609, 5–617, 5–619, and 19–344(f)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – Health – General
Section 5–608.1
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

5–602.

(f) **[**~~(4)~~ (3) If the care of a declarant is transferred from one health care provider to another, the transferring health care provider may prepare an "Instructions on Current Life–Sustaining Treatment Options" form in accordance with § 5–608.1 of this subtitle.

(4) If the transferring health care provider prepares an "Instructions on Current Life–Sustaining Treatment Options" form in accordance with § 5–608.1 of this subtitle, the transferring health care provider shall:

(i) Take reasonable steps to ensure that the "Instructions on Current Life–Sustaining Treatment Options" form is consistent with any applicable decision stated in the advance directive of a declarant; and

(ii) Transmit the "Instructions on Current Life–Sustaining Treatment Options" form to the receiving health care provider simultaneously with the transfer of the declarant.**]**

5–608.

(a) (1) Certified or licensed emergency medical services personnel shall be directed by protocol to follow emergency medical services "do not resuscitate orders" pertaining to adult patients in the outpatient setting in accordance with protocols established by the Maryland Institute for Emergency Medical Services Systems in conjunction with the State Board of Physicians.

(2) Emergency medical services "do not resuscitate orders" may not authorize the withholding of medical interventions, or therapies deemed necessary to provide comfort care or to alleviate pain.

(3) A health care provider, other than certified or licensed emergency medical services personnel, who sees, in a valid form, an emergency medical services "do not resuscitate order" described in paragraph (1) of this subsection that is not superseded by a subsequent physician's order:

(i) May, before a patient's cardiac or respiratory arrest, provide, withhold, or withdraw treatment in accordance with the emergency medical services "do not resuscitate order"; and

(ii) Shall, after a patient's cardiac or respiratory arrest, withhold or withdraw treatment in accordance with the emergency medical services "do not resuscitate order".

(4) AN ORDER CONTAINED IN A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM THAT RESUSCITATION NOT BE ATTEMPTED SHALL BE GIVEN THE SAME EFFECT AS EMERGENCY MEDICAL SERVICES "DO NOT RESUSCITATE ORDERS" DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

(b) This section does not authorize emergency medical services personnel to follow an emergency medical services "do not resuscitate order" for any patient who,

prior to cardiac or respiratory arrest, is able to, and does, express to those personnel the desire to be resuscitated.

(c) This section does not authorize emergency medical services personnel in the outpatient setting to follow an emergency medical services "do not resuscitate order" that is in any form other than:

(1) An emergency medical services "do not resuscitate order" described in subsection (a) of this section;

(2) An oral emergency medical services "do not resuscitate order" provided by an online, emergency medical services medical command and control physician; **[**or**]**

(3) An oral emergency medical services "do not resuscitate order" provided by a physician, as defined in § 5–601 of this subtitle, or a nurse practitioner, as defined in § 5–601 of this subtitle, who is physically present on the scene with the patient and the emergency medical services personnel in the outpatient setting**; OR**

(4) AN ORDER CONTAINED IN A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM.

(d) (1) Except as provided in paragraph (2) of this subsection, in addition to the immunity provided in § 5–609 of this subtitle and any other immunity provided by law, an emergency medical services provider is not subject to criminal or civil liability, or deemed to have engaged in unprofessional conduct as determined by the appropriate licensing or certifying authority, arising out of a claim concerning the provision of health care if:

(i) The claim is based on lack of consent or authorization for the health care;

(ii) Subsection (a) of this section would ordinarily apply; and

(iii) The emergency medical services provider:

1. Acts in good faith in providing the health care; and

2. Believes reasonably that subsection (a)(1) of this section does not apply.

(2) This subsection does not apply if the patient is wearing a valid, legible, and patient–identifying emergency medical services "do not resuscitate order" in bracelet form.

[5–608.1.

(a) The Office of the Attorney General shall develop an "Instructions on Current Life–Sustaining Treatment Options" form suitable for summarizing the plan of care for an individual, including the aspects of the plan of care related to:

(1) The use of life–sustaining procedures; and

(2) Transfer to a hospital from a nonhospital setting.

(b) The "Instructions on Current Life–Sustaining Treatment Options" form is voluntary and shall be consistent with:

(1) The decisions of:

(i) The patient if the patient is a competent individual; or

(ii) If the patient is incapable of making an informed decision, a health care agent or surrogate decision maker as authorized by this subtitle; and

(2) Any advance directive of the patient if the patient is incapable of making an informed decision.

(c) The "Instructions on Current Life–Sustaining Treatment Options" form:

(1) May be completed by a health care provider under the direction of an attending physician;

(2) If the attending physician has a reasonable basis to believe that the "Instructions on Current Life–Sustaining Treatment Options" form satisfies the requirements of subsection (b) of this section, shall be signed by the attending physician;

(3) Shall be signed by:

(i) The patient if the patient is a competent individual; or

(ii) If the patient is incapable of making an informed decision, a health care agent or surrogate decision maker as authorized by this subtitle;

(4) If signed by the patient in accordance with item (3)(i) of this subsection, shall include contact information for the patient's health care agent;

(5) If signed by a health care agent or surrogate decision maker in accordance with item (3)(ii) of this subsection, shall include contact information for the health care agent or surrogate decision maker;

(6) Shall be dated;

(7) Shall include a statement that the form may be reviewed, modified, or rescinded at any time;

(8) Shall designate under which conditions the form must be reviewed or modified, including promptly after the patient becomes incapable of making an informed decision; and

(9) Shall contain a conspicuous statement that the original form shall accompany the individual when the individual is transferred to another health care provider or discharged.

(d) A health care provider shall review any "Instructions on Current Life–Sustaining Treatment Options" form received from another health care provider as part of the process of establishing a plan of care for an individual.

(e) The Office of the Attorney General, in developing the "Instructions on Current Life–Sustaining Treatment Options" form in accordance with subsection (a) of this section, shall consult with:

(1) The Department;

(2) Religious groups and institutions with an interest in end–of–life care;

(3) One or more representatives from the community of individuals with disabilities; and

(4) Any other group the Office of the Attorney General identifies as appropriate for consultation.**]**

5–608.1.

(A) IN THIS SECTION, "HEALTH CARE FACILITY" MEANS:

(1) AN ASSISTED LIVING PROGRAM;

(2) A HOME HEALTH AGENCY;

(3) A HOSPICE;

(4) A HOSPITAL;

(5) A KIDNEY DIALYSIS CENTER; OR

(6) A NURSING HOME.

(B) (1) (I) THE DEPARTMENT, IN CONJUNCTION WITH THE MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS AND THE STATE BOARD OF PHYSICIANS, SHALL DEVELOP AND ~~MAY~~ REVISE PERIODICALLY A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM AND INSTRUCTIONS FOR COMPLETING AND USING THE FORM.

(II) THE "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM AND THE INSTRUCTIONS FOR ITS COMPLETION AND USE SHALL BE DEVELOPED IN CONSULTATION WITH:

1. THE OFFICE OF THE ATTORNEY GENERAL;

2. THE STATE BOARD OF NURSING;

3. THE STATE ADVISORY COUNCIL ON QUALITY CARE AT THE END OF LIFE; AND

4. ANY OTHER INDIVIDUAL OR GROUP THE DEPARTMENT DETERMINES IS APPROPRIATE.

(2) THE "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM DEVELOPED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE SUITABLE FOR CONTAINING A PHYSICIAN'S OR NURSE PRACTITIONER'S WRITTEN MEDICAL ORDERS RELATING TO A PATIENT'S MEDICAL CONDITION, INCLUDING:

(I) THE USE OF LIFE–SUSTAINING PROCEDURES;

(II) THE USE OF MEDICAL TESTS;

(III) TRANSFER OF THE PATIENT TO A HOSPITAL FROM A NONHOSPITAL SETTING; AND

(IV) ANY OTHER MATTER CONSIDERED APPROPRIATE BY THE DEPARTMENT TO IMPLEMENT TREATMENT PREFERENCES AND ORDERS REGARDING LIFE–SUSTAINING TREATMENTS ACROSS HEALTH CARE SETTINGS.

(3) THE "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM IS NOT AN ADVANCE DIRECTIVE.

(C) (1) A HEALTH CARE FACILITY SHALL:

(I) 1. ~~COMPLETE A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM OR ACCEPT~~ ACCEPT A COMPLETED "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM DURING THE ADMISSION PROCESS FOR EACH PATIENT BEING ADMITTED TO THE HEALTH CARE FACILITY; AND

~~(II)~~ 2. UPDATE THE FORM AS INDICATED IN THE INSTRUCTIONS FOR THE COMPLETION AND USE OF THE FORM; ~~AND~~ OR

(II) COMPLETE A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM:

1. FOR A HEALTH CARE FACILITY THAT IS NOT A HOSPITAL, DURING THE ADMISSION PROCESS FOR EACH PATIENT BEING ADMITTED TO THE HEALTH CARE FACILITY; OR

2. FOR A HOSPITAL, DURING AN INPATIENT HOSPITAL STAY FOR PATIENTS WHO ARE BEING DISCHARGED TO ANOTHER HEALTH CARE FACILITY.

~~(III) OFFER A PATIENT, HEALTH CARE AGENT, OR SURROGATE DECISION MAKER THE OPPORTUNITY TO PARTICIPATE IN THE COMPLETION OF THE FORM.~~

(2) ~~A~~ WHEN A HEALTH CARE FACILITY UPDATES OR COMPLETES A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE HEALTH CARE FACILITY SHALL ~~NOTE~~:

(I) OFFER THE PATIENT, HEALTH CARE AGENT, OR SURROGATE DECISION MAKER THE OPPORTUNITY TO PARTICIPATE IN UPDATING OR COMPLETING THE FORM;

(II) NOTE IN THE MEDICAL RECORD WHEN A PATIENT, HEALTH CARE AGENT, OR SURROGATE DECISION MAKER DECLINES TO PARTICIPATE IN ~~THE COMPLETION OF A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM~~ UPDATING OR COMPLETING THE FORM, INDICATING THE DATE AND WITH WHOM THE FORM WAS DISCUSSED;

(III) ON REQUEST OF THE PATIENT, OFFER ANY PHYSICIAN OR NURSE PRACTITIONER SELECTED BY THE PATIENT THE OPPORTUNITY TO PARTICIPATE IN UPDATING OR COMPLETING THE FORM; AND

(IV) INFORM THE PATIENT, HEALTH CARE AGENT, OR SURROGATE DECISION MAKER THAT THE FORM WILL BECOME A PART OF THE PATIENT'S MEDICAL RECORD AND CAN BE ACCESSED THROUGH THE PROCEDURES USED TO ACCESS A MEDICAL RECORD.

(3) EXCEPT AS PROVIDED FOR A TREATMENT THAT HAS BEEN CERTIFIED AS MEDICALLY INEFFECTIVE IN ACCORDANCE WITH § 5–611 OF THIS SUBTITLE, THE "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM SHALL BE CONSISTENT WITH:

(I) THE KNOWN DECISIONS OF:

1. THE PATIENT IF THE PATIENT IS A COMPETENT INDIVIDUAL; OR

2. A HEALTH CARE AGENT OR SURROGATE DECISION MAKER AS AUTHORIZED BY THIS SUBTITLE; AND

(II) ANY KNOWN ADVANCE DIRECTIVE OF THE PATIENT IF THE PATIENT IS INCAPABLE OF MAKING AN INFORMED DECISION.

(D) (1) A HEALTH CARE PROVIDER OTHER THAN A HEALTH CARE FACILITY MAY CHOOSE TO USE A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM.

(2) A HEALTH CARE PROVIDER WHO CHOOSES TO USE A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM SHALL OFFER A PATIENT, HEALTH CARE AGENT, OR SURROGATE DECISION MAKER THE OPPORTUNITY TO PARTICIPATE IN THE COMPLETION OF THE FORM.

(E) THE ORIGINAL OR A COPY OF A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM SHALL:

(1) BE KEPT BY A HEALTH CARE PROVIDER IN THE PATIENT'S MEDICAL RECORD;

(2) PHYSICALLY ACCOMPANY THE PATIENT OR BE TRANSMITTED ELECTRONICALLY OR BY FACSIMILE IN ACCORDANCE WITH THE INSTRUCTIONS FOR THE USE OF THE FORM WHEN THE PATIENT IS TRANSFERRED TO A HEALTH CARE FACILITY; AND

(3) BE GIVEN TO THE PATIENT, HEALTH CARE AGENT, OR SURROGATE DECISION MAKER ~~IF THE PATIENT RESIDES AT HOME OR IS DISCHARGED FROM A HEALTH CARE FACILITY TO THE PATIENT'S HOME~~ WITHIN

48 HOURS OF COMPLETION OF THE FORM OR SOONER IF THE PATIENT IS TRANSFERRED OR DISCHARGED.

(F) EXCEPT AS PROVIDED IN § 5–611 OR § 5–613 OF THIS SUBTITLE, A HEALTH CARE FACILITY SHALL COMPLY WITH ALL MEDICAL ORDERS CONTAINED IN A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM REGARDLESS OF WHETHER THE PHYSICIAN OR NURSE PRACTITIONER WHO SIGNED THE FORM HAS ADMITTING PRIVILEGES OR IS OTHERWISE CREDENTIALED AT THE HEALTH CARE FACILITY.

(G) IN THE EVENT OF A CONFLICT BETWEEN MORE THAN ONE "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM, THE MOST RECENT FORM SHALL BE FOLLOWED.

(H) A HEALTH CARE PROVIDER MAY RELY IN GOOD FAITH ON THE PRESUMED VALIDITY OF A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM.

(I) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS THAT SPECIFY THE "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM AND THE INSTRUCTIONS FOR THE COMPLETION AND USE OF THE FORM THAT ARE DEVELOPED AS REQUIRED BY SUBSECTION (B) OF THIS SECTION, INCLUDING INSTRUCTIONS ON HOW A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM ~~BECOMES VOID~~ IS REVISED OR REVOKED.

(2) REGULATIONS ADOPTED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE CONSISTENT WITH THE HEALTH CARE DECISIONS ACT.

(J) THE DEPARTMENT SHALL MAKE THE "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM AND THE INSTRUCTIONS FOR THE COMPLETION AND USE OF THE FORM, INCLUDING INSTRUCTIONS ON HOW THE FORM IS REVISED OR REVOKED, AVAILABLE ON ITS WEB SITE AND MAY PRINT AND DISTRIBUTE THE FORM, ~~AND~~ THE INSTRUCTIONS, AND TRAINING MATERIALS.

5–609.

(a) (1) A health care provider is not subject to criminal prosecution or civil liability or deemed to have engaged in unprofessional conduct as determined by the appropriate licensing authority as a result of withholding or withdrawing any health care under authorization obtained in accordance with this subtitle.

(2) A health care provider providing, withholding, or withdrawing treatment under authorization obtained under this subtitle does not incur liability arising out of any claim to the extent the claim is based on lack of consent or authorization for the action.

(b) A person who authorizes the provision, withholding, or withdrawal of life–sustaining procedures in accordance with a patient's advance directive**, A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM,** or as otherwise provided in this subtitle is not subject to:

(1) Criminal prosecution or civil liability for that action; or

(2) Liability for the cost of treatment solely on the basis of that authorization.

(c) (1) The provisions of this section shall apply unless it is shown by a preponderance of the evidence that the person authorizing or effectuating the provision, withholding, or withdrawal of life–sustaining procedures in accordance with this subtitle did not, in good faith, comply with the provisions of this subtitle.

(2) The distribution to patients of written advance directives in a form provided in this subtitle and assistance to patients in the completion and execution of such forms does not constitute the unauthorized practice of law.

(d) An advance directive made in accordance with this subtitle shall be presumed to have been made voluntarily by a competent individual. Authorization for the provision, withholding, or withdrawal of life–sustaining procedures in accordance with this subtitle shall be presumed to have been made in good faith.

5–617.

An advance directive **[**or**], AN** emergency medical services "do not resuscitate order"**, OR AN ORDER REGARDING LIFE–SUSTAINING TREATMENT** executed in another state shall be deemed to be validly executed for the purposes of this subtitle if executed in compliance with the laws of Maryland or the laws of the state where executed. Advance directives **[**or**],** emergency medical services "do not resuscitate orders"**, OR AN ORDER REGARDING LIFE–SUSTAINING TREATMENT** executed in another state shall be construed to give effect to the patient's wishes to the extent permitted by the laws of Maryland.

5–619.

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

(b) **[**(1)**]** "Advance directive" has the meaning stated in § 5–601 of this subtitle.

[(2) "Advance directive" includes an "Instructions on Current Life–Sustaining Treatment Options" form developed under § 5–608.1 of this subtitle.**]**

(c) "Registrant" means an individual who registers an advance directive with the Department.

(d) "Registry" means the repository for advance directives in the Department.

19–344.

(f) (1) A resident of a facility:

(i) Shall participate in the planning of the medical treatment;

(ii) May refuse medication or treatment; and

(iii) May know the medical consequences of these actions.

(2) The facility shall:

(i) Have the informed consent of a resident before the resident participates in any experimental research; and

(ii) Keep the resident's written acknowledgment of that consent.

(3) The resident shall receive information about the relationship of the facility to other health care institutions if the information relates to the care of the resident.

(4) The resident shall receive reasonable continuity of care, including information as to the availability of physicians and times for medical appointments.

[(5) (i) A facility shall offer a resident, upon admission, the opportunity for the preparation of an "Instructions on Current Life–Sustaining Treatment Options" form in accordance with § 5–608.1 of this article.

(ii) If a facility prepares an "Instructions on Current Life–Sustaining Treatment Options" form in accordance with subparagraph (i) of this paragraph, the form shall remain conspicuously in the front of a resident's medical records.**]**

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before ~~February~~ April 1, 2012, a ~~health care facility, as defined in § 5–608.1 of the Health – General Article, as enacted by Section 1 of this Act,~~ nursing home or assisted living program shall:

(1) complete a "Medical Orders for Life–Sustaining Treatment" form, developed in accordance with § 5–608.1(b)(1) of the Health – General Article enacted by Section 1 of this Act, for each patient who was admitted to the ~~health care facility~~ nursing home or assisted living program before October 1, 2011, and who is a patient of the nursing home or assisted living program on April 1, 2012; and

(2) offer the patient, health care agent, or surrogate decision maker the opportunity to participate in the completion of the form.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 434

(House Bill 82)

AN ACT concerning

Health Care Decisions Act – "Medical Orders for Life–Sustaining Treatment" Form

FOR the purpose of repealing certain provisions of law relating to the "Instructions on Current Life–Sustaining Treatment Options" form; requiring the Department of Health and Mental Hygiene, in conjunction with the Maryland Institute for Emergency Medical Services Systems and the State Board of Physicians, to develop and periodically revise a "Medical Orders for Life–Sustaining Treatment" form and instructions for its completion and use; requiring that the form and instructions be developed in consultation with certain individuals and groups; requiring that the form be suitable for containing certain medical orders; providing that the form is not an advance directive; requiring certain health care facilities and authorizing other health care providers to use a "Medical Orders for Life–Sustaining Treatment" form; requiring certain health care facilities ~~and authorizing other health care providers~~ to ~~use~~ accept and update or complete a "Medical Orders for Life–Sustaining Treatment" form for certain patients during the admission process or, under certain circumstances, during an inpatient hospital stay; requiring certain health care facilities and health care providers, when updating or completing a "Medical Orders for Life–Sustaining Treatment" form, to offer certain individuals the opportunity to

participate in ~~the completion of a~~ updating or completing the "Medical Orders for Life–Sustaining Treatment" form; requiring health care facilities to note in a patient's medical record when certain individuals decline to participate in ~~the completion of a~~ updating or completing the "Medical Orders for Life–Sustaining Treatment" form; requiring, under certain circumstances, that certain health care facilities offer any physician or nurse practitioner selected by the patient the opportunity to participate in updating or completing a "Medical Orders for Life–Sustaining Treatment" form; requiring, under certain circumstances, that certain health care facilities provide certain information to certain individuals; requiring, under certain circumstances, that a "Medical Orders for Life–Sustaining Treatment" form be consistent with certain health care decisions of certain individuals; requiring a health care facility to comply with the "Medical Orders for Life–Sustaining Treatment" form under certain circumstances; requiring certain health care providers to keep the "Medical Orders for Life–Sustaining Treatment" form in the patient's medical record; requiring that the "Medical Orders for Life–Sustaining Treatment" form accompany certain patients and be given to certain individuals ~~under certain circumstances~~ within a certain time period; requiring that the most recent "Medical Orders for Life–Sustaining Treatment" form be followed if there is a conflict between forms; authorizing a health care provider to rely in good faith on the presumed validity of a "Medical Orders for Life–Sustaining Treatment" form; requiring the Department to adopt certain regulations; requiring the Department to make the "Medical Orders for Life–Sustaining Treatment" ~~form and~~ form, certain instructions, and training materials available on the Department's Web site; authorizing the Department to print and distribute the form ~~and~~, instructions, and training materials; requiring that a "Medical Orders for Life–Sustaining Treatment" form containing an order that resuscitation not be attempted be given the same effect as an emergency medical services "do not resuscitate order"; specifying that orders regarding life–sustaining treatment executed in another state are to be deemed valid under certain circumstances and construed in a certain manner; repealing the requirement that a nursing home offer patients an "Instructions on Current Life–Sustaining Treatment Options" form; requiring ~~certain health care facilities~~ nursing homes and assisted living programs, on or before a certain date, to complete a "Medical Orders for Life–Sustaining Treatment" form for certain patients admitted to the health care facility before a certain date, and to offer the patients or certain other individuals an opportunity to participate in the completion of the form; altering a certain definition; defining a certain term; and generally relating to health care decisions and the "Medical Orders for Life–Sustaining Treatment" form.

BY repealing
Article – Health – General
Section ~~5–602(f)(4)~~ 5–602(f)(3) and (4) and 5–608.1
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 5–608, 5–609, 5–617, 5–619, and 19–344(f)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – Health – General
Section 5–608.1
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

5–602.

(f) **[**~~(4)~~ (3) If the care of a declarant is transferred from one health care provider to another, the transferring health care provider may prepare an "Instructions on Current Life–Sustaining Treatment Options" form in accordance with § 5–608.1 of this subtitle.

(4) If the transferring health care provider prepares an "Instructions on Current Life–Sustaining Treatment Options" form in accordance with § 5–608.1 of this subtitle, the transferring health care provider shall:

(i) Take reasonable steps to ensure that the "Instructions on Current Life–Sustaining Treatment Options" form is consistent with any applicable decision stated in the advance directive of a declarant; and

(ii) Transmit the "Instructions on Current Life–Sustaining Treatment Options" form to the receiving health care provider simultaneously with the transfer of the declarant.**]**

5–608.

(a) (1) Certified or licensed emergency medical services personnel shall be directed by protocol to follow emergency medical services "do not resuscitate orders" pertaining to adult patients in the outpatient setting in accordance with protocols established by the Maryland Institute for Emergency Medical Services Systems in conjunction with the State Board of Physicians.

(2) Emergency medical services "do not resuscitate orders" may not authorize the withholding of medical interventions, or therapies deemed necessary to provide comfort care or to alleviate pain.

(3) A health care provider, other than certified or licensed emergency medical services personnel, who sees, in a valid form, an emergency medical services "do not resuscitate order" described in paragraph (1) of this subsection that is not superseded by a subsequent physician's order:

(i) May, before a patient's cardiac or respiratory arrest, provide, withhold, or withdraw treatment in accordance with the emergency medical services "do not resuscitate order"; and

(ii) Shall, after a patient's cardiac or respiratory arrest, withhold or withdraw treatment in accordance with the emergency medical services "do not resuscitate order".

(4) AN ORDER CONTAINED IN A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM THAT RESUSCITATION NOT BE ATTEMPTED SHALL BE GIVEN THE SAME EFFECT AS EMERGENCY MEDICAL SERVICES "DO NOT RESUSCITATE ORDERS" DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

(b) This section does not authorize emergency medical services personnel to follow an emergency medical services "do not resuscitate order" for any patient who, prior to cardiac or respiratory arrest, is able to, and does, express to those personnel the desire to be resuscitated.

(c) This section does not authorize emergency medical services personnel in the outpatient setting to follow an emergency medical services "do not resuscitate order" that is in any form other than:

(1) An emergency medical services "do not resuscitate order" described in subsection (a) of this section;

(2) An oral emergency medical services "do not resuscitate order" provided by an online, emergency medical services medical command and control physician; **[**or**]**

(3) An oral emergency medical services "do not resuscitate order" provided by a physician, as defined in § 5–601 of this subtitle, or a nurse practitioner, as defined in § 5–601 of this subtitle, who is physically present on the scene with the patient and the emergency medical services personnel in the outpatient setting**; OR**

(4) AN ORDER CONTAINED IN A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM.

(d) (1) Except as provided in paragraph (2) of this subsection, in addition to the immunity provided in § 5–609 of this subtitle and any other immunity provided

by law, an emergency medical services provider is not subject to criminal or civil liability, or deemed to have engaged in unprofessional conduct as determined by the appropriate licensing or certifying authority, arising out of a claim concerning the provision of health care if:

(i) The claim is based on lack of consent or authorization for the health care;

(ii) Subsection (a) of this section would ordinarily apply; and

(iii) The emergency medical services provider:

1. Acts in good faith in providing the health care; and

2. Believes reasonably that subsection (a)(1) of this section does not apply.

(2) This subsection does not apply if the patient is wearing a valid, legible, and patient–identifying emergency medical services "do not resuscitate order" in bracelet form.

[5–608.1.

(a) The Office of the Attorney General shall develop an "Instructions on Current Life–Sustaining Treatment Options" form suitable for summarizing the plan of care for an individual, including the aspects of the plan of care related to:

(1) The use of life–sustaining procedures; and

(2) Transfer to a hospital from a nonhospital setting.

(b) The "Instructions on Current Life–Sustaining Treatment Options" form is voluntary and shall be consistent with:

(1) The decisions of:

(i) The patient if the patient is a competent individual; or

(ii) If the patient is incapable of making an informed decision, a health care agent or surrogate decision maker as authorized by this subtitle; and

(2) Any advance directive of the patient if the patient is incapable of making an informed decision.

(c) The "Instructions on Current Life–Sustaining Treatment Options" form:

(1) May be completed by a health care provider under the direction of an attending physician;

(2) If the attending physician has a reasonable basis to believe that the "Instructions on Current Life–Sustaining Treatment Options" form satisfies the requirements of subsection (b) of this section, shall be signed by the attending physician;

(3) Shall be signed by:

(i) The patient if the patient is a competent individual; or

(ii) If the patient is incapable of making an informed decision, a health care agent or surrogate decision maker as authorized by this subtitle;

(4) If signed by the patient in accordance with item (3)(i) of this subsection, shall include contact information for the patient's health care agent;

(5) If signed by a health care agent or surrogate decision maker in accordance with item (3)(ii) of this subsection, shall include contact information for the health care agent or surrogate decision maker;

(6) Shall be dated;

(7) Shall include a statement that the form may be reviewed, modified, or rescinded at any time;

(8) Shall designate under which conditions the form must be reviewed or modified, including promptly after the patient becomes incapable of making an informed decision; and

(9) Shall contain a conspicuous statement that the original form shall accompany the individual when the individual is transferred to another health care provider or discharged.

(d) A health care provider shall review any "Instructions on Current Life–Sustaining Treatment Options" form received from another health care provider as part of the process of establishing a plan of care for an individual.

(e) The Office of the Attorney General, in developing the "Instructions on Current Life–Sustaining Treatment Options" form in accordance with subsection (a) of this section, shall consult with:

(1) The Department;

(2) Religious groups and institutions with an interest in end–of–life care;

(3) One or more representatives from the community of individuals with disabilities; and

(4) Any other group the Office of the Attorney General identifies as appropriate for consultation.**]**

5–608.1.

(A) IN THIS SECTION, "HEALTH CARE FACILITY" MEANS:

(1) AN ASSISTED LIVING PROGRAM;

(2) A HOME HEALTH AGENCY;

(3) A HOSPICE;

(4) A HOSPITAL;

(5) A KIDNEY DIALYSIS CENTER; OR

(6) A NURSING HOME.

(B) (1) (I) THE DEPARTMENT, IN CONJUNCTION WITH THE MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS AND THE STATE BOARD OF PHYSICIANS, SHALL DEVELOP AND ~~MAY~~ REVISE PERIODICALLY A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM AND INSTRUCTIONS FOR COMPLETING AND USING THE FORM.

(II) THE "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM AND THE INSTRUCTIONS FOR ITS COMPLETION AND USE SHALL BE DEVELOPED IN CONSULTATION WITH:

1. THE OFFICE OF THE ATTORNEY GENERAL;

2. THE STATE BOARD OF NURSING;

3. THE STATE ADVISORY COUNCIL ON QUALITY CARE AT THE END OF LIFE; AND

4. ANY OTHER INDIVIDUAL OR GROUP THE DEPARTMENT DETERMINES IS APPROPRIATE.

(2) THE "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM DEVELOPED UNDER PARAGRAPH (1) OF THIS SUBSECTION

SHALL BE SUITABLE FOR CONTAINING A PHYSICIAN'S OR NURSE PRACTITIONER'S WRITTEN MEDICAL ORDERS RELATING TO A PATIENT'S MEDICAL CONDITION, INCLUDING:

(I) THE USE OF LIFE–SUSTAINING PROCEDURES;

(II) THE USE OF MEDICAL TESTS;

(III) TRANSFER OF THE PATIENT TO A HOSPITAL FROM A NONHOSPITAL SETTING; AND

(IV) ANY OTHER MATTER CONSIDERED APPROPRIATE BY THE DEPARTMENT TO IMPLEMENT TREATMENT PREFERENCES AND ORDERS REGARDING LIFE–SUSTAINING TREATMENTS ACROSS HEALTH CARE SETTINGS.

(3) THE "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM IS NOT AN ADVANCE DIRECTIVE.

(C) (1) A HEALTH CARE FACILITY SHALL:

(I) 1. ~~COMPLETE A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM OR ACCEPT~~ ACCEPT A COMPLETED "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM DURING THE ADMISSION PROCESS FOR EACH PATIENT BEING ADMITTED TO THE HEALTH CARE FACILITY; AND

~~(II)~~ 2. UPDATE THE FORM AS INDICATED IN THE INSTRUCTIONS FOR THE COMPLETION AND USE OF THE FORM; ~~AND~~ OR

(II) COMPLETE A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM:

1. FOR A HEALTH CARE FACILITY THAT IS NOT A HOSPITAL, DURING THE ADMISSION PROCESS FOR EACH PATIENT BEING ADMITTED TO THE HEALTH CARE FACILITY; OR

2. FOR A HOSPITAL, DURING AN INPATIENT HOSPITAL STAY FOR PATIENTS WHO ARE BEING DISCHARGED TO ANOTHER HEALTH CARE FACILITY.

~~(III) OFFER A PATIENT, HEALTH CARE AGENT, OR SURROGATE DECISION MAKER THE OPPORTUNITY TO PARTICIPATE IN THE COMPLETION OF THE FORM.~~

(2) ~~A~~ WHEN A HEALTH CARE FACILITY UPDATES OR COMPLETES A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE HEALTH CARE FACILITY SHALL ~~NOTE~~:

(I) OFFER THE PATIENT, HEALTH CARE AGENT, OR SURROGATE DECISION MAKER THE OPPORTUNITY TO PARTICIPATE IN UPDATING OR COMPLETING THE FORM; ~~AND~~

(II) NOTE IN THE MEDICAL RECORD WHEN A PATIENT, HEALTH CARE AGENT, OR SURROGATE DECISION MAKER DECLINES TO PARTICIPATE IN ~~THE COMPLETION OF A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM~~ UPDATING OR COMPLETING THE FORM, INDICATING THE DATE AND WITH WHOM THE FORM WAS DISCUSSED;

(III) ON REQUEST OF THE PATIENT, OFFER ANY PHYSICIAN OR NURSE PRACTITIONER SELECTED BY THE PATIENT THE OPPORTUNITY TO PARTICIPATE IN UPDATING OR COMPLETING THE FORM; AND

(IV) INFORM THE PATIENT, HEALTH CARE AGENT, OR SURROGATE DECISION MAKER THAT THE FORM WILL BECOME A PART OF THE PATIENT'S MEDICAL RECORD AND CAN BE ACCESSED THROUGH THE PROCEDURES USED TO ACCESS A MEDICAL RECORD.

(3) EXCEPT AS PROVIDED FOR A TREATMENT THAT HAS BEEN CERTIFIED AS MEDICALLY INEFFECTIVE IN ACCORDANCE WITH § 5–611 OF THIS SUBTITLE, THE "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM SHALL BE CONSISTENT WITH:

(I) THE KNOWN DECISIONS OF:

1. THE PATIENT IF THE PATIENT IS A COMPETENT INDIVIDUAL; OR

2. A HEALTH CARE AGENT OR SURROGATE DECISION MAKER AS AUTHORIZED BY THIS SUBTITLE; AND

(II) ANY KNOWN ADVANCE DIRECTIVE OF THE PATIENT IF THE PATIENT IS INCAPABLE OF MAKING AN INFORMED DECISION.

(D) (1) A HEALTH CARE PROVIDER OTHER THAN A HEALTH CARE FACILITY MAY CHOOSE TO USE A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM.

(2) A HEALTH CARE PROVIDER WHO CHOOSES TO USE A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM SHALL OFFER A PATIENT, HEALTH CARE AGENT, OR SURROGATE DECISION MAKER THE OPPORTUNITY TO PARTICIPATE IN THE COMPLETION OF THE FORM.

(E) THE ORIGINAL OR A COPY OF A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM SHALL:

(1) BE KEPT BY A HEALTH CARE PROVIDER IN THE PATIENT'S MEDICAL RECORD;

(2) PHYSICALLY ACCOMPANY THE PATIENT OR BE TRANSMITTED ELECTRONICALLY OR BY FACSIMILE IN ACCORDANCE WITH THE INSTRUCTIONS FOR THE USE OF THE FORM WHEN THE PATIENT IS TRANSFERRED TO A HEALTH CARE FACILITY; AND

(3) BE GIVEN TO THE PATIENT, HEALTH CARE AGENT, OR SURROGATE DECISION MAKER ~~IF THE PATIENT RESIDES AT HOME OR IS DISCHARGED FROM A HEALTH CARE FACILITY TO THE PATIENT'S HOME~~ WITHIN 48 HOURS OF COMPLETION OF THE FORM OR SOONER IF THE PATIENT IS TRANSFERRED OR DISCHARGED.

(F) EXCEPT AS PROVIDED IN § 5–611 OR § 5–613 OF THIS SUBTITLE, A HEALTH CARE FACILITY SHALL COMPLY WITH ALL MEDICAL ORDERS CONTAINED IN A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM REGARDLESS OF WHETHER THE PHYSICIAN OR NURSE PRACTITIONER WHO SIGNED THE FORM HAS ADMITTING PRIVILEGES OR IS OTHERWISE CREDENTIALED AT THE HEALTH CARE FACILITY.

(G) IN THE EVENT OF A CONFLICT BETWEEN MORE THAN ONE "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM, THE MOST RECENT FORM SHALL BE FOLLOWED.

(H) A HEALTH CARE PROVIDER MAY RELY IN GOOD FAITH ON THE PRESUMED VALIDITY OF A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM.

(I) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS THAT SPECIFY THE "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM AND THE INSTRUCTIONS FOR THE COMPLETION AND USE OF THE FORM THAT ARE DEVELOPED AS REQUIRED BY SUBSECTION (B) OF THIS SECTION, INCLUDING INSTRUCTIONS ON HOW A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM ~~BECOMES VOID~~ IS REVISED OR REVOKED.

(2) REGULATIONS ADOPTED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE CONSISTENT WITH THE HEALTH CARE DECISIONS ACT.

(J) THE DEPARTMENT SHALL MAKE THE "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM AND THE INSTRUCTIONS FOR THE COMPLETION AND USE OF THE FORM, INCLUDING INSTRUCTIONS ON HOW THE FORM IS REVISED OR REVOKED, AVAILABLE ON ITS WEB SITE AND MAY PRINT AND DISTRIBUTE THE FORM, ~~AND~~ THE INSTRUCTIONS, AND TRAINING MATERIALS.

5–609.

(a) (1) A health care provider is not subject to criminal prosecution or civil liability or deemed to have engaged in unprofessional conduct as determined by the appropriate licensing authority as a result of withholding or withdrawing any health care under authorization obtained in accordance with this subtitle.

(2) A health care provider providing, withholding, or withdrawing treatment under authorization obtained under this subtitle does not incur liability arising out of any claim to the extent the claim is based on lack of consent or authorization for the action.

(b) A person who authorizes the provision, withholding, or withdrawal of life–sustaining procedures in accordance with a patient's advance directive**, A "MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT" FORM,** or as otherwise provided in this subtitle is not subject to:

(1) Criminal prosecution or civil liability for that action; or

(2) Liability for the cost of treatment solely on the basis of that authorization.

(c) (1) The provisions of this section shall apply unless it is shown by a preponderance of the evidence that the person authorizing or effectuating the provision, withholding, or withdrawal of life–sustaining procedures in accordance with this subtitle did not, in good faith, comply with the provisions of this subtitle.

(2) The distribution to patients of written advance directives in a form provided in this subtitle and assistance to patients in the completion and execution of such forms does not constitute the unauthorized practice of law.

(d) An advance directive made in accordance with this subtitle shall be presumed to have been made voluntarily by a competent individual. Authorization for the provision, withholding, or withdrawal of life–sustaining procedures in accordance with this subtitle shall be presumed to have been made in good faith.

5–617.

An advance directive **[**or**]**, **AN** emergency medical services "do not resuscitate order"**, OR AN ORDER REGARDING LIFE–SUSTAINING TREATMENT** executed in another state shall be deemed to be validly executed for the purposes of this subtitle if executed in compliance with the laws of Maryland or the laws of the state where executed. Advance directives **[**or**]**, emergency medical services "do not resuscitate orders"**, OR AN ORDER REGARDING LIFE–SUSTAINING TREATMENT** executed in another state shall be construed to give effect to the patient's wishes to the extent permitted by the laws of Maryland.

5–619.

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

(b) **[**(1)**]** "Advance directive" has the meaning stated in § 5–601 of this subtitle.

[(2) "Advance directive" includes an "Instructions on Current Life–Sustaining Treatment Options" form developed under § 5–608.1 of this subtitle.**]**

(c) "Registrant" means an individual who registers an advance directive with the Department.

(d) "Registry" means the repository for advance directives in the Department.

19–344.

(f) (1) A resident of a facility:

(i) Shall participate in the planning of the medical treatment;

(ii) May refuse medication or treatment; and

(iii) May know the medical consequences of these actions.

(2) The facility shall:

(i) Have the informed consent of a resident before the resident participates in any experimental research; and

(ii) Keep the resident's written acknowledgment of that consent.

(3) The resident shall receive information about the relationship of the facility to other health care institutions if the information relates to the care of the resident.

(4) The resident shall receive reasonable continuity of care, including information as to the availability of physicians and times for medical appointments.

[(5) (i) A facility shall offer a resident, upon admission, the opportunity for the preparation of an "Instructions on Current Life–Sustaining Treatment Options" form in accordance with § 5–608.1 of this article.

(ii) If a facility prepares an "Instructions on Current Life–Sustaining Treatment Options" form in accordance with subparagraph (i) of this paragraph, the form shall remain conspicuously in the front of a resident's medical records.**]**

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before ~~February~~ April 1, 2012, a ~~health care facility, as defined in § 5–608.1 of the Health – General Article, as enacted by Section 1 of this Act,~~ nursing home or assisted living program shall:

(1) complete a "Medical Orders for Life–Sustaining Treatment" form, developed in accordance with § 5–608.1(b)(1) of the Health – General Article enacted by Section 1 of this Act, for each patient who was admitted to the ~~health care facility~~ nursing home or assisted living program before October 1, 2011, and who is a patient of the nursing home or assisted living program on April 1, 2012; and

(2) offer the patient, health care agent, or surrogate decision maker the opportunity to participate in the completion of the form.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 435

(Senate Bill 212)

AN ACT concerning

Workers' Compensation – Death Benefits – Dependency

FOR the purpose of providing that certain death benefit provisions of the workers' compensation law apply only to certain covered employees of a municipal corporation or a county and their dependents; altering the authority of the Workers' Compensation Commission to make certain determinations of dependency; altering a provision of law that specifies that certain surviving spouses and individuals are not entitled to certain death benefits; altering the provisions relating to the calculation of death benefits for certain individuals who are wholly or partly dependent; requiring an employer or its insurer to pay certain death benefits to certain dependents for a certain period of time; specifying the calculation of certain death benefits; specifying the minimum amount of certain death benefits; specifying the minimum amount of time for the payment of certain death benefits; providing for an exception to the time limitation for certain dependents who are incapable of self–support under certain circumstances; providing for the termination of certain death benefits under certain circumstances; providing for an exception to the termination of certain death benefits for certain children under certain circumstances; providing for the amount of death benefits to certain dependents who are neither a dependent spouse nor a dependent child; providing for an annual adjustment in a certain manner of a certain death benefit; specifying that the Commission has continuing jurisdiction under certain circumstances; authorizing a municipal corporation or county to make a certain election; increasing the amount of certain funeral expenses that the employer or its insurer is required to pay; providing for the application of this Act; making stylistic changes; and generally relating to workers' compensation death benefits for dependents of covered employees.

BY repealing and reenacting, without amendments,
Article – Labor and Employment
Section 9–678
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section 9–679~~, 9–680, 9–681, 9–683,~~ through 9–683 and 9–689
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

~~BY repealing~~
~~Article – Labor and Employment~~
~~Section 9–682~~
~~Annotated Code of Maryland~~
~~(2008 Replacement Volume and 2010 Supplement)~~

BY adding to
Article – Labor and Employment
Section ~~9–682~~ 9–683.1, 9–683.2, 9–683.3, 9–683.4, 9–683.5, and 9–683.6

Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

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

Article – Labor and Employment

9–678.

A dependent of a covered employee who is entitled to compensation for the death of the covered employee resulting from an accidental personal injury or occupational disease shall be paid compensation in accordance with this Part XII of this subtitle.

9–679.

(A) THIS SECTION APPLIES ONLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.

(B) Except as otherwise provided in this subtitle, the Commission shall determine all questions of **[**partial or total**]** dependency in accordance with the facts of each case that existed:

(1) at the time of the occurrence of the accidental personal injury that caused the death of the covered employee; or

(2) on the date of disablement from the occupational disease that caused the death of the covered employee.

~~**(B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THE COMMISSION MAY DETERMINE THE QUESTION OF DEPENDENCY OF A CHILD OF A COVERED EMPLOYEE BORN AFTER:**~~

~~**(1) THE TIME OF THE OCCURRENCE OF THE ACCIDENTAL PERSONAL INJURY THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE;**~~

~~**(2) THE DATE OF DISABLEMENT FROM THE OCCUPATIONAL DISEASE THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE; OR**~~

~~**(3) THE DEATH OF THE COVERED EMPLOYEE RESULTING FROM THE ACCIDENTAL PERSONAL INJURY OR OCCUPATIONAL DISEASE.**~~

9–680.

~~[~~(a)~~]~~ **THIS SECTION APPLIES ONLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.**

(B) The surviving spouse of a ~~DECEASED~~ covered employee whose death was caused by an accidental personal injury or an occupational disease is not entitled to ~~DEATH~~ benefits under this title if~~[~~:

(1) the surviving spouse deserts the covered employee for more than 1 year before the time of the occurrence of the accidental personal injury or the date of disablement from the occupational disease;

(2) the surviving spouse deserts the covered employee at any time after the time of the occurrence of the accidental personal injury or the date of disablement from the occupational disease; or

(3)~~]~~ the surviving spouse and the covered employee~~[~~:

(i)~~]~~ were married after the time of the occurrence of the accidental personal injury or the date of disablement from the occupational disease~~[~~; and

(ii) do not have any dependent children~~]~~.

~~[(b)~~ **(C)** (1) Except as provided in paragraph (2) of this subsection, an individual is not entitled to compensation due to the death of a covered employee from an occupational disease if the individual became dependent on the covered employee after the beginning of the 1st compensable disability of the covered employee resulting from the occupational disease.

(2) The prohibition against compensation in paragraph (1) of this subsection does not apply to a child of the deceased covered employee born:

(i) after the beginning of the 1st compensable disability of the covered employee resulting from the occupational disease; and

(ii) of a marriage that existed at the beginning of the disability.~~]~~

9–681.

(a) **THIS SECTION APPLIES ONLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS**

TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.

(B) If there are individuals who were **[**wholly**]** dependent on a deceased covered employee at the time of death resulting from an accidental personal injury or occupational disease, the employer or its insurer shall pay death benefits in accordance with this section.

[~~(b)~~ **(C)** (1) Except as provided in paragraph (2) of this subsection, the death benefit payable under this section shall equal two–thirds of the average weekly wage of the deceased covered employee, but may not:

(i) exceed the State average weekly wage; or

(ii) be less than $25.

(2) If the average weekly wage of the deceased covered employee was less than $25 at the time of the accidental personal injury or the last injurious exposure to the hazards of the occupational disease, the weekly death benefit payable under this section shall equal the average weekly wage of the deceased covered employee.

~~(c)~~ **(D)** Except as otherwise provided in this section, the employer or its insurer shall pay the weekly death benefit:

(1) for the period of total dependency; or

(2) until $45,000 has been paid.

~~(d)~~ **(E)** If a surviving spouse who was wholly dependent at the time of death continues to be wholly dependent after $45,000 has been paid, the employer or its insurer shall continue to make payments to the surviving spouse at the same weekly rate during the total dependency of the surviving spouse.

~~(e)~~ **(F)** (1) If a surviving spouse who is wholly dependent at the time of death becomes wholly self–supporting before $45,000 has been paid, the employer or its insurer shall continue to pay death benefits until $45,000 has been paid.

(2) If a surviving spouse who is wholly dependent at the time of death becomes partly self–supporting, the employer or its insurer shall continue to make payments to the surviving spouse in accordance with § 9–682 of this subtitle.

~~(f)~~ **(G)** (1) Except as provided in paragraph (2) of this subsection, if a surviving spouse who is wholly dependent remarries, payment to the surviving spouse shall stop on the date of remarriage, even if $45,000 has not been paid.

(2) If a surviving spouse who is wholly dependent remarries and does not have dependent children at the time of the remarriage, the employer or its insurer shall continue to make payments to the surviving spouse for 2 years after the date of the remarriage.

~~(g)~~ **(H)** If a surviving child continues to be wholly dependent after the total amount of $45,000 has been paid, the employer or its insurer shall continue to make payments at the same weekly rate during the total dependency of the surviving child.

~~(h)~~ **(I)** Except as provided in subsection ~~(i)~~ ***(J)*** of this section, if a child who is wholly dependent at the time of death becomes wholly or partly self–supporting, the employer or its insurer shall continue to pay death benefits until $45,000 has been paid.

~~(i)~~ **(J)** (1) Except as provided in paragraphs (2) and (3) of this subsection, the employer or its insurer shall continue to make payments to, or for the benefit of, a surviving child until the child reaches 18 years of age.

(2) The employer or its insurer shall continue to make payments to, or for the benefit of, a child who is 18 years old or older for the period of dependency if the child is:

(i) wholly dependent on the deceased covered employee; and

(ii) incapable of self–support because of mental or physical disability or other sufficient reason as determined by the Commission.

(3) The employer or its insurer shall continue to make payments to, or for the benefit of, a child who is 18 years old or older for up to 5 years after reaching the age of 18 if:

(i) the child is attending school on a full–time basis; and

(ii) the school offers an educational program or a vocational training program, that is accredited or approved by the State Department of Education.

~~(j)~~ **(K)** The Commission has continuing jurisdiction to:

(1) determine whether a surviving spouse or child has become wholly or partly self–supporting;

(2) suspend or terminate payments of compensation; and

(3) reinstate payments of compensation that have been suspended or terminated.**]**

9–682.

(A) THIS SECTION APPLIES ONLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.

[(a)**] (B)** The employer or its insurer shall pay a death benefit in accordance with this section if:

(1) there are no individuals who were wholly dependent on the deceased covered employee at the time of death, but there are individuals who were partly dependent; or

(2) a surviving spouse who was wholly dependent on the deceased covered employee at the time of death becomes partly self–supporting.

[(b)**] (C)** (1) The maximum weekly death benefit payable under this section shall equal two–thirds of the average weekly wage of the deceased covered employee, but may not exceed two–thirds of the State average weekly wage.

(2) The weekly death benefit payable under this section shall be the percentage of the maximum weekly death benefit under paragraph (1) of this subsection that:

(i) the weekly earnings of the deceased covered employee bears to the combined weekly earnings of the deceased covered employee and the partly dependent individuals; and

(ii) does not exceed the maximum weekly death benefit.

[(c)**] (D)** Except as otherwise provided in this section, the employer or its insurer shall pay the weekly death benefit:

(1) for the period of partial dependency; or

(2) until $75,000 has been paid, including any payments made during a period of total dependency under § 9–681 of this subtitle.

[(d)**] (E)** (1) Subject to paragraph (2) of this subsection, if a surviving spouse who is partly dependent remarries and does not have dependent children at the

time of the remarriage, the employer or its insurer shall make payments to the surviving spouse for 2 years after the date of the remarriage.

(2) The total of the payments made before the remarriage may not exceed $75,000.

[(e)**] (F)** (1) Except as provided in paragraphs (2) and (3) of this subsection, the employer or its insurer shall continue to make payments to, or for the benefit of, a surviving child until the child reaches 18 years of age.

(2) If a child who is 18 years old or older remains partly dependent on the deceased covered employee, the employer or its insurer shall continue to make payments in accordance with subsections **[**(b) and**]** (c) **AND (D)** of this section.

(3) The employer or its insurer shall continue to make payments to, or for the benefit of, a child who is 18 years old or older for up to 5 years after reaching the age of 18 if:

(i) the child is attending school on a full–time basis; and

(ii) the school offers an educational program or a vocational training program and the program is accredited or approved by the Maryland State Department of Education.

9–683.

(A) THIS SECTION APPLIES ONLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.

[(a)**] (B)** If there are multiple dependents entitled to death benefits, the Commission may apportion an award of death benefits among the dependents in the manner that the Commission considers just and equitable.

[(b)**] (C)** If there are wholly and partly dependent individuals entitled to death benefits, the Commission may:

(1) award the death benefits to the wholly dependent individuals only; or

(2) apportion the award among the wholly and partly dependent individuals in the manner that the Commission considers to be fair and equitable under all of the facts and circumstances of the case.

[(c)**] (D)** (1) Death benefits shall be paid to 1 or more of the dependents of a covered employee who are entitled to death benefits, as determined by the Commission, for the benefit of all of the dependents who are entitled to death benefits.

(2) A dependent to whom death benefits are paid shall apply the death benefits to the use of all of the dependents who are entitled to death benefits:

(i) according to the respective claims of the dependents on the deceased covered employee for support; and

(ii) in compliance with the findings and direction of the Commission.

9–683.1.

(A) THIS SECTION DOES NOT APPLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.

(B) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, THE COMMISSION SHALL DETERMINE ALL QUESTIONS OF DEPENDENCY IN ACCORDANCE WITH THE FACTS OF EACH CASE THAT EXISTED:

(1) AT THE TIME OF THE OCCURRENCE OF THE ACCIDENTAL PERSONAL INJURY THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE; OR

(2) ON THE DATE OF DISABLEMENT FROM THE OCCUPATIONAL DISEASE THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE.

(C) NOTWITHSTANDING SUBSECTION (B) OF THIS SECTION, THE COMMISSION MAY DETERMINE THE QUESTION OF DEPENDENCY OF A CHILD OF A COVERED EMPLOYEE BORN AFTER:

(1) THE TIME OF THE OCCURRENCE OF THE ACCIDENTAL PERSONAL INJURY THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE;

(2) THE DATE OF DISABLEMENT FROM THE OCCUPATIONAL DISEASE THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE; OR

(3) THE DEATH OF THE COVERED EMPLOYEE RESULTING FROM THE ACCIDENTAL PERSONAL INJURY OR OCCUPATIONAL DISEASE.

9–683.2.

(A) THIS SECTION DOES NOT APPLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.

(B) THE SURVIVING SPOUSE OF A DECEASED COVERED EMPLOYEE WHOSE DEATH WAS CAUSED BY AN ACCIDENTAL PERSONAL INJURY OR AN OCCUPATIONAL DISEASE IS NOT ENTITLED TO DEATH BENEFITS UNDER THIS TITLE IF THE SURVIVING SPOUSE AND THE COVERED EMPLOYEE WERE MARRIED AFTER THE TIME OF THE OCCURRENCE OF THE ACCIDENTAL PERSONAL INJURY OR THE DATE OF DISABLEMENT FROM THE OCCUPATIONAL DISEASE.

9–683.3.

(A) THIS SECTION DOES NOT APPLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.

(B) IF THERE ARE INDIVIDUALS WHO WERE DEPENDENT ON A DECEASED COVERED EMPLOYEE AT THE TIME OF DEATH RESULTING FROM AN ACCIDENTAL PERSONAL INJURY OR OCCUPATIONAL DISEASE, THE EMPLOYER OR ITS INSURER SHALL PAY DEATH BENEFITS IN ACCORDANCE WITH THIS SECTION.

~~(B)~~ (C) (1) BEGINNING ON THE DATE OF DEATH OF A DECEASED COVERED EMPLOYEE AND CONTINUING FOR A PERIOD OF 144 MONTHS, THE EMPLOYER OR ITS INSURER SHALL PAY DEATH BENEFITS, AS CALCULATED IN THIS SECTION, TO THE DEPENDENTS OF THE DECEASED COVERED EMPLOYEE.

(2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, DEATH BENEFITS SHALL BE PAID AT THE RATE OF TWO–THIRDS OF THE DECEASED COVERED EMPLOYEE'S AVERAGE WEEKLY WAGE AT THE TIME OF THE OCCURRENCE OF THE ACCIDENTAL PERSONAL INJURY THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE OR ON THE DATE OF DISABLEMENT FROM THE OCCUPATIONAL DISEASE THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE, NOT TO EXCEED THE STATE AVERAGE WEEKLY WAGE.

(3) THE AVERAGE WEEKLY WAGE OF ALL DEPENDENTS AND THE DECEASED COVERED EMPLOYEE'S AVERAGE WEEKLY WAGE SHALL BE COMBINED TO DETERMINE THE FAMILY INCOME.

(4) THE DECEASED COVERED EMPLOYEE'S INCOME SHALL BE DIVIDED BY THE FAMILY INCOME TO DETERMINE THE PERCENT OF THE FAMILY INCOME EARNED BY THE DECEASED COVERED EMPLOYEE.

(5) THE PERCENT OF THE FAMILY INCOME EARNED BY THE DECEASED COVERED EMPLOYEE SHALL BE MULTIPLIED BY THE DEATH BENEFIT, AS CALCULATED IN PARAGRAPH (2) OF THIS SUBSECTION, TO DETERMINE THE AMOUNT PAYABLE, COLLECTIVELY, TO ALL DEPENDENTS.

(6) IF THE AVERAGE WEEKLY WAGE OF THE DECEASED COVERED EMPLOYEE WAS LESS THAN $100 AT THE TIME OF THE OCCURRENCE OF THE ACCIDENTAL PERSONAL INJURY THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE OR ON THE DATE OF DISABLEMENT FROM THE OCCUPATIONAL DISEASE THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE, THE WEEKLY DEATH BENEFIT PAID UNDER THIS SECTION SHALL EQUAL THE AVERAGE WEEKLY WAGE OF THE DECEASED COVERED EMPLOYEE UP TO $100 PER WEEK.

~~(C)~~ (D) (1) DEATH BENEFITS SHALL BE PAID FOR A MINIMUM OF 5 YEARS AFTER THE COVERED EMPLOYEE'S DEATH.

(2) SUBJECT TO SUBSECTIONS ~~(D) THROUGH (H)~~ (E) THROUGH (I) OF THIS SECTION, PROVIDED THAT A MINIMUM OF 5 YEARS OF DEATH BENEFITS HAS BEEN PAID, DEATH BENEFITS SHALL TERMINATE ON THE DATE THAT WOULD HAVE BEEN THE DECEASED COVERED EMPLOYEE'S 70TH BIRTHDAY.

~~(D)~~ (E) NOTWITHSTANDING THE TIME LIMITATIONS UNDER SUBSECTIONS ~~(B) AND (C)~~ (C) AND (D) OF THIS SECTION, IF A DEPENDENT SPOUSE OR DEPENDENT CHILD IS INCAPABLE OF SELF–SUPPORT BECAUSE OF A MENTAL OR PHYSICAL DISABILITY THAT PREEXISTED THE COVERED EMPLOYEE'S DEATH, DEATH BENEFITS SHALL CONTINUE FOR THE DURATION OF THE DEPENDENT'S DISABILITY.

~~(E)~~ (F) IF A DEPENDENT SPOUSE REMARRIES, DEATH BENEFITS SHALL TERMINATE 2 YEARS AFTER THE DATE OF REMARRIAGE.

~~(F)~~ (G) THE EMPLOYER OR ITS INSURER SHALL CONTINUE TO MAKE PAYMENTS TO OR FOR THE BENEFIT OF A DEPENDENT CHILD UNTIL THE CHILD REACHES 18 YEARS OF AGE.

~~(G)~~ (H) THE EMPLOYER OR ITS INSURER SHALL CONTINUE TO MAKE PAYMENTS TO, OR FOR THE BENEFIT OF, A DEPENDENT CHILD FOR UP TO 5 YEARS AFTER THE CHILD REACHES 18 YEARS OF AGE IF:

(1) THE CHILD IS ATTENDING SCHOOL ON A FULL–TIME BASIS; AND

(2) THE SCHOOL OFFERS AN EDUCATIONAL PROGRAM OR A VOCATIONAL TRAINING PROGRAM THAT IS ACCREDITED OR APPROVED BY THE STATE DEPARTMENT OF EDUCATION.

~~(H)~~ (I) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, ALL DEPENDENTS WHO ARE NEITHER A DEPENDENT SPOUSE NOR A DEPENDENT CHILD SHALL BE ENTITLED TO NO MORE THAN A TOTAL OF $65,000, COLLECTIVELY, AS THEIR PORTION OF THE TOTAL DEATH BENEFITS PAYABLE IN ACCORDANCE WITH SUBSECTION ~~(B)~~ (C) OF THIS SECTION.

(2) BEGINNING ON JANUARY 1, 2012, THE BENEFIT LIMIT UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE ADJUSTED ANNUALLY BY THE SAME PERCENT APPLICABLE TO THE ADJUSTMENT OF THE STATE AVERAGE WEEKLY WAGE.

9–683.4.

(A) THIS SECTION DOES NOT APPLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.

(B) THE COMMISSION HAS CONTINUING JURISDICTION TO:

(1) SUSPEND, REALLOCATE, OR TERMINATE PAYMENTS OF COMPENSATION IN ACCORDANCE WITH THIS PART; AND

(2) REINSTATE PAYMENTS OF COMPENSATION THAT HAVE BEEN SUSPENDED OR TERMINATED UNDER THIS SECTION.

9–683.5.

(A) THIS SECTION DOES NOT APPLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE

MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.

(B) IF THERE ARE MULTIPLE DEPENDENTS ENTITLED TO DEATH BENEFITS, THE COMMISSION MAY APPORTION AN AWARD OF DEATH BENEFITS AMONG THE DEPENDENTS IN THE MANNER THAT THE COMMISSION CONSIDERS JUST AND EQUITABLE.

(C) (1) DEATH BENEFITS SHALL BE PAID TO 1 OR MORE OF THE DEPENDENTS OF A COVERED EMPLOYEE WHO ARE ENTITLED TO DEATH BENEFITS, AS DETERMINED BY THE COMMISSION, FOR THE BENEFIT OF ALL OF THE DEPENDENTS WHO ARE ENTITLED TO DEATH BENEFITS.

(2) A DEPENDENT TO WHOM DEATH BENEFITS ARE PAID SHALL APPLY THE DEATH BENEFITS TO THE USE OF ALL OF THE DEPENDENTS WHO ARE ENTITLED TO DEATH BENEFITS:

(I) ACCORDING TO THE RESPECTIVE CLAIMS OF THE DEPENDENTS OF THE DECEASED COVERED EMPLOYEE FOR SUPPORT; AND

(II) IN COMPLIANCE WITH THE FINDINGS AND DIRECTION OF THE COMMISSION.

9–683.6.

(A) A MUNICIPAL CORPORATION OR COUNTY MAY MAKE A ONE–TIME ELECTION TO MAKE THEIR COVERED EMPLOYEES WHO ARE SUBJECT TO § 9–503 OF THIS TITLE AND THEIR DEPENDENTS SUBJECT TO §§ 9–683.1 THROUGH 9–683.5 OF THIS SUBTITLE.

(B) TO MAKE THE ELECTION DESCRIBED UNDER SUBSECTION (A) OF THIS SECTION, THE GOVERNING BODY OF THE MUNICIPAL CORPORATION OR COUNTY SHALL:

(1) ADOPT AN ORDINANCE OR RESOLUTION STATING THAT IT IS THE INTENT OF THE GOVERNING BODY TO EXERCISE THE RIGHT OF ELECTION; AND

(2) FORWARD A COPY OF THE ORDINANCE OR RESOLUTION TO THE COMMISSION.

(C) ON RECEIPT OF A COPY OF THE RESOLUTION, THE COMMISSION SHALL ACKNOWLEDGE RECEIPT OF THE ORDINANCE OR RESOLUTION TO THE MUNICIPAL CORPORATION OR COUNTY.

(D) ONCE THE COMMISSION HAS ACKNOWLEDGED RECEIPT OF THE ORDINANCE OR RESOLUTION, ANY WORKERS' COMPENSATION CASE ARISING ON OR AFTER THE DATE OF ACKNOWLEDGEMENT AND INVOLVING A COVERED EMPLOYEE OF THE MUNICIPAL CORPORATION OR COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THE COVERED EMPLOYEE SHALL BE SUBJECT TO §§ 9–683.1 THROUGH 9–683.5 OF THIS SUBTITLE.

~~[9–682.~~

~~(a) The employer or its insurer shall pay a death benefit in accordance with this section if:~~

~~(1) there are no individuals who were wholly dependent on the deceased covered employee at the time of death, but there are individuals who were partly dependent; or~~

~~(2) a surviving spouse who was wholly dependent on the deceased covered employee at the time of death becomes partly self–supporting.~~

~~(b) (1) The maximum weekly death benefit payable under this section shall equal two–thirds of the average weekly wage of the deceased covered employee, but may not exceed two–thirds of the State average weekly wage.~~

~~(2) The weekly death benefit payable under this section shall be the percentage of the maximum weekly death benefit under paragraph (1) of this subsection that:~~

~~(i) the weekly earnings of the deceased covered employee bears to the combined weekly earnings of the deceased covered employee and the partly dependent individuals; and~~

~~(ii) does not exceed the maximum weekly death benefit.~~

~~(c) Except as otherwise provided in this section, the employer or its insurer shall pay the weekly death benefit:~~

~~(1) for the period of partial dependency; or~~

~~(2) until $75,000 has been paid, including any payments made during a period of total dependency under § 9–681 of this subtitle.~~

~~(d) (1) Subject to paragraph (2) of this subsection, if a surviving spouse who is partly dependent remarries and does not have dependent children at the time of the remarriage, the employer or its insurer shall make payments to the surviving spouse for 2 years after the date of the remarriage.~~

~~(2) The total of the payments made before the remarriage may not exceed $75,000.~~

~~(c) (1) Except as provided in paragraphs (2) and (3) of this subsection, the employer or its insurer shall continue to make payments to, or for the benefit of, a surviving child until the child reaches 18 years of age.~~

~~(2) If a child who is 18 years old or older remains partly dependent on the deceased covered employee, the employer or its insurer shall continue to make payments in accordance with subsections (b) and (c) of this section.~~

~~(3) The employer or its insurer shall continue to make payments to, or for the benefit of, a child who is 18 years old or older for up to 5 years after reaching the age of 18 if:~~

~~(i) the child is attending school on a full–time basis; and~~

~~(ii) the school offers an educational program or a vocational training program and the program is accredited or approved by the Maryland State Department of Education.~~**]**

~~**9–682.**~~

~~**THE COMMISSION HAS CONTINUING JURISDICTION TO:**~~

~~**(1) SUSPEND, REALLOCATE, OR TERMINATE PAYMENTS OF COMPENSATION IN ACCORDANCE WITH THIS PART; AND**~~

~~**(2) REINSTATE PAYMENTS OF COMPENSATION THAT HAVE BEEN SUSPENDED OR TERMINATED UNDER THIS SECTION.**~~

~~9–683.~~

~~(a) If there are multiple dependents entitled to death benefits, the Commission may apportion an award of death benefits among the dependents in the manner that the Commission considers just and equitable.~~

[~~(b) If there are wholly and partly dependent individuals entitled to death benefits, the Commission may:~~

~~(1) award the death benefits to the wholly dependent individuals only; or~~

~~(2) apportion the award among the wholly and partly dependent individuals in the manner that the Commission considers to be fair and equitable under all of the facts and circumstances of the case.~~**]**

[~~(e)~~**] (B)** ~~(1) Death benefits shall be paid to 1 or more of the dependents of a covered employee who are entitled to death benefits, as determined by the Commission, for the benefit of all of the dependents who are entitled to death benefits.~~

~~(2) A dependent to whom death benefits are paid shall apply the death benefits to the use of all of the dependents who are entitled to death benefits:~~

~~(i) according to the respective claims of the dependents on the deceased covered employee for support; and~~

~~(ii) in compliance with the findings and direction of the Commission.~~

9–689.

(a) The employer or its insurer shall pay reasonable funeral expenses of a deceased covered employee, not exceeding **[**$5,000**] $7,000**, if the covered employee died as a result of:

(1) an accidental personal injury, within 7 years of the accidental personal injury; or

(2) an occupational disease.

(b) Unless approved by the Commission, a bill for funeral expenses of more than **[**$5,000**] $7,000** is void and uncollectable out of:

(1) workers' compensation benefits payable with respect to the deceased covered employee; or

(2) personal assets of any person to whom workers' compensation benefits are payable with respect to the deceased covered employee.

(c) If there are no dependents, the employer**[**,**] OR** its insurer**[**, or the Injured Workers' Insurance Fund, as appropriate,**]** shall pay the expenses of the last sickness and **[**burial**] FUNERAL EXPENSES** of the covered employee.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively to deaths occurring on or after the effective date of this Act and may not be applied or interpreted to have any effect on or application to any death occurring before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 436

(House Bill 417)

AN ACT concerning

Workers' Compensation – Death Benefits – Dependency

FOR the purpose of providing that certain death benefit provisions of the workers' compensation law apply only to certain covered employees of a municipal corporation or a county and their dependents; altering the authority of the Workers' Compensation Commission to make certain determinations of dependency; altering a provision of law that specifies that certain surviving spouses and individuals are not entitled to certain death benefits; altering the provisions relating to the calculation of death benefits for certain individuals who are wholly or partly dependent; requiring an employer or its insurer to pay certain death benefits to certain dependents for a certain period of time; specifying the calculation of certain death benefits; specifying the minimum amount of certain death benefits; specifying the minimum amount of time for the payment of certain death benefits; providing for an exception to the time limitation for certain dependents who are incapable of self–support under certain circumstances; providing for the termination of certain death benefits under certain circumstances; providing for an exception to the termination of certain death benefits for certain children under certain circumstances; providing for the amount of death benefits to certain dependents who are neither a dependent spouse nor a dependent child; providing for an annual adjustment in a certain manner of a certain death benefit; specifying that the Commission has continuing jurisdiction under certain circumstances; authorizing a municipal corporation or county to make a certain election; increasing the amount of certain funeral expenses that the employer or its insurer is required to pay; providing for the application of this Act; making stylistic changes; and generally relating to workers' compensation death benefits for dependents of covered employees.

BY repealing and reenacting, without amendments,
Article – Labor and Employment
Section 9–678
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section 9–679~~, 9–680, 9–681, 9–683,~~ through 9–683 and 9–689
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

~~BY repealing~~
~~Article – Labor and Employment~~
~~Section 9–682~~
~~Annotated Code of Maryland~~
~~(2008 Replacement Volume and 2010 Supplement)~~

BY adding to
Article – Labor and Employment
Section ~~9–682~~ 9–683.1, 9–683.2, 9–683.3, 9–683.4, 9–683.5, and 9–683.6
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

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

Article – Labor and Employment

9–678.

A dependent of a covered employee who is entitled to compensation for the death of the covered employee resulting from an accidental personal injury or occupational disease shall be paid compensation in accordance with this Part XII of this subtitle.

9–679.

(A) THIS SECTION APPLIES ONLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.

(B) Except as otherwise provided in this subtitle, the Commission shall determine all questions of **[**partial or total**]** dependency in accordance with the facts of each case that existed:

(1) at the time of the occurrence of the accidental personal injury that caused the death of the covered employee; or

(2) on the date of disablement from the occupational disease that caused the death of the covered employee.

~~**(B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THE COMMISSION MAY DETERMINE THE QUESTION OF DEPENDENCY OF A CHILD OF A COVERED EMPLOYEE BORN AFTER:**~~

~~**(1) THE TIME OF THE OCCURRENCE OF THE ACCIDENTAL PERSONAL INJURY THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE;**~~

~~**(2) THE DATE OF DISABLEMENT FROM THE OCCUPATIONAL DISEASE THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE; OR**~~

~~**(3) THE DEATH OF THE COVERED EMPLOYEE RESULTING FROM THE ACCIDENTAL PERSONAL INJURY OR OCCUPATIONAL DISEASE.**~~

9–680.

~~[~~(a)~~]~~ **THIS SECTION APPLIES ONLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.**

(B) The surviving spouse of a ~~**DECEASED**~~ covered employee whose death was caused by an accidental personal injury or an occupational disease is not entitled to ~~**DEATH**~~ benefits under this title if~~[~~:

(1) the surviving spouse deserts the covered employee for more than 1 year before the time of the occurrence of the accidental personal injury or the date of disablement from the occupational disease;

(2) the surviving spouse deserts the covered employee at any time after the time of the occurrence of the accidental personal injury or the date of disablement from the occupational disease; or

(3)~~]~~ the surviving spouse and the covered employee~~[~~:

(i)~~]~~ were married after the time of the occurrence of the accidental personal injury or the date of disablement from the occupational disease~~[~~; and

(ii) do not have any dependent children~~]~~.

[~~(b)~~ **(C)** (1) Except as provided in paragraph (2) of this subsection, an individual is not entitled to compensation due to the death of a covered employee from an occupational disease if the individual became dependent on the covered employee after the beginning of the 1st compensable disability of the covered employee resulting from the occupational disease.

(2) The prohibition against compensation in paragraph (1) of this subsection does not apply to a child of the deceased covered employee born:

(i) after the beginning of the 1st compensable disability of the covered employee resulting from the occupational disease; and

(ii) of a marriage that existed at the beginning of the disability.]

9–681.

(a) **THIS SECTION APPLIES ONLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.**

(B) If there are individuals who were [wholly] dependent on a deceased covered employee at the time of death resulting from an accidental personal injury or occupational disease, the employer or its insurer shall pay death benefits in accordance with this section.

[~~(b)~~ **(C)** (1) Except as provided in paragraph (2) of this subsection, the death benefit payable under this section shall equal two–thirds of the average weekly wage of the deceased covered employee, but may not:

(i) exceed the State average weekly wage; or

(ii) be less than $25.

(2) If the average weekly wage of the deceased covered employee was less than $25 at the time of the accidental personal injury or the last injurious exposure to the hazards of the occupational disease, the weekly death benefit payable under this section shall equal the average weekly wage of the deceased covered employee.

~~(c)~~ **(D)** Except as otherwise provided in this section, the employer or its insurer shall pay the weekly death benefit:

(1) for the period of total dependency; or

(2) until $45,000 has been paid.

~~(d)~~ **(E)** If a surviving spouse who was wholly dependent at the time of death continues to be wholly dependent after $45,000 has been paid, the employer or its insurer shall continue to make payments to the surviving spouse at the same weekly rate during the total dependency of the surviving spouse.

~~(e)~~ **(F)** (1) If a surviving spouse who is wholly dependent at the time of death becomes wholly self–supporting before $45,000 has been paid, the employer or its insurer shall continue to pay death benefits until $45,000 has been paid.

(2) If a surviving spouse who is wholly dependent at the time of death becomes partly self–supporting, the employer or its insurer shall continue to make payments to the surviving spouse in accordance with § 9–682 of this subtitle.

~~(f)~~ **(G)** (1) Except as provided in paragraph (2) of this subsection, if a surviving spouse who is wholly dependent remarries, payment to the surviving spouse shall stop on the date of remarriage, even if $45,000 has not been paid.

(2) If a surviving spouse who is wholly dependent remarries and does not have dependent children at the time of the remarriage, the employer or its insurer shall continue to make payments to the surviving spouse for 2 years after the date of the remarriage.

~~(g)~~ **(H)** If a surviving child continues to be wholly dependent after the total amount of $45,000 has been paid, the employer or its insurer shall continue to make payments at the same weekly rate during the total dependency of the surviving child.

~~(h)~~ **(I)** Except as provided in subsection ~~(i)~~ **(J)** of this section, if a child who is wholly dependent at the time of death becomes wholly or partly self–supporting, the employer or its insurer shall continue to pay death benefits until $45,000 has been paid.

~~(i)~~ **(J)** (1) Except as provided in paragraphs (2) and (3) of this subsection, the employer or its insurer shall continue to make payments to, or for the benefit of, a surviving child until the child reaches 18 years of age.

(2) The employer or its insurer shall continue to make payments to, or for the benefit of, a child who is 18 years old or older for the period of dependency if the child is:

(i) wholly dependent on the deceased covered employee; and

(ii) incapable of self–support because of mental or physical disability or other sufficient reason as determined by the Commission.

(3) The employer or its insurer shall continue to make payments to, or for the benefit of, a child who is 18 years old or older for up to 5 years after reaching the age of 18 if:

(i) the child is attending school on a full–time basis; and

(ii) the school offers an educational program or a vocational training program, that is accredited or approved by the State Department of Education.

~~(j)~~ **(K)** The Commission has continuing jurisdiction to:

(1) determine whether a surviving spouse or child has become wholly or partly self–supporting;

(2) suspend or terminate payments of compensation; and

(3) reinstate payments of compensation that have been suspended or terminated.~~]~~

9–682.

(A) THIS SECTION APPLIES ONLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.

[(a)**]** **(B)** The employer or its insurer shall pay a death benefit in accordance with this section if:

(1) there are no individuals who were wholly dependent on the deceased covered employee at the time of death, but there are individuals who were partly dependent; or

(2) a surviving spouse who was wholly dependent on the deceased covered employee at the time of death becomes partly self–supporting.

[(b)**]** **(C)** (1) The maximum weekly death benefit payable under this section shall equal two–thirds of the average weekly wage of the deceased covered employee, but may not exceed two–thirds of the State average weekly wage.

(2) The weekly death benefit payable under this section shall be the percentage of the maximum weekly death benefit under paragraph (1) of this subsection that:

(i) the weekly earnings of the deceased covered employee bears to the combined weekly earnings of the deceased covered employee and the partly dependent individuals; and

(ii) does not exceed the maximum weekly death benefit.

[(c)**] (D)** Except as otherwise provided in this section, the employer or its insurer shall pay the weekly death benefit:

(1) for the period of partial dependency; or

(2) until $75,000 has been paid, including any payments made during a period of total dependency under § 9–681 of this subtitle.

[(d)**] (E)** (1) Subject to paragraph (2) of this subsection, if a surviving spouse who is partly dependent remarries and does not have dependent children at the time of the remarriage, the employer or its insurer shall make payments to the surviving spouse for 2 years after the date of the remarriage.

(2) The total of the payments made before the remarriage may not exceed $75,000.

[(e)**] (F)** (1) Except as provided in paragraphs (2) and (3) of this subsection, the employer or its insurer shall continue to make payments to, or for the benefit of, a surviving child until the child reaches 18 years of age.

(2) If a child who is 18 years old or older remains partly dependent on the deceased covered employee, the employer or its insurer shall continue to make payments in accordance with subsections **[**(b) and**]** (c) **AND (D)** of this section.

(3) The employer or its insurer shall continue to make payments to, or for the benefit of, a child who is 18 years old or older for up to 5 years after reaching the age of 18 if:

(i) the child is attending school on a full–time basis; and

(ii) the school offers an educational program or a vocational training program and the program is accredited or approved by the Maryland State Department of Education.

9–683.

(A) THIS SECTION APPLIES ONLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE

MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.

[(a)**]** **(B)** If there are multiple dependents entitled to death benefits, the Commission may apportion an award of death benefits among the dependents in the manner that the Commission considers just and equitable.

[(b)**]** **(C)** If there are wholly and partly dependent individuals entitled to death benefits, the Commission may:

(1) award the death benefits to the wholly dependent individuals only; or

(2) apportion the award among the wholly and partly dependent individuals in the manner that the Commission considers to be fair and equitable under all of the facts and circumstances of the case.

[(c)**]** **(D)** (1) Death benefits shall be paid to 1 or more of the dependents of a covered employee who are entitled to death benefits, as determined by the Commission, for the benefit of all of the dependents who are entitled to death benefits.

(2) A dependent to whom death benefits are paid shall apply the death benefits to the use of all of the dependents who are entitled to death benefits:

(i) according to the respective claims of the dependents on the deceased covered employee for support; and

(ii) in compliance with the findings and direction of the Commission.

9–683.1.

(A) THIS SECTION DOES NOT APPLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.

(B) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, THE COMMISSION SHALL DETERMINE ALL QUESTIONS OF DEPENDENCY IN ACCORDANCE WITH THE FACTS OF EACH CASE THAT EXISTED:

(1) AT THE TIME OF THE OCCURRENCE OF THE ACCIDENTAL PERSONAL INJURY THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE; OR

(2) ON THE DATE OF DISABLEMENT FROM THE OCCUPATIONAL DISEASE THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE.

(C) NOTWITHSTANDING SUBSECTION (B) OF THIS SECTION, THE COMMISSION MAY DETERMINE THE QUESTION OF DEPENDENCY OF A CHILD OF A COVERED EMPLOYEE BORN AFTER:

(1) THE TIME OF THE OCCURRENCE OF THE ACCIDENTAL PERSONAL INJURY THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE;

(2) THE DATE OF DISABLEMENT FROM THE OCCUPATIONAL DISEASE THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE; OR

(3) THE DEATH OF THE COVERED EMPLOYEE RESULTING FROM THE ACCIDENTAL PERSONAL INJURY OR OCCUPATIONAL DISEASE.

9–683.2.

(A) THIS SECTION DOES NOT APPLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.

(B) THE SURVIVING SPOUSE OF A DECEASED COVERED EMPLOYEE WHOSE DEATH WAS CAUSED BY AN ACCIDENTAL PERSONAL INJURY OR AN OCCUPATIONAL DISEASE IS NOT ENTITLED TO DEATH BENEFITS UNDER THIS TITLE IF THE SURVIVING SPOUSE AND THE COVERED EMPLOYEE WERE MARRIED AFTER THE TIME OF THE OCCURRENCE OF THE ACCIDENTAL PERSONAL INJURY OR THE DATE OF DISABLEMENT FROM THE OCCUPATIONAL DISEASE.

9–683.3.

(A) THIS SECTION DOES NOT APPLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.

(B) IF THERE ARE INDIVIDUALS WHO WERE DEPENDENT ON A DECEASED COVERED EMPLOYEE AT THE TIME OF DEATH RESULTING FROM AN ACCIDENTAL PERSONAL INJURY OR OCCUPATIONAL DISEASE, THE EMPLOYER

OR ITS INSURER SHALL PAY DEATH BENEFITS IN ACCORDANCE WITH THIS SECTION.

~~(B)~~ (C) (1) BEGINNING ON THE DATE OF DEATH OF A DECEASED COVERED EMPLOYEE AND CONTINUING FOR A PERIOD OF 144 MONTHS, THE EMPLOYER OR ITS INSURER SHALL PAY DEATH BENEFITS, AS CALCULATED IN THIS SECTION, TO THE DEPENDENTS OF THE DECEASED COVERED EMPLOYEE.

(2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, DEATH BENEFITS SHALL BE PAID AT THE RATE OF TWO–THIRDS OF THE DECEASED COVERED EMPLOYEE'S AVERAGE WEEKLY WAGE AT THE TIME OF THE OCCURRENCE OF THE ACCIDENTAL PERSONAL INJURY THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE OR ON THE DATE OF DISABLEMENT FROM THE OCCUPATIONAL DISEASE THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE, NOT TO EXCEED THE STATE AVERAGE WEEKLY WAGE.

(3) THE AVERAGE WEEKLY WAGE OF ALL DEPENDENTS AND THE DECEASED COVERED EMPLOYEE'S AVERAGE WEEKLY WAGE SHALL BE COMBINED TO DETERMINE THE FAMILY INCOME.

(4) THE DECEASED COVERED EMPLOYEE'S INCOME SHALL BE DIVIDED BY THE FAMILY INCOME TO DETERMINE THE PERCENT OF THE FAMILY INCOME EARNED BY THE DECEASED COVERED EMPLOYEE.

(5) THE PERCENT OF THE FAMILY INCOME EARNED BY THE DECEASED COVERED EMPLOYEE SHALL BE MULTIPLIED BY THE DEATH BENEFIT, AS CALCULATED IN PARAGRAPH (2) OF THIS SUBSECTION, TO DETERMINE THE AMOUNT PAYABLE, COLLECTIVELY, TO ALL DEPENDENTS.

(6) IF THE AVERAGE WEEKLY WAGE OF THE DECEASED COVERED EMPLOYEE WAS LESS THAN $100 AT THE TIME OF THE OCCURRENCE OF THE ACCIDENTAL PERSONAL INJURY THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE OR ON THE DATE OF DISABLEMENT FROM THE OCCUPATIONAL DISEASE THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE, THE WEEKLY DEATH BENEFIT PAID UNDER THIS SECTION SHALL EQUAL THE AVERAGE WEEKLY WAGE OF THE DECEASED COVERED EMPLOYEE UP TO $100 PER WEEK.

~~(C)~~ (D) (1) DEATH BENEFITS SHALL BE PAID FOR A MINIMUM OF 5 YEARS AFTER THE COVERED EMPLOYEE'S DEATH.

(2) SUBJECT TO SUBSECTIONS ~~(D) THROUGH (H)~~ (E) THROUGH (I) OF THIS SECTION, PROVIDED THAT A MINIMUM OF 5 YEARS OF DEATH BENEFITS HAS BEEN PAID, DEATH BENEFITS SHALL TERMINATE ON THE DATE THAT WOULD HAVE BEEN THE DECEASED COVERED EMPLOYEE'S 70TH BIRTHDAY.

~~(D)~~ (E) NOTWITHSTANDING THE TIME LIMITATIONS UNDER SUBSECTIONS ~~(B) AND (C)~~ (C) AND (D) OF THIS SECTION, IF A DEPENDENT SPOUSE OR DEPENDENT CHILD IS INCAPABLE OF SELF–SUPPORT BECAUSE OF A MENTAL OR PHYSICAL DISABILITY THAT PREEXISTED THE COVERED EMPLOYEE'S DEATH, DEATH BENEFITS SHALL CONTINUE FOR THE DURATION OF THE DEPENDENT'S DISABILITY.

~~(E)~~ (F) IF A DEPENDENT SPOUSE REMARRIES, DEATH BENEFITS SHALL TERMINATE 2 YEARS AFTER THE DATE OF REMARRIAGE.

~~(F)~~ (G) THE EMPLOYER OR ITS INSURER SHALL CONTINUE TO MAKE PAYMENTS TO OR FOR THE BENEFIT OF A DEPENDENT CHILD UNTIL THE CHILD REACHES 18 YEARS OF AGE.

~~(G)~~ (H) THE EMPLOYER OR ITS INSURER SHALL CONTINUE TO MAKE PAYMENTS TO, OR FOR THE BENEFIT OF, A DEPENDENT CHILD FOR UP TO 5 YEARS AFTER THE CHILD REACHES 18 YEARS OF AGE IF:

(1) THE CHILD IS ATTENDING SCHOOL ON A FULL–TIME BASIS; AND

(2) THE SCHOOL OFFERS AN EDUCATIONAL PROGRAM OR A VOCATIONAL TRAINING PROGRAM THAT IS ACCREDITED OR APPROVED BY THE STATE DEPARTMENT OF EDUCATION.

~~(H)~~ (I) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, ALL DEPENDENTS WHO ARE NEITHER A DEPENDENT SPOUSE NOR A DEPENDENT CHILD SHALL BE ENTITLED TO NO MORE THAN A TOTAL OF $65,000, COLLECTIVELY, AS THEIR PORTION OF THE TOTAL DEATH BENEFITS PAYABLE IN ACCORDANCE WITH SUBSECTION ~~(B)~~ (C) OF THIS SECTION.

(2) BEGINNING ON JANUARY 1, 2012, THE BENEFIT LIMIT UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE ADJUSTED ANNUALLY BY THE SAME PERCENT APPLICABLE TO THE ADJUSTMENT OF THE STATE AVERAGE WEEKLY WAGE.

9–683.4.

(A) THIS SECTION DOES NOT APPLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.

(B) THE COMMISSION HAS CONTINUING JURISDICTION TO:

(1) SUSPEND, REALLOCATE, OR TERMINATE PAYMENTS OF COMPENSATION IN ACCORDANCE WITH THIS PART; AND

(2) REINSTATE PAYMENTS OF COMPENSATION THAT HAVE BEEN SUSPENDED OR TERMINATED UNDER THIS SECTION.

9–683.5.

(A) THIS SECTION DOES NOT APPLY TO A COVERED EMPLOYEE OF A MUNICIPAL CORPORATION OR A COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THOSE COVERED EMPLOYEES, UNLESS THE MUNICIPAL CORPORATION OR COUNTY HAS MADE AN ELECTION UNDER § 9–683.6 OF THIS SUBTITLE.

(B) IF THERE ARE MULTIPLE DEPENDENTS ENTITLED TO DEATH BENEFITS, THE COMMISSION MAY APPORTION AN AWARD OF DEATH BENEFITS AMONG THE DEPENDENTS IN THE MANNER THAT THE COMMISSION CONSIDERS JUST AND EQUITABLE.

(C) (1) DEATH BENEFITS SHALL BE PAID TO 1 OR MORE OF THE DEPENDENTS OF A COVERED EMPLOYEE WHO ARE ENTITLED TO DEATH BENEFITS, AS DETERMINED BY THE COMMISSION, FOR THE BENEFIT OF ALL OF THE DEPENDENTS WHO ARE ENTITLED TO DEATH BENEFITS.

(2) A DEPENDENT TO WHOM DEATH BENEFITS ARE PAID SHALL APPLY THE DEATH BENEFITS TO THE USE OF ALL OF THE DEPENDENTS WHO ARE ENTITLED TO DEATH BENEFITS:

(I) ACCORDING TO THE RESPECTIVE CLAIMS OF THE DEPENDENTS OF THE DECEASED COVERED EMPLOYEE FOR SUPPORT; AND

(II) IN COMPLIANCE WITH THE FINDINGS AND DIRECTION OF THE COMMISSION.

9–683.6.

(A) A MUNICIPAL CORPORATION OR COUNTY MAY MAKE A ONE–TIME ELECTION TO MAKE THEIR COVERED EMPLOYEES WHO ARE SUBJECT TO § 9–503 OF THIS TITLE AND THEIR DEPENDENTS SUBJECT TO §§ 9–683.1 THROUGH 9–683.5 OF THIS SUBTITLE.

(B) TO MAKE THE ELECTION DESCRIBED UNDER SUBSECTION (A) OF THIS SECTION, THE GOVERNING BODY OF THE MUNICIPAL CORPORATION OR COUNTY SHALL:

(1) ADOPT AN ORDINANCE OR RESOLUTION STATING THAT IT IS THE INTENT OF THE GOVERNING BODY TO EXERCISE THE RIGHT OF ELECTION; AND

(2) FORWARD A COPY OF THE ORDINANCE OR RESOLUTION TO THE COMMISSION.

(C) ON RECEIPT OF A COPY OF THE RESOLUTION, THE COMMISSION SHALL ACKNOWLEDGE RECEIPT OF THE ORDINANCE OR RESOLUTION TO THE MUNICIPAL CORPORATION OR COUNTY.

(D) ONCE THE COMMISSION HAS ACKNOWLEDGED RECEIPT OF THE ORDINANCE OR RESOLUTION, ANY WORKERS' COMPENSATION CASE ARISING ON OR AFTER THE DATE OF ACKNOWLEDGEMENT AND INVOLVING A COVERED EMPLOYEE OF THE MUNICIPAL CORPORATION OR COUNTY WHO IS SUBJECT TO § 9–503 OF THIS TITLE AND THE DEPENDENTS OF THE COVERED EMPLOYEE SHALL BE SUBJECT TO §§ 9–683.1 THROUGH 9–683.5 OF THIS SUBTITLE.

~~[9–682.~~

~~(a) The employer or its insurer shall pay a death benefit in accordance with this section if:~~

~~(1) there are no individuals who were wholly dependent on the deceased covered employee at the time of death, but there are individuals who were partly dependent; or~~

~~(2) a surviving spouse who was wholly dependent on the deceased covered employee at the time of death becomes partly self–supporting.~~

~~(b) (1) The maximum weekly death benefit payable under this section shall equal two–thirds of the average weekly wage of the deceased covered employee, but may not exceed two–thirds of the State average weekly wage.~~

~~(2) The weekly death benefit payable under this section shall be the percentage of the maximum weekly death benefit under paragraph (1) of this subsection that:~~

~~(i) the weekly earnings of the deceased covered employee bears to the combined weekly earnings of the deceased covered employee and the partly dependent individuals; and~~

~~(ii) does not exceed the maximum weekly death benefit.~~

~~(c) Except as otherwise provided in this section, the employer or its insurer shall pay the weekly death benefit:~~

~~(1) for the period of partial dependency; or~~

~~(2) until $75,000 has been paid, including any payments made during a period of total dependency under § 9–681 of this subtitle.~~

~~(d) (1) Subject to paragraph (2) of this subsection, if a surviving spouse who is partly dependent remarries and does not have dependent children at the time of the remarriage, the employer or its insurer shall make payments to the surviving spouse for 2 years after the date of the remarriage.~~

~~(2) The total of the payments made before the remarriage may not exceed $75,000.~~

~~(e) (1) Except as provided in paragraphs (2) and (3) of this subsection, the employer or its insurer shall continue to make payments to, or for the benefit of, a surviving child until the child reaches 18 years of age.~~

~~(2) If a child who is 18 years old or older remains partly dependent on the deceased covered employee, the employer or its insurer shall continue to make payments in accordance with subsections (b) and (c) of this section.~~

~~(3) The employer or its insurer shall continue to make payments to, or for the benefit of, a child who is 18 years old or older for up to 5 years after reaching the age of 18 if:~~

~~(i) the child is attending school on a full–time basis; and~~

~~(ii) the school offers an educational program or a vocational training program and the program is accredited or approved by the Maryland State Department of Education.~~**]**

~~**9–682.**~~

~~**THE COMMISSION HAS CONTINUING JURISDICTION TO:**~~

~~**(1) SUSPEND, REALLOCATE, OR TERMINATE PAYMENTS OF COMPENSATION IN ACCORDANCE WITH THIS PART; AND**~~

~~**(2) REINSTATE PAYMENTS OF COMPENSATION THAT HAVE BEEN SUSPENDED OR TERMINATED UNDER THIS SECTION.**~~

~~9–683.~~

~~(a) If there are multiple dependents entitled to death benefits, the Commission may apportion an award of death benefits among the dependents in the manner that the Commission considers just and equitable.~~

~~**[**(b) If there are wholly and partly dependent individuals entitled to death benefits, the Commission may:~~

~~(1) award the death benefits to the wholly dependent individuals only; or~~

~~(2) apportion the award among the wholly and partly dependent individuals in the manner that the Commission considers to be fair and equitable under all of the facts and circumstances of the case.**]**~~

~~**[**(c)**] (B)** (1) Death benefits shall be paid to 1 or more of the dependents of a covered employee who are entitled to death benefits, as determined by the Commission, for the benefit of all of the dependents who are entitled to death benefits.~~

~~(2) A dependent to whom death benefits are paid shall apply the death benefits to the use of all of the dependents who are entitled to death benefits:~~

~~(i) according to the respective claims of the dependents on the deceased covered employee for support; and~~

~~(ii) in compliance with the findings and direction of the Commission.~~

9–689.

(a) The employer or its insurer shall pay reasonable funeral expenses of a deceased covered employee, not exceeding **[**$5,000**] $7,000**, if the covered employee died as a result of:

(1) an accidental personal injury, within 7 years of the accidental personal injury; or

(2) an occupational disease.

(b) Unless approved by the Commission, a bill for funeral expenses of more than **[**$5,000**] $7,000** is void and uncollectable out of:

(1) workers' compensation benefits payable with respect to the deceased covered employee; or

(2) personal assets of any person to whom workers' compensation benefits are payable with respect to the deceased covered employee.

(c) If there are no dependents, the employer**[**,**]** **OR** its insurer**[**, or the Injured Workers' Insurance Fund, as appropriate,**]** shall pay the expenses of the last sickness and **[**burial**]** **FUNERAL EXPENSES** of the covered employee.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively to deaths occurring on or after the effective date of this Act and may not be applied or interpreted to have any effect on or application to any death occurring before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 437

(Senate Bill 228)

AN ACT concerning

Agricultural Product Sales – Producer Mobile Farmer's Market License – Public Festival and Event Authorization

FOR the purpose of altering a certain definition to exclude the sale of certain raw agricultural products at a public festival or event from regulation as a food service facility; prohibiting a local jurisdiction from requiring a license for the sale of raw agricultural products at a public festival or event; authorizing a producer mobile farmer's market licensee to sell certain products at a public festival or event; authorizing a seasonal farmer's market producer sampling licensee to prepare and offer samples of a farm product at a public festival or event; requiring a seasonal farmer's market producer sampling license to be valid at any public festival or event in the county issuing the license; defining a certain term; and generally relating to the sale of agricultural products by farmers.

BY repealing and reenacting, without amendments,
Article – Health – General
Section 21–301(a), 21–304(a)(1), 21–305(c), and 21–308(a) and (c)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – Health – General
Section 21–301(i–1)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 21–301(h), 21–304(d), 21–309.1, and 21–309.2
Annotated Code of Maryland
(2009 Replacement Volume and 2010 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.

(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.

(I–1) "PUBLIC FESTIVAL OR EVENT" MEANS A PLANNED GATHERING THAT IS OPEN TO THE PUBLIC AND IS REGULATED BY THE STATE OR LOCAL JURISDICTION IN WHICH IT TAKES PLACE.

21–304.

(a) (1) The Department shall adopt rules and regulations necessary to carry out the provisions of this subtitle.

(d) (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Farmer's market" means a public market in the State where producers of raw agricultural products sell the products directly to the public.

(iii) "Raw agricultural product" includes:

1. Whole, unprocessed grains, flowers, herbs, nuts, fruits, and vegetables supplied directly from the farm on which they were produced; and

2. Any agricultural products the Department identifies in regulation.

(2) A local jurisdiction may not require a license for the sale of raw agricultural products at a farmer's market **OR AT A PUBLIC FESTIVAL OR EVENT**.

21–305.

(c) A license is not transferable:

(1) Except as provided by regulation for transfer of the license on the death of the licensee from person to person; or

(2) From location to location, except for a producer mobile farmer's market license under § 21–309.1 of this subtitle.

21–308.

(a) In this section, "on–farm home processing facility" means a home or domestic kitchen located on an individual's farm that manufactures and processes foods for commercial sale.

(c) (1) An on–farm home processing facility may obtain an on–farm home processing plant license for a fee established in regulations.

(2) An on–farm home processing facility that obtains an on–farm home processing plant license may manufacture or process only foods provided for in regulations of the Department.

(3) A license or permit is not required to deliver prepackaged foods to fill an order of a customer.

21–309.1.

(a) (1) The Department shall establish a producer mobile farmer's market license.

(2) The fee for a producer mobile farmer's market license:

(i) Shall be based on the anticipated cost of licensing, inspecting, and regulating licensees; and

(ii) May not exceed $100.

(3) A producer mobile farmer's market license shall be valid for a period of 1 year.

(b) A producer mobile farmer's market licensee may transport to and sell at a farmer's market **OR AT A PUBLIC FESTIVAL OR EVENT**:

(1) Products that were produced by the licensee under an on–farm home processing plant license;

(2) Products produced by the licensee, as authorized by the Department in regulation; or

(3) Farm products that have been inspected, licensed, or certified for food safety by the Maryland Department of Agriculture.

(c) (1) A producer mobile farmer's market license is valid in all jurisdictions in the State.

(2) A county or municipality may not require a producer mobile farmer's market licensee to obtain a separate permit or license to sell products authorized for sale under the producer mobile farmer's market license.

(d) The Department shall:

(1) Issue producer mobile farmer's market licenses;

(2) At least once a year, inspect each mobile unit that operates under a producer mobile farmer's market license; and

(3) Adopt regulations to implement this section.

(e) A producer mobile farmer's market license shall be displayed on any mobile unit operating under the license.

(f) (1) A person in violation of this section or a regulation adopted under this section is subject to a fine not to exceed $1,000.

(2) A county health department shall enforce and levy fines for a violation of this section or any regulations adopted under this section.

(3) Fines assessed by a county health department shall be paid to the county in which the violation occurred.

(4) A county health department shall notify the Department of any violations occurring in the county.

21–309.2.

(a) A county may establish a seasonal farmer's market producer sampling license to be required for a producer of a farm product to prepare and offer samples of the farm product for human consumption at a farmer's market **OR AT A PUBLIC FESTIVAL OR EVENT**.

(b) A county seasonal farmer's market producer sampling license established under this section shall:

(1) Be valid at all farmer's markets in the county;

(2) **BE VALID AT ANY PUBLIC FESTIVAL OR EVENT IN THE COUNTY;**

(3) Be valid for the entire season for which it is issued; and

[(3)**] (4)** Have a single fee as set by the county.

(c) A seasonal farmer's market producer sampling licensee shall use the license only to offer samples of a farm product that has been produced by the licensee.

(d) The Department shall adopt regulations that:

(1) Establish eligibility for the license;

(2) Provide for the authorized uses of the license;

(3) Establish standards and approved methods under which sampling shall be conducted;

(4) Specify the duration of the season during which the license is valid; and

(5) Include other provisions that are necessary to protect public health and control foodborne illnesses.

(e) A county issuing a **SEASONAL** farmer's market producer sampling license shall adopt an ordinance that:

(1) Sets the fee for the license;

(2) Provides for the enforcement of provisions of law under which the license is issued; and

(3) Provides penalties for violations of provisions of law under which the license is issued.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 438

(Senate Bill 230)

AN ACT concerning

Public Information Act – Required Denials – Senior Citizen Activities Centers

FOR the purpose of requiring a custodian of records under the Public Information Act to deny inspection of the part of a public record that contains certain information regarding an individual enrolled in or a member of certain senior citizen activities centers; requiring a custodian to permit inspection of certain information by a person in interest, law enforcement personnel, and emergency services personnel; defining ~~a~~ certain ~~term~~ terms; and generally relating to the inspection of the records of senior citizen activities centers under the Public Information Act.

BY repealing and reenacting, without amendments,
Article – Human Services
Section 10–513(c)
Annotated Code of Maryland
(2007 Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – State Government
Section 10–611(e)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – State Government
Section 10–617(m)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Human Services

10–513.

(c) "Senior citizen activities center" means a community or neighborhood facility in which a broad spectrum of services are organized and provided to seniors and their spouses, including health, social, nutritional, educational, and recreational services.

Article – State Government

10–611.

(e) "Person in interest" means:

(1) a person or governmental unit that is the subject of a public record or a designee of the person or governmental unit;

(2) if the person has a legal disability, the parent or legal representative of the person; or

(3) as to requests for correction of certificates of death under § 5–310(d)(2) of the Health – General Article, the spouse, adult child, parent, adult sibling, grandparent, or guardian of the person of the deceased at the time of the deceased's death.

10–617.

(M) (1) "SENIOR CITIZEN ACTIVITIES CENTER" HAS THE MEANING STATED IN § 10–513 OF THE HUMAN SERVICES ARTICLE.

(2) ~~A~~ EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A CUSTODIAN SHALL DENY INSPECTION OF THE PART OF A PUBLIC RECORD THAT CONTAINS THE NAME, ADDRESS, TELEPHONE NUMBER, OR ELECTRONIC MAIL ADDRESS OF ANY INDIVIDUAL ENROLLED IN OR ANY MEMBER OF A SENIOR CITIZEN ACTIVITIES CENTER.

(3) A CUSTODIAN SHALL PERMIT INSPECTION BY:

(I) A PERSON IN INTEREST;

(II) LAW ENFORCEMENT PERSONNEL; OR

(III) EMERGENCY SERVICES PERSONNEL, INCLUDING:

1. A CAREER FIREFIGHTER;

2. AN EMERGENCY MEDICAL SERVICES PROVIDER, AS DEFINED IN § 13–516 OF THE EDUCATION ARTICLE;

3. A RESCUE SQUAD EMPLOYEE; AND

4. A VOLUNTEER FIREFIGHTER, RESCUE SQUAD MEMBER, OR ADVANCED LIFE SUPPORT UNIT MEMBER.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 439

(House Bill 329)

AN ACT concerning

Public Information Act – Required Denials – Senior Citizen Activities Centers

FOR the purpose of requiring a custodian of records under the Public Information Act to deny inspection of the part of a public record that contains certain information regarding an individual enrolled in or a member of certain senior citizen activities centers; requiring a custodian to permit inspection of certain information by a person in interest, law enforcement personnel, and emergency services personnel; defining ~~a~~ certain ~~term~~ terms; and generally relating to the

inspection of the records of senior citizen activities centers under the Public Information Act.

BY repealing and reenacting, without amendments,
Article – Human Services
Section 10–513(c)
Annotated Code of Maryland
(2007 Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – State Government
Section 10–611(e)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – State Government
Section 10–617(m)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Human Services

10–513.

(c) "Senior citizen activities center" means a community or neighborhood facility in which a broad spectrum of services are organized and provided to seniors and their spouses, including health, social, nutritional, educational, and recreational services.

Article – State Government

10–611.

(e) "Person in interest" means:

(1) a person or governmental unit that is the subject of a public record or a designee of the person or governmental unit;

(2) if the person has a legal disability, the parent or legal representative of the person; or

(3) as to requests for correction of certificates of death under § 5–310(d)(2) of the Health – General Article, the spouse, adult child, parent, adult

sibling, grandparent, or guardian of the person of the deceased at the time of the deceased's death.

10–617.

(M) (1) "SENIOR CITIZEN ACTIVITIES CENTER" HAS THE MEANING STATED IN § 10–513 OF THE HUMAN SERVICES ARTICLE.

(2) ~~A~~ EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A CUSTODIAN SHALL DENY INSPECTION OF THE PART OF A PUBLIC RECORD THAT CONTAINS THE NAME, ADDRESS, TELEPHONE NUMBER, OR ELECTRONIC MAIL ADDRESS OF ANY INDIVIDUAL ENROLLED IN OR ANY MEMBER OF A SENIOR CITIZEN ACTIVITIES CENTER.

(3) A CUSTODIAN SHALL PERMIT INSPECTION BY:

(I) A PERSON IN INTEREST;

(II) LAW ENFORCEMENT PERSONNEL; OR

(III) EMERGENCY SERVICES PERSONNEL, INCLUDING:

1. A CAREER FIREFIGHTER;

2. AN EMERGENCY MEDICAL SERVICES PROVIDER, AS DEFINED IN § 13–516 OF THE EDUCATION ARTICLE;

3. A RESCUE SQUAD EMPLOYEE; AND

4. A VOLUNTEER FIREFIGHTER, RESCUE SQUAD MEMBER, OR ADVANCED LIFE SUPPORT UNIT MEMBER.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 440

(Senate Bill 253)

AN ACT concerning

Garrett County – Vacancy in Office of County Commissioner – Appointment Process

FOR the purpose of altering the procedures for filling a vacancy in an office of county commissioner in Garrett County by requiring the Governor to use procedures required for other commission counties, subject to the requirement that in Garrett County the nominee or appointee reside in the same commissioner district in which the former county commissioner resided; and generally relating to procedures for filling a vacancy in an office of county commissioner in Garrett County.

BY repealing and reenacting, with amendments,
Article 25 – County Commissioners
Section 16
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)
(As enacted by Chapter 699 of the Acts of the General Assembly of 2010)

BY repealing and reenacting, with amendments,
The Public Local Laws of Garrett County
Section 30.02(D)
Article 12 – Public Local Laws of Maryland
(2005 Edition and November 2010 Supplement, as amended)

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

Article 25 – County Commissioners

16.

(a) This section applies only to commission counties and, unless otherwise provided by a local law enacted by a code county, code counties.

(b) (1) In case any office of county commissioner shall become vacant in any county by death, resignation or otherwise, the Governor, if such vacancy shall occur during the session of the Senate, shall, by and with the advice and consent of the Senate, appoint, and if such vacancy shall occur during the recess of the Senate, the Governor shall appoint a proper person or proper persons to fill such vacancy or vacancies; and the nomination of the person or persons thus appointed during such recess, or of some other person in his or their place, shall be made to the Senate within thirty days after the next meeting of the legislature.

(2) **(I)** **[**The**]** **SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH THE** Governor shall nominate or appoint the person to fill such vacancy whose name shall be submitted to the Governor in writing by the central committee of the political party with which the county commissioner, so vacating, has been

affiliated in the particular county, provided that the nominee or appointee shall be of the same political party as the person whose office is to be filled; and it shall be the duty of the Governor to make the nomination or appointment within fifteen days after the submission of the name of the nominee or appointee to the Governor.

(II) IN GARRETT COUNTY, THE NOMINEE OR APPOINTEE SHALL BE A RESIDENT OF THE SAME COMMISSIONER DISTRICT IN WHICH THE FORMER COUNTY COMMISSIONER RESIDED.

(3) In the event there is no central committee in the county in which the vacancy occurs, the Governor shall appoint to fill the vacancy a person who has all the qualifications required for the office of county commissioner in the particular county.

(4) As to Allegany County, if there is no resident Senator from Allegany County in the Senate of Maryland at the time of the appointment, it shall be by and with the advice and consent of the House of Delegates of Maryland.

Article 12 – Garrett County

30.02.

(D) If the office of any of the County Commissioners becomes vacant during the term, the Governor shall **[**appoint a proper person to**]** fill the vacancy **[**from among the residents of the same Commissioner District as that in which the former Commissioner resided**]** **AS PROVIDED IN ARTICLE 25, § 16 OF THE ANNOTATED CODE OF MARYLAND**.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 441

(Senate Bill 258)

AN ACT concerning

State Board of Physical Therapy Examiners – Licensure and Regulation

FOR the purpose of authorizing the State Board of Physical Therapy Examiners to send license renewal notices by electronic means; altering the maximum amount of a certain fine; altering certain definitions; and generally relating to

the licensure and regulation of physical therapists and physical therapist assistants.

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 13–101, 13–311, and 13–407
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health Occupations

13–101.

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

(b) "Board" means the State Board of Physical Therapy Examiners.

(c) "License" means, unless the context requires otherwise, a license issued by the Board to practice:

(1) Physical therapy; or

(2) Limited physical therapy.

(d) "Licensed physical therapist" means, unless the context requires otherwise, a physical therapist who is licensed by the Board to practice physical therapy.

(e) "Licensed physical therapist assistant" means, unless the context requires otherwise, a physical therapist assistant who is licensed by the Board to practice limited physical therapy.

(f) "Physical therapist" means an individual, licensed by the State Board of Physical Therapy Examiners, who practices physical therapy and who has passed the national physical therapy licensing examination administered or accepted by the Board.

(g) "Physical therapist assistant" means an individual who practices limited physical therapy and who has passed the national physical therapy licensing examination administered or accepted by the Board.

(h) (1) "Practice limited physical therapy" means to **[**practice the health specialty concerned with**]** **IMPLEMENT THERAPEUTIC INTERVENTIONS FOR THE PURPOSE OF**:

(i) The prevention of disability in patients or clients; and

(ii) The physical rehabilitation of patients or clients with a congenital or acquired disability.

(2) "Practice limited physical therapy" includes, except as provided in paragraph (3) of this subsection:

(i) Taking and documenting measurements; and

(ii) Administering **[**treatment with**]** **THERAPEUTIC INTERVENTIONS THAT INCLUDE** therapeutic exercise, therapeutic massage, mechanical devices, or therapeutic agents that use the physical, chemical, or other properties of air, water, electricity, sound, or radiant energy.

(3) "Practice limited physical therapy" does not include:

(i) Interpreting measurements;

(ii) Planning treatment programs; or

(iii) **[**Using:

1.**]** **TAKING** X rays;

[2.**]** **(IV)** **[**Radioactive**]** **USING RADIOACTIVE** substances; or

[3.**]** **(V)** **[**Electricity**]** **USING ELECTRICITY** for cauterization or surgery.

(i) (1) "Practice physical therapy" means to **[**practice the health specialty concerned with**]** **DESIGN, IMPLEMENT, AND MODIFY THERAPEUTIC INTERVENTIONS FOR THE PURPOSE OF**:

(i) The prevention of disability in patients or clients; and

(ii) The physical rehabilitation of patients or clients with a congenital or acquired disability.

(2) "Practice physical therapy" includes:

(i) Performing an evaluation of the physical therapy needs of patients or clients;

(ii) Performing and interpreting tests and measurements of neuromuscular and musculoskeletal functions to aid treatment;

(iii) Planning treatment programs that are based on test findings; and

(iv) Except as provided in paragraph (3) of this subsection, administering **[**treatment with**]** **THERAPEUTIC INTERVENTIONS THAT INCLUDE** therapeutic exercise, therapeutic massage, mechanical devices, or therapeutic agents that use the physical, chemical, or other properties of air, water, electricity, sound, or radiant energy.

(3) "Practice physical therapy" does not include **[**using**]**:

(i) **TAKING** X rays;

(ii) **[**Radioactive**]** **USING RADIOACTIVE** substances; or

(iii) **[**Electricity**]** **USING ELECTRICITY** for cauterization or surgery.

(j) "Restricted license" means a license issued by the Board under and as limited by § 13–314 of this title to practice physical therapy.

13–311.

(a) A license expires on the date set by the Board, unless the license is renewed for an additional term as provided in this section. A license may not be renewed for a term longer than 2 years.

(b) **(1)** **[**At**]** **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AT** least 1 month before the license expires, the Board shall send to the licensee, by first–class mail to the last known address of the licensee, a renewal notice that states:

[(1)**]** **(I)** The date on which the current license expires;

[(2)**]** **(II)** The date by which the renewal application must be received by the Board for the renewal to be issued and mailed before the license expires; and

[(3)**]** **(III)** The amount of the renewal fee.

(2) IF REQUESTED BY A LICENSEE, THE BOARD SHALL SEND TO THE LICENSEE, AT LEAST TWO TIMES WITHIN THE MONTH BEFORE A LICENSE EXPIRES, A RENEWAL NOTICE BY ELECTRONIC MEANS TO THE LAST KNOWN ELECTRONIC MAIL ADDRESS OF THE LICENSEE.

(3) IF A RENEWAL NOTICE SENT BY ELECTRONIC MEANS UNDER PARAGRAPH (2) OF THIS SUBSECTION IS RETURNED TO THE BOARD AS UNDELIVERABLE, THE BOARD SHALL SEND TO THE LICENSEE A RENEWAL NOTICE BY FIRST–CLASS MAIL TO THE LAST KNOWN ADDRESS OF THE LICENSEE.

(c) Before the license expires, the licensee periodically may renew it for an additional 2–year term, if the licensee:

(1) Otherwise is entitled to be licensed;

(2) Pays to the Board a renewal fee set by the Board; and

(3) Submits to the Board:

(i) A renewal application on the form that the Board requires; and

(ii) Satisfactory evidence of compliance with the other qualifications set under this title for license renewal.

(d) The Board may adopt regulations to establish continuing education requirements as a condition for the renewal of licenses under this section.

(e) The Board shall renew the license of each licensee who meets the requirements of this section.

13–407.

(a) A person who violates any provision of this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding **[**$5,000**] $10,000** or imprisonment not exceeding 3 years or both.

(b) (1) Any person who violates § 13–401 of this subtitle is subject to a civil fine of not more than $50,000 to be assessed by the Board.

(2) The Board shall pay any penalty collected under this subsection into the State Board of Physical Therapy Examiners Fund.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 442

(House Bill 188)

AN ACT concerning

State Board of Physical Therapy Examiners – Licensure and Regulation

FOR the purpose of authorizing the State Board of Physical Therapy Examiners to send license renewal notices by electronic means; altering the maximum amount of a certain fine; altering certain definitions; and generally relating to the licensure and regulation of physical therapists and physical therapist assistants.

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 13–101, 13–311, and 13–407
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health Occupations

13–101.

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

(b) "Board" means the State Board of Physical Therapy Examiners.

(c) "License" means, unless the context requires otherwise, a license issued by the Board to practice:

(1) Physical therapy; or

(2) Limited physical therapy.

(d) "Licensed physical therapist" means, unless the context requires otherwise, a physical therapist who is licensed by the Board to practice physical therapy.

(e) "Licensed physical therapist assistant" means, unless the context requires otherwise, a physical therapist assistant who is licensed by the Board to practice limited physical therapy.

(f) "Physical therapist" means an individual, licensed by the State Board of Physical Therapy Examiners, who practices physical therapy and who has passed the national physical therapy licensing examination administered or accepted by the Board.

(g) "Physical therapist assistant" means an individual who practices limited physical therapy and who has passed the national physical therapy licensing examination administered or accepted by the Board.

(h) (1) "Practice limited physical therapy" means to **[**practice the health specialty concerned with**]** **IMPLEMENT THERAPEUTIC INTERVENTIONS FOR THE PURPOSE OF**:

(i) The prevention of disability in patients or clients; and

(ii) The physical rehabilitation of patients or clients with a congenital or acquired disability.

(2) "Practice limited physical therapy" includes, except as provided in paragraph (3) of this subsection:

(i) Taking and documenting measurements; and

(ii) Administering **[**treatment with**]** **THERAPEUTIC INTERVENTIONS THAT INCLUDE** therapeutic exercise, therapeutic massage, mechanical devices, or therapeutic agents that use the physical, chemical, or other properties of air, water, electricity, sound, or radiant energy.

(3) "Practice limited physical therapy" does not include:

(i) Interpreting measurements;

(ii) Planning treatment programs; **[**or**]**

(iii) **[**Using:

1.**]** **TAKING** X rays;

[2.**]** **(IV)** **[**Radioactive**]** **USING RADIOACTIVE** substances; or

[3.**]** **(V)** **[**Electricity**]** **USING ELECTRICITY** for cauterization or surgery.

(i) (1) "Practice physical therapy" means to [practice the health specialty concerned with] **DESIGN, IMPLEMENT, AND MODIFY THERAPEUTIC INTERVENTIONS FOR THE PURPOSE OF**:

(i) The prevention of disability in patients or clients; and

(ii) The physical rehabilitation of patients or clients with a congenital or acquired disability.

(2) "Practice physical therapy" includes:

(i) Performing an evaluation of the physical therapy needs of patients or clients;

(ii) Performing and interpreting tests and measurements of neuromuscular and musculoskeletal functions to aid treatment;

(iii) Planning treatment programs that are based on test findings; and

(iv) Except as provided in paragraph (3) of this subsection, administering [treatment with] **THERAPEUTIC INTERVENTIONS THAT INCLUDE** therapeutic exercise, therapeutic massage, mechanical devices, or therapeutic agents that use the physical, chemical, or other properties of air, water, electricity, sound, or radiant energy.

(3) "Practice physical therapy" does not include [using]:

(i) **TAKING** X rays;

(ii) [Radioactive] **USING RADIOACTIVE** substances; or

(iii) [Electricity] **USING ELECTRICITY** for cauterization or surgery.

(j) "Restricted license" means a license issued by the Board under and as limited by § 13–314 of this title to practice physical therapy.

13–311.

(a) **(1)** A license expires on the date set by the Board, unless the license is renewed for an additional term as provided in this section.

(2) A license may not be renewed for a term longer than 2 years.

(b) **(1)** **[**At**]** **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AT** least 1 month before the license expires, the Board shall send to the licensee, by first–class mail to the last known address of the licensee, a renewal notice that states:

[(1)**]** **(I)** The date on which the current license expires;

[(2)**]** **(II)** The date by which the renewal application must be received by the Board for the renewal to be issued and mailed before the license expires; and

[(3)**]** **(III)** The amount of the renewal fee.

(2) IF REQUESTED BY A LICENSEE, THE BOARD SHALL SEND TO THE LICENSEE, AT LEAST TWO TIMES WITHIN THE MONTH BEFORE A LICENSE EXPIRES, A RENEWAL NOTICE BY ELECTRONIC MEANS TO THE LAST KNOWN ELECTRONIC MAIL ADDRESS OF THE LICENSEE.

(3) IF A RENEWAL NOTICE SENT BY ELECTRONIC MEANS UNDER PARAGRAPH (2) OF THIS SUBSECTION IS RETURNED TO THE BOARD AS UNDELIVERABLE, THE BOARD SHALL SEND TO THE LICENSEE A RENEWAL NOTICE BY FIRST–CLASS MAIL TO THE LAST KNOWN ADDRESS OF THE LICENSEE.

(c) Before the license expires, the licensee periodically may renew it for an additional 2–year term, if the licensee:

(1) Otherwise is entitled to be licensed;

(2) Pays to the Board a renewal fee set by the Board; and

(3) Submits to the Board:

(i) A renewal application on the form that the Board requires; and

(ii) Satisfactory evidence of compliance with the other qualifications set under this title for license renewal.

(d) The Board may adopt regulations to establish continuing education requirements as a condition for the renewal of licenses under this section.

(e) The Board shall renew the license of each licensee who meets the requirements of this section.

13–407.

(a) A person who violates any provision of this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding **[**$5,000**] $10,000** or imprisonment not exceeding 3 years or both.

(b) (1) Any person who violates § 13–401 of this subtitle is subject to a civil fine of not more than $50,000 to be assessed by the Board.

(2) The Board shall pay any penalty collected under this subsection into the State Board of Physical Therapy Examiners Fund.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 443

(Senate Bill 294)

AN ACT concerning

State Board of Pilots – Limited Licenses to Provide Pilotage

FOR the purpose of increasing the vessel draft lengths for the limited pilotage licenses the State Board of Pilots may issue; and generally relating to pilotage licenses issued by the State Board of Pilots.

BY repealing and reenacting, with amendments,
Article – Business Occupations and Professions
Section 11–101(f) and 11–402
Annotated Code of Maryland
(2010 Replacement Volume)

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

Article – Business Occupations and Professions

11–101.

(f) (1) "Limited license" means a license issued by the Board to provide pilotage as limited by § 11–407 of this title.

(2) "Limited license" includes a **[**37–foot–draft**] 40–FOOT–DRAFT** limited license, a **[**34–foot–draft**] 36–FOOT–DRAFT** limited license, and a **[**28–foot–draft**] 32–FOOT–DRAFT** limited license.

11–402.

Subject to the provisions of this subtitle, the Board may issue:

(1) a license;

(2) a **[**37–foot–draft**] 40–FOOT–DRAFT** limited license;

(3) a **[**34–foot–draft**] 36–FOOT–DRAFT** limited license; and

(4) a **[**28–foot–draft**] 32–FOOT–DRAFT** limited license.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 444

(Senate Bill 302)

AN ACT concerning

Baltimore City – Zoning Requirements – Administrative Adjustments

FOR the purpose of ~~clarifying~~ expanding the applicability to Baltimore City of certain provisions related to administrative adjustments to certain zoning requirements; and generally relating to administrative adjustments to zoning requirements in Baltimore City.

BY repealing and reenacting, with amendments,
Article 66B – Land Use
Section 2.13
Annotated Code of Maryland
(2010 Replacement Volume)

BY repealing and reenacting, without amendments,
Article 66B – Land Use
Section 4.05(d)
Annotated Code of Maryland

(2010 Replacement Volume)

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

Article 66B – Land Use

2.13.

(a) Except as provided in subsection (b) of this section, §§ 3.01 through 8.15 of this article do not apply in Baltimore City.

(b) The following sections of this article apply to Baltimore City:

(1) § 1.00(j) (Definition of "sensitive areas");

(2) § 1.01 (Visions);

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

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

(5) § 3.02(h) (Planning Commission – Education);

(6) § 3.09 (Annual report – Preparation and filing);

(7) § 3.10 (Annual report – Smart Growth goals, measures, and indicators);

(8) § 4.01(b)(2) (Regulation of bicycle parking);

(9) § 4.04(c) (Exceptions related to the Maryland Accessibility Code);

(10) **§ 4.05(D) (ADMINISTRATIVE ADJUSTMENTS TO ZONING REQUIREMENTS);**

(11) § 4.07(i) (Board of Appeals – Education);

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

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

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

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

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

[(16)**] (17)** § 13.01 (Development Rights and Responsibilities Agreements).

4.05.

(d) (1) A local legislative body may authorize the planning director or another designee to grant administrative adjustments from the following requirements in a zoning ordinance enacted by the local legislative body:

(i) Local height requirements;

(ii) Local setback requirements;

(iii) Local bulk requirements;

(iv) Local parking requirements;

(v) Local loading, dimensional, or area requirements; or

(vi) Similar local requirements.

(2) Before developing criteria and procedures for administrative adjustments under this subsection, the local legislative body shall:

(i) Consult with the planning commission and the board of appeals; and

(ii) Provide:

1. Reasonable public notice of the proposed criteria and procedures;

2. An opportunity for public hearing; and

3. An opportunity for public review and comment.

(3) The criteria for an administrative adjustment shall include:

(i) Standards for actions on requests;

(ii) Standards for the classes of development that are eligible for an administrative adjustment; and

(iii) The maximum variation from a zoning requirement that is allowed under an administrative adjustment.

(4) Procedures for administrative adjustments may include:

(i) Applications;

(ii) Notice to the public and to the parties in interest;

(iii) An opportunity for public hearing;

(iv) An opportunity for the taking of testimony and evidence; and

(v) Decision making.

(5) A decision on an application for an administrative adjustment shall include written findings of fact.

(6) By the enactment of an ordinance or the adoption of a procedure, a local legislative body may authorize the appeal to the board of appeals of a decision to approve or deny an administrative adjustment.

(7) Nothing in this subsection is intended to authorize a local government to permit an administrative adjustment to State or local requirements that are intended to protect environmentally sensitive areas, such as streams, slopes, wetlands, natural heritage areas, or critical areas.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 445

(Senate Bill 317)

AN ACT concerning

~~Property and Casualty~~ Homeowner's Insurance – Victims of Crimes of Violence – Discrimination Prohibited

FOR the purpose of prohibiting insurers ~~from using~~, based solely on information about an individual's status as a victim of a crime of violence ~~to take~~, from taking certain actions relating to a policy of ~~property and casualty~~ homeowner's insurance; providing that an insurer may not deny payment to ~~an~~ a certain innocent coinsured under certain circumstances; limiting payment to an

innocent coinsured under certain circumstances; authorizing an insurer to exclude certain property from coverage; providing that an insurer making a certain payment shall have the right of subrogation against a certain perpetrator; providing that this Act does not require a payment in excess of certain limits, prohibit an insurer from applying certain standards, or prohibit an insurer or insurance producer from asking certain individuals about a certain claim or from using certain information for certain purposes; authorizing the Maryland Insurance Commissioner to take certain actions on a finding of certain violations; defining certain terms; providing for the application of this Act; and generally relating to victims of crimes of violence and discrimination in ~~property and casualty~~ homeowner's insurance.

BY repealing and reenacting, without amendments,
Article – Insurance
Section 27–501(a) and (b)
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

BY adding to
Article – Insurance
Section 27–504.1
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Insurance
Section 27–505(a)(1)
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

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

Article – Insurance

27–501.

(a) (1) An insurer or insurance producer may not cancel or refuse to underwrite or renew a particular insurance risk or class of risk for a reason based wholly or partly on race, color, creed, sex, or blindness of an applicant or policyholder or for any arbitrary, capricious, or unfairly discriminatory reason.

(2) Except as provided in this section, an insurer or insurance producer may not cancel or refuse to underwrite or renew a particular insurance risk or class of risk except by the application of standards that are reasonably related to the insurer's economic and business purposes.

(b) (1) An insurer may not require special conditions, facts, or situations as a condition to its acceptance or renewal of a particular insurance risk or class of risks in an arbitrary, capricious, unfair, or discriminatory manner based wholly or partly on race, creed, color, sex, religion, national origin, place of residency, blindness, or other physical handicap or disability.

(2) Actuarial justification may be considered with respect to sex.

27–504.1.

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

(2) "CRIME OF VIOLENCE" HAS THE MEANING STATED IN § 14–101 OF THE CRIMINAL LAW ARTICLE.

(3) "VICTIM" MEANS A ~~PERSON~~ POLICYHOLDER OR CLAIMANT WHO SUFFERS PERSONAL INJURY, DEATH, OR PROPERTY LOSS AS A RESULT OF A CRIME OF VIOLENCE.

(B) EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, IF AN INDIVIDUAL IS A VICTIM OF A CRIME OF VIOLENCE, AN INSURER MAY NOT ~~USE~~, BASED SOLELY ON INFORMATION ABOUT THE INDIVIDUAL'S STATUS AS A VICTIM OF A CRIME OF VIOLENCE ~~TO~~:

(1) CANCEL, REFUSE TO UNDERWRITE OR RENEW, OR REFUSE TO ISSUE A POLICY OF ~~PROPERTY AND CASUALTY~~ HOMEOWNER'S INSURANCE;

(2) REFUSE TO PAY A CLAIM UNDER A POLICY OF ~~PROPERTY AND CASUALTY~~ HOMEOWNER'S INSURANCE; OR

(3) ~~INCREASE RATES FOR PROPERTY AND CASUALTY INSURANCE; OR~~

~~(4)~~ FOR A POLICY OF ~~PROPERTY AND CASUALTY~~ HOMEOWNER'S INSURANCE, INCREASE A PREMIUM, ADD A SURCHARGE, APPLY A RATING FACTOR, ~~OR USE ANY OTHER UNDERWRITING PRACTICE THAT ADVERSELY TAKES THE INFORMATION INTO ACCOUNT~~ RETIER A POLICY, REMOVE A DISCOUNT, OR TAKE ANY OTHER ADVERSE UNDERWRITING OR RATING ACTION.

(C) (1) IF A POLICY OF ~~PROPERTY AND CASUALTY~~ HOMEOWNER'S INSURANCE EXCLUDES PROPERTY COVERAGE FOR INTENTIONAL ACTS, THE INSURER MAY NOT DENY PAYMENT FOR A LOSS TO A VICTIM WHO:

(I) IS AN INNOCENT COINSURED ~~WHO~~;

(II) DID NOT ~~COOPERATE IN OR CONTRIBUTE TO THE CREATION OF~~ COMMIT, CAUSE TO BE COMMITTED, OR DIRECT THE CRIME OF VIOLENCE LEADING TO THE LOSS ~~IF:~~; AND

~~(I) THE LOSS AROSE OUT OF A CRIME OF VIOLENCE; AND~~

~~(II) THE PERPETRATOR OF THE LOSS IS CRIMINALLY PROSECUTED FOR THE ACT CAUSING THE LOSS.~~

(III) COOPERATES IN ANY CRIMINAL INVESTIGATION, INCLUDING THE FILING OF AN OFFICIAL POLICE REPORT, AND IF UNDERTAKEN, ANY PROSECUTION OF THE PERPETRATOR.

(2) PAYMENT TO THE INNOCENT COINSURED MAY BE LIMITED TO ~~THE INNOCENT COINSURED'S OWNERSHIP INTEREST IN THE PROPERTY AS REDUCED BY ANY PAYMENT TO A MORTGAGOR OR OTHER SECURED PARTY.~~ THE AMOUNT OF THE LOSS UP TO THE HOMEOWNER'S INSURANCE POLICY LIMITS, LESS ANY APPLICABLE DEDUCTIBLE AND COINSURANCE AND ANY PAYMENT TO ANY SECURED PARTY.

(3) AN INSURER MAY EXCLUDE PROPERTY OWNED SOLELY BY THE PERPETRATOR FROM COVERAGE UNDER THE POLICY OF HOMEOWNER'S INSURANCE.

(4) AN INSURER MAKING PAYMENT TO THE INNOCENT COINSURED UNDER THIS SECTION SHALL HAVE THE RIGHT OF SUBROGATION AGAINST THE PERPETRATOR WHO COMMITTED, CAUSED TO BE COMMITTED, OR DIRECTED THE CRIME OF VIOLENCE LEADING TO THE LOSS.

(D) THIS SECTION DOES NOT:

(1) REQUIRE PAYMENT IN EXCESS OF A HOMEOWNER'S INSURANCE POLICY LIMITS;

(2) PROHIBIT AN INSURER FROM APPLYING REASONABLE STANDARDS OF PROOF OF A CLAIM; OR

(3) PROHIBIT AN INSURER OR INSURANCE PRODUCER FROM:

(I) ASKING AN APPLICANT, A POLICYHOLDER, OR A CLAIMANT ABOUT A CLAIM UNDER THIS SECTION; OR

(II) USING INFORMATION OBTAINED BY INVESTIGATION TO EVALUATE A CLAIM AND EXERCISE THE INSURER'S RIGHTS AND PERFORM ITS DUTIES.

27–505.

(a) (1) If the Commissioner finds that an insurer has violated § 27–501, § 27–503, **[**or**]** § 27–504**, OR § 27–504.1** of this subtitle, the Commissioner, in addition to any other power granted by this article, may order the insurer to accept the risk, or accept the business, as appropriate.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all policies ~~and contracts of property and casualty~~ of homeowner's insurance issued, delivered, or renewed in the State on or after October 1, 2011.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 446

(House Bill 647)

AN ACT concerning

~~Property and Casualty~~ Homeowner's Insurance – Victims of Crimes of Violence – Discrimination Prohibited

FOR the purpose of prohibiting insurers ~~from using~~, based solely on information about an individual's status as a victim of a crime of violence ~~to take~~, from taking certain actions relating to a policy of ~~property and casualty~~ homeowner's insurance; providing that an insurer may not deny payment to ~~an~~ a certain innocent coinsured under certain circumstances; limiting payment to an innocent coinsured under certain circumstances; authorizing an insurer to exclude certain property from coverage; providing that an insurer making a certain payment shall have the right of subrogation against a certain perpetrator; providing that this Act does not require a payment in excess of certain limits, prohibit an insurer from applying certain standards, or prohibit an insurer or insurance producer from asking certain individuals about a certain claim or from using certain information for certain purposes; authorizing the Maryland Insurance Commissioner to take certain actions on a finding of certain violations; defining certain terms; providing for the application of this Act; and generally relating to victims of crimes of violence and discrimination in ~~property and casualty~~ homeowner's insurance.

BY repealing and reenacting, without amendments,
Article – Insurance
Section 27–501(a) and (b)
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

BY adding to
Article – Insurance
Section 27–504.1
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Insurance
Section 27–505(a)(1)
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

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

Article – Insurance

27–501.

(a) (1) An insurer or insurance producer may not cancel or refuse to underwrite or renew a particular insurance risk or class of risk for a reason based wholly or partly on race, color, creed, sex, or blindness of an applicant or policyholder or for any arbitrary, capricious, or unfairly discriminatory reason.

(2) Except as provided in this section, an insurer or insurance producer may not cancel or refuse to underwrite or renew a particular insurance risk or class of risk except by the application of standards that are reasonably related to the insurer's economic and business purposes.

(b) (1) An insurer may not require special conditions, facts, or situations as a condition to its acceptance or renewal of a particular insurance risk or class of risks in an arbitrary, capricious, unfair, or discriminatory manner based wholly or partly on race, creed, color, sex, religion, national origin, place of residency, blindness, or other physical handicap or disability.

(2) Actuarial justification may be considered with respect to sex.

27–504.1.

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

(2) "CRIME OF VIOLENCE" HAS THE MEANING STATED IN § 14–101 OF THE CRIMINAL LAW ARTICLE.

(3) "VICTIM" MEANS A ~~PERSON~~ POLICYHOLDER OR CLAIMANT WHO SUFFERS PERSONAL INJURY, DEATH, OR PROPERTY LOSS AS A RESULT OF A CRIME OF VIOLENCE.

(B) EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, IF AN INDIVIDUAL IS A VICTIM OF A CRIME OF VIOLENCE, AN INSURER MAY NOT ~~USE~~, BASED SOLELY ON INFORMATION ABOUT THE INDIVIDUAL'S STATUS AS A VICTIM OF A CRIME OF VIOLENCE ~~TO~~:

(1) CANCEL, REFUSE TO UNDERWRITE OR RENEW, OR REFUSE TO ISSUE A POLICY OF ~~PROPERTY AND CASUALTY~~ HOMEOWNER'S INSURANCE;

(2) REFUSE TO PAY A CLAIM UNDER A POLICY OF ~~PROPERTY AND CASUALTY~~ HOMEOWNER'S INSURANCE; OR

(3) ~~INCREASE RATES FOR PROPERTY AND CASUALTY INSURANCE; OR~~

~~(4)~~ FOR A POLICY OF ~~PROPERTY AND CASUALTY~~ HOMEOWNER'S INSURANCE, INCREASE A PREMIUM, ADD A SURCHARGE, APPLY A RATING FACTOR, ~~OR USE ANY OTHER UNDERWRITING PRACTICE THAT ADVERSELY TAKES THE INFORMATION INTO ACCOUNT~~ RETIER A POLICY, REMOVE A DISCOUNT, OR TAKE ANY OTHER ADVERSE UNDERWRITING OR RATING ACTION.

(C) (1) IF A POLICY OF ~~PROPERTY AND CASUALTY~~ HOMEOWNER'S INSURANCE EXCLUDES PROPERTY COVERAGE FOR INTENTIONAL ACTS, THE INSURER MAY NOT DENY PAYMENT FOR A LOSS TO A VICTIM WHO:

(I) IS AN INNOCENT COINSURED ~~WHO~~;

(II) DID NOT ~~COOPERATE IN OR CONTRIBUTE TO THE CREATION OF~~ COMMIT, CAUSE TO BE COMMITTED, OR DIRECT THE CRIME OF VIOLENCE LEADING TO THE LOSS ~~IF:~~; AND

~~(I) THE LOSS AROSE OUT OF A CRIME OF VIOLENCE; AND~~

~~(II) THE PERPETRATOR OF THE LOSS IS CRIMINALLY PROSECUTED FOR THE ACT CAUSING THE LOSS.~~

(III) COOPERATES IN ANY CRIMINAL INVESTIGATION, INCLUDING THE FILING OF AN OFFICIAL POLICE REPORT, AND IF UNDERTAKEN, ANY PROSECUTION OF THE PERPETRATOR.

(2) PAYMENT TO THE INNOCENT COINSURED MAY BE LIMITED TO ~~THE INNOCENT COINSURED'S OWNERSHIP INTEREST IN THE PROPERTY AS REDUCED BY ANY PAYMENT TO A MORTGAGOR OR OTHER SECURED PARTY.~~ THE AMOUNT OF THE LOSS UP TO THE HOMEOWNER'S INSURANCE POLICY LIMITS, LESS ANY APPLICABLE DEDUCTIBLE AND COINSURANCE AND ANY PAYMENT TO ANY SECURED PARTY.

(3) AN INSURER MAY EXCLUDE PROPERTY OWNED SOLELY BY THE PERPETRATOR FROM COVERAGE UNDER THE POLICY OF HOMEOWNER'S INSURANCE.

(4) AN INSURER MAKING PAYMENT TO THE INNOCENT COINSURED UNDER THIS SECTION SHALL HAVE THE RIGHT OF SUBROGATION AGAINST THE PERPETRATOR WHO COMMITTED, CAUSED TO BE COMMITTED, OR DIRECTED THE CRIME OF VIOLENCE LEADING TO THE LOSS.

(D) THIS SECTION DOES NOT:

(1) REQUIRE PAYMENT IN EXCESS OF A HOMEOWNER'S INSURANCE POLICY LIMITS;

(2) PROHIBIT AN INSURER FROM APPLYING REASONABLE STANDARDS OF PROOF OF A CLAIM; OR

(3) PROHIBIT AN INSURER OR INSURANCE PRODUCER FROM:

(I) ASKING AN APPLICANT, A POLICYHOLDER, OR A CLAIMANT ABOUT A CLAIM UNDER THIS SECTION; OR

(II) USING INFORMATION OBTAINED BY INVESTIGATION TO EVALUATE A CLAIM AND EXERCISE THE INSURER'S RIGHTS AND PERFORM ITS DUTIES.

27–505.

(a) (1) If the Commissioner finds that an insurer has violated § 27–501, § 27–503, **[**or**]** § 27–504**, OR § 27–504.1** of this subtitle, the Commissioner, in addition to any other power granted by this article, may order the insurer to accept the risk, or accept the business, as appropriate.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all policies ~~and contracts of property and casualty~~ of homeowner's insurance issued, delivered, or renewed in the State on or after October 1, 2011.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 447

(Senate Bill 320)

AN ACT concerning

Environment – Phosphorus – Commercial Dishwashing Detergent

FOR the purpose of prohibiting a person from using, selling, manufacturing, or distributing for use or sale certain commercial dishwashing detergents that contain greater than a certain amount of phosphorus after a certain date; repealing certain obsolete language; and generally relating to phosphorus in commercial dishwashing detergents.

BY repealing and reenacting, with amendments,
Article – Environment
Section 9–1503
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

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

Article – Environment

9–1503.

(a) Except as provided in subsection (b) of this section, a person may not use, sell, manufacture, or distribute for use or sale within the State any cleaning agent that contains more than 0.0 percent phosphorus by weight expressed as elemental phosphorus except for an amount not exceeding 0.5 percent phosphorus that is incidental to manufacturing.

(b) Except as provided in subsection (c) of this section, a person may use, sell, manufacture, or distribute for use or sale a cleaning agent that contains greater than

0.0 percent phosphorus by weight, but does not exceed 8.7 percent phosphorus by weight that is:

(1) A detergent used in a **COMMERCIAL** dishwashing machine**[**, whether commercial or household**]**; or

(2) A substance the Secretary, by rule and regulation, excludes from the 0.0 percent phosphorus limitation of subsection (a) of this section based on a finding that compliance with this section would:

(i) Create a significant hardship on the user; or

(ii) Be unreasonable because of the lack of an adequate substitute cleaning agent.

(c) **(1)** ~~After **[**July 1, 2010**]** **JANUARY 1, 2013**, a~~ **A** person may not use, sell, manufacture, or distribute for use or sale within the State any detergent for use in a **[**household**]** ~~**COMMERCIAL**~~ dishwashing machine that contains more than 0.5 percent phosphorus by weight.

(2) AFTER ~~**JANUARY**~~ ***JULY*** **1, 2013, A PERSON MAY NOT USE, SELL, MANUFACTURE, OR DISTRIBUTE FOR USE OR SALE WITHIN THE STATE ANY DETERGENT FOR USE IN A COMMERCIAL DISHWASHING MACHINE THAT CONTAINS MORE THAN 0.5 PERCENT PHOSPHORUS BY WEIGHT.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 448

(House Bill 53)

AN ACT concerning

Environment – ~~Commercial Dishwashing Detergent – Prohibition~~
Phosphorus – Commercial Dishwashing Detergent

FOR the purpose of prohibiting a person from using, selling, manufacturing, or distributing for use or sale certain commercial dishwashing detergents that contain greater than a certain amount of phosphorus after a certain date; repealing certain obsolete language; and generally relating to phosphorus in commercial dishwashing detergents.

BY repealing and reenacting, with amendments,
Article – Environment
Section 9–1503
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

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

Article – Environment

9–1503.

(a) Except as ~~provided in subsection (b) of~~ ~~**OTHERWISE PROVIDED IN**~~ ***PROVIDED IN SUBSECTION (B) OF*** this section, a person may not use, sell, manufacture, or distribute for use or sale within the State any cleaning agent that contains more than 0.0 percent phosphorus by weight expressed as elemental phosphorus except for an amount not exceeding 0.5 percent phosphorus that is incidental to manufacturing.

(b) Except as provided in subsection (c) of this section, a person may use, sell, manufacture, or distribute for use or sale a cleaning agent that contains greater than 0.0 percent phosphorus by weight, but does not exceed 8.7 percent phosphorus by weight that is:

(1) A detergent used in a **COMMERCIAL** dishwashing machine**[**, whether commercial or household**]**; or

(2) A substance the Secretary, by rule and regulation, excludes from the 0.0 percent phosphorus limitation of subsection (a) of this section based on a finding that compliance with this section would:

(i) Create a significant hardship on the user; or

(ii) Be unreasonable because of the lack of an adequate substitute cleaning agent.

(c) **(1)** ~~After~~ ~~**[**July 1, 2010**]**~~ ~~**OCTOBER 1, 2012**, a~~ ***A*** person may not use, sell, manufacture, or distribute for use or sale within the State any detergent for use in a ~~**[**~~household~~**]**~~ ~~**COMMERCIAL**~~ dishwashing machine that contains more than 0.5 percent phosphorus by weight.

(2) AFTER JULY 1, 2013, A PERSON MAY NOT USE, SELL, MANUFACTURE, OR DISTRIBUTE FOR USE OR SALE WITHIN THE STATE ANY

DETERGENT FOR USE IN A COMMERCIAL DISHWASHING MACHINE THAT CONTAINS MORE THAN 0.5 PERCENT PHOSPHORUS BY WEIGHT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 449

(Senate Bill 328)

AN ACT concerning

Estates and Trusts – Transfers – Recordation and Transfer Taxes

FOR the purpose of altering a certain provision prohibiting the imposition of certain taxes on certain transfers of property by a personal representative or the recordation of certain instruments; prohibiting the imposition of certain taxes on certain transfers of real property or the recordation of certain instruments relating to certain transfers to or from certain trusts; providing certain exemptions under the recordation tax and State transfer tax for instruments of writing relating to certain transfers from an estate and certain transfers to or from certain trusts; defining certain terms; and generally relating to the taxation of certain transfers from an estate and certain transfers to or from certain trusts.

BY repealing and reenacting, with amendments,
Article – Estates and Trusts
Section 9–105
Annotated Code of Maryland
(2001 Replacement Volume and 2010 Supplement)

BY adding to
Article – Estates and Trusts
Section 14–114
Annotated Code of Maryland
(2001 Replacement Volume and 2010 Supplement)

BY adding to
Article – Tax – Property
Section 12–108(dd) and (ee) and 13–207(a)(22) and (23)
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Tax – Property
Section 13–207(a)(20) and (21)
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

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

Article – Estates and Trusts

9–105.

(a) When distribution in kind is made, the personal representative shall execute and deliver an instrument or deed of distribution assigning, transferring, or releasing the assets to the distributee as evidence of the title of the distributee to the property.

(b) Costs payable as a condition of the recordation of a deed shall be paid by the estate.

(c) **(1) IN THIS SUBSECTION, "CONSIDERATION" DOES NOT INCLUDE THE AMOUNT OF ANY OBLIGATION UNDER A MORTGAGE OR DEED OF TRUST ENCUMBERING THE TRANSFERRED PROPERTY.**

(2) A **[**state**]** **RECORDATION TAX, TRANSFER TAX, OR ANY OTHER STATE** or local excise tax may not be imposed **[**upon**]** **ON** the transfer **BY A PERSONAL REPRESENTATIVE** of property or **AN INTEREST IN PROPERTY WITHOUT CONSIDERATION OR ON** the recordation of an instrument executed **[**without consideration**]** by a personal representative **THAT TRANSFERS PROPERTY OR AN INTEREST IN PROPERTY WITHOUT CONSIDERATION**.

(d) In addition to other indexing, any such deed recorded among the land records shall be indexed in the grantor index under the name of the decedent.

14–114.

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

(2) "CONSIDERATION" DOES NOT INCLUDE THE AMOUNT OF ANY OBLIGATION UNDER A MORTGAGE OR DEED OF TRUST ENCUMBERING THE TRANSFERRED PROPERTY.

(3) "TRUST" DOES NOT INCLUDE:

(I) A REAL ESTATE INVESTMENT TRUST AS DEFINED IN § 8–101 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE; OR

(II) A ~~BUSINESS~~ STATUTORY TRUST AS DEFINED IN § ~~12–101(C)~~ 12–101 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.

(B) A RECORDATION TAX, TRANSFER TAX, OR ANY OTHER STATE OR LOCAL EXCISE TAX MAY NOT BE IMPOSED ON THE TRANSFER OF REAL PROPERTY OR AN INTEREST IN REAL PROPERTY WITHOUT CONSIDERATION OR ON THE RECORDATION OF AN INSTRUMENT THAT TRANSFERS REAL PROPERTY OR AN INTEREST IN REAL PROPERTY WITHOUT CONSIDERATION IF:

(1) THE TRANSFER IS TO A TRUST; OR

(2) THE TRANSFER IS FROM A TRUST TO ONE OR MORE BENEFICIARIES AND:

(I) THE TRANSFER IS MADE TO A PERSON WHO WOULD BE EXEMPT FROM TAX UNDER TITLE 12 OR TITLE 13 OF THE TAX – PROPERTY ARTICLE IF THE TRANSFER HAD BEEN MADE TO THAT PERSON DIRECTLY BY THE GRANTOR; OR

(II) THE TRANSFER IS MADE DURING THE LIFE OF THE GRANTOR OF THE TRUST AND THE TRUSTEE OF THE TRUST ORIGINALLY ACQUIRED THE REAL PROPERTY FOR ADEQUATE CONSIDERATION.

Article – Tax – Property

12–108.

(DD) AN INSTRUMENT OF WRITING THAT TRANSFERS REAL PROPERTY OR AN INTEREST IN REAL PROPERTY FROM AN ESTATE IS NOT SUBJECT TO RECORDATION TAX AS PROVIDED IN § 9–105(C) OF THE ESTATES AND TRUSTS ARTICLE.

(EE) AN INSTRUMENT OF WRITING THAT TRANSFERS REAL PROPERTY OR AN INTEREST IN REAL PROPERTY TO A TRUST OR FROM A TRUST TO ONE OR MORE BENEFICIARIES UNDER THE CIRCUMSTANCES SPECIFIED IN § 14–114 OF THE ESTATES AND TRUSTS ARTICLE IS NOT SUBJECT TO RECORDATION TAX.

13–207.

(a) An instrument of writing is not subject to transfer tax to the same extent that it is not subject to recordation tax under:

(20) § 12–108(aa) of this article (Transfers involving certain Maryland Stadium Authority affiliates); **[**or**]**

(21) § 12–108(cc) of this article (Certain transfers to land trusts)**;**

(22) § 12–108(DD) OF THIS ARTICLE (TRANSFER FROM AN ESTATE); OR

(23) § 12–108(EE) OF THIS ARTICLE (TRANSFER TO A TRUST AND TRANSFER FROM A TRUST UNDER SPECIFIED CIRCUMSTANCES).

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 450

(Senate Bill 334)

AN ACT concerning

Real Property – Deposits on New Homes – Escrow Accounts

FOR the purpose of clarifying the circumstances under which a vendor or builder of a new single–family residential unit is required to deposit certain money in a certain escrow account or obtain and maintain a certain surety bond or irrevocable letter of credit; clarifying the circumstances under which the vendor's or builder's obligation to maintain an escrow account, surety bond, or letter of credit terminates; authorizing the vendor or builder to make withdrawals from an escrow account under certain circumstances; providing that a banking institution or national banking association at which a certain escrow account is maintained is not responsible for a withdrawal from the escrow account under certain circumstances; establishing that any sum of money received by a vendor or builder in connection with the sale and purchase of a new single–family residential unit shall be held in trust for the benefit of the purchaser; establishing that certain payments shall be consistent with ~~the trust~~ a certain trust obligation; defining certain terms; and generally relating to deposits on new homes.

BY repealing and reenacting, with amendments,
Article – Real Property
Section 10–301 and 10–301.1

Annotated Code of Maryland
(2010 Replacement Volume and 2010 Supplement)

BY adding to
Article – Real Property
Section 10–301.1
Annotated Code of Maryland
(2010 Replacement Volume and 2010 Supplement)

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

Article – Real Property

10–301.

(a) If, in connection with the sale and purchase of a new single–family residential unit **[**which**], THE CONSTRUCTION OF WHICH HAS NOT BEGUN OR, IF BEGUN,** is not completed at the time of contracting the sale, the vendor or builder obligates the purchaser to pay and the vendor or builder receives any sum of money before completion of the unit and grant of the realty to the purchaser, the builder or vendor shall:

(1) Deposit or hold the sum in an escrow account segregated from all other funds of the vendor or builder to assure the return of the sum to the purchaser in the event the purchaser becomes entitled to a return of the sum;

(2) Obtain and maintain a corporate surety bond in the form and in the amounts set forth in § 10–302 of this subtitle, conditioned on the return of the sum to the purchaser in the event the purchaser becomes entitled to the return of the money; or

(3) Obtain and maintain an irrevocable letter of credit issued by a Maryland bank in the form and in the amounts set forth in § 10–303 of this subtitle.

(b) **(1) [**The**] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE** vendor or builder shall maintain the escrow account, surety bond, or irrevocable letter of credit until the happening of the earlier of:

[(1)**] (I)** The granting of a deed to the property on which **[**the**] A COMPLETED** residential unit is located to the purchaser;

[(2)**] (II)** The return of the sum of money to the purchaser; or

[(3)**] (III)** The forfeiture of the sum by the purchaser, under the terms of the contract of sale relating to the purchase of the residential unit.

(2) THE VENDOR OR BUILDER MAY MAKE WITHDRAWALS FROM AN ESCROW ACCOUNT ESTABLISHED UNDER SUBSECTION (A)(1) OF THIS SECTION THAT CONSISTS OF SUMS RECEIVED TO FINANCE THE CONSTRUCTION OF A RESIDENTIAL UNIT TO PAY, IN ACCORDANCE WITH A DRAW SCHEDULE AGREED TO BY THE PURCHASER IN WRITING, DOCUMENTED CLAIMS OF PERSONS WHO HAVE FURNISHED LABOR OR MATERIAL FOR THE CONSTRUCTION OF THE RESIDENTIAL UNIT.

(C) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(II) "BANKING INSTITUTION" HAS THE MEANING STATED IN § 1–101 OF THE FINANCIAL INSTITUTIONS ARTICLE.

(III) "NATIONAL BANKING ASSOCIATION" HAS THE MEANING STATED IN § 1–101 OF THE FINANCIAL INSTITUTIONS ARTICLE.

(2) A BANKING INSTITUTION OR NATIONAL BANKING ASSOCIATION AT WHICH AN ESCROW ACCOUNT ESTABLISHED UNDER SUBSECTION (A)(1) OF THIS SECTION IS MAINTAINED IS NOT RESPONSIBLE FOR A WITHDRAWAL FROM THE ESCROW ACCOUNT MADE BY THE VENDOR OR BUILDER.

10–301.1.

(A) ANY SUM OF MONEY RECEIVED BY A VENDOR OR BUILDER IN CONNECTION WITH THE SALE AND PURCHASE OF A NEW SINGLE–FAMILY RESIDENTIAL UNIT SHALL BE HELD IN TRUST FOR THE BENEFIT OF THE PURCHASER.

(B) ANY PAYMENTS MADE FOR LABOR OR MATERIAL IN CONNECTION WITH THE CONSTRUCTION OF THE RESIDENTIAL UNIT SHALL BE CONSISTENT WITH THE TRUST OBLIGATION REQUIRED UNDER SUBSECTION (A) OF THIS SECTION.

[10–301.1.**] 10–301.2.**

(a) A vendor or builder may deposit trust moneys in:

(1) A noninterest bearing checking account;

(2) One or more savings accounts; or

(3) Any combination of accounts in any bank or savings and loan association authorized by federal or State law to do business in the State.

(b) Trust moneys in the hands of the vendor or builder may be invested in any other investment vehicle specified by the client or beneficial owner or as they and the licensee may agree.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 451

(House Bill 379)

AN ACT concerning

Real Property – Deposits on New Homes – Escrow Accounts

FOR the purpose of clarifying the circumstances under which a vendor or builder of a new single–family residential unit is required to deposit certain money in a certain escrow account or obtain and maintain a certain surety bond or irrevocable letter of credit; clarifying the circumstances under which the vendor's or builder's obligation to maintain an escrow account, surety bond, or letter of credit terminates; authorizing the vendor or builder to make withdrawals from an escrow account under certain circumstances; providing that a banking institution or national banking association at which a certain escrow account is maintained is not responsible for a withdrawal from the escrow account under certain circumstances; establishing that any sum of money received by a vendor or builder in connection with the sale and purchase of a new single–family residential unit shall be held in trust for the benefit of the purchaser; establishing that certain payments shall be consistent with ~~the trust~~ a certain trust obligation; defining certain terms; and generally relating to deposits on new homes.

BY repealing and reenacting, with amendments,
Article – Real Property
Section 10–301 and 10–301.1
Annotated Code of Maryland
(2010 Replacement Volume and 2010 Supplement)

BY adding to
Article – Real Property
Section 10–301.1

Annotated Code of Maryland
(2010 Replacement Volume and 2010 Supplement)

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

Article – Real Property

10–301.

(a) If, in connection with the sale and purchase of a new single–family residential unit **[**which**], THE CONSTRUCTION OF WHICH HAS NOT BEGUN OR, IF BEGUN,** is not completed at the time of contracting the sale, the vendor or builder obligates the purchaser to pay and the vendor or builder receives any sum of money before completion of the unit and grant of the realty to the purchaser, the builder or vendor shall:

(1) Deposit or hold the sum in an escrow account segregated from all other funds of the vendor or builder to assure the return of the sum to the purchaser in the event the purchaser becomes entitled to a return of the sum;

(2) Obtain and maintain a corporate surety bond in the form and in the amounts set forth in § 10–302 of this subtitle, conditioned on the return of the sum to the purchaser in the event the purchaser becomes entitled to the return of the money; or

(3) Obtain and maintain an irrevocable letter of credit issued by a Maryland bank in the form and in the amounts set forth in § 10–303 of this subtitle.

(b) **(1) [**The**] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE** vendor or builder shall maintain the escrow account, surety bond, or irrevocable letter of credit until the happening of the earlier of:

[(1)**] (I)** The granting of a deed to the property on which **[**the**] A COMPLETED** residential unit is located to the purchaser;

[(2)**] (II)** The return of the sum of money to the purchaser; or

[(3)**] (III)** The forfeiture of the sum by the purchaser, under the terms of the contract of sale relating to the purchase of the residential unit.

**(2) THE VENDOR OR BUILDER MAY MAKE WITHDRAWALS FROM AN ESCROW ACCOUNT ESTABLISHED UNDER SUBSECTION (A)(1) OF THIS SECTION THAT CONSISTS OF SUMS RECEIVED TO FINANCE THE CONSTRUCTION OF A RESIDENTIAL UNIT TO PAY, *IN ACCORDANCE WITH A DRAW SCHEDULE AGREED TO BY THE PURCHASER IN WRITING*,~~, IN ACCORDANCE WITH A DRAW~~

~~SCHEDULE AGREED TO BY THE PURCHASER,~~ **DOCUMENTED CLAIMS OF PERSONS WHO HAVE FURNISHED LABOR OR MATERIAL FOR THE CONSTRUCTION OF THE RESIDENTIAL UNIT.**

(C) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(II) "BANKING INSTITUTION" HAS THE MEANING STATED IN § 1–101 OF THE FINANCIAL INSTITUTIONS ARTICLE.

(III) "NATIONAL BANKING ASSOCIATION" HAS THE MEANING STATED IN § 1–101 OF THE FINANCIAL INSTITUTIONS ARTICLE.

(2) A BANKING INSTITUTION OR NATIONAL BANKING ASSOCIATION AT WHICH AN ESCROW ACCOUNT ESTABLISHED UNDER SUBSECTION (A)(1) OF THIS SECTION IS MAINTAINED IS NOT RESPONSIBLE FOR A WITHDRAWAL FROM THE ESCROW ACCOUNT MADE BY THE VENDOR OR BUILDER.

10–301.1.

(A) ANY SUM OF MONEY RECEIVED BY A VENDOR OR BUILDER IN CONNECTION WITH THE SALE AND PURCHASE OF A NEW SINGLE–FAMILY RESIDENTIAL UNIT SHALL BE HELD IN TRUST FOR THE BENEFIT OF THE PURCHASER.

(B) ANY PAYMENTS MADE FOR LABOR OR MATERIAL IN CONNECTION WITH THE CONSTRUCTION OF THE RESIDENTIAL UNIT SHALL BE CONSISTENT WITH THE TRUST OBLIGATION REQUIRED UNDER SUBSECTION (A) OF THIS SECTION.

[10–301.1.**] 10–301.2.**

(a) A vendor or builder may deposit trust moneys in:

(1) A noninterest bearing checking account;

(2) One or more savings accounts; or

(3) Any combination of accounts in any bank or savings and loan association authorized by federal or State law to do business in the State.

(b) Trust moneys in the hands of the vendor or builder may be invested in any other investment vehicle specified by the client or beneficial owner or as they and the licensee may agree.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 452

(Senate Bill 358)

AN ACT concerning

Audit Responsibilities – ~~Local Education Agencies, Community Colleges, and Public Libraries – Employer Pension Contributions~~ State Department of Education, Maryland Higher Education Commission, and State Retirement Agency

FOR the purpose of requiring the county boards of education to conduct certain audits under certain circumstances; requiring certain local school systems to reimburse the State for certain employer contributions for certain employees participating in the Teachers' Retirement System or the Teachers' Pension System; providing that the State Department of Education may authorize certain county boards of education and public libraries to conduct certain audits; authorizing the State Department of Education, rather than the State Retirement Agency, to conduct certain audits of local school systems and public libraries to determine if certain employer contributions have been paid appropriately to the State Retirement and Pension System; ~~altering a provision relating to the employees included for purposes of certain audits as eligible for State payment of retirement contributions;~~ clarifying that certain audits conducted by certain groups may be conducted in a certain manner; requiring that reimbursements for certain audits be applied to the State Department of Education, certain county boards of education, the Maryland Higher Education Commission, certain public junior or community colleges, certain public libraries, and the General Fund in a certain manner; requiring certain county boards of education and public libraries to provide certain documentation to the State Department of Education under certain circumstances; providing that the Maryland Higher Education Commission may authorize certain public junior or community colleges to conduct certain audits; authorizing the Maryland Higher Education Commission, rather than the State Retirement Agency, to conduct certain audits of public junior or community colleges to determine if certain employer contributions have been paid appropriately to the State Retirement and Pension System; ~~requiring that certain reimbursements determined from performing certain audits of local school systems, public junior or community colleges, and public libraries be credited entirely to the General Fund;~~ requiring certain public junior or community colleges to provide certain documentation to

the Maryland Higher Education Commission under certain circumstances; clarifying that the State Retirement Agency may perform certain audits of certain participating employers; requiring that if certain audits by the State Retirement Agency reveal certain information, certain actions shall be taken and certain payments shall be made to the State Retirement and Pension System; and generally relating to performing audits of local school systems, public junior or community colleges, and public libraries for purposes of determining if employer and member contributions have been paid appropriately to the State Retirement and Pension System.

BY repealing and reenacting, with amendments,
Article – Education
Section 5–109, 5–203, 16–306, and 23–504
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – State Personnel and Pensions
Section 21–121
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Education

5–109.

(a) **(1)** Each county board shall provide for an annual audit of its financial transactions and accounts.

(2) AT THE REQUEST OF THE DEPARTMENT, A COUNTY BOARD SHALL CONDUCT AN AUDIT UNDER § 5–203 OF THIS TITLE.

(b) (1) The audit shall be made by a certified public accountant or a partnership of certified public accountants who are:

(i) Licensed by the State Board of Public Accountancy; and

(ii) Approved by the State Superintendent.

(2) The audit shall be made in accordance with the standards and regulations adopted by the State Board.

(c) (1) The results of the audit, including the letter of recommendation submitted by the auditor, are a matter of public record.

(2) The results shall be reported within 3 months after the close of the fiscal year for the county board on the form and in the manner required by the State Board to:

(i) The State Superintendent;

(ii) The county fiscal authority;

(iii) The Joint Audit Committee of the General Assembly;

(iv) The Senate Budget and Taxation Committee;

(v) The Senate Education, Health, and Environmental Affairs Committee;

(vi) The House Appropriations Committee; and

(vii) The House Committee on Ways and Means.

(d) In addition to the audit required by this section, the county commissioners or county council may conduct an audit using auditors employed by the county.

5–203.

~~(a)~~ **[**~~In this section, "Agency" means the State Retirement Agency.~~

(A) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A LOCAL SCHOOL SYSTEM SHALL REIMBURSE THE STATE ANNUALLY FOR THE EMPLOYER CONTRIBUTIONS MADE BY THE STATE FOR AN EMPLOYEE WHO:

(I) IS A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM OR THE TEACHERS' PENSION SYSTEM UNDER DIVISION II OF THE STATE PERSONNEL AND PENSIONS ARTICLE; AND

(II) IS RECEIVING A SALARY FUNDED BY A SOURCE OTHER THAN STATE OR LOCAL AID.

(2) TO THE EXTENT THAT AN EMPLOYEE'S SALARY IS FUNDED IN PART BY SOURCES OTHER THAN STATE OR LOCAL AID, THE LOCAL SCHOOL SYSTEM SHALL REIMBURSE THE STATE A PRO RATA SHARE OF THE STATE'S PAYMENT BASED ON THE PERCENTAGE OF THE EMPLOYEE'S SALARY FUNDED BY A SOURCE OTHER THAN STATE OR LOCAL AID.

(b)**]** (1) ~~The [Agency] DEPARTMENT~~ **TO ENSURE THAT EACH LOCAL SCHOOL SYSTEM IS PROPERLY REIMBURSING THE STATE AS PROVIDED UNDER SUBSECTION (A) OF THIS SECTION, THE DEPARTMENT OR, AT THE DEPARTMENT'S REQUEST, A COUNTY BOARD** may at any time examine the records of local school systems to determine whether the State's payments for retirement contributions for employees of the school systems are in accordance with the provisions of Division II of the State Personnel and Pensions Article.

~~(2) In making the determination under paragraph (1) of this subsection, the [Agency] DEPARTMENT shall include as employees eligible for State payment of retirement contributions those employees[:~~

~~(i) Whose salaries are funded by State or local aid, whether general or categorical in nature; and~~

~~(ii) Who] WHO are members of the Teachers' Pension System or Teachers' Retirement System.~~

(2) AN AUDIT CONDUCTED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY BE:

(I) INCLUDED WITH AN EXISTING ANNUAL FINANCIAL AUDIT AS A SUPPLEMENTAL PART AND TESTED INDEPENDENTLY;

(II) CONDUCTED IN CONJUNCTION WITH A SUPPLEMENTAL FEDERALLY MANDATED SINGLE AUDIT OF FEDERAL FINANCIAL ASSISTANCE PROGRAMS AND TESTED INDEPENDENTLY; OR

(III) CONDUCTED AS A SEPARATE INDEPENDENT AUDIT.

[(c)**]** ~~(B)~~ (1) (i) If an examination of the records of a local school system shows that the State has paid more than is required under Division II of the State Personnel and Pensions Article, within 30 days after the date of the notice to the school system of the State overpayment, the school system may appeal the notice of State overpayment to the Secretary of Budget and Management who shall appoint a hearing examiner who is an attorney.

(ii) The hearing examiner shall make recommendations to the Secretary of Budget and Management who shall make a determination regarding the amount, if any, of the State overpayment.

(iii) Should a local school system request a transcript of an audit appeals hearing, the local school system shall provide and pay for the production of the transcript.

(2) At the request of the Department ~~of Education~~ the moneys owed shall be deducted from any other State funds that would otherwise be paid to the school system if:

(i) A local school system does not appeal to the Secretary of Budget and Management or to the Office of Administrative Hearings; or

(ii) The Office of Administrative Hearings determines that the State is due reimbursement for excess payments as provided in paragraph (3) of this subsection.

(3) (i) The local school system may appeal to the Office of Administrative Hearings a determination by the Secretary of Budget and Management regarding the amount, if any, of the State overpayment.

(ii) Within 45 days after the close of the hearing record, the Office of Administrative Hearings shall issue a written decision to the parties and may grant any appropriate remedy.

(iii) The written decision issued by the Office of Administrative Hearings is the final finding of fact and conclusion of law and binding on all parties and is not subject to judicial review.

~~[~~(d)~~]~~ ~~(C)~~ **(1)** Any reimbursements ~~which result from audits under this section~~ **UNDER SUBSECTION (A) OF THIS SECTION**~~[~~:

~~(1)~~ **(I)** Shall be applied first to ~~reimburse the Agency~~ **THE COST OF ANY AUDIT OR PORTION OF ANY AUDIT RELATING TO SUBSECTION (A) OF THIS SECTION TO REIMBURSE EITHER THE DEPARTMENT OR THE COUNTY BOARD** for the expenses of the audits; and

~~(2)~~ **(II)** After reimbursement to the ~~Agency under item (1) of this subsection,~~**]** **DEPARTMENT OR COUNTY BOARD UNDER ITEM (I) OF THIS PARAGRAPH,** shall be credited to the General Fund.

(2) IF AN AUDIT UNDER THIS SECTION IS PERFORMED BY A COUNTY BOARD, BEFORE THE COUNTY BOARD IS REIMBURSED UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION, THE COUNTY BOARD SHALL PROVIDE DOCUMENTATION TO THE DEPARTMENT THAT THE INCREMENTAL COSTS OF THE AUDIT INCURRED BY THE COUNTY BOARD ARE REASONABLE.

16–306.

(a) **(1)** ~~In this section, [~~"Agency"~~]~~ ~~"COMMISSION" means the [~~State Retirement Agency~~]~~ ~~MARYLAND HIGHER EDUCATION COMMISSION.~~ **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PUBLIC JUNIOR OR COMMUNITY**

COLLEGE SHALL REIMBURSE THE STATE ANNUALLY FOR THE EMPLOYER CONTRIBUTIONS MADE BY THE STATE FOR AN EMPLOYEE WHO:

(I) IS A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM OR THE TEACHERS' PENSION SYSTEM UNDER DIVISION II OF THE STATE PERSONNEL AND PENSIONS ARTICLE; AND

(II) IS RECEIVING A SALARY FUNDED BY A SOURCE OTHER THAN STATE OR LOCAL AID.

(2) TO THE EXTENT THAT AN EMPLOYEE'S SALARY IS FUNDED IN PART BY SOURCES OTHER THAN STATE OR LOCAL AID, THE PUBLIC JUNIOR OR COMMUNITY COLLEGE SHALL REIMBURSE THE STATE A PRO RATA SHARE OF THE STATE'S PAYMENT BASED ON THE PERCENTAGE OF THE EMPLOYEE'S SALARY FUNDED BY A SOURCE OTHER THAN STATE OR LOCAL AID.

(b) **(1)** ~~The [Agency] COMMISSION~~ **TO ENSURE THAT THE PUBLIC JUNIOR OR COMMUNITY COLLEGE IS PROPERLY REIMBURSING THE STATE AS PROVIDED UNDER SUBSECTION (A) OF THIS SECTION, THE COMMISSION OR, AT THE COMMISSION'S REQUEST, A PUBLIC JUNIOR OR COMMUNITY COLLEGE** may at any time examine the records of public junior or community colleges to determine whether the State's payments for retirement contributions for employees of the public junior or community colleges are in accordance with the provisions of Division II of the State Personnel and Pensions Article.

(2) AN AUDIT CONDUCTED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY BE:

(I) INCLUDED WITH AN EXISTING ANNUAL FINANCIAL AUDIT AS A SUPPLEMENTAL PART AND TESTED INDEPENDENTLY;

(II) CONDUCTED IN CONJUNCTION WITH A SUPPLEMENTAL FEDERALLY MANDATED SINGLE AUDIT OF FEDERAL FINANCIAL ASSISTANCE PROGRAMS AND TESTED INDEPENDENTLY; OR

(III) CONDUCTED AS A SEPARATE INDEPENDENT AUDIT.

(c) (1) (i) If an examination of the records of a public junior or community college shows that the State has paid more than is required under Division II of the State Personnel and Pensions Article, within 30 days after the date of the notice to the junior or community college of the State overpayment, the junior or community college may appeal the notice of State overpayment to the Secretary of Budget and Management who shall appoint a hearing examiner.

(ii) The hearing examiner shall make recommendations to the Secretary of Budget and Management who shall make a final determination regarding the amount, if any, of the State overpayment.

(2) If a public junior or community college does not appeal to the Secretary of Budget and Management or if the Secretary of Budget and Management determines that the State is due reimbursement for excess payments, as provided in paragraph (1) of this subsection, at the request of the **[**Agency**]** **COMMISSION** the moneys owed shall be deducted from any other State funds that would otherwise be paid to the public junior or community college.

(3) For purposes of the Administrative Procedure Act, an appeal taken under this section is not a contested case.

(d) **(1)** Any reimbursements ~~which result from audits under this section~~**[** **UNDER SUBSECTION (A) OF THIS SECTION**:

~~(1)~~ **(I)** Shall be applied first to ~~reimburse the Agency~~ **THE COST OF ANY AUDIT OR PORTION OF ANY AUDIT RELATING TO SUBSECTION (A) OF THIS SECTION TO REIMBURSE EITHER THE COMMISSION OR THE PUBLIC JUNIOR OR COMMUNITY COLLEGE** for the expenses of the audits; and

~~(2)~~ **(II)** After reimbursement to the ~~Agency under item (1) of this subsection,~~**]** **COMMISSION OR THE PUBLIC JUNIOR OR COMMUNITY COLLEGE UNDER ITEM (I) OF THIS PARAGRAPH,** shall be credited to the General Fund.

(2) IF AN AUDIT UNDER THIS SECTION IS PERFORMED BY A PUBLIC JUNIOR OR COMMUNITY COLLEGE, BEFORE THE PUBLIC JUNIOR OR COMMUNITY COLLEGE IS REIMBURSED UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION, THE PUBLIC JUNIOR OR COMMUNITY COLLEGE SHALL PROVIDE DOCUMENTATION TO THE COMMISSION THAT THE INCREMENTAL COSTS OF THE AUDIT INCURRED BY THE PUBLIC JUNIOR OR COMMUNITY COLLEGE ARE REASONABLE.

23–504.

~~(a)~~ **[**~~In this section, "Agency" means the State Retirement Agency.~~

(A) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PUBLIC LIBRARY SHALL REIMBURSE THE STATE ANNUALLY FOR THE EMPLOYER CONTRIBUTIONS MADE BY THE STATE FOR AN EMPLOYEE WHO:

(I) IS A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM OR THE TEACHERS' PENSION SYSTEM UNDER DIVISION II OF THE STATE PERSONNEL AND PENSIONS ARTICLE; AND

(II) IS RECEIVING A SALARY FUNDED BY A SOURCE OTHER THAN STATE OR LOCAL AID.

(2) TO THE EXTENT THAT AN EMPLOYEE'S SALARY IS FUNDED IN PART BY SOURCES OTHER THAN STATE OR LOCAL AID, THE PUBLIC LIBRARY SHALL REIMBURSE THE STATE A PRO RATA SHARE OF THE STATE'S PAYMENT BASED ON THE PERCENTAGE OF THE EMPLOYEE'S SALARY FUNDED BY A SOURCE OTHER THAN STATE OR LOCAL AID.

(b)~~]~~ **(1)** ~~The [Agency] DEPARTMENT~~ **TO ENSURE THAT EACH PUBLIC LIBRARY IS PROPERLY REIMBURSING THE STATE AS PROVIDED UNDER SUBSECTION (A) OF THIS SECTION, THE DEPARTMENT OR, AT THE DEPARTMENT'S REQUEST, A PUBLIC LIBRARY** may at any time examine the records of public libraries to determine whether the State's payments for retirement contributions for employees of the public libraries are in accordance with the provisions of Division II of the State Personnel and Pensions Article.

(2) AN AUDIT CONDUCTED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY BE:

(I) INCLUDED WITH AN EXISTING ANNUAL FINANCIAL AUDIT AS A SUPPLEMENTAL PART AND TESTED INDEPENDENTLY;

(II) CONDUCTED IN CONJUNCTION WITH A SUPPLEMENTAL FEDERALLY MANDATED SINGLE AUDIT OF FEDERAL FINANCIAL ASSISTANCE PROGRAMS AND TESTED INDEPENDENTLY; OR

(III) CONDUCTED AS A SEPARATE INDEPENDENT AUDIT.

~~[~~(c)~~]~~ ~~(B)~~ (1) (i) If an examination of the records of a public library shows that the State has paid more than is required under Division II of the State Personnel and Pensions Article, within 30 days after the date of the notice to the library of the State overpayment, the public library may appeal the notice of State overpayment to the Secretary of Budget and Management who shall appoint a hearing examiner.

(ii) The hearing examiner shall make recommendations to the Secretary of Budget and Management who shall make a final determination regarding the amount, if any, of the State overpayment.

(2) If a public library does not appeal to the Secretary of Budget and Management or if the Secretary of Budget and Management determines that the State is due reimbursement for excess payments as provided in paragraph (1) of this subsection, at the request of the Department ~~of Education~~ the moneys owed shall be

deducted from any other State funds that would otherwise be paid to the public library.

(3) For purposes of the Administrative Procedure Act, an appeal taken under this section is not a contested case.

~~[~~(d)~~]~~ ~~(C)~~ **(1)** Any reimbursements ~~which result from audits under this section~~ **UNDER SUBSECTION (A) OF THIS SECTION~~[~~**:

~~(1)~~ **(I)** Shall be applied first to ~~reimburse the Agency~~ **THE COST OF ANY AUDIT OR PORTION OF ANY AUDIT RELATING TO SUBSECTION (A) OF THIS SECTION TO REIMBURSE EITHER THE DEPARTMENT OR THE PUBLIC LIBRARY** for the expenses of the audits; and

~~(2)~~ **(II)** After reimbursement to the ~~Agency under item (1) of this subsection,~~**]** **DEPARTMENT OR PUBLIC LIBRARY UNDER ITEM (I) OF THIS PARAGRAPH,** shall be credited to the General Fund.

(2) IF AN AUDIT UNDER THIS SECTION IS PERFORMED BY A PUBLIC LIBRARY, BEFORE THE PUBLIC LIBRARY IS REIMBURSED UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION, THE PUBLIC LIBRARY SHALL PROVIDE DOCUMENTATION TO THE DEPARTMENT THAT THE INCREMENTAL COSTS OF THE AUDIT INCURRED BY THE PUBLIC LIBRARY ARE REASONABLE.

Article – State Personnel and Pensions

21–121.

(A) **[**Whenever an audit of the records of an educational institution, public library, or school system reveals that the institution, library, or school system owes money to the accumulation fund of the Teachers' Retirement System or the Teachers' Pension System, the State Retirement Agency may collect the delinquent payment as provided under §§ 5–203, 16–306, and 23–504 of the Education Article.**] THE STATE RETIREMENT AGENCY MAY AT ANY TIME EXAMINE THE RECORDS OF A PARTICIPATING EMPLOYER TO DETERMINE WHETHER THE PAYMENT OF BENEFITS TO A PARTICIPANT AND THE PAYMENT OF CONTRIBUTIONS BY A PARTICIPATING EMPLOYER OR PARTICIPANT ARE AND WILL BE IN ACCORDANCE WITH THE PROVISIONS OF DIVISION II OF THIS ARTICLE.**

(B) WHENEVER AN AUDIT REVEALS THAT THE PAYMENT OF BENEFITS TO A PARTICIPANT OR THE PAYMENT OF CONTRIBUTIONS BY A PARTICIPATING EMPLOYER OR PARTICIPANT IS NOT IN ACCORDANCE WITH THE PROVISIONS OF DIVISION II OF THIS ARTICLE:

(1) THE STATE RETIREMENT AGENCY AND PARTICIPATING EMPLOYER SHALL CORRECT THEIR RECORDS; AND

(2) (I) THE PARTICIPATING EMPLOYER SHALL PAY ANY AMOUNTS OWED TO THE ACCUMULATION FUND OF THE APPROPRIATE STATE SYSTEM; AND

(II) THE MEMBER CONTRIBUTIONS OWED BY THE PARTICIPANT SHALL BE MADE BY THE PARTICIPANT IN ACCORDANCE WITH § 21–312(E) OF THIS TITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 453

(Senate Bill 369)

AN ACT concerning

Education – School Buses – Fire Safety Standards

FOR the purpose of ~~requiring a school bus to meet certain fire safety criteria; requiring the State Department of Education to adopt certain fire safety regulations for school buses that include certain requirements; requiring certain engine components of certain school buses to meet a certain standard~~ requiring a school bus to be constructed with certain materials that enable it to meet certain criteria; requiring the Motor Vehicle Administration, with the advice of the State Department of Education, to adopt certain regulations; defining *a* certain ~~terms~~ *term*; providing for the application of this Act; and generally relating to school bus fire safety standards.

BY adding to
Article – Education
Section 7–808
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – Transportation
Section 11–153 and 11–154
Annotated Code of Maryland

(2009 Replacement Volume and 2010 Supplement)

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

Article – Education

7–808.

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

~~**(2) "ASTM E 1537 STANDARD TEST METHOD FOR FIRE TESTING OF UPHOLSTERED FURNITURE" MEANS THE CONSENSUS STANDARD TEST METHOD DEVELOPED BY ASTM INTERNATIONAL AND USED TO:**~~

~~**(I) DETERMINE THE BURNING BEHAVIOR OF UPHOLSTERED FURNITURE THAT IS USED IN A PLACE OCCUPIED BY THE PUBLIC; AND**~~

~~**(II) MEASURE SPECIFIC FIRE–TEST RESPONSES WHEN THE FURNITURE SPECIMEN IS SUBJECTED TO A SPECIFIC FLAMING IGNITION SOURCE UNDER WELL–VENTILATED CONDITIONS.**~~

~~**(3) "SCHOOL,**~~ **"SCHOOL BUS" HAS THE MEANING STATED IN § 11–153 OF THE TRANSPORTATION ARTICLE.**

~~**(B) A SCHOOL BUS SHALL MEET THE FIRE SAFETY CRITERIA ESTABLISHED UNDER THE ASTM E 1537 STANDARD TEST METHOD FOR FIRE TESTING OF UPHOLSTERED FURNITURE.**~~

~~**(C) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS TO PROMOTE THE FIRE SAFETY OF SCHOOL BUSES.**~~

(B) A SCHOOL BUS SHALL BE CONSTRUCTED WITH MATERIALS THAT ENABLE IT TO MEET ALL THE CRITERIA OF THE SCHOOL BUS SEAT UPHOLSTERY FIRE BLOCK TEST ESTABLISHED BY THE NATIONAL SCHOOL TRANSPORTATION SPECIFICATIONS AND PROCEDURES ADOPTED AT THE MOST RECENT NATIONAL CONGRESS ON SCHOOL TRANSPORTATION.

(C) ~~**(1)**~~ **THE MOTOR VEHICLE ADMINISTRATION, WITH THE ADVICE OF THE DEPARTMENT, SHALL ADOPT REGULATIONS TO PROMOTE FIRE SAFETY STANDARDS OF SCHOOL BUSES.**

~~**(2) THE REGULATIONS ADOPTED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL REQUIRE THAT A SCHOOL BUS MEET AT LEAST ONE OF THE FOLLOWING REQUIREMENTS WHEN THE TEST METHOD IS CONDUCTED ON A COMPLETE SEAT ASSEMBLY INSIDE A TEST ROOM OR ON THAT MODEL AND TYPE OF SCHOOL BUS:**~~

~~**(I) THE SEAT ASSEMBLY EXHIBITS A WEIGHT LOSS OF 3 POUNDS OR GREATER DURING THE FIRST 10 MINUTES OF THE TEST; OR**~~

~~**(II) THE SEAT ASSEMBLY EXHIBITS A HEAT RELEASE RATE OF 80 KILOWATTS OR GREATER.**~~

~~**(D) EACH PLASTIC COMPONENT CONTAINED IN THE ENGINE COMPARTMENT OF A SCHOOL BUS USED TO TRANSPORT CHILDREN UNDER THE AGE OF 18 IN THIS STATE SHALL MEET A V–0 CLASSIFICATION WHEN TESTED IN ACCORDANCE WITH UNDERWRITERS LABORATORIES INC. STANDARDS FOR SAFETY UL 94.**~~

Article – Transportation

11–153.

"School bus" means a Type I school vehicle, as defined in this subtitle.

11–154.

(a) "School vehicle" means, except as provided in subsection (b) of this section, any motor vehicle that:

(1) Is used regularly for the exclusive transportation of children, students, or teachers for educational purposes or in connection with a school activity; and

(2) Is either:

(i) A Type I school vehicle, as defined in this subtitle; or

(ii) A Type II school vehicle, as defined in this subtitle.

(b) "School vehicle" does not include:

(1) A privately owned vehicle while it is carrying members of its owner's household and not operated for compensation; or

(2) A vehicle that is registered as a Class M (multipurpose) vehicle under § 13–937 of this article or a Class A (passenger) vehicle under § 13–912 of this

article and used to transport children between one or more schools or licensed child care centers or to and from designated areas that are approved by the Administration if:

(i) The vehicle is designed for carrying 15 persons or less, including the driver;

(ii) The children are permitted to embark or exit the vehicle only at a school or child care center or a designated area approved by the Administration;

(iii) The owner has obtained vehicle liability insurance or other security as required by Title 17 of this article; and

(iv) The vehicle is equipped with proper seat belts or safety seats so as to permit each child to be secured in a seat belt or a safety seat as required by §§ 22–412.2 and 22–412.3 of this article.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to any school bus that is procured for use in this State on or after January 1, 2014.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 454

(Senate Bill 372)

AN ACT concerning

Environment – Nitrogen Removal Technology – Evaluation and Ranking

FOR the purpose of requiring the Department of the Environment to evaluate and rank certain nitrogen removal technologies for on–site sewage disposal systems for certain purposes; *requiring the Department to make available a certain evaluation and ranking on the Department's Web site; requiring the Department to provide a certain evaluation and ranking to a county, municipality, or resident of the State under certain circumstances;* requiring the Department to request certain information from certain vendors for certain purposes; defining certain terms; and generally relating to nitrogen removal technology for on–site sewage disposal systems.

BY adding to

Article – Environment
Section 9–1108.1
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

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

Article – Environment

9–1108.1.

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

(2) "NITROGEN REMOVAL TECHNOLOGY" HAS THE MEANING STATED IN § 9–1108 OF THIS SUBTITLE.

(3) "ON–SITE SEWAGE DISPOSAL SYSTEM" HAS THE MEANING STATED IN § 9–1108 OF THIS SUBTITLE.

(4) "VENDOR" MEANS A PERSON THAT SELLS, OFFERS FOR SALE, OR DISTRIBUTES ON–SITE SEWAGE DISPOSAL SYSTEMS THAT UTILIZE NITROGEN REMOVAL TECHNOLOGY.

(B) *(1)* IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION, THE DEPARTMENT SHALL EVALUATE AND RANK ALL BEST AVAILABLE NITROGEN REMOVAL TECHNOLOGIES FOR ON–SITE SEWAGE DISPOSAL SYSTEMS TO ADVISE LOCAL GOVERNMENTS AND ~~CITIZENS~~ *RESIDENTS* OF THE STATE OF APPROVED TECHNOLOGIES THAT QUALIFY FOR FUNDING UNDER § 9–1605.2(H)(2) OF THIS TITLE.

(2) THE DEPARTMENT SHALL:

(I) MAKE AVAILABLE THE EVALUATION AND RANKING OF ALL BEST AVAILABLE NITROGEN REMOVAL TECHNOLOGIES REQUIRED UNDER THIS SECTION ON THE DEPARTMENT'S WEB SITE; AND

(II) PROVIDE THE EVALUATION AND RANKING OF ALL BEST AVAILABLE NITROGEN REMOVAL TECHNOLOGIES TO A COUNTY, MUNICIPALITY, OR RESIDENT OF THE STATE IN ANY CORRESPONDENCE RELATING TO APPROVED TECHNOLOGIES THAT QUALIFY FOR FUNDING UNDER § 9–1605.2(H)(2) OF THIS TITLE.

(C) THE DEPARTMENT SHALL EVALUATE AND RANK ALL BEST AVAILABLE NITROGEN REMOVAL TECHNOLOGIES FOR ON–SITE SEWAGE DISPOSAL SYSTEMS BASED ON:

(1) THE TOTAL AMOUNT OF NITROGEN REDUCTION THE TECHNOLOGY CAN ACHIEVE;

(2) THE TOTAL COST OF THE TECHNOLOGY, INCLUDING THE ESTIMATED ANNUAL COST OF OPERATION AND MAINTENANCE, INCLUDING ELECTRICITY COSTS;

(3) THE COST PER POUND OF THE NITROGEN REDUCTION; AND

(4) ANY OTHER INFORMATION THE DEPARTMENT DETERMINES IS NECESSARY.

(D) BEGINNING JUNE 1, 2011, AND ~~BIANNUALLY~~ *EVERY 2 YEARS* THEREAFTER, THE DEPARTMENT SHALL REQUEST INFORMATION FROM VENDORS NECESSARY TO CARRY OUT THE REQUIREMENTS OF THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 455

(House Bill 347)

AN ACT concerning

Environment – Nitrogen Removal Technology – Evaluation and Ranking

FOR the purpose of requiring the Department of the Environment to evaluate and rank certain nitrogen removal technologies for on–site sewage disposal systems for certain purposes; requiring the Department to make available a certain evaluation and ranking on the Department's Web site; requiring the Department to provide a certain evaluation and ranking to a county, municipality, or resident of the State under certain circumstances; requiring the Department to request certain information from certain vendors for certain purposes; defining certain terms; and generally relating to nitrogen removal technology for on–site sewage disposal systems.

BY adding to

Article – Environment
Section 9–1108.1
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

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

Article – Environment

9–1108.1.

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

(2) "NITROGEN REMOVAL TECHNOLOGY" HAS THE MEANING STATED IN § 9–1108 OF THIS SUBTITLE.

(3) "ON–SITE SEWAGE DISPOSAL SYSTEM" HAS THE MEANING STATED IN § 9–1108 OF THIS SUBTITLE.

(4) "VENDOR" MEANS A PERSON THAT SELLS, OFFERS FOR SALE, OR DISTRIBUTES ON–SITE SEWAGE DISPOSAL SYSTEMS THAT UTILIZE NITROGEN REMOVAL TECHNOLOGY.

(B) (1) IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION, THE DEPARTMENT SHALL EVALUATE AND RANK ALL BEST AVAILABLE NITROGEN REMOVAL TECHNOLOGIES FOR ON–SITE SEWAGE DISPOSAL SYSTEMS TO ADVISE LOCAL GOVERNMENTS AND ~~CITIZENS~~ *RESIDENTS* OF THE STATE OF APPROVED TECHNOLOGIES THAT QUALIFY FOR FUNDING UNDER § 9–1605.2(H)(2) OF THIS TITLE.

(2) THE DEPARTMENT SHALL:

(I) MAKE AVAILABLE THE EVALUATION AND RANKING OF ALL BEST AVAILABLE NITROGEN REMOVAL TECHNOLOGIES REQUIRED UNDER THIS SECTION ON THE DEPARTMENT'S WEB SITE; AND

(II) PROVIDE THE EVALUATION AND RANKING OF ALL BEST AVAILABLE NITROGEN REMOVAL TECHNOLOGIES TO A COUNTY, MUNICIPALITY, OR RESIDENT OF THE STATE IN ANY CORRESPONDENCE RELATING TO APPROVED TECHNOLOGIES THAT QUALIFY FOR FUNDING UNDER § 9–1605.2(H)(2) OF THIS TITLE.

(C) THE DEPARTMENT SHALL EVALUATE AND RANK ALL BEST AVAILABLE NITROGEN REMOVAL TECHNOLOGIES FOR ON–SITE SEWAGE DISPOSAL SYSTEMS BASED ON:

(1) THE TOTAL AMOUNT OF NITROGEN REDUCTION THE TECHNOLOGY CAN ACHIEVE;

(2) THE TOTAL COST OF THE TECHNOLOGY, INCLUDING THE ESTIMATED ANNUAL COST OF OPERATION AND MAINTENANCE, INCLUDING ELECTRICITY COSTS;

(3) THE COST PER POUND OF THE NITROGEN REDUCTION; AND

(4) ANY OTHER INFORMATION THE DEPARTMENT DETERMINES IS NECESSARY.

(D) BEGINNING JUNE 1, 2011, AND ~~BIANNUALLY~~ EVERY 2 YEARS THEREAFTER, THE DEPARTMENT SHALL REQUEST INFORMATION FROM VENDORS NECESSARY TO CARRY OUT THE REQUIREMENTS OF THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 456

(Senate Bill 384)

AN ACT concerning

Health – State Facilities and Residential Centers – Definition of Abuse ~~and Required Guidelines for Employees~~

FOR the purpose of altering certain definitions of "abuse" for purposes of certain reporting requirements by specifying that "abuse" does not include certain actions ~~taken by certain employees; requiring the Department of Health and Mental Hygiene to develop certain guidelines in consultation with certain employee organizations and to provide training on implementation of the guidelines to certain employees; requiring the Department to report to certain committees of the General Assembly on or before a certain date; requiring the Department to complete implementation of certain guidelines on or before a certain date~~ that comply with certain State and federal laws and certain

Department *of Health and Mental Hygiene* policies; and generally relating to State facilities and residential centers.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 7–1005 and 10–705
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

7–1005.

(a) (1) In this section, "abuse" means:

(i) Any physical injury that is inflicted willfully or with gross recklessness;

(ii) Inhumane treatment; or

(iii) Any of the following kinds of sexual abuse:

1. A sexual act, as defined in § 3–301 of the Criminal Law Article;

2. Sexual contact, as defined in § 3–301 of the Criminal Law Article; or

3. Vaginal intercourse, as defined in § 3–301 of the Criminal Law Article.

(2) In this section, "abuse" does not include**:**

(I) **[**the**]** **THE** performance of:

[(i)**] 1.** An accepted medical procedure that a physician orders; **[**or**]**

[(ii)**] 2.** An accepted behavioral procedure that a licensed psychologist or psychiatrist, as appropriate, orders**; OR**

(II) ~~**APPROPRIATE ACTIONS TAKEN BY AN EMPLOYEE OF A STATE RESIDENTIAL CENTER TO PROTECT THE EMPLOYEE OR OTHER**~~

~~INDIVIDUALS IN THE RESIDENTIAL CENTER THAT INVOLVE THE LEAST AMOUNT OF RESTRICTION REQUIRED TO PROVIDE THE NECESSARY PROTECTION~~ **AN ACTION TAKEN BY AN EMPLOYEE THAT COMPLIES WITH APPLICABLE STATE AND FEDERAL LAWS AND APPLICABLE DEPARTMENT POLICIES ON THE USE OF PHYSICAL INTERVENTION**.

(b) (1) In addition to any other reporting requirement of law, a person who believes that an individual with developmental disability has been abused promptly shall report the alleged abuse to the executive officer or administrative head of the licensee.

(2) The executive officer or administrative head shall report the alleged abuse to an appropriate law–enforcement agency.

(3) A report to the executive officer or administrative head:

(i) May be oral or written; and

(ii) Shall contain as much information as the reporter is able to provide.

(c) (1) The law–enforcement agency shall:

(i) Investigate thoroughly each report of an alleged abuse; and

(ii) Attempt to ensure the protection of the alleged victim.

(2) The investigation shall include:

(i) A determination of the nature, extent, and cause of the abuse;

(ii) The identity of the alleged abuser or abusers; and

(iii) Any other pertinent fact or matter.

(d) As soon as possible, but no later than 10 working days after the completion of the investigation, the law–enforcement agency shall submit a written report of its findings to the State's Attorney, the Director, the State–designated protection and advocacy agency, and the executive officer or administrative head of the licensee.

(e) The Administration shall maintain a central registry of abuse reports and their disposition and shall take appropriate remedial action.

(f) A person shall have the immunity from liability described under § 5–625 of the Courts and Judicial Proceedings Article for:

(1) Making a report under this section;

(2) Participating in an investigation arising out of a report under this section; or

(3) Participating in a judicial proceeding arising out of a report under this section.

10–705.

(a) (1) In this section, "abuse" means cruel or inhumane treatment that causes:

(i) Any physical injury; or

(ii) Any of the following kinds of sexual abuse:

1. A sexual act, as defined in § 3–301 of the Criminal Law Article.

2. Sexual contact, as defined in § 3–301 of the Criminal Law Article.

3. Vaginal intercourse, as defined in § 3–301 of the Criminal Law Article.

(2) In this section, "abuse" does not include**:**

(I) **[**the**]** **THE** performance of an accepted medical procedure that a physician orders in a manner that is consistent with the provisions of this subtitle**; OR**

(II) ~~**APPROPRIATE ACTIONS TAKEN BY AN EMPLOYEE OF A STATE FACILITY TO PROTECT THE EMPLOYEE OR OTHER INDIVIDUALS IN THE FACILITY THAT INVOLVE THE LEAST AMOUNT OF RESTRICTION REQUIRED TO PROVIDE THE NECESSARY PROTECTION**~~ **AN ACTION TAKEN BY AN EMPLOYEE THAT COMPLIES WITH APPLICABLE STATE AND FEDERAL LAWS AND APPLICABLE DEPARTMENT POLICIES ON THE USE OF PHYSICAL INTERVENTION**.

(b) (1) A person who believes that an individual in a facility has been abused shall promptly report the alleged abuse to:

(i) An appropriate law enforcement agency; or

(ii) The administrative head of the facility, who promptly shall report the alleged abuse to an appropriate law enforcement agency.

(2) A report:

(i) May be oral or written; and

(ii) Shall contain as much information as the reporter is able to provide.

(c) (1) The law enforcement agency shall:

(i) Investigate thoroughly each report of an alleged abuse; and

(ii) Attempt to insure the protection of the alleged victim.

(2) The investigation shall include:

(i) A determination of the nature, extent, and cause of the abuse, if any;

(ii) The identity of the alleged abuser; and

(iii) Any other pertinent fact or matter.

(d) As soon as possible, but no later than 10 working days after the completion of the investigation, the law enforcement agency shall submit a written report of its findings to the State's Attorney and the administrative head of the facility.

(e) A person shall have the immunity from liability described under § 5–626 of the Courts and Judicial Proceedings Article for:

(1) Making a report under this section;

(2) Participating in an investigation arising out of a report under this section; or

(3) Participating in a judicial proceeding arising out of a report under this section.

~~SECTION 2. AND BE IT FURTHER ENACTED, That the Department of Health and Mental Hygiene:~~

~~(1) (i) shall develop guidelines regarding appropriate methods of protection and restraint to be used by employees of State facilities under the Mental~~

~~Hygiene Administration and State residential centers under the Developmental Disabilities Administration, in consultation with employee organizations that represent the employees; and~~

~~(ii) shall provide training to the employees on implementation of the guidelines;~~

~~(2) on or before September 1, 2011, shall report to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2–1246 of the State Government Article, on the progress made in developing and implementing the guidelines; and~~

~~(3) on or before December 31, 2011, shall complete implementation of the guidelines.~~

SECTION ~~3.~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 457

(House Bill 346)

AN ACT concerning

Health – State Facilities and Residential Centers – Definition of Abuse ~~and Required Guidelines for Employees~~

FOR the purpose of altering certain definitions of "abuse" for purposes of certain reporting requirements by specifying that "abuse" does not include certain actions ~~taken by certain employees; requiring the Department of Health and Mental Hygiene to develop certain guidelines in consultation with certain employee organizations and to provide training on implementation of the guidelines to certain employees; requiring the Department to report to certain committees of the General Assembly on or before a certain date; requiring the Department to complete implementation of certain guidelines on or before a certain date~~ that comply with certain State and federal laws and certain Department *of Health and Mental Hygiene* policies; and generally relating to State facilities and residential centers.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 7–1005 and 10–705
Annotated Code of Maryland

(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

7–1005.

(a) (1) In this section, "abuse" means:

(i) Any physical injury that is inflicted willfully or with gross recklessness;

(ii) Inhumane treatment; or

(iii) Any of the following kinds of sexual abuse:

1. A sexual act, as defined in § 3–301 of the Criminal Law Article;

2. Sexual contact, as defined in § 3–301 of the Criminal Law Article; or

3. Vaginal intercourse, as defined in § 3–301 of the Criminal Law Article.

(2) In this section, "abuse" does not include**:**

(I) **[**the**]** **THE** performance of:

[(i)**]** **1.** An accepted medical procedure that a physician orders; **[**or**]**

[(ii)**]** **2.** An accepted behavioral procedure that a licensed psychologist or psychiatrist, as appropriate, orders**; OR**

(II) ~~**APPROPRIATE ACTIONS TAKEN BY AN EMPLOYEE OF A STATE RESIDENTIAL CENTER TO PROTECT THE EMPLOYEE OR OTHER INDIVIDUALS IN THE RESIDENTIAL CENTER THAT INVOLVE THE LEAST AMOUNT OF RESTRICTION REQUIRED TO PROVIDE THE NECESSARY PROTECTION**~~ **AN ACTION TAKEN BY AN EMPLOYEE THAT COMPLIES WITH APPLICABLE STATE AND FEDERAL LAWS AND APPLICABLE DEPARTMENT POLICIES ON THE USE OF PHYSICAL INTERVENTION**.

(b) (1) In addition to any other reporting requirement of law, a person who believes that an individual with developmental disability has been abused promptly shall report the alleged abuse to the executive officer or administrative head of the licensee.

(2) The executive officer or administrative head shall report the alleged abuse to an appropriate law–enforcement agency.

(3) A report to the executive officer or administrative head:

(i) May be oral or written; and

(ii) Shall contain as much information as the reporter is able to provide.

(c) (1) The law–enforcement agency shall:

(i) Investigate thoroughly each report of an alleged abuse; and

(ii) Attempt to ensure the protection of the alleged victim.

(2) The investigation shall include:

(i) A determination of the nature, extent, and cause of the abuse;

(ii) The identity of the alleged abuser or abusers; and

(iii) Any other pertinent fact or matter.

(d) As soon as possible, but no later than 10 working days after the completion of the investigation, the law–enforcement agency shall submit a written report of its findings to the State's Attorney, the Director, the State–designated protection and advocacy agency, and the executive officer or administrative head of the licensee.

(e) The Administration shall maintain a central registry of abuse reports and their disposition and shall take appropriate remedial action.

(f) A person shall have the immunity from liability described under § 5–625 of the Courts and Judicial Proceedings Article for:

(1) Making a report under this section;

(2) Participating in an investigation arising out of a report under this section; or

(3) Participating in a judicial proceeding arising out of a report under this section.

10–705.

(a) (1) In this section, "abuse" means cruel or inhumane treatment that causes:

(i) Any physical injury; or

(ii) Any of the following kinds of sexual abuse:

1. A sexual act, as defined in § 3–301 of the Criminal Law Article.

2. Sexual contact, as defined in § 3–301 of the Criminal Law Article.

3. Vaginal intercourse, as defined in § 3–301 of the Criminal Law Article.

(2) In this section, "abuse" does not include**:**

(I) **[**the**]** **THE** performance of an accepted medical procedure that a physician orders in a manner that is consistent with the provisions of this subtitle**; OR**

(II) ~~**APPROPRIATE ACTIONS TAKEN BY AN EMPLOYEE OF A STATE FACILITY TO PROTECT THE EMPLOYEE OR OTHER INDIVIDUALS IN THE FACILITY THAT INVOLVE THE LEAST AMOUNT OF RESTRICTION REQUIRED TO PROVIDE THE NECESSARY PROTECTION**~~ **AN ACTION TAKEN BY AN EMPLOYEE THAT COMPLIES WITH APPLICABLE STATE AND FEDERAL LAWS AND APPLICABLE DEPARTMENT POLICIES ON THE USE OF PHYSICAL INTERVENTION**.

(b) (1) A person who believes that an individual in a facility has been abused shall promptly report the alleged abuse to:

(i) An appropriate law enforcement agency; or

(ii) The administrative head of the facility, who promptly shall report the alleged abuse to an appropriate law enforcement agency.

(2) A report:

(i) May be oral or written; and

(ii) Shall contain as much information as the reporter is able to provide.

(c) (1) The law enforcement agency shall:

(i) Investigate thoroughly each report of an alleged abuse; and

(ii) Attempt to insure the protection of the alleged victim.

(2) The investigation shall include:

(i) A determination of the nature, extent, and cause of the abuse, if any;

(ii) The identity of the alleged abuser; and

(iii) Any other pertinent fact or matter.

(d) As soon as possible, but no later than 10 working days after the completion of the investigation, the law enforcement agency shall submit a written report of its findings to the State's Attorney and the administrative head of the facility.

(e) A person shall have the immunity from liability described under § 5–626 of the Courts and Judicial Proceedings Article for:

(1) Making a report under this section;

(2) Participating in an investigation arising out of a report under this section; or

(3) Participating in a judicial proceeding arising out of a report under this section.

~~SECTION 2. AND BE IT FURTHER ENACTED, That the Department of Health and Mental Hygiene:~~

~~(1) (i) shall develop guidelines regarding appropriate methods of protection and restraint to be used by employees of State facilities under the Mental Hygiene Administration and State residential centers under the Developmental Disabilities Administration, in consultation with employee organizations that represent the employees; and~~

~~(ii) shall provide training to the employees on implementation of the guidelines;~~

~~(2) on or before September 1, 2011, shall report to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2–1246 of the State Government Article, on the progress made in developing and implementing the guidelines; and~~

~~(3) on or before December 31, 2011, shall complete implementation of the guidelines.~~

SECTION ~~3.~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 458

(Senate Bill 392)

AN ACT concerning

Washington County – Water and Sewer Debt Reduction Fund – ~~Repeal~~ *Conococheague Industrial Pretreatment Facility*

FOR the purpose of repealing certain provisions of law relating to the Washington County Water and Sewer Debt Reduction Fund; requiring the County Commissioners of Washington County to ensure service of the debt for the ~~Washington County pretreatment facility~~ *Conococheague Industrial Pretreatment Facility* from the Washington County general fund and revenues generated by the pretreatment facility; prohibiting the County Commissioners from using the costs of debt service for the ~~Washington County pretreatment facility~~ *Conococheague Industrial Pretreatment Facility* as a factor in the establishment or adjustment of water and sewer rates in the County; and generally relating to the Washington County Water and Sewer Debt Reduction Fund and the debt service for the ~~Washington County pretreatment facility~~ *Conococheague Industrial Pretreatment Facility*.

BY repealing
The Public Local Laws of Washington County
Section 6–505
Article 22 – Public Local Laws of Maryland
(2007 Edition and October 2010 Supplement, as amended)

BY adding to
The Public Local Laws of Washington County
Section 6–505
Article 22 – Public Local Laws of Maryland

(2007 Edition and October 2010 Supplement, as amended)

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

Article 22 – Washington County

[6–505.

(a) There is a Washington County Water and Sewer Debt Reduction Fund.

(b) The Fund is a continuous, nonlapsing fund.

(c) (1) The County Commissioners shall annually appropriate $500,000 to the Fund.

(2) The appropriation shall be in addition to funds appropriated for any subsidy for Washington County water, sewer, and pretreatment facilities.

(3) The appropriation may not be construed to replace or reduce any existing subsidy for Washington County water, sewer, and pretreatment facilities.

(4) The amount of any reduction in any existing subsidy for Washington County water, sewer, and pretreatment facilities that reduces the existing subsidy below the subsidy for Fiscal Year 2000 shall be appropriated to the Fund.

(d) All profits of the Conococheague Industrial Pretreatment Facility shall be deposited in the Fund.**]**

6–505.

(A) THE COUNTY COMMISSIONERS SHALL ENSURE SERVICE OF THE DEBT FOR THE ~~WASHINGTON COUNTY PRETREATMENT FACILITY~~ *CONOCOCHEAGUE INDUSTRIAL PRETREATMENT FACILITY* FROM THE GENERAL FUND OF THE COUNTY AND FROM THE REVENUES GENERATED BY THE PRETREATMENT FACILITY.

(B) THE COUNTY COMMISSIONERS MAY NOT USE THE COSTS OF DEBT SERVICE FOR THE ~~WASHINGTON COUNTY PRETREATMENT FACILITY~~ *CONOCOCHEAGUE INDUSTRIAL PRETREATMENT FACILITY* AS A FACTOR IN THE ESTABLISHMENT OR ADJUSTMENT OF WATER AND SEWER RATES IN THE COUNTY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 459

(Senate Bill 397)

AN ACT concerning

Task Force on the ~~Method of Selecting~~ Membership and Operation of the Baltimore County Board of Education

FOR the purpose of establishing the Task Force on the ~~Method of Selecting~~ Membership and Operation of the Baltimore County Board of Education; providing for the chairs and staff for the Task Force; prohibiting a member of the Task Force from receiving certain compensation but entitling members to reimbursement for certain expenses; requiring the Task Force to make certain recommendations, including recommendations regarding the method of selecting the Baltimore County Board of Education; requiring the Task Force to hold a certain number of public meetings *in certain locations* that allow certain persons to testify about certain issues; requiring the Task Force to make a certain report to certain persons on *or* before a certain date; providing for the termination of this Act; and generally relating to the Task Force on the ~~Method of Selecting~~ Membership and Operation of the Baltimore County Board of Education.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That:

(a) There is a Task Force on the ~~Method of Selecting~~ Membership and Operation of the Baltimore County Board of Education.

(b) The Task Force consists of the following ~~12~~ 13 members:

(1) the Chair of the Baltimore County Senate Delegation, or the Chair's designee;

(2) three members of the Senate of Maryland who represent Baltimore County, appointed by the Chair of the Baltimore County Senate Delegation;

(3) the Chair of the Baltimore County House Delegation, or the Chair's designee;

(4) three members of the House of Delegates who represent Baltimore County, appointed by the Chair of the Baltimore County House Delegation;

(5) three members, appointed by the Baltimore County Executive; ~~and~~

(6) one member, appointed by the Chair of the Baltimore County Council; and

(7) one representative of the Maryland Association of Boards of Education, appointed by the Association.

(c) The Chair of the Baltimore County Senate Delegation and the Chair of the Baltimore County House Delegation shall jointly designate the cochairs of the Task Force from among the Senator and Delegate members of the Task Force.

(d) The Office of the Baltimore County Executive shall 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 make recommendations on the following issues:

(1) the ideal size of the Baltimore County Board of Education;

(2) the most appropriate method of selecting members of the Baltimore County Board of Education, including consideration of the following methods:

(i) all elected;

(ii) gubernatorial appointments;

(iii) Baltimore County executive appointments;

(iv) partially elected and appointed;

(v) county nominating commission; and

(vi) appointments with additional approval; ~~and~~

(3) the appropriate phase–in period for changes to the existing selection process; and

(4) improving the transparency and professionalism of the Baltimore County Board of Education.

(g) (1) The Task Force shall hold at least ~~one public meeting that allows~~ *three public meetings in geographically diverse areas of Baltimore County that allow* members of the general public and stakeholder organizations to testify on issues being studied by the Task Force.

(2) The Task Force shall extend an invitation to representatives from the following stakeholder organizations to testify at a public meeting:

(i) the Teachers Association of Baltimore County;

(ii) the Council of Administrative and Supervisory Employees of Baltimore County;

(iii) the Education Support Professionals of Baltimore County;

(iv) the Baltimore County Chamber of Commerce;

(v) the ~~Parent Teacher Association~~ PTA Council of Baltimore County;

(vi) the Baltimore County Student Councils;

(vii) the Baltimore County chapter of the NAACP;

(viii) the Baltimore County League of Women Voters;

(ix) the Baltimore County Board of Education; and

(x) the Baltimore County Superintendent of Schools.

(h) On or before October 1, 2011, the Task Force shall report its findings and recommendations to the Governor, and, in accordance with § 2–1246 of the State Government Article, the Baltimore County Senate and House Delegations, the State Superintendent of Schools, the Baltimore County Executive, the Baltimore County Council, the Baltimore County Superintendent of Schools, and the Baltimore County Board of Education.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011. It shall remain effective for a period of 6 months and, at the end of December 31, 2011, 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 19, 2011.

Chapter 460

(House Bill 398)

AN ACT concerning

Task Force on the ~~Method of Selecting~~ *Membership and Operation of* the Baltimore County Board of Education

FOR the purpose of establishing the Task Force on the ~~Method of Selecting~~ *Membership and Operation of* the Baltimore County Board of Education; providing for the chairs and staff for the Task Force; prohibiting a member of the Task Force from receiving certain compensation but entitling members to reimbursement for certain expenses; requiring the Task Force to make certain recommendations*, including recommendations* regarding the method of selecting the Baltimore County Board of Education; requiring the Task Force to hold a certain number of public meetings in certain locations that allow certain persons to testify about certain issues; requiring the Task Force to make a certain report to certain persons on or before a certain date; providing for the termination of this Act; and generally relating to the Task Force on the ~~Method of Selecting~~ *Membership and Operation of* the Baltimore County Board of Education.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That:

(a) There is a Task Force on the ~~Method of Selecting~~ *Membership and Operation of* the Baltimore County Board of Education.

(b) The Task Force consists of the following ~~12~~ *13* members:

(1) the Chair of the Baltimore County Senate Delegation, or the Chair's designee;

(2) three members of the Senate of Maryland *who represent Baltimore County*, appointed by the Chair of the Baltimore County Senate Delegation;

(3) the Chair of the Baltimore County House Delegation, or the Chair's designee;

(4) three members of the House of Delegates *who represent Baltimore County*, appointed by the Chair of the Baltimore County House Delegation;

(5) three members, appointed by the Baltimore County Executive; ~~and~~

(6) one member, appointed by the Chair of the Baltimore County Council*; and*

(7) one representative of the Maryland Association of Boards of Education, appointed by the Association.

(c) The Chair of the Baltimore County Senate Delegation and the Chair of the Baltimore County House Delegation shall jointly designate the cochairs of the Task Force from among the Senator and Delegate members of the Task Force.

(d) The Office of the Baltimore County Executive shall 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 make recommendations on the following issues:

(1) the ideal size of the Baltimore County Board of Education;

(2) the most appropriate method of selecting members of the Baltimore County Board of Education, including consideration of the following methods:

(i) all elected;

(ii) gubernatorial appointments;

(iii) Baltimore County executive appointments;

(iv) partially elected and appointed;

(v) county nominating commission; and

(vi) appointments with additional approval; ~~and~~

(3) the appropriate phase–in period for changes to the existing selection process*; and*

(4) improving the transparency and professionalism of the Baltimore County Board of Education.

(g) (1) The Task Force shall hold at least ~~one public meeting that allows~~ three public meetings in geographically diverse areas of Baltimore County that allow

members of the general public and stakeholder organizations to testify on issues being studied by the Task Force.

(2) The Task Force shall extend an invitation to representatives from the following stakeholder organizations to testify at a public meeting:

(i) the Teachers Association of Baltimore County;

(ii) the Council of Administrative and Supervisory Employees of Baltimore County;

(iii) the Education Support Professionals of Baltimore County;

(iv) the Baltimore County Chamber of Commerce;

(v) the ~~Parent-Teacher Association~~ *PTA* Council of Baltimore County;

(vi) the Baltimore County Student Councils;

(vii) the Baltimore County chapter of the NAACP;

(viii) the Baltimore County League of Women Voters;

(ix) the Baltimore County Board of Education; and

(x) the Baltimore County Superintendent of Schools.

(h) On or before October 1, 2011, the Task Force shall report its findings and recommendations to the Governor, the State Superintendent of Schools, the Baltimore County Executive, the Baltimore County Council, the Baltimore County Superintendent of Schools, the Baltimore County Board of Education, and, in accordance with § 2–1246 of the State Government Article, the Baltimore County Senate and House Delegations.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011. It shall remain effective for a period of 6 months and, at the end of December 31, 2011, 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 19, 2011.

Chapter 461

(Senate Bill 398)

AN ACT concerning

Sales and Use Tax – Sale of Electricity Generated by Solar Energy and Residential Wind Energy Equipment – Exemption

FOR the purpose of providing an exemption from the sales and use tax for the sale of electricity generated by certain solar energy equipment or certain residential wind energy equipment for certain purposes; and generally relating to a sales and use tax exemption for the sale of certain electricity.

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 11–207(a)
Annotated Code of Maryland
(2010 Replacement Volume)

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

Article – Tax – General

11–207.

(a) The sales and use tax does not apply to:

(1) a sale of electricity, steam, or artificial or natural gas for use in residential condominiums;

(2) a sale of electricity, steam, or artificial or natural gas that is delivered under a residential or domestic rate schedule on file with the Public Service Commission;

(3) a sale of coal, firewood, heating oil, or propane gas or similar liquefied gas for use in residential property that contains not more than 4 units, cooperative housing, condominiums, or other similar residential living arrangements; **[**or**]**

(4) a sale of electricity through 3 or more bulk meters for use in a nonprofit planned retirement community of more than 2,000 housing cooperative or condominium units if:

(i) ownership of units is restricted by age;

(ii) any unit is served by an individual meter; and

(iii) on or before July 1, 1979, at least 3 bulk meters served the community**; OR**

(5) A SALE OF ELECTRICITY GENERATED BY SOLAR ENERGY EQUIPMENT OR RESIDENTIAL WIND ENERGY EQUIPMENT, AS DEFINED UNDER § 11–230 OF THIS SUBTITLE, FOR USE IN RESIDENTIAL PROPERTY ~~OR FOR SUPPLY TO THE ELECTRIC GRID~~ OWNED BY AN ELIGIBLE CUSTOMER–GENERATOR UNDER § 7–306 OF THE PUBLIC UTILITIES ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 462

(House Bill 502)

AN ACT concerning

Sales and Use Tax – Sale of Electricity Generated by Solar Energy and Residential Wind Energy Equipment – Exemption

FOR the purpose of providing an exemption from the sales and use tax for the sale of electricity generated by certain solar energy equipment or certain residential wind energy equipment for certain purposes; and generally relating to a sales and use tax exemption for the sale of certain electricity.

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 11–207(a)
Annotated Code of Maryland
(2010 Replacement Volume)

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

Article – Tax – General

11–207.

(a) The sales and use tax does not apply to:

(1) a sale of electricity, steam, or artificial or natural gas for use in residential condominiums;

(2) a sale of electricity, steam, or artificial or natural gas that is delivered under a residential or domestic rate schedule on file with the Public Service Commission;

(3) a sale of coal, firewood, heating oil, or propane gas or similar liquefied gas for use in residential property that contains not more than 4 units, cooperative housing, condominiums, or other similar residential living arrangements; **[**or**]**

(4) a sale of electricity through 3 or more bulk meters for use in a nonprofit planned retirement community of more than 2,000 housing cooperative or condominium units if:

(i) ownership of units is restricted by age;

(ii) any unit is served by an individual meter; and

(iii) on or before July 1, 1979, at least 3 bulk meters served the community**; OR**

(5) A SALE OF ELECTRICITY GENERATED BY SOLAR ENERGY EQUIPMENT OR RESIDENTIAL WIND ENERGY EQUIPMENT, AS DEFINED UNDER § 11–230 OF THIS SUBTITLE, FOR USE IN RESIDENTIAL PROPERTY ~~OR FOR SUPPLY TO THE ELECTRIC GRID~~ OWNED BY AN ELIGIBLE CUSTOMER–GENERATOR UNDER § 7–306 OF THE PUBLIC UTILITIES ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 463

(Senate Bill 400)

AN ACT concerning

Department of Health and Mental Hygiene – Certificates of Foreign Birth – IH–3 Visa

FOR the purpose of requiring the Secretary of Health and Mental Hygiene, on request, to prepare and register a certificate of foreign birth for certain individuals who have been granted an IH–3 visa by the United States Immigration and Naturalization Service; requiring the certificate to be established on receipt of certain documents, including proof of IH–3 visa status; making stylistic changes; and generally relating to certificates of foreign birth prepared and registered by the Department of Health and Mental Hygiene.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 4–211(i)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

4–211.

(i) (1) The Secretary shall, **[**upon**]** **ON** request, prepare and register a certificate in this State for **[**a person**]** **AN INDIVIDUAL** born in a foreign country and who was adopted:

(i) Through a court of competent jurisdiction in this State; or

(ii) 1. Under the laws of a jurisdiction or country other than the United States and has been granted an IR–3 **OR IH–3** visa by the United States Immigration and Naturalization Service under the Immigration and Nationality Act; and

2. By an adopting parent who is a resident of this State.

(2) Except as provided in paragraph (3) of this subsection, the certificate shall be established **[**upon**]** **ON** receipt of:

(i) A certificate of adoption from the court decreeing the adoption;

(ii) Proof of the date and place of the child's birth; and

(iii) A request from the court, the adopting parents, or the adopted person if 18 years of age or over that the certificate be prepared.

(3) If the child was adopted under the laws of a jurisdiction or country other than the United States and has been granted an IR–3 **OR IH–3** visa by the United States Immigration and Naturalization Service under the Immigration and Nationality Act, the certificate shall be established **[**upon**]** **ON** receipt of:

(i) An official copy of the decree from the jurisdiction or country in which the child was adopted;

(ii) A certified translation of the foreign adoption decree;

(iii) Proof of the date and place of the child's birth;

(iv) Proof of IR–3 **OR IH–3** visa status;

(v) A request from the court, the adopting parents, or the adopted person if 18 years of age or over that the certificate be prepared; and

(vi) Proof that the adopting parent is a resident of this State.

(4) The certificate shall be labeled "Certificate of Foreign Birth" and shall show the actual country of birth.

(5) A statement shall also be included on the certificate indicating that it is not evidence of United States citizenship for the child for whom it is issued.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 464

(House Bill 1180)

AN ACT concerning

Department of Health and Mental Hygiene – Certificates of Foreign Birth – IH–3 Visa

FOR the purpose of requiring the Secretary of Health and Mental Hygiene, on request, to prepare and register a certificate of foreign birth for certain individuals who have been granted an IH–3 visa by the United States Immigration and Naturalization Service; requiring the certificate to be established on receipt of certain documents, including proof of IH–3 visa status; making stylistic

changes; and generally relating to certificates of foreign birth prepared and registered by the Department of Health and Mental Hygiene.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 4–211(i)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

4–211.

(i) (1) The Secretary shall, **[**upon**]** **ON** request, prepare and register a certificate in this State for **[**a person**]** **AN INDIVIDUAL** born in a foreign country and who was adopted:

(i) Through a court of competent jurisdiction in this State; or

(ii) 1. Under the laws of a jurisdiction or country other than the United States and has been granted an IR–3 **OR IH–3** visa by the United States Immigration and Naturalization Service under the Immigration and Nationality Act; and

2. By an adopting parent who is a resident of this State.

(2) Except as provided in paragraph (3) of this subsection, the certificate shall be established **[**upon**]** **ON** receipt of:

(i) A certificate of adoption from the court decreeing the adoption;

(ii) Proof of the date and place of the child's birth; and

(iii) A request from the court, the adopting parents, or the adopted person if 18 years of age or over that the certificate be prepared.

(3) If the child was adopted under the laws of a jurisdiction or country other than the United States and has been granted an IR–3 **OR IH–3** visa by the United States Immigration and Naturalization Service under the Immigration and Nationality Act, the certificate shall be established **[**upon**]** **ON** receipt of:

(i) An official copy of the decree from the jurisdiction or country in which the child was adopted;

(ii) A certified translation of the foreign adoption decree;

(iii) Proof of the date and place of the child's birth;

(iv) Proof of IR–3 **OR IH–3** visa status;

(v) A request from the court, the adopting parents, or the adopted person if 18 years of age or over that the certificate be prepared; and

(vi) Proof that the adopting parent is a resident of this State.

(4) The certificate shall be labeled "Certificate of Foreign Birth" and shall show the actual country of birth.

(5) A statement shall also be included on the certificate indicating that it is not evidence of United States citizenship for the child for whom it is issued.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 465

(Senate Bill 402)

AN ACT concerning

Motor Carrier Companies – Local Public Transportation Systems – Exemption from Motor Carrier Permit Requirement

FOR the purpose of providing that a motor carrier permit is not required for a local public transportation system established under a law enacted by the local governing body of a county or municipal corporation; providing that a motor carrier permit is not required for a motor vehicle used by a privately owned transportation company exclusively to provide transportation system services under a certain contract; requiring a certain privately owned transportation company to obtain a motor carrier permit for certain motor vehicles under certain circumstances; repealing certain exemptions for particular counties; and generally relating to motor carriers and motor carrier permits.

BY repealing and reenacting, with amendments,

Article – Public Utilities
Section 9–201 *and 9–207*
Annotated Code of Maryland
(2010 Replacement Volume)

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

Article – Public Utilities

9–201.

(a) Except as provided in subsection (b) of this section, a motor carrier permit is required for a passenger motor vehicle used in the transportation of persons for hire.

(b) A motor carrier permit is not required for:

(1) a motor vehicle used exclusively for the transportation of pupils to and from public or private schools;

(2) a motor vehicle operated for a period of not more than 3 months in any registration year in the transportation of persons employed at a cannery located in a county;

(3) taxicabs;

(4) public transportation for hire authorized to operate on the boardwalk in Ocean City;

(5) a vanpool operation as defined in § 11–175.1 of the Transportation Article;

[(6) the public transportation system for Washington County established under § 1–603 of the Code of Public Local Laws of Washington County, Article 22 of the Code of Public Local Laws of Maryland;

(7) the public transportation system for Allegany County established under § 23–24 of the Code of Public Local Laws of Allegany County, Article 1 of the Code of Public Local Laws of Maryland;

(8) the public transportation system for Frederick County established by the Board of County Commissioners for Frederick County;**]**

(6) A LOCAL PUBLIC TRANSPORTATION SYSTEM ESTABLISHED UNDER A LAW ENACTED BY THE LOCAL GOVERNING BODY OF A COUNTY OR MUNICIPAL CORPORATION; ~~or~~

[(9)**] (7)** **SUBJECT TO SUBSECTION (C) OF THIS SECTION, A MOTOR VEHICLE USED BY A PRIVATELY OWNED TRANSPORTATION COMPANY EXCLUSIVELY TO PROVIDE TRANSPORTATION SYSTEM SERVICES UNDER A CONTRACT WITH THE GOVERNING BODY OF A COUNTY OR MUNICIPAL CORPORATION OR WITH A UNIT OF STATE GOVERNMENT; OR**

(8) shuttle bus service operated by the University of Maryland, College Park for students enrolled at the University of Maryland, College Park and, in exchange for payment by the municipal corporation in which the University of Maryland, College Park is located, transportation service on the shuttle bus to residents of the municipal corporation.

(C) A PRIVATELY OWNED TRANSPORTATION COMPANY THAT PROVIDES TRANSPORTATION SYSTEM SERVICES UNDER A CONTRACT WITH THE GOVERNING BODY OF A COUNTY OR MUNICIPAL CORPORATION OR WITH A UNIT OF STATE GOVERNMENT SHALL OBTAIN A MOTOR CARRIER PERMIT FOR MOTOR VEHICLES THAT THE COMPANY DOES NOT USE EXCLUSIVELY TO PROVIDE TRANSPORTATION SYSTEM SERVICES UNDER A CONTRACT WITH THE GOVERNING BODY OF A COUNTY OR MUNICIPAL CORPORATION OR WITH A UNIT OF STATE GOVERNMENT.

~~(c)~~ **(D)** The public duties of a common carrier may not be imposed on a person with respect to a vehicle for which a motor carrier permit is required under this section, if the vehicle is not actually engaged in public transportation.

9–207.

(a) This section applies to a motor carrier providing transportation for hire by or through contract with a public authority, or a federal, State, district, or municipal transportation agency.

(b) A motor carrier subject to this section:

(1) is also subject to §§ 5–101 and 5–304 of this article; and

(2) ***EXCEPT AS PROVIDED IN § 9–201(B)(7) OF THIS SUBTITLE,*** *shall obtain a motor carrier permit under § 9–201 of this subtitle.*

(c) A motor carrier permit issued to a motor carrier subject to this section may be:

(1) subject to conditions under § 9–203 of this subtitle; and

(2) suspended, revoked, or subsequently denied under § 9–204 of this subtitle.

(d) Except as provided in this section, the provisions of this division do not apply to a motor carrier subject to this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 466

(Senate Bill 410)

AN ACT concerning

State Highway Administration – Unauthorized Signs on Highway Rights–of–Way

FOR the purpose of providing for original jurisdiction of the District Court for certain actions; prohibiting a person without authorization from the State Highway Administration from placing or maintaining a sign within the right–of–way of a State highway; providing that a sign placed or maintained in violation of this Act may be removed by the Administration, a law enforcement officer, or certain local governments; authorizing the Administration or certain local governments to collect certain civil penalties and to seek an injunction against certain violations of this Act; providing for civil penalties for certain violations of this Act; providing that certain provisions of this Act may be enforced only by issuance of a warning for a certain period of time; requiring the Administration and certain local governments to retain civil penalties collected under certain provisions of this Act; providing that the presence of a sign within a State highway right–of–way is evidence of certain facts; repealing a certain provision relating to when certain political signs may be erected; *repealing a certain obsolete reporting requirement;* and generally relating to the placement and maintenance of unauthorized signs on State highway rights–of–way.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 4–401(16) and (17)
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

BY adding to
Article – Courts and Judicial Proceedings
Section 4–401(18)

Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Transportation
Section 8–605 and 8–714
Annotated Code of Maryland
(2008 Replacement Volume and 2010 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

4–401.

Except as provided in § 4–402 of this subtitle, and subject to the venue provisions of Title 6 of this article, the District Court has exclusive original civil jurisdiction in:

(16) A proceeding for a replacement motor vehicle under § 14–1502(c)(1)(i) of the Commercial Law Article; **[**and**]**

(17) An action for damages for a dishonored check or other instrument under Title 15, Subtitle 8 of the Commercial Law Article, regardless of the amount in controversy**; AND**

(18) A CIVIL ACTION FOR AN INJUNCTION OR FOR A CIVIL PENALTY FOR A VIOLATION OF § 8–605(F) OF THE TRANSPORTATION ARTICLE.

Article – Transportation

8–605.

(a) Along any State highway, the Administration may place signs, signals, or markers to inform the traveling public of directions, distances, danger, or other information.

(b) (1) Except as provided in paragraph (2) of this subsection, the Administration shall assume the full cost of installing and maintaining traffic signals required at the intersection of a State highway with any municipal street or highway or at any other place along a State highway that is within the limits of any municipal corporation.

(2) This subsection does not apply where the traffic signal primarily will serve traffic generated by a private development, such as an apartment complex, shopping center, industrial plant, or drive–in theater.

(c) Signs, signals, and markers placed along any interstate highway shall conform to all applicable federal standards.

(d) (1) For the purpose of providing information to the driving public on the availability of gas, food, lodging, camping, or attractions, the Administration may place along State controlled access highways specific service signs, subject to the applicable federal standards.

(2) (i) The Administration shall adopt regulations governing specific service signs.

(ii) The regulations shall conform to all applicable federal standards, and shall govern the type, lighting, size, number, and location of specific service signs.

(iii) The Administration shall consult with:

1. The Maryland Travel Council prior to drafting regulations; and

2. The Department of Business and Economic Development and the appropriate local government officials concerning the placement of specific service signs under this subsection.

(3) The business or attraction identified in a specific service sign shall pay for the full administrative and operational cost of procurement, installation, and maintenance of the sign.

~~(4) The Administration shall report to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly on or before January 9, 2002 on the installation of service signs along State controlled access highways under this subsection.~~

(e) Any person who removes, damages, or defaces any sign, signal, or marker placed under this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $100.

(F) (1) EXCEPT FOR A SIGN PLACED OR MAINTAINED BY THE ADMINISTRATION OR WITH THE AUTHORIZATION OF THE ADMINISTRATION, A PERSON MAY NOT PLACE OR MAINTAIN A SIGN OR DIRECT, CONSENT TO, OR APPROVE THE PLACEMENT OR MAINTENANCE OF A SIGN, WITHIN A STATE HIGHWAY RIGHT–OF–WAY.

(2) (I) WITHOUT RESORT TO LEGAL PROCEEDINGS, A SIGN PLACED OR MAINTAINED IN VIOLATION OF THIS SUBSECTION MAY BE REMOVED

AND DESTROYED BY THE ADMINISTRATION, A LAW ENFORCEMENT OFFICER, OR THE GOVERNMENT OF THE COUNTY OR MUNICIPAL CORPORATION IN WHICH THE SIGN WAS LOCATED.

(II) THE ADMINISTRATION OR THE GOVERNMENT OF THE COUNTY OR MUNICIPAL CORPORATION THAT REMOVED OR DESTROYED THE SIGN MAY, IF THE SIGN IS A COMMERCIAL SIGN:

1. COLLECT THE CIVIL PENALTY PROVIDED FOR UNDER PARAGRAPH (3) OF THIS SUBSECTION FROM THE PERSON THAT PLACED OR MAINTAINED THE COMMERCIAL SIGN; AND

2. SEEK AN INJUNCTION AGAINST FURTHER VIOLATIONS OF THIS SUBSECTION IN A CIVIL ACTION IN THE DISTRICT COURT.

(3) (I) A PERSON THAT PLACES OR MAINTAINS A COMMERCIAL SIGN WITHIN THE RIGHT–OF–WAY OF A STATE HIGHWAY IN VIOLATION OF THIS SUBSECTION IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING $25 PER COMMERCIAL SIGN, WHICH, IF NOT PAID AFTER BEING CITED AND ASSESSED BY THE ADMINISTRATION, COUNTY, OR MUNICIPAL CORPORATION, MAY BE RECOVERED IN A CIVIL ACTION IN THE DISTRICT COURT BY THE ADMINISTRATION OR BY THE COUNTY OR MUNICIPAL CORPORATION IN WHICH THE COMMERCIAL SIGN WAS LOCATED.

(II) AS TO A COUNTY OR A MUNICIPAL CORPORATION IN WHICH THE COMMERCIAL SIGN WAS LOCATED, THE CIVIL ACTION IN THE DISTRICT COURT MAY BE BROUGHT BY THE COUNTY ATTORNEY OR, IF THE COMMERCIAL SIGN WAS LOCATED IN A MUNICIPAL CORPORATION, THE MUNICIPAL CORPORATION ATTORNEY.

(III) THE ADMINISTRATION, A COUNTY, OR A MUNICIPAL CORPORATION:

1. MAY ENFORCE THIS SUBSECTION ONLY BY THE ISSUANCE OF A WARNING FOR THE FIRST 3 MONTHS AFTER INITIATING A SIGN REMOVAL PROGRAM; AND

2. SHALL ENFORCE THIS SUBSECTION ON A VIEWPOINT AND CONTENT NEUTRAL BASIS.

(4) FOR THE PURPOSES OF ENFORCING THIS SUBSECTION, THE PRESENCE OF A SIGN WITHIN A STATE HIGHWAY RIGHT–OF–WAY SHALL BE EVIDENCE THAT THE SIGN WAS PLACED OR MAINTAINED AT THE DIRECTION OF, OR WITH THE CONSENT AND APPROVAL OF, THE PERSON OR THE PERSON'S

AGENT OR REPRESENTATIVE IN THE STATE WHOSE NAME, BUSINESS, LOCATION, OR PRODUCT REPRESENTATION IS DISPLAYED ON THE SIGN.

(5) THE ADMINISTRATION, A COUNTY, OR A MUNICIPAL CORPORATION SHALL RETAIN ANY CIVIL PENALTIES THAT IT COLLECTS UNDER THIS SUBSECTION.

8–714.

(a) Whether or not the person must be licensed under Part II of this subtitle, a person may not erect or maintain any outdoor sign outside the limits of any municipal corporation and within 500 feet of a State highway, unless the person has a permit issued by the Administration for that sign.

(b) A permit is not required under this section to erect or maintain any outdoor sign:

(1) That is used only to advertise the sale or lease of the property on which it is located;

(2) That is on or within 100 feet of any building or the entrance to any building in which the business advertised is carried on;

(3) That is used only to advertise:

(i) A Maryland historic shrine or institution; or

(ii) A county or church fair held in this State;

(4) That advertises a candidate or the support or defeat of any proposition. This sign:

(i) Shall comply with all provisions of the Election Law Article;

(ii) Shall comply with public safety requirements as set forth in § 8–716 of this subtitle;

(iii) Shall conform to all local restrictions and zoning requirements which are more restrictive than this section**[**, including any applicable time limitations. In the absence of an applicable time limitation, the sign:

1. May not be erected more than 45 days prior to the election; and

2. Shall be removed within 15 days after the general election, or within 15 days after the primary election if the candidate is not a candidate in the general election**]**; and

(iv) Shall conform to the restrictions and requirements of Parts IV and V of this subtitle; or

(5) That is only a temporary outdoor sign that advertises the sale in season of fresh produce on property that adjoins a State highway by a person who has grown the fresh produce and who owns, rents, or has permission to sell on the property. This sign:

(i) Shall comply with public safety requirements as set forth in § 8–716 of this subtitle;

(ii) Shall conform to all local restrictions and zoning requirements that are more restrictive than this section, including any applicable time limitation;

(iii) Shall conform to the restrictions and requirements of Parts IV and V of this subtitle; and

(iv) Shall be removed or covered when produce is no longer for sale.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 467

(House Bill 289)

AN ACT concerning

State Highway Administration – Unauthorized Signs on Highway Rights–of–Way

FOR the purpose of providing for original jurisdiction of the District Court for certain actions; prohibiting a person without authorization from the State Highway Administration from placing or maintaining a sign within the right–of–way of a State highway; providing that a sign placed or maintained in violation of this Act may be removed by the Administration, a law enforcement officer, or certain local governments; authorizing the Administration or certain local governments

to collect certain civil penalties and to seek an injunction against certain violations of this Act; providing for civil penalties for certain violations of this Act; providing that certain provisions of this Act may be enforced only by issuance of a warning for a certain period of time; requiring the Administration and certain local governments to retain civil penalties collected under certain provisions of this Act; providing that the presence of a sign within a State highway right–of–way is evidence of certain facts; repealing a certain provision relating to when certain political signs may be erected; repealing a certain obsolete reporting requirement; and generally relating to the placement and maintenance of unauthorized signs on State highway rights–of–way.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 4–401(16) and (17)
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

BY adding to
Article – Courts and Judicial Proceedings
Section 4–401(18)
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Transportation
Section 8–605 and 8–714
Annotated Code of Maryland
(2008 Replacement Volume and 2010 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

4–401.

Except as provided in § 4–402 of this subtitle, and subject to the venue provisions of Title 6 of this article, the District Court has exclusive original civil jurisdiction in:

(16) A proceeding for a replacement motor vehicle under § 14–1502(c)(1)(i) of the Commercial Law Article; **[**and**]**

(17) An action for damages for a dishonored check or other instrument under Title 15, Subtitle 8 of the Commercial Law Article, regardless of the amount in controversy**; AND**

(18) A CIVIL ACTION FOR AN INJUNCTION OR FOR A CIVIL PENALTY FOR A VIOLATION OF § 8–605(F) OF THE TRANSPORTATION ARTICLE.

Article – Transportation

8–605.

(a) Along any State highway, the Administration may place signs, signals, or markers to inform the traveling public of directions, distances, danger, or other information.

(b) (1) Except as provided in paragraph (2) of this subsection, the Administration shall assume the full cost of installing and maintaining traffic signals required at the intersection of a State highway with any municipal street or highway or at any other place along a State highway that is within the limits of any municipal corporation.

(2) This subsection does not apply where the traffic signal primarily will serve traffic generated by a private development, such as an apartment complex, shopping center, industrial plant, or drive–in theater.

(c) Signs, signals, and markers placed along any interstate highway shall conform to all applicable federal standards.

(d) (1) For the purpose of providing information to the driving public on the availability of gas, food, lodging, camping, or attractions, the Administration may place along State controlled access highways specific service signs, subject to the applicable federal standards.

(2) (i) The Administration shall adopt regulations governing specific service signs.

(ii) The regulations shall conform to all applicable federal standards, and shall govern the type, lighting, size, number, and location of specific service signs.

(iii) The Administration shall consult with:

1. The Maryland Travel Council prior to drafting regulations; and

2. The Department of Business and Economic Development and the appropriate local government officials concerning the placement of specific service signs under this subsection.

(3) The business or attraction identified in a specific service sign shall pay for the full administrative and operational cost of procurement, installation, and maintenance of the sign.

~~(4) The Administration shall report to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly on or before January 9, 2002 on the installation of service signs along State controlled access highways under this subsection.~~

(e) Any person who removes, damages, or defaces any sign, signal, or marker placed under this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $100.

(F) (1) EXCEPT FOR A SIGN PLACED OR MAINTAINED BY THE ADMINISTRATION OR WITH THE AUTHORIZATION OF THE ADMINISTRATION, A PERSON MAY NOT PLACE OR MAINTAIN A SIGN OR DIRECT, CONSENT TO, OR APPROVE THE PLACEMENT OR MAINTENANCE OF A SIGN, WITHIN A STATE HIGHWAY RIGHT–OF–WAY.

(2) (I) WITHOUT RESORT TO LEGAL PROCEEDINGS, A SIGN PLACED OR MAINTAINED IN VIOLATION OF THIS SUBSECTION MAY BE REMOVED AND DESTROYED BY THE ADMINISTRATION, A LAW ENFORCEMENT OFFICER, OR THE GOVERNMENT OF THE COUNTY OR MUNICIPAL CORPORATION IN WHICH THE SIGN WAS LOCATED.

(II) THE ADMINISTRATION OR THE GOVERNMENT OF THE COUNTY OR MUNICIPAL CORPORATION THAT REMOVED OR DESTROYED THE SIGN MAY, IF THE SIGN IS A COMMERCIAL SIGN:

1. COLLECT THE CIVIL PENALTY PROVIDED FOR UNDER PARAGRAPH (3) OF THIS SUBSECTION FROM THE PERSON THAT PLACED OR MAINTAINED THE COMMERCIAL SIGN; AND

2. SEEK AN INJUNCTION AGAINST FURTHER VIOLATIONS OF THIS SUBSECTION IN A CIVIL ACTION IN THE DISTRICT COURT.

(3) (I) A PERSON THAT PLACES OR MAINTAINS A COMMERCIAL SIGN WITHIN THE RIGHT–OF–WAY OF A STATE HIGHWAY IN VIOLATION OF THIS SUBSECTION IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING $25 PER COMMERCIAL SIGN, WHICH, IF NOT PAID AFTER BEING CITED AND ASSESSED BY THE ADMINISTRATION, COUNTY, OR MUNICIPAL CORPORATION, MAY BE RECOVERED IN A CIVIL ACTION IN THE DISTRICT COURT BY THE ADMINISTRATION OR BY THE COUNTY OR MUNICIPAL CORPORATION IN WHICH THE COMMERCIAL SIGN WAS LOCATED.

(II) AS TO A COUNTY OR A MUNICIPAL CORPORATION IN WHICH THE COMMERCIAL SIGN WAS LOCATED, THE CIVIL ACTION IN THE DISTRICT COURT MAY BE BROUGHT BY THE COUNTY ATTORNEY OR, IF THE COMMERCIAL SIGN WAS LOCATED IN A MUNICIPAL CORPORATION, THE MUNICIPAL CORPORATION ATTORNEY.

(III) THE ADMINISTRATION, A COUNTY, OR A MUNICIPAL CORPORATION:

1. MAY ENFORCE THIS SUBSECTION ONLY BY THE ISSUANCE OF A WARNING FOR THE FIRST 3 MONTHS AFTER INITIATING A SIGN REMOVAL PROGRAM; AND

2. SHALL ENFORCE THIS SUBSECTION ON A VIEWPOINT AND CONTENT NEUTRAL BASIS.

(4) FOR THE PURPOSES OF ENFORCING THIS SUBSECTION, THE PRESENCE OF A SIGN WITHIN A STATE HIGHWAY RIGHT–OF–WAY SHALL BE EVIDENCE THAT THE SIGN WAS PLACED OR MAINTAINED AT THE DIRECTION OF, OR WITH THE CONSENT AND APPROVAL OF, THE PERSON OR THE PERSON'S AGENT OR REPRESENTATIVE IN THE STATE WHOSE NAME, BUSINESS, LOCATION, OR PRODUCT REPRESENTATION IS DISPLAYED ON THE SIGN.

(5) THE ADMINISTRATION, A COUNTY, OR A MUNICIPAL CORPORATION SHALL RETAIN ANY CIVIL PENALTIES THAT IT COLLECTS UNDER THIS SUBSECTION.

8–714.

(a) Whether or not the person must be licensed under Part II of this subtitle, a person may not erect or maintain any outdoor sign outside the limits of any municipal corporation and within 500 feet of a State highway, unless the person has a permit issued by the Administration for that sign.

(b) A permit is not required under this section to erect or maintain any outdoor sign:

(1) That is used only to advertise the sale or lease of the property on which it is located;

(2) That is on or within 100 feet of any building or the entrance to any building in which the business advertised is carried on;

(3) That is used only to advertise:

(i) A Maryland historic shrine or institution; or

(ii) A county or church fair held in this State;

(4) That advertises a candidate or the support or defeat of any proposition. This sign:

(i) Shall comply with all provisions of the Election Law Article;

(ii) Shall comply with public safety requirements as set forth in § 8–716 of this subtitle;

(iii) Shall conform to all local restrictions and zoning requirements which are more restrictive than this section**[**, including any applicable time limitations. In the absence of an applicable time limitation, the sign:

1. May not be erected more than 45 days prior to the election; and

2. Shall be removed within 15 days after the general election, or within 15 days after the primary election if the candidate is not a candidate in the general election**]**; and

(iv) Shall conform to the restrictions and requirements of Parts IV and V of this subtitle; or

(5) That is only a temporary outdoor sign that advertises the sale in season of fresh produce on property that adjoins a State highway by a person who has grown the fresh produce and who owns, rents, or has permission to sell on the property. This sign:

(i) Shall comply with public safety requirements as set forth in § 8–716 of this subtitle;

(ii) Shall conform to all local restrictions and zoning requirements that are more restrictive than this section, including any applicable time limitation;

(iii) Shall conform to the restrictions and requirements of Parts IV and V of this subtitle; and

(iv) Shall be removed or covered when produce is no longer for sale.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 468

(Senate Bill 414)

AN ACT concerning

Natural Resources – Administrative Procedures – Electronic Citations, Inspections, and Hearings

FOR the purpose of altering the acknowledgment procedures for citations issued by certain police officers for certain natural resources violations; repealing a certain hearing requirement that must be met before the Department of Natural Resources may suspend a recreational or commercial fishing license and requiring the Department to provide certain notice to certain persons of the right to a hearing; requiring the Department to hold a hearing under certain circumstances within a certain time frame in accordance with certain procedures before suspending a recreational or commercial fishing license; authorizing the Department to suspend a recreational or commercial fishing license without a hearing under certain circumstances; ~~altering who may perform administrative inspections of commercial fishing operations;~~ altering the authorized scope of administrative inspections of commercial fishing operations; authorizing the seizure and forfeiture by the Department of certain property under certain circumstances; making certain stylistic changes; and generally relating to administrative procedures for natural resources violations.

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 1–205, 4–220, and 4–701(l) and (m)
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – Natural Resources
Section 4–701(a) and (b)
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 8–2003
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

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

Article – Natural Resources

1–205.

(a) If a Natural Resources police officer apprehends a person for violating any law punishable as a misdemeanor**,** the officer may prepare **[**and sign**]** a written **OR ELECTRONIC** citation containing**[**a**]:**

(1) A notice to appear in court**[**, the**];**

(2) THE name and address of the person charged**[**, appropriate**];**

(3) RELEVANT license numbers, if any**[**, the**];**

(4) THE offense charged**[**, the**];**

(5) THE time and place the person shall appear in court**[**,**];**

(6) AN ACKNOWLEDGMENT OF RECEIPT OF THE CITATION BY THE PERSON CHARGED MADE IN A MANNER DETERMINED BY THE DEPARTMENT; and

(7) [other**] OTHER** pertinent information required by the Secretary.

(b) **(1)** The person charged may **[**give his written**]** promise to appear in court by **[**signing**] ACKNOWLEDGING RECEIPT OF** the citation prepared by the officer **IN A MANNER DETERMINED BY THE DEPARTMENT**.

(2) [In this event,**] IF THE PERSON CHARGED ACKNOWLEDGES RECEIPT OF THE CITATION,** the officer is not required to take the person into physical custody for the violation unless **[**the**]:**

(I) THE person charged does not furnish satisfactory evidence of identity**;** or **[**the**]**

(II) THE officer has reasonable grounds to believe the person charged will **[**disregard a written promise to**] NOT** appear.

(c) A person may not **[**violate his written promise to appear in court**] FAIL TO COMPLY WITH A NOTICE TO APPEAR IN A CITATION ISSUED UNDER THIS SECTION** unless **[**sufficient**]:**

(1) SUFFICIENT collateral for the offense is posted**[**, the**];**

(2) **THE** fine is paid in advance of trial**[,]; or [**the**]**

(3) **THE** person is represented by counsel in court.

(d) (1) If a person fails to comply with the notice to appear in a citation issued under this section, the court may:

(i) Except as provided in paragraph (4) of this subsection, issue a warrant for the person's arrest; or

(ii) After 5 days, notify the court's clerk of the person's noncompliance.

(2) On receipt of notice of noncompliance from the court, the clerk shall notify the person by mail at the address indicated on the citation that a warrant for the person's arrest may be issued by the court unless, by the end of the 15th day after the date on which the notice is mailed, the person:

(i) Pays the fine on the original charge as provided for in the original citations and a fine of $100 for failing to appear; or

(ii) Posts bond or a penalty deposit and requests a new trial date.

(3) If a person fails to pay the fines or post the bond or penalty deposit under paragraph (2) of this subsection, the court may issue a warrant.

(4) When the original offense is not punishable by incarceration, a warrant may not be issued for the person under this subsection until 20 days after the original trial date.

4–220.

(a) In addition to any other penalty provided by the provisions of this title, the Secretary may revoke or suspend any recreational license issued to any person under this title.

(b) The Secretary may adopt regulations that list the criteria for a suspension of a person's entitlement to engage in an activity or activities that are licensed or permitted under this title.

(c) (1) During a period of suspension imposed by the Department, the person whose entitlement to engage in an activity or activities has been suspended may not engage in an activity for which the suspension was imposed.

(2) The following are grounds for an immediate suspension of a license issued under this title:

(i) Knowingly making a false statement in an application;

(ii) Three convictions for violations occurring on separate days within any 3–year period of provisions under this title;

(iii) Failure to submit a report required under this title or by regulation; or

(iv) Failure of a nonresident of the State to appear in court in accordance with a citation issued by a Natural Resources police officer, or to any other process issued by any court of Maryland, for violation of this title.

(3) A penalty imposed in accordance with this section is in addition to any other penalty authorized under § 4–1201 of this title regarding striped bass.

(4) The Department shall initiate any proceeding to suspend a license under this section not later than 6 months after the time for filing an appeal of the third conviction under paragraph (2)(ii) of this subsection has passed.

(5) (i) Before the suspension of a license under this section, the Department shall **[**hold a hearing on not less than 10 days' notice to the licensee**]** **NOTIFY THE LICENSEE IN WRITING OF THE LICENSEE'S RIGHT TO A HEARING ON REQUEST**.

(ii) **[**On the failure of a nonresident of the State to appear in a court of this State as required by any charging document accusing the person of committing any offense under this subtitle, in addition to any other appropriate action taken by the court or the Department, the Department may suspend immediately and without a hearing any license issued to the person under this title.**]** **IF A LICENSEE SUBMITS A WRITTEN REQUEST FOR A HEARING TO THE DEPARTMENT, WITHIN 30 DAYS AFTER THE DATE THAT THE NOTICE REQUIRED UNDER THIS PARAGRAPH IS MAILED, THE DEPARTMENT SHALL:**

1. HOLD A HEARING AFTER PROVIDING AT LEAST 10 DAYS' NOTICE TO THE LICENSEE; AND

2. CONDUCT THE HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(III) THE DEPARTMENT MAY SUSPEND A RECREATIONAL LICENSE ISSUED UNDER THIS TITLE WITHOUT A HEARING IF:

1. THE LICENSEE DOES NOT SUBMIT A WRITTEN REQUEST FOR A HEARING; OR

2. THE LICENSEE FAILS TO APPEAR FOR A SCHEDULED HEARING FOR WHICH THE DEPARTMENT PROVIDED NOTICE.

4–701.

(a) This section applies to any person who is required under Subtitle 2, 7, 8, 9, or 10 of this title to be licensed to guide fishing parties or to catch, sell, buy, process, transport, export, or otherwise deal in fish caught in tidal waters.

(b) (1) The Department shall utilize a single, commercial license, to be known and designated as a tidal fish license.

(2) A tidal fish license authorizes a licensee:

(i) To engage in each activity indicated on the license; and

(ii) For catching crabs, to utilize the number of crew members indicated on the license.

(3) Except for a person receiving a license under subsection (i)(2)(ii) of this section, the Department may not issue a tidal fish license to an individual who is younger than 14 years of age.

(4) A person may not guide fishing parties or catch, sell, buy, process, transport, export, or otherwise deal in fish caught in tidal waters unless licensed under this section.

(l) (1) In addition to any other penalty provided in this title, the Department may suspend or revoke a person's entitlement to engage in a particular activity or activities under a tidal fish license.

(2) During a period of suspension or revocation imposed by the Department, the person penalized is not and shall not be authorized under any existing, renewed, transferred, or new tidal fish license to engage in the particular activity or activities for which the suspension is imposed.

(3) The following are grounds for suspension or revocation of a tidal fish license:

(i) Making any false statement in an application for a tidal fish license;

(ii) A serious violation of a State or federal commercial fisheries law that results in a conviction or an accepted plea of nolo contendere;

(iii) Failure to submit reports required by the provisions of this title or by the Department pursuant to provisions of this title; or

(iv) Failure for a nonresident of the State to appear in court pursuant to a citation issued by a Natural Resources police officer, or to any other process issued by any court of Maryland, for violation of this title.

(4) A penalty imposed in accordance with this subtitle shall be in addition to any other penalty authorized under § 4–1201 of this title regarding striped bass.

(5) The Department, in consultation with the Tidal Fisheries Advisory Commission and the Sport Fisheries Advisory Commission, shall adopt regulations relating to the suspension and revocation of licenses and authorizations issued under this title, including:

(i) A schedule of points assigned to various offenses under this title;

(ii) A schedule of the maximum number of days that a license may be suspended according to the number of points accumulated;

(iii) Suspension or revocation of a license or authorization for a serious violation of a State or federal commercial fisheries law that results in an individual receiving a conviction or an accepted plea of nolo contendere;

(iv) Enhanced penalties for repeated violations of this title; and

(v) Enhanced penalties for violations of provisions of this title that regulate species deemed by the Department to be in need of special protection, including striped bass, crabs, oysters, and menhaden.

(6) **(I)** Before the suspension or revocation of a tidal fish license under this section, the Department shall **[**hold a hearing upon not less than 10 days' notice to the licensee, except that upon the failure of a nonresident of the State to appear in a court of this State as required by any charging document accusing the person of committing any offense under this title, in addition to any other appropriate action taken by the court or the Department, the Department may suspend immediately and without hearing any license issued to the person under this title**]** **NOTIFY THE LICENSEE IN WRITING ~~ON~~ OF THE LICENSEE'S RIGHT TO A HEARING ON REQUEST**.

(II) IF A LICENSEE SUBMITS A WRITTEN REQUEST FOR A HEARING TO THE DEPARTMENT~~,~~ WITHIN 30 DAYS AFTER THE DATE THAT THE

NOTICE REQUIRED UNDER THIS PARAGRAPH IS MAILED, THE DEPARTMENT SHALL:

1. HOLD A HEARING AFTER PROVIDING AT LEAST 10 DAYS' NOTICE TO THE LICENSEE; AND

2. CONDUCT THE HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(III) THE DEPARTMENT MAY SUSPEND A COMMERCIAL LICENSE ISSUED UNDER THIS TITLE WITHOUT A HEARING IF:

1. THE LICENSEE DOES NOT SUBMIT A WRITTEN REQUEST FOR A HEARING; OR

2. THE LICENSEE FAILS TO APPEAR FOR A SCHEDULED HEARING FOR WHICH THE DEPARTMENT PROVIDED NOTICE.

(m) **(1)** A licensee or any person to whom a licensee has transferred a license under subsection (i) of this section shall have in possession the tidal fish license and any valid application to transfer the commercial tidal fish license approved by the Department for a temporary transfer whenever engaged in any licensed activity.

(2) (I) THIS PARAGRAPH DOES NOT LIMIT THE DEPARTMENT'S AUTHORITY TO INSPECT BOOKS, STATEMENTS, AND ACCOUNTS UNDER § 4–206(B) OF THIS TITLE.

(II) The licensee or any person to whom a licensee has transferred a license under subsection (i) of this section shall allow **[**any police officer**]** ~~THE DEPARTMENT~~**, AT REASONABLE TIMES, <u>INCLUDING WHEN THE LICENSEE OR PERSON IS ENGAGED IN AN ACTIVITY THAT REQUIRES A LICENSE UNDER THIS SECTION,</u>** to inspect **[**the**]:**

1. THE license **[**and any**];**

2. ANY applicable application to transfer the commercial tidal fish license approved by the Department for a temporary transfer**[**, to conduct searches as authorized in Subtitle 12 of this title, and to inspect books, statements, and accounts as authorized in § 4–206(b) of this title**];**

3. COMMERCIAL FISHING VESSELS;

4. VEHICLES USED TO TRANSPORT FISH FOR COMMERCIAL PURPOSES; AND

5. FISH BUSINESSES OWNED OR OPERATED BY A PERSON LICENSED UNDER THIS SECTION.

(III) INSPECTIONS OF VESSELS, VEHICLES, AND BUSINESSES AUTHORIZED UNDER THIS PARAGRAPH SHALL BE RESTRICTED TO INSPECTIONS OF FISHING GEAR AND PLACES WHERE FISH MAY BE STORED.

(IV) INSPECTIONS OF BUSINESSES AUTHORIZED UNDER THIS PARAGRAPH MAY BE CONDUCTED IN ANY BUILDING OTHER THAN A DWELLING HOUSE.

(3) (I) AN INSPECTOR MAY SEIZE FISHING GEAR OR FISH FOUND DURING AN INSPECTION UNDER THIS SUBSECTION THAT IS USED OR POSSESSED IN CONNECTION WITH A VIOLATION OF THIS TITLE OR A REGULATION ADOPTED UNDER THIS TITLE.

(II) FISHING GEAR SEIZED UNDER THIS PARAGRAPH SHALL BE HELD BY THE DEPARTMENT PENDING DISPOSITION OF COURT PROCEEDINGS, AND ON CONVICTION THE PROPERTY SEIZED OR PROCEEDS FROM THE SEIZURE SHALL BE FORFEITED TO THE STATE FOR DESTRUCTION OR DISPOSITION AS THE DEPARTMENT MAY DEEM APPROPRIATE.

(III) THE DEPARTMENT MAY DISPOSE OF FISH SEIZED UNDER THIS PARAGRAPH AT ITS DISCRETION.

8–2003.

(a) Whenever a person is halted by a regular or special police officer for an offense on publicly owned watershed property punishable as a misdemeanor and which is either a violation of law or a violation of watershed regulations, and is not taken before a District Court commissioner as would otherwise be required or is permitted by law, the officer may prepare a written **OR ELECTRONIC** citation containing **[**a**]:**

(1) A notice to appear in court**[**, the**];**

(2) THE name and address of the person **CHARGED[**,**];**

(3) [the**] THE** offense charged**[**, the**];**

(4) THE time and place the person shall appear in court**[**,**];**

(5) AN ACKNOWLEDGMENT OF RECEIPT OF THE CITATION BY THE PERSON CHARGED MADE IN A MANNER DETERMINED BY THE DEPARTMENT; and **[**whatever other**]**

(6) OTHER pertinent information as necessary.

(b) The time specified in the notice to appear shall be at least five days after the alleged violation unless the person charged with the violation demands an earlier hearing.

(c) The place specified in the notice to appear shall be before a judge of the appropriate District Court.

(d) The person charged with the violation may **[**give his written**]** promise to appear in court by **[**signing**]** **ACKNOWLEDGING RECEIPT OF** at least one copy of the **[**written**]** citation prepared by the officer **IN A MANNER DETERMINED BY THE DEPARTMENT**, in which event the officer shall deliver a copy of the citation to the person. Then, the officer may not take the person into physical custody for the violation.

(e) Failure to **COMPLY WITH THE NOTICE TO** appear **[**as promised**]** is punishable as contempt or as otherwise provided by law in such cases.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 469

(House Bill 396)

AN ACT concerning

Natural Resources – Administrative Procedures – Electronic Citations, Inspections, and Hearings

FOR the purpose of altering the acknowledgment procedures for citations issued by certain police officers for certain natural resources violations; repealing a certain hearing requirement that must be met before the Department of Natural Resources may suspend a recreational or commercial fishing license and requiring the Department to provide certain notice to certain persons of the right to a hearing; requiring the Department to hold a hearing under certain circumstances within a certain time frame in accordance with certain

procedures before suspending a recreational or commercial fishing license; authorizing the Department to suspend a recreational *or commercial* ~~or commercial~~ fishing license without a hearing under certain circumstances; ~~altering who may perform administrative inspections of commercial fishing operations;~~ altering the authorized scope of administrative inspections of commercial fishing operations; authorizing the seizure and forfeiture by the Department of certain property under certain circumstances; making certain stylistic changes; and generally relating to administrative procedures for natural resources violations.

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 1–205, 4–220, and 4–701(l) and (m)
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – Natural Resources
Section 4–701(a) and (b)
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 8–2003
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

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

Article – Natural Resources

1–205.

(a) If a Natural Resources police officer apprehends a person for violating any law punishable as a misdemeanor**,** the officer may prepare **[**and sign**]** a written **OR ELECTRONIC** citation containing**[**a**]:**

(1) **A** notice to appear in court**[**, the**];**

(2) **THE** name and address of the person charged**[**, appropriate**];**

(3) **RELEVANT** license numbers, if any**[**, the**];**

(4) **THE** offense charged**[**, the**];**

(5) **THE** time and place the person shall appear in court**[**,**]**;

(6) **AN ACKNOWLEDGMENT OF RECEIPT OF THE CITATION BY THE PERSON CHARGED MADE IN A MANNER DETERMINED BY THE DEPARTMENT;** and

(7) **[**other**]** **OTHER** pertinent information required by the Secretary.

(b) **(1)** The person charged may **[**give his written**]** promise to appear in court by **[**signing**]** **ACKNOWLEDGING RECEIPT OF** the citation prepared by the officer **IN A MANNER DETERMINED BY THE DEPARTMENT**.

(2) **[**In this event,**]** **IF THE PERSON CHARGED ACKNOWLEDGES RECEIPT OF THE CITATION,** the officer is not required to take the person into physical custody for the violation unless **[**the**]:**

(I) **THE** person charged does not furnish satisfactory evidence of identity**;** or **[**the**]**

(II) **THE** officer has reasonable grounds to believe the person charged will **[**disregard a written promise to**]** **NOT** appear.

(c) A person may not **[**violate his written promise to appear in court**]** **FAIL TO COMPLY WITH A NOTICE TO APPEAR IN A CITATION ISSUED UNDER THIS SECTION** unless **[**sufficient**]:**

(1) **SUFFICIENT** collateral for the offense is posted**[**, the**]**;

(2) **THE** fine is paid in advance of trial**[**,**]**; or **[**the**]**

(3) **THE** person is represented by counsel in court.

(d) (1) If a person fails to comply with the notice to appear in a citation issued under this section, the court may:

(i) Except as provided in paragraph (4) of this subsection, issue a warrant for the person's arrest; or

(ii) After 5 days, notify the court's clerk of the person's noncompliance.

(2) On receipt of notice of noncompliance from the court, the clerk shall notify the person by mail at the address indicated on the citation that a warrant for the person's arrest may be issued by the court unless, by the end of the 15th day after the date on which the notice is mailed, the person:

(i) Pays the fine on the original charge as provided for in the original citations and a fine of $100 for failing to appear; or

(ii) Posts bond or a penalty deposit and requests a new trial date.

(3) If a person fails to pay the fines or post the bond or penalty deposit under paragraph (2) of this subsection, the court may issue a warrant.

(4) When the original offense is not punishable by incarceration, a warrant may not be issued for the person under this subsection until 20 days after the original trial date.

4–220.

(a) In addition to any other penalty provided by the provisions of this title, the Secretary may revoke or suspend any recreational license issued to any person under this title.

(b) The Secretary may adopt regulations that list the criteria for a suspension of a person's entitlement to engage in an activity or activities that are licensed or permitted under this title.

(c) (1) During a period of suspension imposed by the Department, the person whose entitlement to engage in an activity or activities has been suspended may not engage in an activity for which the suspension was imposed.

(2) The following are grounds for an immediate suspension of a license issued under this title:

(i) Knowingly making a false statement in an application;

(ii) Three convictions for violations occurring on separate days within any 3–year period of provisions under this title;

(iii) Failure to submit a report required under this title or by regulation; or

(iv) Failure of a nonresident of the State to appear in court in accordance with a citation issued by a Natural Resources police officer, or to any other process issued by any court of Maryland, for violation of this title.

(3) A penalty imposed in accordance with this section is in addition to any other penalty authorized under § 4–1201 of this title regarding striped bass.

(4) The Department shall initiate any proceeding to suspend a license under this section not later than 6 months after the time for filing an appeal of the third conviction under paragraph (2)(ii) of this subsection has passed.

(5) (i) Before the suspension of a license under this section, the Department shall **[**hold a hearing on not less than 10 days' notice to the licensee**]** **NOTIFY THE LICENSEE IN WRITING OF THE LICENSEE'S RIGHT TO A HEARING ON REQUEST**.

(ii) **[**On the failure of a nonresident of the State to appear in a court of this State as required by any charging document accusing the person of committing any offense under this subtitle, in addition to any other appropriate action taken by the court or the Department, the Department may suspend immediately and without a hearing any license issued to the person under this title.**] IF A LICENSEE SUBMITS A WRITTEN REQUEST FOR A HEARING TO THE DEPARTMENT, WITHIN 30 DAYS AFTER THE DATE THAT THE NOTICE REQUIRED UNDER THIS PARAGRAPH IS MAILED, THE DEPARTMENT SHALL:**

1. HOLD A HEARING AFTER PROVIDING AT LEAST 10 DAYS' NOTICE TO THE LICENSEE; AND

2. CONDUCT THE HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(III) THE DEPARTMENT MAY SUSPEND A <u>RECREATIONAL</u> LICENSE ISSUED UNDER THIS TITLE WITHOUT A HEARING IF:

1. THE LICENSEE DOES NOT SUBMIT A WRITTEN REQUEST FOR A HEARING; OR

2. THE LICENSEE FAILS TO APPEAR FOR A SCHEDULED HEARING FOR WHICH THE DEPARTMENT PROVIDED NOTICE.

4–701.

(a) This section applies to any person who is required under Subtitle 2, 7, 8, 9, or 10 of this title to be licensed to guide fishing parties or to catch, sell, buy, process, transport, export, or otherwise deal in fish caught in tidal waters.

(b) (1) The Department shall utilize a single, commercial license, to be known and designated as a tidal fish license.

(2) A tidal fish license authorizes a licensee:

(i) To engage in each activity indicated on the license; and

(ii) For catching crabs, to utilize the number of crew members indicated on the license.

(3) Except for a person receiving a license under subsection (i)(2)(ii) of this section, the Department may not issue a tidal fish license to an individual who is younger than 14 years of age.

(4) A person may not guide fishing parties or catch, sell, buy, process, transport, export, or otherwise deal in fish caught in tidal waters unless licensed under this section.

(l) (1) In addition to any other penalty provided in this title, the Department may suspend or revoke a person's entitlement to engage in a particular activity or activities under a tidal fish license.

(2) During a period of suspension or revocation imposed by the Department, the person penalized is not and shall not be authorized under any existing, renewed, transferred, or new tidal fish license to engage in the particular activity or activities for which the suspension is imposed.

(3) The following are grounds for suspension or revocation of a tidal fish license:

(i) Making any false statement in an application for a tidal fish license;

(ii) A serious violation of a State or federal commercial fisheries law that results in a conviction or an accepted plea of nolo contendere;

(iii) Failure to submit reports required by the provisions of this title or by the Department pursuant to provisions of this title; or

(iv) Failure for a nonresident of the State to appear in court pursuant to a citation issued by a Natural Resources police officer, or to any other process issued by any court of Maryland, for violation of this title.

(4) A penalty imposed in accordance with this subtitle shall be in addition to any other penalty authorized under § 4–1201 of this title regarding striped bass.

(5) The Department, in consultation with the Tidal Fisheries Advisory Commission and the Sport Fisheries Advisory Commission, shall adopt regulations relating to the suspension and revocation of licenses and authorizations issued under this title, including:

(i) A schedule of points assigned to various offenses under this title;

(ii) A schedule of the maximum number of days that a license may be suspended according to the number of points accumulated;

(iii) Suspension or revocation of a license or authorization for a serious violation of a State or federal commercial fisheries law that results in an individual receiving a conviction or an accepted plea of nolo contendere;

(iv) Enhanced penalties for repeated violations of this title; and

(v) Enhanced penalties for violations of provisions of this title that regulate species deemed by the Department to be in need of special protection, including striped bass, crabs, oysters, and menhaden.

(6) **(I)** Before the suspension or revocation of a tidal fish license under this section, the Department shall **[**hold a hearing upon not less than 10 days' notice to the licensee, except that upon the failure of a nonresident of the State to appear in a court of this State as required by any charging document accusing the person of committing any offense under this title, in addition to any other appropriate action taken by the court or the Department, the Department may suspend immediately and without hearing any license issued to the person under this title**]** **NOTIFY THE LICENSEE IN WRITING ~~ON~~ OF THE LICENSEE'S RIGHT TO A HEARING ON REQUEST.**

(II) IF A LICENSEE SUBMITS A WRITTEN REQUEST FOR A HEARING TO THE DEPARTMENT~~,~~ WITHIN 30 DAYS AFTER THE DATE THAT THE NOTICE REQUIRED UNDER THIS PARAGRAPH IS MAILED, THE DEPARTMENT SHALL:

1. HOLD A HEARING AFTER PROVIDING AT LEAST 10 DAYS' NOTICE TO THE LICENSEE; AND

2. CONDUCT THE HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(III) THE DEPARTMENT MAY SUSPEND A COMMERCIAL LICENSE ISSUED UNDER THIS TITLE WITHOUT A HEARING IF:

1. THE LICENSEE DOES NOT SUBMIT A WRITTEN REQUEST FOR A HEARING; OR

2. THE LICENSEE FAILS TO APPEAR FOR A SCHEDULED HEARING FOR WHICH THE DEPARTMENT PROVIDED NOTICE.

(m) **(1)** A licensee or any person to whom a licensee has transferred a license under subsection (i) of this section shall have in possession the tidal fish license and any valid application to transfer the commercial tidal fish license approved by the Department for a temporary transfer whenever engaged in any licensed activity.

(2) (I) THIS PARAGRAPH DOES NOT LIMIT THE DEPARTMENT'S AUTHORITY TO INSPECT BOOKS, STATEMENTS, AND ACCOUNTS UNDER § 4–206(B) OF THIS TITLE.

(II) The licensee or any person to whom a licensee has transferred a license under subsection (i) of this section shall allow ~~[~~any police officer~~]~~ ~~THE DEPARTMENT~~**, AT REASONABLE TIMES, INCLUDING WHEN THE LICENSEE OR PERSON IS ENGAGED IN AN ACTIVITY THAT REQUIRES A LICENSE UNDER THIS SECTION,** to inspect **[**the**]:**

1. THE license **[**and any**];**

2. ANY applicable application to transfer the commercial tidal fish license approved by the Department for a temporary transfer**[**, to conduct searches as authorized in Subtitle 12 of this title, and to inspect books, statements, and accounts as authorized in § 4–206(b) of this title**];**

3. COMMERCIAL FISHING VESSELS;

4. VEHICLES USED TO TRANSPORT FISH FOR COMMERCIAL PURPOSES; AND

5. FISH BUSINESSES OWNED OR OPERATED BY A PERSON LICENSED UNDER THIS SECTION.

(III) INSPECTIONS OF VESSELS, VEHICLES, AND BUSINESSES AUTHORIZED UNDER THIS PARAGRAPH ~~INCLUDE~~ SHALL BE RESTRICTED TO INSPECTIONS OF FISHING GEAR AND PLACES WHERE FISH MAY BE STORED.

(IV) INSPECTIONS OF BUSINESSES AUTHORIZED UNDER THIS PARAGRAPH MAY BE CONDUCTED IN ANY BUILDING OTHER THAN A DWELLING HOUSE.

(3) (I) AN INSPECTOR MAY SEIZE FISHING GEAR OR FISH FOUND DURING AN INSPECTION UNDER THIS SUBSECTION THAT IS USED OR POSSESSED IN CONNECTION WITH A VIOLATION OF THIS TITLE OR A REGULATION ADOPTED UNDER THIS TITLE.

(II) FISHING GEAR ~~OR FISH~~ SEIZED UNDER THIS PARAGRAPH SHALL BE HELD BY THE DEPARTMENT PENDING DISPOSITION OF COURT PROCEEDINGS, AND ON CONVICTION THE PROPERTY SEIZED OR PROCEEDS FROM THE SEIZURE SHALL BE FORFEITED TO THE STATE FOR DESTRUCTION OR DISPOSITION AS THE DEPARTMENT MAY DEEM APPROPRIATE.

(III) THE DEPARTMENT MAY DISPOSE OF FISH SEIZED UNDER THIS PARAGRAPH AT ITS DISCRETION.

8–2003.

(a) Whenever a person is halted by a regular or special police officer for an offense on publicly owned watershed property punishable as a misdemeanor and which is either a violation of law or a violation of watershed regulations, and is not taken before a District Court commissioner as would otherwise be required or is permitted by law, the officer may prepare a written **OR ELECTRONIC** citation containing **[**a**]:**

(1) A notice to appear in court**[**, the**];**

(2) THE name and address of the person **CHARGED[**,**];**

(3) [the**] THE** offense charged**[**, the**];**

(4) THE time and place the person shall appear in court**[**,**];**

(5) AN ACKNOWLEDGMENT OF RECEIPT OF THE CITATION BY THE PERSON CHARGED MADE IN A MANNER DETERMINED BY THE DEPARTMENT; and **[**whatever other**]**

(6) OTHER pertinent information as necessary.

(b) The time specified in the notice to appear shall be at least five days after the alleged violation unless the person charged with the violation demands an earlier hearing.

(c) The place specified in the notice to appear shall be before a judge of the appropriate District Court.

(d) The person charged with the violation may **[**give his written**]** promise to appear in court by **[**signing**] ACKNOWLEDGING RECEIPT OF** at least one copy of the **[**written**]** citation prepared by the officer **IN A MANNER DETERMINED BY THE DEPARTMENT**, in which event the officer shall deliver a copy of the citation to the person. Then, the officer may not take the person into physical custody for the violation.

(e) Failure to **COMPLY WITH THE NOTICE TO** appear **[**as promised**]** is punishable as contempt or as otherwise provided by law in such cases.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 470

(Senate Bill 421)

AN ACT concerning

Program Open Space – Attainment of Acquisition Goals – Increased Allocation for Local Government

FOR the purpose of altering the amount a local government can spend on development projects after it has attained its acquisition goals under Program Open Space; repealing a certain limitation on the use of certain funds; *authorizing a local government to use a certain amount of certain funds only for certain purposes;* providing for the termination of this Act; and generally relating to the apportionment of local government funds for Program Open Space.

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 5–905(c)(1)
Annotated Code of Maryland
(2005 Replacement Volume and 2010 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 **[**75**] 100** percent of its future annual apportionment for development projects **[**for a period of 5 years after attainment**]**, 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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2011. It shall remain effective for a period of 3 years and, at the end of May 31, 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 19, 2011.

Chapter 471

(Senate Bill 424)

AN ACT concerning

Motor Vehicles – Use of Text Messaging Device While Driving – Prohibited Acts

FOR the purpose of prohibiting a person from using a text messaging device to read a text message while operating a motor vehicle; clarifying that a certain prohibition against a person using a text messaging device to write, send, or read a text message while operating a motor vehicle includes a prohibition against writing, sending, or reading an electronic message; repealing a certain provision of law that applies the text messaging prohibition to an operator of a motor vehicle only if the motor vehicle is in motion; and generally relating to prohibited acts with respect to the use of a text messaging device while driving.

BY repealing and reenacting, with amendments,
Article – Transportation
Section 21–1124.1
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Transportation

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 may not use a text messaging device to write **[**or**]**, send**, OR READ** a text message **OR AN ELECTRONIC MESSAGE** while operating a motor vehicle **[**in motion or**]** 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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 472

(House Bill 196)

AN ACT concerning

Motor Vehicles – Use of Text Messaging Device While Driving – Prohibited Acts

FOR the purpose of prohibiting a person from using a text messaging device to read a text message while operating a motor vehicle; clarifying that a certain prohibition against a person using a text messaging device to write, send, or read a text message while operating a motor vehicle includes a prohibition against writing, sending, or reading an electronic message; repealing a certain provision of law that applies the text messaging prohibition to an operator of a motor vehicle only if the motor vehicle is in motion; and generally relating to prohibited acts with respect to the use of a text messaging device while driving.

BY repealing and reenacting, with amendments,
Article – Transportation
Section 21–1124.1
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Transportation

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 may not use a text messaging device to write **[**or**]**, send**, OR READ** a text message **OR AN ELECTRONIC MESSAGE** while operating a motor vehicle **[**in motion or**]** 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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 473

(Senate Bill 430)

AN ACT concerning

Baltimore County – Public School Employees – Collective Bargaining Units ~~and Representation Fees~~

FOR the purpose of ~~specifying that, in Baltimore County, an employee organization that represents certain certificated and noncertificated employees may represent nonmembers only in negotiations;~~ requiring the Board of Education of Baltimore County to ~~negotiate~~ meet and confer with an employee organization that represents certain certificated and noncertificated employees by a certain date regarding a certain matter; ~~certain fees with certain employee organizations representing certain certificated and noncertificated employees to be charged to certain nonmembers hired or promoted into a unit on or before a certain date for certain representation when membership includes a certain percentage of those eligible for membership; requiring the Board to negotiate certain fees with certain employee organizations representing certain certificated and noncertificated employees to be charged to certain nonmembers who are hired or promoted into a unit on or after a certain date;~~ and generally relating to collective bargaining units ~~and representation fees~~ for ~~certain~~ certificated and noncertificated school personnel in Baltimore County.

~~BY repealing and reenacting, with amendments,~~
~~Article – Education~~
~~Section 6–504 6–407(a) and 6–509(a)~~
~~Annotated Code of Maryland~~

~~(2008 Replacement Volume and 2010 Supplement)~~

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

~~**Article – Education**~~

~~6–407.~~

~~(a) **(1)** An employee organization designated as an exclusive representative shall be the negotiating agent of all public school employees in the unit in the county.~~

~~**(2) IN ADDITION, IN BALTIMORE COUNTY, AN EMPLOYEE ORGANIZATION THAT IS DESIGNATED AS THE EXCLUSIVE REPRESENTATIVE OF A UNIT THAT CONSISTS OF BOTH CERTIFICATED AND NONCERTIFICATED EMPLOYEES, AS DESCRIBED IN § 6–404(C)(2) OF THIS SUBTITLE, MAY REPRESENT NONMEMBERS ONLY IN NEGOTIATIONS.**~~

~~6–509.~~

~~(a) **(1)** An employee organization designated as an exclusive representative shall be the negotiating agent of all public school employees in the unit in the county.~~

~~**(2) IN ADDITION, IN BALTIMORE COUNTY, AN EMPLOYEE ORGANIZATION THAT IS DESIGNATED AS THE EXCLUSIVE REPRESENTATIVE OF A UNIT THAT CONSISTS OF BOTH CERTIFICATED AND NONCERTIFICATED EMPLOYEES, AS DESCRIBED IN § 6–404(C)(2) OF THIS TITLE, MAY REPRESENT NONMEMBERS ONLY IN NEGOTIATIONS.**~~

~~SECTION 2. AND BE IT FURTHER ENACTED, That~~ the Board of Education of Baltimore County shall meet and confer with an employee organization that is designated as the exclusive representative of a unit that consists of ~~both certificated~~ employees whose position requires an administrative and supervisory certificate and supervisory noncertificated employees, as ~~described in § 6–404(c)(2)~~ defined under § 6–501(h) of the Education Article, by November 1, 2011, regarding the job titles to be included in the unit.

~~6–504.~~

~~(a) A public school employee may refuse to join or participate in the activities of employee organizations.~~

~~(b) (1) In Montgomery County, Allegany County, Charles County, and Howard County, the county board, with respect to noncertificated employees, shall~~

~~negotiate a structure of reasonable service fees to be charged nonmembers for representation in negotiations and grievance matters by employee organizations.~~

~~(2) In Charles County, the provisions of this subsection shall apply only to employees hired on or after July 1, 2005.~~

~~(c) In Prince George's County, the county board shall negotiate an organizational security provision, commonly known as "agency shop", with employee organizations.~~

~~(d) (1) In Anne Arundel County~~**[**~~, Baltimore County,~~**]** ~~and Garrett County, the county board, with respect to noncertificated employees, may negotiate a structure of reasonable service fees to be charged nonmembers for representation in negotiations and grievance matters by employee organizations.~~

~~(2) In Anne Arundel County, if the county board negotiates a structure of fees as authorized under this subsection:~~

~~(i) Each party shall:~~

~~1. Confer in good faith, at all reasonable times; and~~

~~2. Reduce to writing the matters agreed on as a result of the negotiations; and~~

~~(ii) Neither party is required to agree to any proposal or to make any concession.~~

~~(3)~~ **[**~~(i) The provisions of this paragraph apply if an agency or representation fee is negotiated in Baltimore County.~~

~~(ii) 1. Subject to the provisions of subsubparagraph 2 of this subparagraph, the employee organization designated as the exclusive representative for the public school employees shall indemnify and hold harmless the Board of Education of Baltimore County against any and all claims, demands, suits, or any other forms of liability that may arise out of, or by reason of, action taken by the board for the purpose of complying with any of the agency or representation fee provisions of the negotiated agreement.~~

~~2. The board shall retain without charge to the board the services of counsel that are designated by the exclusive representative with regard to any claim, demand, suit, or any other liability that may arise out of, or by reason of, action taken by the board for the purpose of complying with any of the agency or representation fee provisions of the negotiated agreement.~~

~~(iii) The employee organization designated as the exclusive representative shall submit to the board an annual audit from an external auditor~~

~~that reflects the operational expenses of the employee organization and explains how the representation fee is calculated based on the audit.~~

~~(iv) 1. The agency or representation fee shall be based only on the expenses incurred by the employee organization in its representation in negotiations, contract administration, including the handling of grievances, and other activities as required under § 6–509 of this subtitle; and~~

~~2. Any political activities of the employee organization designated as the exclusive representative may not be financed by the funds collected from the agency or representation fee.~~

~~(4)]~~ ~~In Garrett County, if a noncertificated employee was not a public school employee at the time that a service fee under paragraph (1) of this subsection was initiated, the noncertificated employee may not be charged a service fee.~~

~~(E) (1) THIS SUBSECTION APPLIES ONLY TO BALTIMORE COUNTY.~~

~~(2) THE COUNTY BOARD, WITH RESPECT TO ANY UNIT THAT CONSISTS OF BOTH CERTIFICATED AND NONCERTIFICATED EMPLOYEES, AS DESCRIBED IN § 6–404(C)(2) OF THIS TITLE, SHALL NEGOTIATE A STRUCTURE OF REASONABLE SERVICE FEES TO BE CHARGED NONMEMBERS WHO ARE HIRED OR PROMOTED INTO A UNIT ON OR BEFORE JUNE 30, 2011, FOR REPRESENTATION IN NEGOTIATIONS, CONTRACT ADMINISTRATION, GRIEVANCE MATTERS, AND ALL OTHER ACTIVITIES AS REQUIRED UNDER § 6–509 OF THIS SUBTITLE WHEN MEMBERSHIP IN THE UNIT INCLUDES 60 PERCENT OR MORE OF THOSE ELIGIBLE FOR MEMBERSHIP.~~

~~(3) (I) THIS PARAGRAPH APPLIES ONLY TO EMPLOYEES WHO ARE HIRED OR PROMOTED ON OR AFTER JULY 1, 2011, INTO A UNIT THAT CONSISTS OF BOTH CERTIFICATED AND NONCERTIFICATED EMPLOYEES, AS DESCRIBED UNDER § 6–404(C)(2) OF THIS TITLE.~~

~~(II) THE COUNTY BOARD, WITH RESPECT TO ANY UNIT THAT REPRESENTS BOTH CERTIFICATED AND NONCERTIFICATED EMPLOYEES, AS DESCRIBED IN § 6–404(C)(2) OF THIS TITLE, SHALL NEGOTIATE A REASONABLE SERVICE FEE TO BE CHARGED NONMEMBERS WHO ARE HIRED OR PROMOTED INTO A UNIT ON OR AFTER JULY 1, 2011, FOR REPRESENTATION IN NEGOTIATIONS, CONTRACT ADMINISTRATION, GRIEVANCE MATTERS, AND ALL OTHER ACTIVITIES AS REQUIRED UNDER § 6–509 OF THIS SUBTITLE.~~

~~(4) (I) THE PROVISIONS OF THIS PARAGRAPH APPLY IF AN AGENCY OR REPRESENTATION FEE IS NEGOTIATED IN THE COUNTY.~~

~~(II) 1. SUBJECT TO THE PROVISIONS OF SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH, THE EMPLOYEE ORGANIZATION DESIGNATED AS THE EXCLUSIVE REPRESENTATIVE FOR THE PUBLIC SCHOOL EMPLOYEES SHALL INDEMNIFY AND HOLD HARMLESS THE COUNTY BOARD AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, OR ANY OTHER FORMS OF LIABILITY THAT MAY ARISE OUT OF, OR BY REASON OF, ACTION TAKEN BY THE BOARD FOR THE PURPOSE OF COMPLYING WITH ANY OF THE AGENCY OR REPRESENTATION FEE PROVISIONS OF THE NEGOTIATED AGREEMENT.~~

~~2. THE COUNTY BOARD SHALL RETAIN WITHOUT CHARGE TO THE COUNTY BOARD THE SERVICES OF COUNSEL THAT ARE DESIGNATED BY THE EXCLUSIVE REPRESENTATIVE WITH REGARD TO ANY CLAIM, DEMAND, SUIT, OR ANY OTHER LIABILITY THAT MAY ARISE OUT OF, OR BY REASON OF, ACTION TAKEN BY THE COUNTY BOARD FOR THE PURPOSE OF COMPLYING WITH ANY OF THE AGENCY OR REPRESENTATION FEE PROVISIONS OF THE NEGOTIATED AGREEMENT.~~

~~(III) THE EMPLOYEE ORGANIZATION DESIGNATED AS THE EXCLUSIVE REPRESENTATIVE SHALL SUBMIT TO THE COUNTY BOARD AN ANNUAL AUDIT FROM AN EXTERNAL AUDITOR THAT REFLECTS THE OPERATIONAL EXPENSES OF THE EMPLOYEE ORGANIZATION AND EXPLAINS HOW THE REPRESENTATION FEE IS CALCULATED BASED ON THE AUDIT.~~

~~(IV) 1. THE AGENCY OR REPRESENTATION FEE SHALL BE BASED ONLY ON THE EXPENSES INCURRED BY THE EMPLOYEE ORGANIZATION IN ITS REPRESENTATION IN NEGOTIATIONS, CONTRACT ADMINISTRATION, INCLUDING THE HANDLING OF GRIEVANCES, AND OTHER ACTIVITIES AS REQUIRED UNDER § 6–509 OF THIS SUBTITLE; AND~~

~~2. ANY POLITICAL ACTIVITIES OF THE EMPLOYEE ORGANIZATION DESIGNATED AS THE EXCLUSIVE REPRESENTATIVE MAY NOT BE FINANCED BY THE FUNDS COLLECTED FROM THE AGENCY OR REPRESENTATION FEE.~~

~~[(e)] (F) In Baltimore City, the public school employer shall negotiate with the employee organization designated as the exclusive representative for the public school employees in a unit, a reasonable service or representation fee to be charged to nonmembers for representing them in negotiations in the same manner that any such fee was permitted under law and bargained for prior to January 1, 1997.~~

SECTION ~~2.~~ ~~3.~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 474

(House Bill 683)

AN ACT concerning

Baltimore County – Public School Employees – Collective Bargaining ~~and Representation Fees~~ Units

FOR the purpose of requiring the Board of Education of Baltimore County to ~~negotiate certain fees with certain employee organizations representing certain certificated and noncertificated employees to be charged to certain nonmembers hired or promoted into a unit on or before a certain date for certain representation when membership includes a certain percentage of those eligible for membership; requiring the Board to negotiate certain fees with certain employee organizations representing certain certificated and noncertificated employees to be charged to certain nonmembers who are hired or promoted into a unit on or after a certain date~~ meet and confer with an employee organization that represents certain certificated and noncertificated employees by a certain date regarding a certain matter; and generally relating to collective bargaining ~~and representation fees~~ units for ~~certain~~ certificated and noncertificated school personnel in Baltimore County.

~~BY repealing and reenacting, with amendments,~~
~~Article – Education~~
~~Section 6–504~~
~~Annotated Code of Maryland~~
~~(2008 Replacement Volume and 2010 Supplement)~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That ~~the Laws of Maryland read as follows:~~ the Board of Education of Baltimore County shall meet and confer with an employee organization that is designated as the exclusive representative of a unit that consists of employees whose position requires an administrative and supervisory certificate and supervisory noncertificated employees, as defined under § 6–501(h) of the Education Article, by November 1, 2011, regarding the job titles to be included in the unit.

~~**Article – Education**~~

~~6–504.~~

~~(a) A public school employee may refuse to join or participate in the activities of employee organizations.~~

~~(b) (1) In Montgomery County, Allegany County, Charles County, and Howard County, the county board, with respect to noncertificated employees, shall negotiate a structure of reasonable service fees to be charged nonmembers for representation in negotiations and grievance matters by employee organizations.~~

~~(2) In Charles County, the provisions of this subsection shall apply only to employees hired on or after July 1, 2005.~~

~~(c) In Prince George's County, the county board shall negotiate an organizational security provision, commonly known as "agency shop", with employee organizations.~~

~~(d) (1) In Anne Arundel County~~**[**~~, Baltimore County,~~**]** ~~and Garrett County, the county board, with respect to noncertificated employees, may negotiate a structure of reasonable service fees to be charged nonmembers for representation in negotiations and grievance matters by employee organizations.~~

~~(2) In Anne Arundel County, if the county board negotiates a structure of fees as authorized under this subsection:~~

~~(i) Each party shall:~~

~~1. Confer in good faith, at all reasonable times; and~~

~~2. Reduce to writing the matters agreed on as a result of the negotiations; and~~

~~(ii) Neither party is required to agree to any proposal or to make any concession.~~

~~(3)~~ **[**~~(i) The provisions of this paragraph apply if an agency or representation fee is negotiated in Baltimore County.~~

~~(ii) 1. Subject to the provisions of subsubparagraph 2 of this subparagraph, the employee organization designated as the exclusive representative for the public school employees shall indemnify and hold harmless the Board of Education of Baltimore County against any and all claims, demands, suits, or any other forms of liability that may arise out of, or by reason of, action taken by the board for the purpose of complying with any of the agency or representation fee provisions of the negotiated agreement.~~

~~2. The board shall retain without charge to the board the services of counsel that are designated by the exclusive representative with regard to any claim, demand, suit, or any other liability that may arise out of, or by reason of, action taken by the board for the purpose of complying with any of the agency or representation fee provisions of the negotiated agreement.~~

~~(iii) The employee organization designated as the exclusive representative shall submit to the board an annual audit from an external auditor that reflects the operational expenses of the employee organization and explains how the representation fee is calculated based on the audit.~~

~~(iv) 1. The agency or representation fee shall be based only on the expenses incurred by the employee organization in its representation in negotiations, contract administration, including the handling of grievances, and other activities as required under § 6–509 of this subtitle; and~~

~~2. Any political activities of the employee organization designated as the exclusive representative may not be financed by the funds collected from the agency or representation fee.~~

~~(4)~~**]** ~~In Garrett County, if a noncertificated employee was not a public school employee at the time that a service fee under paragraph (1) of this subsection was initiated, the noncertificated employee may not be charged a service fee.~~

~~**(E) (1) THIS SUBSECTION APPLIES ONLY TO BALTIMORE COUNTY.**~~

~~**(2) THE COUNTY BOARD, WITH RESPECT TO ANY UNIT THAT CONSISTS OF BOTH CERTIFICATED AND NONCERTIFICATED EMPLOYEES, AS DESCRIBED IN § 6–404(C)(2) OF THIS TITLE, SHALL NEGOTIATE A STRUCTURE OF REASONABLE SERVICE FEES TO BE CHARGED NONMEMBERS WHO ARE HIRED OR PROMOTED INTO A UNIT ON OR BEFORE JUNE 30, 2011, FOR REPRESENTATION IN NEGOTIATIONS, CONTRACT ADMINISTRATION, GRIEVANCE MATTERS, AND ALL OTHER ACTIVITIES AS REQUIRED UNDER § 6–509 OF THIS SUBTITLE WHEN MEMBERSHIP IN THE UNIT INCLUDES 60 PERCENT OR MORE OF THOSE ELIGIBLE FOR MEMBERSHIP.**~~

~~**(3) (I) THIS PARAGRAPH APPLIES ONLY TO EMPLOYEES WHO ARE HIRED OR PROMOTED ON OR AFTER JULY 1, 2011, INTO A UNIT THAT CONSISTS OF BOTH CERTIFICATED AND NONCERTIFICATED EMPLOYEES, AS DESCRIBED UNDER § 6–404(C)(2) OF THIS TITLE.**~~

~~**(II) THE COUNTY BOARD, WITH RESPECT TO ANY UNIT THAT REPRESENTS BOTH CERTIFICATED AND NONCERTIFICATED EMPLOYEES, AS DESCRIBED IN § 6–404(C)(2) OF THIS TITLE, SHALL NEGOTIATE A REASONABLE SERVICE FEE TO BE CHARGED NONMEMBERS WHO ARE HIRED OR PROMOTED INTO A UNIT ON OR AFTER JULY 1, 2011, FOR REPRESENTATION IN NEGOTIATIONS, CONTRACT ADMINISTRATION, GRIEVANCE MATTERS, AND ALL OTHER ACTIVITIES AS REQUIRED UNDER § 6–509 OF THIS SUBTITLE.**~~

~~**(4) (I) THE PROVISIONS OF THIS PARAGRAPH APPLY IF AN AGENCY OR REPRESENTATION FEE IS NEGOTIATED IN THE COUNTY.**~~

~~(II) 1. SUBJECT TO THE PROVISIONS OF SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH, THE EMPLOYEE ORGANIZATION DESIGNATED AS THE EXCLUSIVE REPRESENTATIVE FOR THE PUBLIC SCHOOL EMPLOYEES SHALL INDEMNIFY AND HOLD HARMLESS THE COUNTY BOARD AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, OR ANY OTHER FORMS OF LIABILITY THAT MAY ARISE OUT OF, OR BY REASON OF, ACTION TAKEN BY THE BOARD FOR THE PURPOSE OF COMPLYING WITH ANY OF THE AGENCY OR REPRESENTATION FEE PROVISIONS OF THE NEGOTIATED AGREEMENT.~~

~~2. THE COUNTY BOARD SHALL RETAIN WITHOUT CHARGE TO THE COUNTY BOARD THE SERVICES OF COUNSEL THAT ARE DESIGNATED BY THE EXCLUSIVE REPRESENTATIVE WITH REGARD TO ANY CLAIM, DEMAND, SUIT, OR ANY OTHER LIABILITY THAT MAY ARISE OUT OF, OR BY REASON OF, ACTION TAKEN BY THE COUNTY BOARD FOR THE PURPOSE OF COMPLYING WITH ANY OF THE AGENCY OR REPRESENTATION FEE PROVISIONS OF THE NEGOTIATED AGREEMENT.~~

~~(III) THE EMPLOYEE ORGANIZATION DESIGNATED AS THE EXCLUSIVE REPRESENTATIVE SHALL SUBMIT TO THE COUNTY BOARD AN ANNUAL AUDIT FROM AN EXTERNAL AUDITOR THAT REFLECTS THE OPERATIONAL EXPENSES OF THE EMPLOYEE ORGANIZATION AND EXPLAINS HOW THE REPRESENTATION FEE IS CALCULATED BASED ON THE AUDIT.~~

~~(IV) 1. THE AGENCY OR REPRESENTATION FEE SHALL BE BASED ONLY ON THE EXPENSES INCURRED BY THE EMPLOYEE ORGANIZATION IN ITS REPRESENTATION IN NEGOTIATIONS, CONTRACT ADMINISTRATION, INCLUDING THE HANDLING OF GRIEVANCES, AND OTHER ACTIVITIES AS REQUIRED UNDER § 6–509 OF THIS SUBTITLE; AND~~

~~2. ANY POLITICAL ACTIVITIES OF THE EMPLOYEE ORGANIZATION DESIGNATED AS THE EXCLUSIVE REPRESENTATIVE MAY NOT BE FINANCED BY THE FUNDS COLLECTED FROM THE AGENCY OR REPRESENTATION FEE.~~

~~[(e)] (F) In Baltimore City, the public school employer shall negotiate with the employee organization designated as the exclusive representative for the public school employees in a unit, a reasonable service or representation fee to be charged to nonmembers for representing them in negotiations in the same manner that any such fee was permitted under law and bargained for prior to January 1, 1997.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 475

(Senate Bill 431)

AN ACT concerning

Baltimore County – Tax Sales – Notification

FOR the purpose of eliminating a requirement that in Baltimore County the collector post a statement and notice on certain property before the property is advertised for sale at a tax sale; eliminating a certain fee related to tax sales in Baltimore County; ~~increasing a certain fee related to tax sales in Baltimore County;~~ *including among the allowable expenses relating to certain tax sales in Baltimore County, a fee that may be established by the County Executive and subject to review by the County Council of Baltimore County for legal services, administrative costs, and mailing expenses, not to exceed actual costs, to be collected and paid into the general fund of Baltimore County;* and generally relating to certain tax sales in Baltimore County.

BY repealing and reenacting, with amendments,
Article – Tax – Property
Section 14–812 and 14–813(e)(1)
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

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

Article – Tax – Property

14–812.

At least 30 days before any property is first advertised for sale under this subtitle, the collector shall have mailed to the person who last appears as owner of the property on the collector's tax roll, at the last address shown on the tax roll, a statement giving the name of the person, and the amounts of taxes due. On the statement there shall also appear the following notice:

.....
"Date"

"This Is a Final Bill and Legal Notice to the Person Whose Name Appears on This Notice."

"According to the collector's tax roll you are the owner of the property appearing on this notice. Some of the taxes listed are in arrears. Notice is given you that unless all taxes in arrears are paid on or before 30 days from the above date, the collector will proceed to sell the above property to satisfy your entire indebtedness. Interest and penalties must be added to the total at the time of payment."

For any individual who last appears as an owner of the property on the collector's tax roll who has been listed as an owner of the property on the collector's tax roll for at least the last 25 years, the collector shall provide, at least 30 days before the property is first advertised, a list that includes the individual's name and address and notice to the area agency, as defined in § 10–101 of the Human Services Article.

[In Baltimore County the above statement and notice shall also be posted by the collector at least 30 days before the property is first advertised, in a conspicuous place on the property to be sold.**]**

Failure of the collector to mail the statement and notice to the last address of the person last assessed for the property, as it appears on the collector's tax roll, to mail, if applicable, a list including the name and address of an individual receiving the statement who has been listed as an owner of the property on the collector's tax roll for at least the last 25 years and notice to the area agency, **[**or in Baltimore County to post the statement and notice on the property,**]** or to include any taxes in the statement and notice, does not invalidate or otherwise affect any tax, except a tax that is required to be but has not been certified as provided in § 14–810 of this subtitle, or any sale made under this subtitle to enforce payment of taxes, nor prevent nor stay any proceedings under this subtitle, nor affect the title of any purchaser.

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:

(i) the expense of publication of all notices;

(ii) the cost of the county or municipal corporation surveyor's description and plat, if necessary;

(iii) except as provided in items **[**(vi)**]** ~~(V)~~ and **[**(vii)**]** ~~(VI)~~ of this paragraph, a fee to the attorney representing the county treasurer for services, that does not exceed $15 for each property; except that in any county that has a paid full–time solicitor, counsel or attorney, the fee shall be collected and paid into the general funds of the county;

(iv) the auctioneer's fee, as provided in paragraph (2) of this subsection;

(v) [in Baltimore County, ~~where provision has been made for the posting of the premises to be sold, a sum that does not exceed $7.50~~ ***A FEE, THAT MAY BE ESTABLISHED BY THE COUNTY EXECUTIVE AND SUBJECT TO REVIEW BY THE COUNTY COUNCIL FOR LEGAL SERVICES, ADMINISTRATIVE COSTS, AND MAILING EXPENSES RELATING TO THE SALE FOR EACH PROPERTY, NOT TO EXCEED ACTUAL COSTS, TO BE COLLECTED AND PAID INTO THE GENERAL FUND OF BALTIMORE COUNTY***;

(vi)] in Somerset County, Wicomico County and Worcester County a fee to the attorney representing the county treasurer or director of finance, that does not exceed $35 for each property, to be approved by the county treasurer or director of finance and by the governing body;

[(vii)] ~~(VI)~~ in Baltimore City ~~AND BALTIMORE COUNTY~~:

1. a fee of $30 for each property to the attorney representing the director of finance ~~OR THE DIRECTOR OF BUDGET AND FINANCE, AS APPLICABLE~~, that is collected and paid into the General Fund of Baltimore City ~~OR BALTIMORE COUNTY, AS APPLICABLE~~; and

2. a fee that does not exceed $10 for the mailing of statements and notices;

[(viii)] ~~(VII)~~ in Montgomery County, instead of the fee allowed under item (iii) of this paragraph, a fee that does not exceed $30 for each property for legal services relating to the sale, to be collected and paid into the general funds of the county; and

[(ix)] ~~(VIII)~~ a reasonable fee that does not exceed $150 for examinations of title before the mailing of statements and notices.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 476

(Senate Bill 436)

AN ACT concerning

Prince George's County – Municipal Corporations – Tax Credit for Revitalization Districts

PG 415–11

FOR the purpose of authorizing the governing body of a municipal corporation in Prince George's County to establish, by resolution, certain areas within the municipal corporations as revitalization districts; authorizing the governing body of a municipal corporation in Prince George's County to grant a property tax credit against the municipal corporation property tax imposed on real property within a designated revitalization district; authorizing the governing body of a municipal corporation in Prince George's County to provide, by law, certain provisions to carry out the tax credit authorized by this Act; ~~defining a certain term;~~ and generally relating to tax credits for revitalization districts in a municipal corporation in Prince George's County.

BY adding to
Article – Tax – Property
Section 9–318(g)
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

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

Article – Tax – Property

9–318.

(G) (1) ~~**IN THIS SUBSECTION, "REVITALIZATION DISTRICT" MEANS AN AREA IN A MUNICIPAL CORPORATION IN PRINCE GEORGE'S COUNTY DESIGNATED BY RESOLUTION ADOPTED BY THE GOVERNING BODY OF THE MUNICIPAL CORPORATION IF THE DESIGNATED AREA IS FOUND BY THE MUNICIPAL CORPORATION TO BE IN NEED OF REDEVELOPMENT.**~~

~~**(2)**~~ **THE GOVERNING BODY OF A MUNICIPAL CORPORATION IN PRINCE GEORGE'S COUNTY MAY, BY RESOLUTION, ESTABLISH REVITALIZATION DISTRICTS FOR THE PURPOSE OF ENCOURAGING REDEVELOPMENT.**

~~**(3)**~~ **(2)** **THE GOVERNING BODY OF A MUNICIPAL CORPORATION IN PRINCE GEORGE'S COUNTY MAY GRANT, BY LAW, A PROPERTY TAX CREDIT AGAINST THE MUNICIPAL CORPORATION PROPERTY TAX IMPOSED ON REAL PROPERTY LOCATED WITHIN A REVITALIZATION DISTRICT ESTABLISHED UNDER THIS SUBSECTION THAT IS:**

(I) CONSTRUCTED OR SUBSTANTIALLY REDEVELOPED IN CONFORMANCE WITH ADOPTED ELIGIBILITY CRITERIA; AND

(II) REASSESSED AS A RESULT OF THE CONSTRUCTION OR REDEVELOPMENT AT A HIGHER VALUE THAN THAT ASSESSED PRIOR TO THE CONSTRUCTION OR REDEVELOPMENT.

~~(4)~~ (3) THE GOVERNING BODY OF A MUNICIPAL CORPORATION IN PRINCE GEORGE'S COUNTY MAY PROVIDE BY LAW:

(I) CRITERIA FOR THE DESIGNATION OF A REVITALIZATION DISTRICT;

(II) CRITERIA FOR ELIGIBILITY FOR THE PROPERTY TAX CREDIT UNDER THIS SUBSECTION;

(III) THE AMOUNT AND DURATION OF THE TAX CREDIT;

(IV) REGULATIONS AND PROCEDURES FOR THE APPLICATION AND UNIFORM PROCESSING OF REQUESTS FOR THE TAX CREDIT; AND

(V) ANY OTHER PROVISION NECESSARY TO CARRY OUT THE TAX CREDIT UNDER THIS SUBSECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 477

(Senate Bill 450)

AN ACT concerning

Real Property – Residential Property Foreclosure Procedures – Lost Note Affidavit

FOR the purpose of prohibiting a court, in an action to foreclose a mortgage or deed of trust on residential property, from accepting a certain affidavit in lieu of a copy of the debt instrument unless the affidavit contains certain information;

providing for the application of this Act; and generally relating to residential property foreclosure procedures.

BY repealing and reenacting, without amendments,
Article – Real Property
Section 7–105.1(d)
Annotated Code of Maryland
(2010 Replacement Volume and 2010 Supplement)

BY adding to
Article – Real Property
Section 7–105.1(d–1)
Annotated Code of Maryland
(2010 Replacement Volume and 2010 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.

(d) 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 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

(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:

1. The individual is not a servicemember, as defined in the Servicemembers Civil Relief Act, 50 U.S.C. Appendix § 511; or

2. The action is authorized by the Act;

(vi) If applicable, a copy of the notice of intent to foreclose;

(vii) In addition to any other filing fees required by law, a filing fee in the amount of $300;

(viii) Subject to subsection (e) of this section:

1. If the loss mitigation analysis has been completed, 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. A preliminary loss mitigation affidavit in the form prescribed by regulation adopted by the Commissioner of Financial Regulation;

B. The loss mitigation application and a description of the eligibility requirements for loss mitigation programs offered by the secured party as described in subsection (c)(5) of this section;

C. Instructions for completing the loss mitigation application, including instructions to return the completed application to the attorney handling the foreclosure; and

D. An envelope preprinted with the address of the attorney handling the foreclosure;

(ix) A notice to the mortgagor or grantor in substantially the following form, as prescribed by regulation by the Commissioner of Financial Regulation:

"NOTICE

An action to foreclose the mortgage/deed of trust on the property located at (insert address) has been filed in the Circuit Court for (county).

A foreclosure sale of the property may occur at any time after 45 days from the date that this notice is served on you.

You may stop the sale and reinstate your mortgage loan by paying all amounts due on your loan, plus fees and costs of the foreclosure action, at any time up to one business day before the sale. Please contact (insert name of authorized agent of secured party) at (insert telephone number) to obtain the amount due to cure the default on your mortgage loan and instructions for delivering the payment.

If you own and live in the home that is subject to foreclosure, your lender may be required to conduct an analysis of your loan to see if you qualify for a loan modification or some other loss mitigation. You must apply and provide your lender with specific information as part of this analysis. The results of your lender's analysis of your loan will be provided to you in the form of an affidavit submitted to the court.

If your lender determines that you are not eligible for any loan modification or other relief, you have the right to file a request with the court and have foreclosure mediation. This will be a conference with you, someone representing your lender, and a neutral third party to discuss your loan and possible options. To request foreclosure mediation, you must complete the Request for Foreclosure Mediation form that will accompany the lender's final loss mitigation affidavit and mail it to the court and the lender's foreclosure attorney within 15 days after receipt. If you file a Request for Foreclosure Mediation, your property cannot go to sale until at least 15 days after your mediation has been held.

You are urged to obtain legal advice and the assistance of a housing counselor to discuss possible loss mitigation programs, foreclosure mediation, and other options to stop the foreclosure sale.

If you are interested in selling your home to avoid a foreclosure sale, you may wish to contact a licensed real estate broker or salesperson as soon as possible.

Housing counseling and financial assistance programs are available through the Maryland Department of Housing and Community Development. Please call (insert telephone number) for information on available resources.

Some people may approach you about "saving" your home. You should be careful about any such promises.

The State encourages you to become informed about your options in foreclosure before entering into any agreements with anyone in connection with the foreclosure of your home. There are government agencies and nonprofit organizations that you may contact for helpful information about the foreclosure process. For the name and telephone number of an organization near you, please call the Consumer Protection Division of the Office of the Attorney General of Maryland at (insert telephone number). The State does not guarantee the advice of these organizations.

DO NOT DELAY DEALING WITH THE FORECLOSURE BECAUSE YOUR OPTIONS WILL BECOME MORE LIMITED AS TIME PASSES."; and

(x) If the order to docket or complaint to foreclose concerns owner–occupied residential property and is accompanied by a final loss mitigation affidavit:

1. A request for foreclosure mediation in the form prescribed by regulation adopted by the Commissioner of Financial Regulation; and

2. An envelope preprinted with the address of the clerk of the court; and

3. An envelope preprinted with the address of the foreclosure attorney.

(D–1) 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) OF THIS SECTION, UNLESS THE AFFIDAVIT:

(1) ~~LISTS EACH OWNER IN THE CHAIN OF TITLE OF THE DEBT INSTRUMENT AND THE DATE ON WHICH EACH OWNER ACQUIRED OWNERSHIP~~ 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.

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 order to docket or complaint to foreclose on residential property filed before July 1, 2011.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 478

(House Bill 412)

AN ACT concerning

Real Property – Residential Property Foreclosure Procedures – Lost Note Affidavit

FOR the purpose of prohibiting a court, in an action to foreclose a mortgage or deed of trust on residential property, from accepting a certain affidavit in lieu of a copy of the debt instrument unless the affidavit contains certain information; providing for the application of this Act; and generally relating to residential property foreclosure procedures.

BY repealing and reenacting, without amendments,
Article – Real Property
Section 7–105.1(d)
Annotated Code of Maryland
(2010 Replacement Volume and 2010 Supplement)

BY adding to
Article – Real Property
Section 7–105.1(d–1)
Annotated Code of Maryland
(2010 Replacement Volume and 2010 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.

(d) 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 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

(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:

1. The individual is not a servicemember, as defined in the Servicemembers Civil Relief Act, 50 U.S.C. Appendix § 511; or

2. The action is authorized by the Act;

(vi) If applicable, a copy of the notice of intent to foreclose;

(vii) In addition to any other filing fees required by law, a filing fee in the amount of $300;

(viii) Subject to subsection (e) of this section:

1. If the loss mitigation analysis has been completed, 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. A preliminary loss mitigation affidavit in the form prescribed by regulation adopted by the Commissioner of Financial Regulation;

B. The loss mitigation application and a description of the eligibility requirements for loss mitigation programs offered by the secured party as described in subsection (c)(5) of this section;

C. Instructions for completing the loss mitigation application, including instructions to return the completed application to the attorney handling the foreclosure; and

D. An envelope preprinted with the address of the attorney handling the foreclosure;

(ix) A notice to the mortgagor or grantor in substantially the following form, as prescribed by regulation by the Commissioner of Financial Regulation:

"NOTICE

An action to foreclose the mortgage/deed of trust on the property located at (insert address) has been filed in the Circuit Court for (county).

A foreclosure sale of the property may occur at any time after 45 days from the date that this notice is served on you.

You may stop the sale and reinstate your mortgage loan by paying all amounts due on your loan, plus fees and costs of the foreclosure action, at any time up to one business day before the sale. Please contact (insert name of authorized agent of secured party) at (insert telephone number) to obtain the amount due to cure the default on your mortgage loan and instructions for delivering the payment.

If you own and live in the home that is subject to foreclosure, your lender may be required to conduct an analysis of your loan to see if you qualify for a loan modification or some other loss mitigation. You must apply and provide your lender with specific information as part of this analysis. The results of your lender's analysis of your loan will be provided to you in the form of an affidavit submitted to the court.

If your lender determines that you are not eligible for any loan modification or other relief, you have the right to file a request with the court and have foreclosure mediation. This will be a conference with you, someone representing your lender, and a neutral third party to discuss your loan and possible options. To request foreclosure mediation, you must complete the Request for Foreclosure Mediation form that will accompany the lender's final loss mitigation affidavit and mail it to the court and the

lender's foreclosure attorney within 15 days after receipt. If you file a Request for Foreclosure Mediation, your property cannot go to sale until at least 15 days after your mediation has been held.

You are urged to obtain legal advice and the assistance of a housing counselor to discuss possible loss mitigation programs, foreclosure mediation, and other options to stop the foreclosure sale.

If you are interested in selling your home to avoid a foreclosure sale, you may wish to contact a licensed real estate broker or salesperson as soon as possible.

Housing counseling and financial assistance programs are available through the Maryland Department of Housing and Community Development. Please call (insert telephone number) for information on available resources.

Some people may approach you about "saving" your home. You should be careful about any such promises.

The State encourages you to become informed about your options in foreclosure before entering into any agreements with anyone in connection with the foreclosure of your home. There are government agencies and nonprofit organizations that you may contact for helpful information about the foreclosure process. For the name and telephone number of an organization near you, please call the Consumer Protection Division of the Office of the Attorney General of Maryland at (insert telephone number). The State does not guarantee the advice of these organizations.

DO NOT DELAY DEALING WITH THE FORECLOSURE BECAUSE YOUR OPTIONS WILL BECOME MORE LIMITED AS TIME PASSES."; and

(x) If the order to docket or complaint to foreclose concerns owner–occupied residential property and is accompanied by a final loss mitigation affidavit:

1. A request for foreclosure mediation in the form prescribed by regulation adopted by the Commissioner of Financial Regulation; and

2. An envelope preprinted with the address of the clerk of the court; and

3. An envelope preprinted with the address of the foreclosure attorney.

(D–1) 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) OF THIS SECTION, UNLESS THE AFFIDAVIT:

(1) ~~LISTS EACH OWNER IN THE CHAIN OF TITLE OF THE DEBT INSTRUMENT AND THE DATE ON WHICH EACH OWNER ACQUIRED OWNERSHIP IDENTIFIES THE SECURED PARTY AND THE BASIS FOR THE SECURED PARTY'S RIGHT TO ENFORCE THE DEBT INSTRUMENT~~ *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.

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 order to docket or complaint to foreclose on residential property filed before July 1, 2011.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 479

(Senate Bill 466)

AN ACT concerning

Carroll County – Winery Special Event Permits – Farmers' Markets

FOR the purpose of authorizing the issuance of a certain number of additional winery special event permits to certain wineries for use in certain farmers' markets in Carroll County; prohibiting a holder of a permit from selling wine by the glass; requiring that a certain individual who is certified by an alcohol awareness program be present during the hours when wine may be sold; and generally relating to farmers' markets in Carroll County.

BY repealing and reenacting, with amendments,
Article 2B – Alcoholic Beverages
Section 2–101(u)(1)
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

BY adding to
Article 2B – Alcoholic Beverages
Section 2–101(u)(9)
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

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

Article 2B – Alcoholic Beverages

2–101.

(u) (1) The Office of the Comptroller may issue a winery special event permit to a licensed Class 4 Maryland limited winery, provided that:

(i) Except as provided in paragraphs (6), (7), **[**and**]** (8)**, AND (9)** of this subsection, no more than 12 winery special event permits are issued to the Class 4 Maryland limited winery in any given calendar year;

(ii) The permit does not exceed 3 consecutive days; and

(iii) Except as provided in paragraphs (6), (7), **[**and**]** (8)**, AND (9)** of this subsection, no more than three winery special event permits are issued in any calendar year to any given limited winery for use in the same political subdivision.

(9) (I) IN ADDITION TO THE WINERY SPECIAL EVENT PERMITS THAT MAY BE ISSUED UNDER PARAGRAPH (1)(I) AND (III) OF THIS SUBSECTION, A CLASS 4 MARYLAND LIMITED WINERY MAY BE ISSUED NOT MORE THAN 12 WINERY SPECIAL EVENT PERMITS FOR USE AT FARMERS' MARKETS IN CARROLL COUNTY THAT ARE LISTED ON THE FARMERS' MARKET DIRECTORY OF THE MARYLAND DEPARTMENT OF AGRICULTURE.

(II) IF A WINERY SPECIAL EVENT PERMIT IS ISSUED UNDER THIS PARAGRAPH:

1. THE HOLDER OF THE PERMIT MAY NOT SELL WINE BY THE GLASS; AND

2. THE FARMERS' MARKET ADMINISTRATOR OR THE ADMINISTRATOR'S DESIGNEE AND THE HOLDER OF THE PERMIT OR THE HOLDER'S DESIGNEE SHALL BE:

A. CERTIFIED BY AN ALCOHOL AWARENESS PROGRAM APPROVED BY THE COMPTROLLER; AND

B. PRESENT DURING THE HOURS WHEN WINE MAY BE SOLD.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 480

(Senate Bill 476)

AN ACT concerning

~~Counselors Home Study – Online Study~~
Professional Counselors and Therapists – Continuing Education – Home Study

FOR the purpose of repealing a provision prohibiting the State Board of Professional ~~Counselor~~ *Counselors* and Therapists from authorizing home study courses towards completion of continuing education requirements.

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 17–504
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health Occupations

17–504.

(a) (1) A license or certificate expires on the date set by the Board, unless the license or certificate is renewed for an additional term as provided in this section.

(2) A license or certificate may not be renewed for a term longer than 2 years.

(b) At least 1 month before the license or certificate expires, the Board shall send to the licensee or certificate holder, by first–class mail to the last known address of the licensee or certificate holder, a renewal notice that states:

(1) The date on which the current license or certificate expires;

(2) The date by which the renewal application must be received by the Board for the renewal to be issued and mailed before the license or certificate expires; and

(3) The amount of the renewal fee.

(c) Each licensee or certificate holder shall notify the Board of any change in the address of the licensee or certificate holder.

(d) Before the license or certificate expires, the licensee or certificate holder periodically may renew it for an additional 2–year term, if the licensee or certificate holder:

(1) Otherwise is entitled to be licensed or certified;

(2) Pays to the Board the renewal fee set by the Board;

(3) Submits to the Board a renewal application on the form that the Board requires; and

(4) Submits satisfactory evidence of compliance with any continuing education requirements as required by the Board for license or certificate renewal.

(e) **[**The Board may not authorize home study towards the completion of the continuing education requirements.

(f)**]** (1) The Board shall renew the license or certificate of and issue a renewal license or certificate to each licensee or certificate holder who meets the requirements of this section.

(2) The Board shall include the term of the renewal on each renewal license or certificate that the Board issues.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 481

(House Bill 311)

AN ACT concerning

Professional Counselors and Therapists – Continuing Education – Home Study

FOR the purpose of repealing a provision prohibiting the State Board of Professional Counselors and Therapists from authorizing home study courses towards completion of continuing education requirements.

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 17–504
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health Occupations

17–504.

(a) (1) A license or certificate expires on the date set by the Board, unless the license or certificate is renewed for an additional term as provided in this section.

(2) A license or certificate may not be renewed for a term longer than 2 years.

(b) At least 1 month before the license or certificate expires, the Board shall send to the licensee or certificate holder, by first–class mail to the last known address of the licensee or certificate holder, a renewal notice that states:

(1) The date on which the current license or certificate expires;

(2) The date by which the renewal application must be received by the Board for the renewal to be issued and mailed before the license or certificate expires; and

(3) The amount of the renewal fee.

(c) Each licensee or certificate holder shall notify the Board of any change in the address of the licensee or certificate holder.

(d) Before the license or certificate expires, the licensee or certificate holder periodically may renew it for an additional 2–year term, if the licensee or certificate holder:

(1) Otherwise is entitled to be licensed or certified;

(2) Pays to the Board the renewal fee set by the Board;

(3) Submits to the Board a renewal application on the form that the Board requires; and

(4) Submits satisfactory evidence of compliance with any continuing education requirements as required by the Board for license or certificate renewal.

(e) **[**The Board may not authorize home study towards the completion of the continuing education requirements.

(f)**]** (1) The Board shall renew the license or certificate of and issue a renewal license or certificate to each licensee or certificate holder who meets the requirements of this section.

(2) The Board shall include the term of the renewal on each renewal license or certificate that the Board issues.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 482

(Senate Bill 479)

AN ACT concerning

Transportation – Procurement for MARC ~~Train~~ Service ~~– Disclosure Requirements Regarding Involvement in Deportations~~

FOR the purpose of ~~requiring certain entities that submit a bid or proposal to the Maryland Department of Transportation or certain other units of the State or local government to provide certain MARC train service to submit a certain statement concerning certain deportation activity in which the entity may have engaged; requiring an entity to include certain information in the statement; requiring the Department of Transportation or certain other units of the State or local government to consider certain information provided by certain entities seeking to provide certain MARC train service; defining certain terms; and generally relating to the disclosure of certain information by entities that submit bids or proposals on procurement contracts to provide certain MARC train service.~~ *prohibiting certain entities from being considered a responsible*

bidder or offeror for certain contracts to provide Maryland Area Regional Commuter (MARC) service unless the entities comply with certain requirements; requiring that, in conjunction with the submission of certain bids or offers, certain entities provide certain units with a certain statement and estimated date for completing a certain process of assembling records; requiring certain entities to notify certain units of changes to a certain estimated date; requiring certain entities to comply with certain requirements for a certain process of assembling records; requiring certain entities to contract with certain archivists and historians to conduct a certain initial analysis and ensure that a certain process of assembling records is conducted in a certain manner; establishing requirements for a certain initial analysis; requiring certain entities to submit certain information to the State Archivist after a certain process of assembling records is completed; requiring the State Archivist to approve certain archivists, historians, and initial reports; requiring the State Archivist to provide certain guidance and oversight; requiring the State Archivist to make certain determinations and provide certain written notice of the determination to certain units; authorizing the State Archivist to use a designee to carry out certain provisions; requiring certain units to provide notice of intent to award certain contracts within a certain period of time; prohibiting certain units from awarding certain contracts to certain entities that do not comply with certain provisions; authorizing certain units to award certain entities after receiving certain notice; providing that certain prohibitions do not apply if a contract is awarded to certain bidders or offerors; authorizing certain entities to award certain contracts to certain entities after receiving certain notice; providing that, notwithstanding certain requirements, certain units may award certain contracts to certain bidders or offerors; prohibiting certain entities, bidders, or offerors from submitting certain protests; requiring that certain entities that submit certain bids or proposals to the Maryland Transit Administration comply with certain requirements; providing for the application of this Act; defining certain terms; and generally relating to procurement for MARC service and requirements for assembling records and disclosing information related to the deportation of victims.

BY adding to
Article – State Finance and Procurement
Section 12–501 through ~~12–504~~ *12–511* to be under the new subtitle "Subtitle 5. Disclosure Requirements Regarding Involvement in Deportations"
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – Transportation
Section 7–508
Annotated Code of Maryland
(2008 Replacement Volume and 2010 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

SUBTITLE 5. DISCLOSURE REQUIREMENTS REGARDING INVOLVEMENT IN DEPORTATIONS.

12–501.

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

~~**(B) "DEPARTMENT" MEANS THE MARYLAND DEPARTMENT OF TRANSPORTATION.**~~

~~**(C)**~~ ***(B)*** **"DIRECT INVOLVEMENT** ***IN THE DEPORTATION OF VICTIMS*****" MEANS OWNERSHIP OR OPERATION OF THE TRAINS ON WHICH INDIVIDUALS WERE** ~~**DEPORTED**~~ ***TRANSPORTED*** **TO EXTERMINATION CAMPS, DEATH CAMPS, OR ANY FACILITY USED TO TRANSITION INDIVIDUALS TO EXTERMINATION CAMPS OR DEATH CAMPS, DURING THE PERIOD BEGINNING ON** ~~**JANUARY 1, 1942**~~ ***SEPTEMBER 1, 1939*****, AND ENDING ON** ~~**DECEMBER 31, 1944**~~ ***SEPTEMBER 2, 1945*****.**

~~**(D)**~~ ***(C)*** **"ENTITY" MEANS:**

(1) A CORPORATION, AFFILIATE, OR OTHER SIMILAR ORGANIZATION ***OR A SUCCESSOR IN INTEREST OF THE CORPORATION, AFFILIATE, OR SIMILAR ORGANIZATION*** **THAT CONTROLS, OR IS CONTROLLED OR OWNED OR PARTIALLY OWNED BY OR UNDER COMMON CONTROL WITH, A CORPORATION THAT** ~~**HAS**~~ ***HAD*** **DIRECT INVOLVEMENT** ***IN THE DEPORTATION OF VICTIMS*****; OR**

(2) A MEMBER OF A PARTNERSHIP OR A CONSORTIUM THAT INCLUDES AN ENTITY THAT CERTIFIES THAT IT ~~**HAS**~~ ***HAD*** **DIRECT INVOLVEMENT** ***IN THE DEPORTATION OF VICTIMS*****.**

(D) "MARC" MEANS THE MARYLAND AREA REGIONAL COMMUTER.

(E) (1) "PROPERTY" MEANS ANY PERSONAL BELONGINGS OWNED OR CONTROLLED BY VICTIMS ~~**OF THE DEPORTATIONS TO EXTERMINATION CAMPS, DEATH CAMPS, OR FACILITIES USED TO TRANSITION INDIVIDUALS TO EXTERMINATION CAMPS OR DEATH CAMPS, DURING THE PERIOD BEGINNING ON JANUARY 1, 1942, AND ENDING ON DECEMBER 31, 1944**~~**.**

(2) "PROPERTY" INCLUDES:

(I) JEWELRY;

(II) BOOKS;

(III) ARTIFACTS;

(IV) PRECIOUS METALS; AND

(V) CURRENCY.

(F) "PROCESS OF ASSEMBLING THE RECORDS" MEANS TO:

(1) ORGANIZE, DIGITIZE, AND MAKE RECORDS AVAILABLE TO THE PUBLIC IN AN INTERNET ACCESSIBLE, ELECTRONIC FORMAT THAT IS SEARCHABLE AND ANALYZABLE; AND

(2) PREPARE TO SUBMIT THE INFORMATION DESCRIBED IN § 12–507 OF THIS SUBTITLE TO THE STATE ARCHIVIST.

~~(F)~~ *(G) (1) "RECORDS" MEANS MATERIAL RELATING TO THE DEPORTATION OF VICTIMS.*

(2) "RECORDS" INCLUDES:

~~(1)~~ *(I)* DOCUMENTS;

~~(2)~~ *(II)* CORRESPONDENCE;

~~(3)~~ *(III)* MEMORANDA;

~~(4)~~ *(IV)* RECEIPTS;

~~(5)~~ *(V)* INVOICES;

~~(6)~~ *(VI)* PRESENTATIONS;

~~(7)~~ *(VII)* AUDITS; AND

~~(8)~~ *(VIII)* ANY OTHER MATERIALS RELATED TO ITEMS (1) THROUGH (7) OF THIS SUBSECTION.

(H) "VICTIM" MEANS AN INDIVIDUAL WHO WAS ON AN ENTITY'S TRAIN FOR THE PURPOSE OF BEING TRANSPORTED TO AN EXTERMINATION CAMP,

DEATH CAMP, OR A FACILITY USED TO TRANSITION INDIVIDUALS TO EXTERMINATION CAMPS OR DEATH CAMPS DURING THE PERIOD BEGINNING ON SEPTEMBER 1, 1939 AND ENDING ON SEPTEMBER 2, 1945.

12–502.

FOR THE PURPOSES OF THIS SUBTITLE:

(1) TWO OR MORE ENTITIES SHALL BE CONSIDERED AS THE SAME ENTITY IF:

(I) ONE ENTITY IS A WHOLLY OWNED SUBSIDIARY OF THE OTHER; OR

(II) ONE ENTITY OWNS OR DIRECTLY OR INDIRECTLY CONTROLS MORE THAN 50% OF THE VOTING SECURITIES OF THE OTHER ENTITY, REGARDLESS OF WHETHER THE EQUITY INTEREST IN THAT OTHER ENTITY IS OWNED BY A FOREIGN GOVERNMENT; AND

(2) IF AN EQUITY INTEREST IN AN ENTITY IS OR WAS OWNED BY A FOREIGN GOVERNMENT, THAT EQUITY INTEREST SHALL BE ATTRIBUTED TO THE ENTITY.

12–503.

THIS SUBTITLE APPLIES TO AN ENTITY THAT:

(1) ~~HAS~~ *HAD* DIRECT INVOLVEMENT *IN THE DEPORTATION OF VICTIMS*; AND

(2) SUBMITS A BID *OR OFFER TO A UNIT OF STATE OR LOCAL GOVERNMENT* ON A PROCUREMENT CONTRACT ~~WITH THE DEPARTMENT OR WITH ANY OTHER UNIT OF THE STATE OR LOCAL GOVERNMENT~~ TO PROVIDE MARC ~~TRAIN~~ SERVICE THAT IS FUNDED IN WHOLE OR IN PART WITH PUBLIC FUNDS.

12–504.

AN ENTITY MAY NOT BE CONSIDERED A RESPONSIBLE BIDDER OR OFFEROR FOR A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE UNLESS THE ENTITY COMPLIES WITH THE REQUIREMENTS OF §§ 12–505 THROUGH 12–507 OF THIS SUBTITLE.

~~12–504.~~ 12–505.

(A) ~~BEFORE SUBMITTING~~ *IN CONJUNCTION WITH THE SUBMISSION OF* A ~~FORMAL~~ BID *OR OFFER* ON A PROCUREMENT CONTRACT TO ~~THE DEPARTMENT OR OTHER UNIT OF THE~~ *A UNIT OF* STATE OR LOCAL GOVERNMENT TO PROVIDE MARC ~~TRAIN~~ SERVICE, AN ENTITY SHALL *SUBMIT TO THE UNIT*:

(1) ~~CERTIFY TO THE DEPARTMENT OR UNIT WHETHER~~ *A STATEMENT THAT* THE ENTITY ~~HAS~~ *HAD* DIRECT INVOLVEMENT *IN THE DEPORTATION OF VICTIMS*; AND

(2) ~~DISCLOSE TO THE DEPARTMENT OR OTHER UNIT THE INFORMATION DESCRIBED IN SUBSECTION (B) OF THIS SECTION~~ *AN ESTIMATED DATE FOR COMPLETING THE PROCESS OF ASSEMBLING THE RECORDS AND PROVIDING INFORMATION TO THE STATE ARCHIVIST IN ACCORDANCE WITH §§ 12–506 AND 12–507 OF THIS SUBTITLE*.

(B) THE ENTITY SHALL NOTIFY THE UNIT OF ANY CHANGE IN THE ESTIMATED DATE THAT WAS SUBMITTED TO THE UNIT IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION.

12–506.

(A) BEFORE A UNIT OF STATE OR LOCAL GOVERNMENT MAY AWARD A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE TO AN ENTITY SUBJECT TO THIS SUBTITLE, THE ENTITY SHALL COMPLY WITH THE PROVISIONS OF THIS SECTION FOR THE PROCESS OF ASSEMBLING THE RECORDS RELATED TO THE DEPORTATION OF VICTIMS.

(B) (1) AN ENTITY SHALL CONTRACT WITH AN ARCHIVIST AND A HISTORIAN TO CONDUCT AN INITIAL ANALYSIS OF THE RECORDS.

(2) THE ARCHIVIST AND HISTORIAN THAT CONDUCT THE INITIAL ANALYSIS SHALL:

(I) BE APPROVED BY THE STATE ARCHIVIST;

(II) BE INDEPENDENT OF THE ENTITY; AND

(III) CONDUCT THE ANALYSIS IN ACCORDANCE WITH THE STANDARDS OF THE SOCIETY OF AMERICAN ARCHIVISTS AND THE COUNCIL OF STATE ARCHIVISTS.

(3) THE INITIAL ANALYSIS SHALL INCLUDE:

(I) AN INSPECTION OF EACH LOCATION IN WHICH THE ENTITY MAINTAINS RECORDS THAT MAY BE RELATED TO THE DEPORTATION OF VICTIMS; AND

(II) A REPORT SUBMITTED TO THE STATE ARCHIVIST.

(4) THE INITIAL REPORT SUBMITTED TO THE STATE ARCHIVIST SHALL INCLUDE:

(I) A LIST OF EACH LOCATION INSPECTED AND AN ASSESSMENT OF WHETHER THE LOCATION MAINTAINS ANY RECORDS;

(II) AN OUTLINE AND ASSESSMENT OF THE QUALITY OF THE RECORDS;

(III) A TIMELINE FOR THE PROCESS TO ASSEMBLE THE RECORDS; AND

(IV) AN ESTIMATED COST TO ASSEMBLE THE RECORDS.

(C) (1) AFTER THE INITIAL ANALYSIS IS CONCLUDED AND THE STATE ARCHIVIST HAS APPROVED THE INITIAL REPORT IN ACCORDANCE WITH § 12–508(A)(2)(I) OF THIS SUBTITLE, THE ENTITY SHALL CONTRACT WITH AN ARCHIVIST AND A HISTORIAN TO ENSURE THAT THE PROCESS OF ASSEMBLING THE RECORDS IS COMPLETED IN A MANNER CONSISTENT WITH:

(I) THE INITIAL REPORT; AND

(II) THE STANDARDS OF THE SOCIETY OF AMERICAN ARCHIVISTS AND THE COUNCIL OF STATE ARCHIVISTS.

(2) THE ARCHIVIST AND HISTORIAN CONTRACTED WITH TO CARRY OUT PARAGRAPH (1) OF THIS SUBSECTION:

(I) SHALL BE APPROVED BY THE STATE ARCHIVIST; AND

(II) MAY BE THE ARCHIVIST AND HISTORIAN THAT CONDUCTED THE INITIAL ANALYSIS OR ANOTHER ARCHIVIST AND HISTORIAN APPROVED BY THE STATE ARCHIVIST.

(D) AFTER THE PROCESS OF ASSEMBLING THE RECORDS IS COMPLETE, THE ENTITY SHALL PROVIDE THE INFORMATION REQUIRED UNDER § 12–507 OF THIS SUBTITLE TO THE STATE ARCHIVIST.

~~(B) AN~~

12–507.

BEFORE A UNIT OF STATE OR LOCAL GOVERNMENT MAY AWARD A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE TO AN ENTITY SUBJECT TO THIS SUBTITLE*, THE ENTITY* SHALL ~~STATE, AS TO THE DEPORTATION OF INDIVIDUALS TO EXTERMINATION CAMPS, DEATH CAMPS, OR A FACILITY TO TRANSITION INDIVIDUALS TO EXTERMINATION CAMPS OR DEATH CAMPS DURING THE PERIOD BETWEEN JANUARY 1, 1942, AND DECEMBER 31, 1944~~ *PROVIDE THE STATE ARCHIVIST WITH THE FOLLOWING INFORMATION AS IT RELATES TO THE DEPORTATION OF VICTIMS*:

(1) *A WRITTEN STATEMENT PROVIDING:*

(I) WHETHER THE ENTITY ~~HAS ANY~~ *POSSESSES, HAS CUSTODY OF, OR CONTROLS* RECORDS RELATING TO THE ~~DEPORTATIONS IN ITS POSSESSION, CUSTODY, OR CONTROL~~ *DEPORTATION OF VICTIMS*;

(II) ~~THE~~ *EACH* LOCATION WHERE THE RECORDS ARE MAINTAINED; AND

(III) THE CONTENTS AND ADDRESSES OF ~~ANY~~ *EACH* ARCHIVE OR OTHER FACILITY WHERE THE ENTITY MAINTAINS RECORDS;

(2) A DETAILED INDEX OF THE RECORDS, INCLUDING:

(I) THE LOCATION OF THE RECORDS AND A LIST OF ANY MONEY RECEIVED FOR EACH DEPORTATION, DELINEATED BY INDIVIDUAL CONVOYS AND PERSONS; AND

(II) AN ACCOUNTING OF EACH PIECE OF PROPERTY TAKEN OR CONFISCATED ~~IN CONNECTION WITH THE DEPORTATIONS~~ *FROM EACH VICTIM*;

(3) IF THE ENTITY NO LONGER HAS IN ITS CUSTODY OR CONTROL ANY OR ALL OF THE PROPERTY TAKEN OR CONFISCATED ~~IN CONNECTION WITH THE DEPORTATIONS~~ *FROM EACH VICTIM, A WRITTEN DESCRIPTION OF*:

(I) THE TIME AND MANNER IN WHICH THE ENTITY DISPOSED OF OR CONVERTED THE PROPERTY;

(II) ANY PROPERTY CURRENTLY OWNED OR OPERATED BY THE ENTITY THAT WAS EXCHANGED FOR THE EXPROPRIATED PROPERTY;

(III) ANY EXPROPRIATED PROPERTY CURRENTLY OWNED BY THE ENTITY OR ANY OTHER PROPERTY DERIVED FROM THE EXPROPRIATED PROPERTY; AND

(IV) ANY OTHER DERIVATIVE OR TRACEABLE PROPERTY THAT REMAINS IN THE ENTITY'S POSSESSION, CUSTODY, OR CONTROL AS A RESULT OF ITS DEPORTATIONS ACTIVITY; *AND*

(4) ~~IF ANY RECORDS RELATING TO THE DEPORTATIONS HAVE BEEN MADE PUBLIC, A CONFIRMATION THAT THE MATERIALS MADE AVAILABLE FOR PUBLIC REVIEW CONSTITUTE ALL OF THE RECORDS, REGARDLESS OF THE DATE THE RECORDS WERE CREATED OR OBTAINED; AND~~

~~(5)~~ *A WRITTEN STATEMENT CONCERNING* WHETHER THE ENTITY HAS PROVIDED RESTITUTION OR REPARATIONS TO ALL IDENTIFIABLE VICTIMS OF THE DEPORTATIONS AND, IF SO STATED, A DETAILED ~~REPORT~~ *DESCRIPTION* ON HOW THE RESTITUTION *OR REPARATIONS* APPLIES SPECIFICALLY TO ~~INDIVIDUALS DEPORTED BY THE ENTITY~~ *THE DEPORTATION OF EACH VICTIM*.

12–508.

(A) THE STATE ARCHIVIST SHALL:

(1) APPROVE AN ARCHIVIST AND HISTORIAN TO CONDUCT THE INITIAL ANALYSIS REQUIRED UNDER § 12–506(B) OF THIS SUBTITLE;

(2) WITHIN 14 DAYS AFTER RECEIVING THE INITIAL REPORT SUBMITTED IN ACCORDANCE WITH § 12–506(B) OF THIS SUBTITLE:

(I) REVIEW THE REPORT AND DETERMINE WHETHER, IN THE PROFESSIONAL OPINION OF THE STATE ARCHIVIST, THE REPORT IS CONSISTENT WITH THE STANDARDS OF THE SOCIETY OF AMERICAN ARCHIVISTS AND THE COUNCIL OF STATE ARCHIVISTS; AND

(II) APPROVE AN ARCHIVIST AND HISTORIAN THAT WILL ENSURE THAT THE PROCESS OF ASSEMBLING THE RECORDS IS COMPLETED IN A MANNER CONSISTENT WITH:

1. THE INITIAL REPORT; AND

2. THE STANDARDS OF THE SOCIETY OF AMERICAN ARCHIVISTS AND THE COUNCIL OF STATE ARCHIVISTS;

(3) AS NEEDED, PROVIDE GUIDANCE FOR AND OVERSIGHT OF THE PROCESS OF ASSEMBLING THE RECORDS;

(4) AFTER RECEIVING FROM AN ENTITY THE INFORMATION REQUIRED UNDER § 12–507 OF THIS SUBTITLE, DETERMINE WHETHER, IN THE PROFESSIONAL OPINION OF THE STATE ARCHIVIST:

(I) THE PROCESS OF ASSEMBLING THE RECORDS IS COMPLETE;

(II) THE PROCESS OF ASSEMBLING THE RECORDS WAS COMPLETED IN A MANNER CONSISTENT WITH:

1. THE INITIAL REPORT SUBMITTED IN ACCORDANCE WITH § 12–506(B) OF THIS SUBTITLE; AND

2. THE STANDARDS OF THE SOCIETY OF AMERICAN ARCHIVISTS AND THE COUNCIL OF STATE ARCHIVISTS; AND

(III) THE INFORMATION SUBMITTED UNDER § 12–507 OF THIS SUBTITLE IS AS COMPLETE AND ACCURATE AS POSSIBLE; AND

(5) PROVIDE WRITTEN NOTICE OF THE DETERMINATION MADE UNDER ITEM (4) OF THIS SUBSECTION TO:

(I) THE ENTITY; AND

(II) IF THE STATE ARCHIVIST DETERMINES THAT THE ENTITY MET THE REQUIREMENTS SET FORTH IN ITEM (4)(I), (II), AND (III) OF THIS SUBSECTION, TO THE UNIT OF STATE OR LOCAL GOVERNMENT AWARDING THE PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE.

(B) THE STATE ARCHIVIST MAY USE A DESIGNEE TO CARRY OUT ANY PROVISION OF THIS SECTION.

12–509.

(A) AT LEAST 30 DAYS BEFORE AWARDING A PROCUREMENT CONTRACT ON WHICH AN ENTITY SUBJECT TO THIS SUBTITLE SUBMITTED A BID OR OFFER, A UNIT OF STATE OR LOCAL GOVERNMENT SHALL PUBLISH NOTICE OF ITS INTENT TO AWARD THE PROCUREMENT CONTRACT.

(B) A UNIT OF STATE OR LOCAL GOVERNMENT MAY NOT AWARD A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE TO AN ENTITY THAT DOES NOT COMPLY WITH §§ 12–505 THROUGH 12–507 OF THIS SUBTITLE.

(C) A UNIT OF STATE OR LOCAL GOVERNMENT MAY AWARD A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE TO AN ENTITY ONLY AFTER THE UNIT RECEIVES THE NOTICE FROM THE STATE ARCHIVIST IN ACCORDANCE WITH § 12–508(A)(5) OF THIS SUBTITLE.

(D) NOTWITHSTANDING THE REQUIREMENTS OF THIS SUBTITLE, A UNIT OF STATE OR LOCAL GOVERNMENT MAY AWARD A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE TO A BIDDER OR OFFEROR THAT IS NOT AN ENTITY SUBJECT TO THE REQUIREMENTS OF THIS SUBTITLE.

12–510.

AN ENTITY AWARDED A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE IN ACCORDANCE WITH § 12–509(C) OF THIS SUBTITLE IS CONSIDERED TO HAVE SATISFIED THE REQUIREMENTS OF §§ 12–505 THROUGH 12–507 OF THIS SUBTITLE FOR ALL FUTURE PROCUREMENT CONTRACTS TO PROVIDE MARC SERVICE.

12–511.

THE ENTITY OR ANY OTHER BIDDER OR OFFEROR FOR A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE MAY NOT SUBMIT A PROTEST UNDER § 15–217 OF THIS ARTICLE RELATING TO THE REQUIREMENTS OF THIS SUBTITLE.

Article – Transportation

7–508.

AN ENTITY THAT SUBMITS A BID OR PROPOSAL TO THE ADMINISTRATION *ON A PROCUREMENT CONTRACT* TO PROVIDE MARC ~~TRAIN SERVICE ON THE CAMDEN AND BRUNSWICK LINES IN THE GREATER BALTIMORE–WASHINGTON METROPOLITAN REGION~~ *SERVICE THAT IS FUNDED IN WHOLE OR IN PART BY PUBLIC FUNDS* SHALL COMPLY WITH THE REQUIREMENTS OF TITLE 12, SUBTITLE 5 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October 1, 2011~~ *June 1, 2011*.

Approved by the Governor, May 19, 2011.

Chapter 483

(House Bill 520)

AN ACT concerning

Transportation – Procurement for MARC ~~Train~~ Service ~~– Disclosure Requirements Regarding Involvement in Deportations~~

FOR the purpose of ~~requiring certain entities that submit a bid or proposal to the Maryland Department of Transportation or certain other units of the State or local government to provide certain MARC train service to submit a certain statement concerning certain deportation activity in which the entity may have engaged; requiring an entity to include certain information in the statement; requiring the Department of Transportation or certain other units of the State or local government to consider certain information provided by certain entities seeking to provide certain MARC train service; defining certain terms; and generally relating to the disclosure of certain information by entities that submit bids or proposals on procurement contracts to provide certain MARC train service.~~ prohibiting certain entities from being considered a responsible bidder or offeror for certain contracts to provide Maryland Area *Regional* Commuter ~~Rail~~ (MARC) service unless the entities comply with certain requirements; requiring that, in conjunction with the submission of certain bids or offers, certain entities provide certain units with a certain statement and estimated date for completing a certain process of assembling records; requiring certain entities to notify certain units of changes to a certain estimated date; requiring certain entities to comply with certain requirements for a certain process of assembling records; requiring certain entities to contract with certain archivists and historians to conduct a certain initial analysis and ensure that a certain process of assembling records is conducted in a certain manner; establishing requirements for a certain initial analysis; requiring certain entities to submit certain information to the State Archivist after a certain process of assembling records is completed; requiring the State Archivist to approve certain archivists, historians, and initial reports; requiring the State Archivist to provide certain guidance and oversight; requiring the State Archivist to make certain determinations and provide certain written notice of the determination to certain units; authorizing the State Archivist to use a designee to carry out certain provisions; requiring certain units to provide notice of intent to award certain contracts within a certain period of time; prohibiting certain units from awarding certain contracts to certain entities that do not comply with certain provisions; authorizing certain units to award certain entities after receiving certain notice; providing that certain prohibitions do not apply if a contract is awarded to certain bidders or offerors; authorizing certain entities to award certain contracts to certain entities after receiving certain notice; providing that, notwithstanding certain requirements, certain units may award certain contracts to certain bidders or offerors; prohibiting

certain entities, bidders, or offerors from submitting certain protests; requiring that certain entities that submit certain bids or proposals to the Maryland Transit Administration comply with certain requirements; providing for the application of this Act; defining certain terms; and generally relating to procurement for MARC service and requirements for assembling records and disclosing information related to the deportation of victims.

BY adding to
Article – State Finance and Procurement
Section 12–501 through ~~12–504~~ 12–511 to be under the new subtitle "Subtitle 5. Disclosure Requirements Regarding Involvement in Deportations"
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – Transportation
Section 7–508
Annotated Code of Maryland
(2008 Replacement Volume and 2010 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

SUBTITLE 5. DISCLOSURE REQUIREMENTS REGARDING INVOLVEMENT IN DEPORTATIONS.

12–501.

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

~~(B) "DEPARTMENT" MEANS THE MARYLAND DEPARTMENT OF TRANSPORTATION.~~

~~(C)~~ (B) "DIRECT INVOLVEMENT IN THE DEPORTATION OF VICTIMS" MEANS OWNERSHIP OR OPERATION OF THE TRAINS ON WHICH INDIVIDUALS WERE ~~DEPORTED~~ TRANSPORTED TO EXTERMINATION CAMPS, DEATH CAMPS, OR ANY FACILITY USED TO TRANSITION INDIVIDUALS TO EXTERMINATION CAMPS OR DEATH CAMPS, DURING THE PERIOD BEGINNING ON ~~JANUARY 1, 1942~~ SEPTEMBER 1, 1939, AND ENDING ON ~~DECEMBER 31, 1944~~ SEPTEMBER 2, 1945.

~~(D)~~ (C) "ENTITY" MEANS:

(1) A CORPORATION, AFFILIATE, OR OTHER SIMILAR ORGANIZATION OR A SUCCESSOR IN INTEREST OF THE CORPORATION, AFFILIATE, OR SIMILAR ORGANIZATION THAT CONTROLS, OR IS CONTROLLED OR OWNED OR PARTIALLY OWNED BY OR UNDER COMMON CONTROL WITH, A CORPORATION THAT ~~HAS~~ HAD DIRECT INVOLVEMENT IN THE DEPORTATION OF VICTIMS; OR

(2) A MEMBER OF A PARTNERSHIP OR A CONSORTIUM THAT INCLUDES AN ENTITY THAT CERTIFIES THAT IT ~~HAS~~ HAD DIRECT INVOLVEMENT IN THE DEPORTATION OF VICTIMS.

(D) "MARC" MEANS THE MARYLAND AREA ~~RAIL~~ *REGIONAL* COMMUTER.

(E) (1) "PROPERTY" MEANS ANY PERSONAL BELONGINGS OWNED OR CONTROLLED BY VICTIMS ~~OF THE DEPORTATIONS TO EXTERMINATION CAMPS, DEATH CAMPS, OR FACILITIES USED TO TRANSITION INDIVIDUALS TO EXTERMINATION CAMPS OR DEATH CAMPS, DURING THE PERIOD BEGINNING ON JANUARY 1, 1942, AND ENDING ON DECEMBER 31, 1944~~.

(2) "PROPERTY" INCLUDES:

(I) JEWELRY;

(II) BOOKS;

(III) ARTIFACTS;

(IV) PRECIOUS METALS; AND

(V) CURRENCY.

(F) "PROCESS OF ASSEMBLING THE RECORDS" MEANS TO:

(1) ORGANIZE, DIGITIZE, AND MAKE RECORDS AVAILABLE TO THE PUBLIC IN AN INTERNET ACCESSIBLE, ELECTRONIC FORMAT THAT IS SEARCHABLE AND ANALYZABLE; AND

(2) PREPARE TO SUBMIT THE INFORMATION DESCRIBED IN § 12–507 OF THIS SUBTITLE TO THE STATE ARCHIVIST.

~~(F)~~ (G) (1) "RECORDS" MEANS MATERIAL RELATING TO THE DEPORTATION OF VICTIMS.

(2) "RECORDS" INCLUDES:

~~(1)~~ (I) DOCUMENTS;

~~(2)~~ (II) CORRESPONDENCE;

~~(3)~~ (III) MEMORANDA;

~~(4)~~ (IV) RECEIPTS;

~~(5)~~ (V) INVOICES;

~~(6)~~ (VI) PRESENTATIONS;

~~(7)~~ (VII) AUDITS; AND

~~(8)~~ (VIII) ANY OTHER MATERIALS RELATED TO ITEMS (1) THROUGH (7) OF THIS SUBSECTION.

(H) "VICTIM" MEANS AN INDIVIDUAL WHO WAS ON AN ENTITY'S TRAIN FOR THE PURPOSE OF BEING TRANSPORTED TO AN EXTERMINATION CAMP, DEATH CAMP, OR A FACILITY USED TO TRANSITION INDIVIDUALS TO EXTERMINATION CAMPS OR DEATH CAMPS DURING THE PERIOD BEGINNING ON SEPTEMBER 1, 1939 AND ENDING ON SEPTEMBER 2, 1945.

12–502.

FOR THE PURPOSES OF THIS SUBTITLE:

(1) TWO OR MORE ENTITIES SHALL BE CONSIDERED AS THE SAME ENTITY IF:

(I) ONE ENTITY IS A WHOLLY OWNED SUBSIDIARY OF THE OTHER; OR

(II) ONE ENTITY OWNS OR DIRECTLY OR INDIRECTLY CONTROLS MORE THAN 50% OF THE VOTING SECURITIES OF THE OTHER ENTITY, REGARDLESS OF WHETHER THE EQUITY INTEREST IN THAT OTHER ENTITY IS OWNED BY A FOREIGN GOVERNMENT; AND

(2) IF AN EQUITY INTEREST IN AN ENTITY IS OR WAS OWNED BY A FOREIGN GOVERNMENT, THAT EQUITY INTEREST SHALL BE ATTRIBUTED TO THE ENTITY.

12–503.

THIS SUBTITLE APPLIES TO AN ENTITY THAT:

(1) ~~HAS~~ HAD DIRECT INVOLVEMENT IN THE DEPORTATION OF VICTIMS; AND

(2) SUBMITS A BID OR OFFER TO A UNIT OF STATE OR LOCAL GOVERNMENT ON A PROCUREMENT CONTRACT ~~WITH THE DEPARTMENT OR WITH ANY OTHER UNIT OF THE STATE OR LOCAL GOVERNMENT~~ TO PROVIDE MARC ~~TRAIN~~ SERVICE THAT IS FUNDED IN WHOLE OR IN PART WITH PUBLIC FUNDS.

12–504.

AN ENTITY MAY NOT BE CONSIDERED A RESPONSIBLE BIDDER OR OFFEROR FOR A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE UNLESS THE ENTITY COMPLIES WITH THE REQUIREMENTS OF §§ 12–505 THROUGH 12–507 OF THIS SUBTITLE.

~~12–504.~~ 12–505.

(A) ~~BEFORE SUBMITTING~~ IN CONJUNCTION WITH THE SUBMISSION OF A ~~FORMAL~~ BID OR OFFER ON A PROCUREMENT CONTRACT TO ~~THE DEPARTMENT OR OTHER UNIT OF THE~~ A UNIT OF STATE OR LOCAL GOVERNMENT TO PROVIDE MARC ~~TRAIN~~ SERVICE, AN ENTITY SHALL SUBMIT TO THE UNIT:

(1) ~~CERTIFY TO THE DEPARTMENT OR UNIT WHETHER~~ A STATEMENT THAT THE ENTITY ~~HAS~~ HAD DIRECT INVOLVEMENT IN THE DEPORTATION OF VICTIMS; AND

(2) ~~DISCLOSE TO THE DEPARTMENT OR OTHER UNIT THE INFORMATION DESCRIBED IN SUBSECTION (B) OF THIS SECTION~~ AN ESTIMATED DATE FOR COMPLETING THE PROCESS OF ASSEMBLING THE RECORDS AND PROVIDING INFORMATION TO THE STATE ARCHIVIST IN ACCORDANCE WITH §§ 12–506 AND 12–507 OF THIS SUBTITLE.

(B) THE ENTITY SHALL NOTIFY THE UNIT OF ANY CHANGE IN THE ESTIMATED DATE THAT WAS SUBMITTED TO THE UNIT IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION.

12–506.

(A) BEFORE A UNIT OF STATE OR LOCAL GOVERNMENT MAY AWARD A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE TO AN ENTITY SUBJECT TO THIS SUBTITLE, THE ENTITY SHALL COMPLY WITH THE PROVISIONS OF THIS SECTION FOR THE PROCESS OF ASSEMBLING THE RECORDS RELATED TO THE DEPORTATION OF VICTIMS.

(B) (1) AN ENTITY SHALL CONTRACT WITH AN ARCHIVIST AND A HISTORIAN TO CONDUCT AN INITIAL ANALYSIS OF THE RECORDS.

(2) THE ARCHIVIST AND HISTORIAN THAT CONDUCT THE INITIAL ANALYSIS SHALL:

(I) BE APPROVED BY THE STATE ARCHIVIST;

(II) BE INDEPENDENT OF THE ENTITY; AND

(III) CONDUCT THE ANALYSIS IN ACCORDANCE WITH THE STANDARDS OF THE SOCIETY OF AMERICAN ARCHIVISTS AND THE COUNCIL OF STATE ARCHIVISTS.

(3) THE INITIAL ANALYSIS SHALL INCLUDE:

(I) AN INSPECTION OF EACH LOCATION IN WHICH THE ENTITY MAINTAINS RECORDS THAT MAY BE RELATED TO THE DEPORTATION OF VICTIMS; AND

(II) A REPORT SUBMITTED TO THE STATE ARCHIVIST.

(4) THE INITIAL REPORT SUBMITTED TO THE STATE ARCHIVIST SHALL INCLUDE:

(I) A LIST OF EACH LOCATION INSPECTED AND AN ASSESSMENT OF WHETHER THE LOCATION MAINTAINS ANY RECORDS;

(II) AN OUTLINE AND ASSESSMENT OF THE QUALITY OF THE RECORDS;

(III) A TIMELINE FOR THE PROCESS TO ASSEMBLE THE RECORDS; AND

(IV) AN ESTIMATED COST TO ASSEMBLE THE RECORDS.

(C) (1) AFTER THE INITIAL ANALYSIS IS CONCLUDED AND THE STATE ARCHIVIST HAS APPROVED THE INITIAL REPORT IN ACCORDANCE WITH §

12–508(A)(2)(I) OF THIS SUBTITLE, THE ENTITY SHALL CONTRACT WITH AN ARCHIVIST AND A HISTORIAN TO ENSURE THAT THE PROCESS OF ASSEMBLING THE RECORDS IS COMPLETED IN A MANNER CONSISTENT WITH:

(I) THE INITIAL REPORT; AND

(II) THE STANDARDS OF THE SOCIETY OF AMERICAN ARCHIVISTS AND THE COUNCIL OF STATE ARCHIVISTS.

(2) THE ARCHIVIST AND HISTORIAN CONTRACTED WITH TO CARRY OUT PARAGRAPH (1) OF THIS SUBSECTION:

(I) SHALL BE APPROVED BY THE STATE ARCHIVIST; AND

(II) MAY BE THE ARCHIVIST AND HISTORIAN THAT CONDUCTED THE INITIAL ANALYSIS OR ANOTHER ARCHIVIST AND HISTORIAN APPROVED BY THE STATE ARCHIVIST.

(D) AFTER THE PROCESS OF ASSEMBLING THE RECORDS IS COMPLETE, THE ENTITY SHALL PROVIDE THE INFORMATION REQUIRED UNDER § 12–507 OF THIS SUBTITLE TO THE STATE ARCHIVIST.

12–507.

~~(B)~~ ~~AN~~ BEFORE A UNIT OF STATE OR LOCAL GOVERNMENT MAY AWARD A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE TO AN ENTITY SUBJECT TO THIS SUBTITLE, THE ENTITY SHALL ~~STATE, AS TO THE DEPORTATION OF INDIVIDUALS TO EXTERMINATION CAMPS, DEATH CAMPS, OR A FACILITY TO TRANSITION INDIVIDUALS TO EXTERMINATION CAMPS OR DEATH CAMPS DURING THE PERIOD BETWEEN JANUARY 1, 1942, AND DECEMBER 31, 1944~~ PROVIDE THE STATE ARCHIVIST WITH THE FOLLOWING INFORMATION AS IT RELATES TO THE DEPORTATION OF VICTIMS:

(1) A WRITTEN STATEMENT PROVIDING:

(I) WHETHER THE ENTITY ~~HAS ANY~~ POSSESSES, HAS CUSTODY OF, OR CONTROLS RECORDS RELATING TO THE ~~DEPORTATIONS IN ITS POSSESSION, CUSTODY, OR CONTROL~~ THE DEPORTATION OF VICTIMS;

(II) ~~THE~~ EACH LOCATION WHERE THE RECORDS ARE MAINTAINED; AND

(III) THE CONTENTS AND ADDRESSES OF ~~ANY~~ EACH ARCHIVE OR OTHER FACILITY WHERE THE ENTITY MAINTAINS RECORDS;

(2) A DETAILED INDEX OF THE RECORDS, INCLUDING:

(I) THE LOCATION OF THE RECORDS AND A LIST OF ANY MONEY RECEIVED FOR EACH DEPORTATION, DELINEATED BY INDIVIDUAL CONVOYS AND PERSONS; AND

(II) AN ACCOUNTING OF EACH PIECE OF PROPERTY TAKEN OR CONFISCATED ~~IN CONNECTION WITH THE DEPORTATIONS~~ FROM EACH VICTIM;

(3) IF THE ENTITY NO LONGER HAS IN ITS CUSTODY OR CONTROL ANY OR ALL OF THE PROPERTY TAKEN OR CONFISCATED ~~IN CONNECTION WITH THE DEPORTATIONS~~ FROM EACH VICTIM, A WRITTEN DESCRIPTION OF:

(I) THE TIME AND MANNER IN WHICH THE ENTITY DISPOSED OF OR CONVERTED THE PROPERTY;

(II) ANY PROPERTY CURRENTLY OWNED OR OPERATED BY THE ENTITY THAT WAS EXCHANGED FOR THE EXPROPRIATED PROPERTY;

(III) ANY EXPROPRIATED PROPERTY CURRENTLY OWNED BY THE ENTITY OR ANY OTHER PROPERTY DERIVED FROM THE EXPROPRIATED PROPERTY; AND

(IV) ANY OTHER DERIVATIVE OR TRACEABLE PROPERTY THAT REMAINS IN THE ENTITY'S POSSESSION, CUSTODY, OR CONTROL AS A RESULT OF ITS DEPORTATIONS ACTIVITY; AND

(4) ~~IF ANY RECORDS RELATING TO THE DEPORTATIONS HAVE BEEN MADE PUBLIC, A CONFIRMATION THAT THE MATERIALS MADE AVAILABLE FOR PUBLIC REVIEW CONSTITUTE ALL OF THE RECORDS, REGARDLESS OF THE DATE THE RECORDS WERE CREATED OR OBTAINED; AND~~

~~(5)~~ A WRITTEN STATEMENT CONCERNING WHETHER THE ENTITY HAS PROVIDED RESTITUTION OR REPARATIONS TO ALL IDENTIFIABLE VICTIMS OF THE DEPORTATIONS AND, IF SO STATED, A DETAILED ~~REPORT~~ DESCRIPTION ON HOW THE RESTITUTION OR REPARATIONS APPLIES SPECIFICALLY TO ~~INDIVIDUALS DEPORTED BY THE ENTITY~~ THE DEPORTATION OF EACH VICTIM.

12–508.

(A) THE STATE ARCHIVIST SHALL:

(1) APPROVE AN ARCHIVIST AND HISTORIAN TO CONDUCT THE INITIAL ANALYSIS REQUIRED UNDER § 12–506(B) OF THIS SUBTITLE;

(2) WITHIN 14 DAYS AFTER RECEIVING THE INITIAL REPORT SUBMITTED IN ACCORDANCE WITH § 12–506(B) OF THIS SUBTITLE:

(I) REVIEW THE REPORT AND DETERMINE WHETHER, IN THE PROFESSIONAL OPINION OF THE STATE ARCHIVIST, THE REPORT IS CONSISTENT WITH THE STANDARDS OF THE SOCIETY OF AMERICAN ARCHIVISTS AND THE COUNCIL OF STATE ARCHIVISTS; AND

(II) APPROVE AN ARCHIVIST AND HISTORIAN THAT WILL ENSURE THAT THE PROCESS OF ASSEMBLING THE RECORDS IS COMPLETED IN A MANNER CONSISTENT WITH:

1. THE INITIAL REPORT; AND

2. THE STANDARDS OF THE SOCIETY OF AMERICAN ARCHIVISTS AND THE COUNCIL OF STATE ARCHIVISTS;

(3) AS NEEDED, PROVIDE GUIDANCE FOR AND OVERSIGHT OF THE PROCESS OF ASSEMBLING THE RECORDS;

(4) AFTER RECEIVING FROM AN ENTITY THE INFORMATION REQUIRED UNDER § 12–507 OF THIS SUBTITLE, DETERMINE WHETHER, IN THE PROFESSIONAL OPINION OF THE STATE ARCHIVIST:

(I) THE PROCESS OF ASSEMBLING THE RECORDS IS COMPLETE;

(II) THE PROCESS OF ASSEMBLING THE RECORDS WAS COMPLETED IN A MANNER CONSISTENT WITH:

1. THE INITIAL REPORT SUBMITTED IN ACCORDANCE WITH § 12–506(B) OF THIS SUBTITLE; AND

2. THE STANDARDS OF THE SOCIETY OF AMERICAN ARCHIVISTS AND THE COUNCIL OF STATE ARCHIVISTS; AND

(III) THE INFORMATION SUBMITTED UNDER § 12–507 OF THIS SUBTITLE IS AS COMPLETE AND ACCURATE AS POSSIBLE; AND

(5) PROVIDE WRITTEN NOTICE OF THE DETERMINATION MADE UNDER ITEM (4) OF THIS SUBSECTION TO:

(I) THE ENTITY; AND

(II) IF THE STATE ARCHIVIST DETERMINES THAT THE ENTITY MET THE REQUIREMENTS SET FORTH IN ITEM (4)(I), (II), AND (III) OF THIS SUBSECTION, TO THE UNIT OF STATE OR LOCAL GOVERNMENT AWARDING THE PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE.

(B) THE STATE ARCHIVIST MAY USE A DESIGNEE TO CARRY OUT ANY PROVISION OF THIS SECTION.

12–509.

(A) AT LEAST 30 DAYS BEFORE AWARDING A PROCUREMENT CONTRACT ON WHICH AN ENTITY SUBJECT TO THIS SUBTITLE SUBMITTED A BID OR OFFER, A UNIT OF STATE OR LOCAL GOVERNMENT SHALL PUBLISH NOTICE OF ITS INTENT TO AWARD THE PROCUREMENT CONTRACT.

(B) A UNIT OF STATE OR LOCAL GOVERNMENT MAY NOT AWARD A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE TO AN ENTITY THAT DOES NOT COMPLY WITH §§ 12–505 THROUGH 12–507 OF THIS SUBTITLE.

(C) A UNIT OF STATE OR LOCAL GOVERNMENT MAY AWARD A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE TO AN ENTITY ONLY AFTER THE UNIT RECEIVES THE NOTICE FROM THE STATE ARCHIVIST IN ACCORDANCE WITH § 12–508(A)(5) OF THIS SUBTITLE.

(D) NOTWITHSTANDING THE REQUIREMENTS OF THIS SUBTITLE, A UNIT OF STATE OR LOCAL GOVERNMENT MAY AWARD A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE TO A BIDDER OR OFFEROR THAT IS NOT AN ENTITY SUBJECT TO THE REQUIREMENTS OF THIS SUBTITLE.

12–510.

AN ENTITY AWARDED A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE IN ACCORDANCE WITH § 12–509(C) OF THIS SUBTITLE IS CONSIDERED TO HAVE SATISFIED THE REQUIREMENTS OF §§ 12–505 THROUGH 12–507 OF THIS SUBTITLE FOR ALL FUTURE PROCUREMENT CONTRACTS TO PROVIDE MARC SERVICE.

12–511.

THE ENTITY OR ANY OTHER BIDDER OR OFFEROR FOR A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE MAY NOT SUBMIT A PROTEST UNDER § 15–217 OF THIS ARTICLE RELATING TO THE REQUIREMENTS OF THIS SUBTITLE.

Article – Transportation

7–508.

AN ENTITY THAT SUBMITS A BID OR PROPOSAL TO THE ADMINISTRATION ON A PROCUREMENT CONTRACT TO PROVIDE MARC ~~TRAIN SERVICE ON THE CAMDEN AND BRUNSWICK LINES IN THE GREATER BALTIMORE–WASHINGTON METROPOLITAN REGION~~ SERVICE THAT IS FUNDED IN WHOLE OR IN PART BY PUBLIC FUNDS SHALL COMPLY WITH THE REQUIREMENTS OF TITLE 12, SUBTITLE 5 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October 1, 2011~~ June 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 484

(Senate Bill 487)

AN ACT concerning

Fertilizer Use Act of 2011

FOR the purpose of ~~altering~~ establishing certain ~~specialty fertilizer~~ labeling requirements for specialty fertilizer used on certain turf; removing the exemption for certain contractors, salespersons, employees, and other agents of certain contractors from a certain prohibition; exempting certain organic fertilizer sold to certain professional fertilizer applicators from a certain prohibition; requiring the Department of Agriculture, in consultation with the University of Maryland, to establish a professional fertilizer applicator certification program in accordance with certain requirements; requiring the Department to publish and maintain a certain list; requiring the Department, in consultation with the University of Maryland, to develop a certain public education program; requiring the University of Maryland to identify certain laboratories; requiring the University of Maryland to revise certain guidelines in accordance with a certain schedule; providing the Department with exclusive authority to establish certain standards; prohibiting a local government entity from adopting certain laws, regulations, rules, or ordinances; establishing certain maximum limits for nitrogen and phosphorus in certain ~~specialty~~

fertilizer under certain circumstances; prohibiting a person from selling ~~at retail certain specialty~~ certain fertilizer; prohibiting a person from applying certain fertilizer to certain surfaces under certain circumstances; authorizing a person to apply certain fertilizer under certain circumstances; establishing certain penalties for certain violations; authorizing a county or municipality to enforce certain provisions of law; authorizing the Department to adopt certain regulations; requiring the Department to adopt certain regulations on or before a certain date; prohibiting a professional fertilizer applicator from applying certain fertilizer without first obtaining a certain certification; prohibiting a professional fertilizer applicator from using or applying certain fertilizer under certain circumstances; providing for delayed effective dates for certain provisions of this Act; defining certain terms; making certain technical changes; and generally relating to the use of fertilizer in the State.

BY repealing and reenacting, with amendments,
Article – Agriculture
Section 6–201, 6–210(d) and (e), 6–219(a) and (b), 6–222(a) and (b), 8–801, and 8–803.4
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY repealing
Article – Agriculture
Section 8–803.5
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY adding to
Article – Agriculture
Section 6–223, 6–224, ~~6–225, 6–226, 6–227, and 6–228~~ 8–803.5, 8–803.6, 8–803.7, 8–803.8, and 8–803.9
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

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

Article – Agriculture

6–201.

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

(b) A commercial fertilizer is "adulterated" if:

(1) Any poisonous, deleterious, or nonnutritive ingredient is added in sufficient amount to render it injurious to the health of plants, humans, or animal life or injurious to the environment;

(2) A valuable constituent is omitted or abstracted wholly or partially from it or any less valuable substance is substituted for it; or

(3) Its composition or quality falls below or differs from that which it is purported or is represented to contain by its labeling.

(c) "Brand" means the term, design, trademark, or other specific designation under which a commercial fertilizer or soil conditioner is distributed in the State.

(d) "Bulk fertilizer" means any commercial fertilizer distributed in a nonpackaged form.

(e) "Buyer's mixture" means commercial fertilizer mixed on specific request of a purchaser according to a formula furnished by him.

~~(F) "COMMERCIAL FARM" MEANS A FARM THAT PERFORMS ACTIVITIES RELATED TO THE PRODUCTION AND SALE OF AGRICULTURAL COMMODITIES, INCLUDING ROW CROPS, FRUITS, VEGETABLES, HORTICULTURE, AND SILVACULTURE.~~

[(f)**]** ~~(G)~~ "Commercial fertilizer" means any substance containing a recognized plant nutrient used for its plant nutrient content and designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manure, marl, lime, wood ashes, and gypsum.

[(g)**]** ~~(H)~~ "Custom–mix" means commercial fertilizer mixed on specific request of a purchaser according to a formula furnished by him.

[(h)**]** ~~(I)~~ "Distribute" means to import, manufacture, produce, compound, mix, blend, barter, sell, offer for sale, consign, furnish, provide, or otherwise supply commercial fertilizer or soil conditioners as part of a commercial enterprise.

(I) "ENHANCED EFFICIENCY FERTILIZER" MEANS A FERTILIZER PRODUCT THAT INCREASES PLANT UPTAKE AND DECREASES THE POTENTIAL OF NUTRIENT LOSS TO THE ENVIRONMENT, INCLUDING GASEOUS LOSS, LEACHING, OR RUNOFF, WHEN COMPARED TO AN APPROPRIATE REFERENCE FERTILIZER PRODUCT.

[(i)**] (J)** "Fertilizer material" means a commercial fertilizer containing a recognized plant nutrient, which is used primarily for its plant nutrient content.

[(j)**] (K)** "Grade" means the percentage of total nitrogen (N), available ~~phosphoric acid (H_3PO_4)~~ **PHOSPHATE (P_2O_5)**, and soluble potash (K_2O) stated in whole numbers in the same terms, order, and percentages as in the "guaranteed analysis". In the case of any "specialty fertilizer" or "mixed–to–order fertilizer" guarantees may be stated in decimal fractions of whole numbers.

[(k)**] (L)** "Guaranteed analysis" means the minimum percentage of plant nutrient claimed as follows:

(1) Total nitrogen (N), available ~~phosphoric acid (H_3PO_4)~~ **PHOSPHATE (P_2O_5)**, soluble potash (K_2O);

(2) For unacidulated mineral phosphatic materials and basic slag, both total and available ~~phosphoric acid~~ **PHOSPHATE** and the degree of fineness;

(3) For bone, tankage, and other organic phosphatic materials, total ~~phosphoric acid~~ **PHOSPHATE**;

(4) Additional plant nutrients, when claimed, shall be expressed in elemental form; and

(5) Potential basicity or acidity may be expressed in terms of calcium carbonate equivalent in multiples of 100 pounds per ton.

[(l)**] (M)** "Gypsum" means any product that consists chiefly of calcium sulfate intended for use for agricultural purposes.

~~**(N) "IMPERVIOUS SURFACE" MEANS ANY STRUCTURE, SURFACE, OR IMPROVEMENT THAT REDUCES OR PREVENTS ABSORPTION OF STORMWATER INTO LAND, AND INCLUDES POROUS PAVING, PAVER BLOCKS, GRAVEL, CRUSHED STONE, DECKS, PATIOS, ELEVATED STRUCTURES, AND OTHER SIMILAR STRUCTURES, SURFACES, OR IMPROVEMENTS.**~~

[(m)**] ~~(O)~~ (N)** "Label" means the display of all written, printed, or graphic matter on the immediate container or a statement accompanying a commercial fertilizer or soil conditioner.

[(n)**] ~~(P)~~ (O)** "Labeling" means all written, printed, or graphic matter on or accompanying any commercial fertilizer or soil conditioner, or the contents of any advertisement, brochure, poster or television or radio announcement used in promoting the sale of a commercial fertilizer or soil conditioner.

[(o)**] ~~(Q)~~ (P)** "Lot" means a definite quantity of commercial fertilizer or soil conditioner, identified by name, grade, or code designation as certified by the Secretary.

[(p)**]** ~~**(R)**~~ **(Q)** "Low phosphorous fertilizer" means fertilizer:

(1) Containing not more than 5% of available ~~phosphoric acid (H_3PO_4)~~ **PHOSPHATE (P_2O_5)**; and

(2) That has an application rate not to exceed 0.25 pound of available ~~phosphoric acid (H_3PO_4)~~ **PHOSPHATE (P_2O_5)**/1,000 square feet/application and 0.5 pound of available ~~phosphoric acid (H_3PO_4)~~ **PHOSPHATE (P_2O_5)**/1,000 square feet/year.

[(q)**]** ~~**(S)**~~ **(R)** A commercial fertilizer or soil conditioner is "misbranded", if:

(1) Its labeling is false or misleading in any particular;

(2) It is distributed under the name of another product;

(3) It is not labeled as required in § 6–210 of this subtitle and in rules and regulations prescribed under this subtitle;

(4) A fertilizer purports to be or is represented as a commercial fertilizer or if it purports to contain or is represented as containing a fertilizer material, unless the fertilizer material conforms to any definition of identity, prescribed by departmental rules and regulations which give due regard to commonly accepted definitions, such as those issued by the Association of American Plant Food Control Officials, Inc.; or

(5) Any word, statement, or other information, required to appear on the label or labeling, is not placed on it prominently and conspicuously as compared with other words, statements, designs, or devices in the labeling, and it is not in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

~~**(T) "MANIPULATED ANIMAL OR VEGETABLE MANURE" MEANS MANURE THAT IS GROUND, PELLETIZED, MECHANICALLY DRIED, OR OTHERWISE TREATED TO ASSIST WITH THE USE OF MANURE AS A FERTILIZER.**~~

[(r)**]** ~~**(U)**~~ **(S)** "Mixed fertilizer" means a commercial fertilizer containing any combination, blend, or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth.

[(s)**]** ~~**(V)**~~ **(T)** "Mixed–to–order" means commercial fertilizer mixed on a specific request of a purchaser according to a formula furnished by him.

(U) (1) "NATURAL ORGANIC FERTILIZER" MEANS A FERTILIZER PRODUCT THAT IS DERIVED FROM EITHER A PLANT OR ANIMAL PRODUCT

CONTAINING CARBON, AND ONE OR MORE ELEMENTS, OTHER THAN HYDROGEN OR OXYGEN THAT ARE ESSENTIAL FOR PLANT GROWTH.

(2) "NATURAL ORGANIC FERTILIZER" DOES NOT INCLUDE A FERTILIZER PRODUCT THAT CONTAINS:

(I) SYNTHETIC MATERIALS; OR

(II) MATERIALS THAT ARE CHANGED IN ANY PHYSICAL OR CHEMICAL MANNER FROM THEIR INITIAL STATE, EXCEPT BY PHYSICAL MANIPULATION, INCLUDING DRYING, COOKING, CHOPPING, GRINDING, SHREDDING, OR PELLETING.

[(t)**]** ~~(W)~~ **(V)** "Official sample" means any sample of fertilizer or soil conditioner taken and designated as "official" by the Secretary.

(W) (1) "ORGANIC FERTILIZER" MEANS A FERTILIZER PRODUCT THAT IS DERIVED FROM EITHER A PLANT OR ANIMAL PRODUCT CONTAINING CARBON AND ONE OR MORE ELEMENTS, OTHER THAN HYDROGEN OR OXYGEN THAT ARE ESSENTIAL FOR PLANT GROWTH.

(2) "ORGANIC FERTILIZER" INCLUDES A FERTILIZER PRODUCT THAT CONTAINS:

(I) SYNTHETIC MATERIALS; OR

(II) MATERIALS THAT ARE CHANGED IN A PHYSICAL OR CHEMICAL MANNER FROM THEIR INITIAL STATE.

[(u)**] (X)** "Percent" or "percentage" means percentage by weight.

(Y) (1) "PROFESSIONAL FERTILIZER APPLICATOR" ~~MEANS ANY PERSON WHO:~~

~~(I) IS CERTIFIED TO APPLY FERTILIZER IN ACCORDANCE WITH § 6–226 OF THIS SUBTITLE; AND~~

~~(II) APPLIES FERTILIZER FOR HIRE.~~

~~(2) "PROFESSIONAL FERTILIZER APPLICATOR" INCLUDES THE OWNER OR MANAGER OF PROPERTY, OR AN EMPLOYEE OF A GOVERNMENT ENTITY WHO APPLIES FERTILIZER WITHIN THE SCOPE OF EMPLOYMENT~~ **HAS THE MEANING STATED IN § 8–801 OF THIS ARTICLE.**

[(v)**] (Z)** "Registrant" means any person who registers a commercial fertilizer or soil conditioner pursuant to the provisions of this subtitle.

[(w)**] (AA)** "Retail establishment" has the meaning stated in § 5–401 of the Economic Development Article.

(BB) "SLOW RELEASE NITROGEN" MEANS NITROGEN IN A FORM THAT:

(1) DELAYS ITS AVAILABILITY FOR PLANT UPTAKE AND USE AFTER APPLICATION; OR

(2) EXTENDS ITS AVAILABILITY TO THE PLANT SIGNIFICANTLY LONGER THAN A REFERENCE "RAPIDLY AVAILABLE NUTRIENT" SUCH AS AMMONIUM NITRATE OR UREA, AMMONIUM PHOSPHATE, OR POTASSIUM CHLORIDE.

[(x)**] (CC)** (1) "Soil conditioner" means any substance or mixture of substances intended for sale, offered for sale, or sold for:

(i) Manurial, soil enriching, or soil corrective purposes;

(ii) Promoting or stimulating the growth of plants;

(iii) Increasing the productivity of plants;

(iv) Improving the quality of crops; or

(v) Producing any chemical or physical change in the soil, except a commercial fertilizer, unmanipulated animal and vegetable manures, agricultural liming material, and gypsum.

(2) "Soil conditioner" includes but is not limited to materials such as compost, peat, vermiculite, or perlite, that are incorporated into the soil.

(DD) "SOIL TEST" MEANS A TECHNICAL ANALYSIS OF SOIL CONDUCTED BY A LABORATORY USING STANDARDS RECOMMENDED BY THE UNIVERSITY OF MARYLAND.

[(y)**] (EE)** "Specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries, and may include commercial fertilizers used for any research or experimental purpose.

[(z)**] (FF)** "Ton" means a net weight of two thousand pounds avoirdupois.

(GG) "TURF" MEANS LAND, INCLUDING RESIDENTIAL PROPERTY AND PUBLICLY OWNED LAND THAT IS PLANTED IN MOWED, MANAGED GRASS, EXCEPT LAND THAT IS USED IN THE SALE AND PRODUCTION OF SOD, AS DEFINED IN § 9–101 OF THIS ARTICLE.

(HH) "WATER–SOLUBLE NITROGEN" MEANS NITROGEN THAT IS READILY SOLUBLE IN WATER.

~~**(II) "WATERS OF THE STATE" HAS THE MEANING STATED IN § 5–101 OF THE ENVIRONMENT ARTICLE.**~~

6–210.

(d) **(1)** ~~**A**~~ **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A** specialty fertilizer shall be labeled to contain **ALL INFORMATION REQUIRED BY SUBSECTION (A) OF THIS SECTION.**

(2) A SPECIALTY FERTILIZER USED ON TURF SHALL BE LABELED TO CONTAIN [all**]:**

(I) ALL OF THE information required by subsection (a) of this section**;**

(II) THE PERCENTAGE OF TOTAL NITROGEN, INCLUDING THE PERCENTAGE OF OTHER WATER SOLUBLE NITROGEN AND WATER INSOLUBLE NITROGEN;

(III) THE PERCENTAGE OF AVAILABLE PHOSPHATE;

(IV) THE PERCENTAGE OF SOLUBLE POTASH; AND

(V) 1. THE FOLLOWING STATEMENT: "DO NOT APPLY NEAR WATER, STORM DRAINS OR DRAINAGE DITCHES. DO NOT APPLY IF HEAVY RAIN IS EXPECTED. APPLY THIS PRODUCT ONLY TO YOUR LAWN, AND SWEEP ANY PRODUCT THAT LANDS ON THE DRIVEWAY, SIDEWALK, OR STREET BACK ONTO YOUR LAWN."; ~~AND~~ OR

~~**(VI)**~~ **2. THE ENVIRONMENTAL HAZARD STATEMENT RECOMMENDED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY FOR THAT PRODUCT.**

~~**(2)**~~ **(3) THE INFORMATION REQUIRED UNDER ~~PARAGRAPH (1)~~ PARAGRAPHS (1) AND (2) OF THIS SUBSECTION SHALL BE PRINTED** in a legible and conspicuous manner on at least one side of the container**[**. If**], OR IF** it does not

appear on the face or display side of the container, it shall appear on the upper third of the side used.

(e) (1) Except as provided in paragraph (2) of this subsection, on or after April 1, 2011, a lawn fertilizer with an available **[**phosphoric acid (H_3PO_4)**]** **PHOSPHATE (P_2O_5)** content greater than 5%:

(i) May not be labeled for use on established lawns or grass;

(ii) May not be labeled with spreader settings; and

(iii) Shall be marked with the words "NOT FOR USE ON ESTABLISHED LAWNS OR GRASS" in at least a three–quarter inch font and in a legible and conspicuous manner on the front side of the container.

(2) This subsection does not apply to seed starter fertilizer for use on newly established lawns or turf.

6–219.

(a) To determine the commercial value to be applied in subsection (b) of this section, the Secretary shall determine and publish annually the values per pound of nitrogen, available **[**phosphoric acid**]** **PHOSPHATE**, soluble potash and other plant nutrients in commercial fertilizers in the State as determined by the Secretary.

(b) If an official analysis of a lot shows that a commercial fertilizer is deficient in a guaranteed primary plant nutrient, that is nitrogen, available **[**phosphoric acid**]** **PHOSPHATE**, and soluble potash, beyond the investigational allowance as established by rule or regulation, the Secretary shall assess against the registrant a penalty of three times the commercial value of the deficiency in the lot analyzed if the deficiency is confirmed in a hearing before him.

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

Article – Agriculture

6–222.

(a) **[**(1) Except as provided in paragraph (2) of this subsection, on or after April 1, 2011, a**]** ~~A~~ person may not sell or distribute for use or sale ~~at a retail establishment in the State~~ any fertilizer intended for use on established lawns or grass unless it is low phosphorous fertilizer.

[(2) This subsection does not apply to:

(i) A landscaping contractor who is licensed under Title 8 of the Business Regulation Article; or

(ii) A salesperson, employee, or other agent of a landscaping contractor who is licensed under Title 8 of the Business Regulation Article.**]**

(2) THIS SUBSECTION DOES NOT APPLY TO ORGANIC OR NATURAL ORGANIC FERTILIZER THAT IS SOLD TO A PROFESSIONAL FERTILIZER APPLICATOR.

(b) (1) On or before April 1, 2011, a manufacturer of lawn fertilizer whose products are sold in the State shall reduce by 50% from 2006 levels the amount of available **[**phosphoric acid (H_3PO_4)**]** **PHOSPHATE (P_2O_5)** resulting from the application of its lawn care products within the State.

(2) The amount of available **[**phosphoric acid (H_3PO_4)**]** **PHOSPHATE (P_2O_5)** resulting from the application within the State of lawn care products sold or distributed by a manufacturer may not exceed an average of 1.5% available **[**phosphoric acid (H_3PO_4)**]** **PHOSPHATE (P_2O_5)** if, prior to April 1, 2010, the manufacturer did not sell or distribute fertilizer in the State intended for use on established lawns or grass.

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

Article – Agriculture

~~**6–223.**~~

~~**(A) (1) THE DEPARTMENT SHALL, IN CONSULTATION WITH THE UNIVERSITY OF MARYLAND, ESTABLISH A PROGRAM TO CERTIFY PROFESSIONAL FERTILIZER APPLICATORS.**~~

~~**(2) THE CERTIFICATION PROGRAM SHALL PROVIDE PROFESSIONAL FERTILIZER APPLICATORS WITH TRAINING AND EDUCATION IN THE FOLLOWING SUBJECT AREAS:**~~

~~**(I) THE PROPER USE AND CALIBRATION OF FERTILIZER APPLICATION EQUIPMENT;**~~

~~**(II) THE HAZARDS INVOLVED IN, AND THE ENVIRONMENTAL IMPACT OF, APPLYING FERTILIZER, INCLUDING NUTRIENT POLLUTION TO THE WATERS OF THE STATE;**~~

~~(III) ALL APPLICABLE STATE AND FEDERAL LAWS, RULES, AND REGULATIONS;~~

~~(IV) THE CORRECT INTERPRETATION OF FERTILIZER LABELING INFORMATION; AND~~

~~(V) THE RECOMMENDATIONS DEVELOPED BY THE UNIVERSITY OF MARYLAND FOR NUTRIENT MANAGEMENT ON TURF, INCLUDING THE APPROPRIATE TIME TO:~~

~~1. APPLY FERTILIZER WHEN RAIN IS FORECAST; AND~~

~~2. APPLY FERTILIZER WHEN SOILS ARE WET AND THE POTENTIAL FOR FERTILIZER MOVEMENT OFF–SITE EXISTS.~~

~~(B) IN ESTABLISHING THE CERTIFICATION PROGRAM, THE DEPARTMENT MAY:~~

~~(1) CHARGE REASONABLE FEES, INCLUDING AN ANNUAL RECERTIFICATION FEE, TO COVER COSTS ASSOCIATED WITH THE CERTIFICATION PROGRAM;~~

~~(2) REQUIRE CONTINUING EDUCATION OR TRAINING FOR PROFESSIONAL FERTILIZER APPLICATORS;~~

~~(3) DESIGNATE ONE OR MORE ENTITIES TO TRAIN, CERTIFY, AND RECERTIFY PROFESSIONAL FERTILIZER APPLICATORS, WHICH MAY CHARGE FEES TO COVER THE REASONABLE COSTS ASSOCIATED WITH THE CERTIFICATION TRAINING AND EDUCATION; AND~~

~~(4) RECOGNIZE THE TRAINING PROGRAM OF AN ENTITY EMPLOYING PROFESSIONAL FERTILIZER APPLICATORS IF THE PROGRAM MEETS THE CERTIFICATION AND RECERTIFICATION TRAINING AND EDUCATION STANDARDS ESTABLISHED BY THE DEPARTMENT UNDER THIS SECTION.~~

~~(C) THE DEPARTMENT SHALL PUBLISH AND MAINTAIN A LIST OF ALL CERTIFIED PROFESSIONAL FERTILIZER APPLICATORS AND MAKE THE LIST AVAILABLE ON ITS INTERNET WEB SITE.~~

~~(D) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.~~

~~6–224.~~

~~(A) THE DEPARTMENT, IN CONSULTATION WITH THE UNIVERSITY OF MARYLAND, SHALL DEVELOP A PROGRAM OF PUBLIC EDUCATION THAT SHALL INCLUDE:~~

~~(1) THE DISSEMINATION OF INFORMATION REGARDING NUTRIENT POLLUTION;~~

~~(2) BEST MANAGEMENT PRACTICES FOR FERTILIZER USE;~~

~~(3) SOIL TESTING;~~

~~(4) PROPER INTERPRETATION OF FERTILIZER LABEL INSTRUCTIONS; AND~~

~~(5) THE PROPER USE AND CALIBRATION OF FERTILIZER APPLICATION EQUIPMENT.~~

~~(B) THE UNIVERSITY OF MARYLAND SHALL IDENTIFY LABORATORIES THAT:~~

~~(1) PARTICIPATE IN THE NORTH AMERICAN PROFICIENCY TESTING PROGRAM OF THE SOIL SCIENCE SOCIETY OF AMERICA;~~

~~(2) FOLLOW THE RECOMMENDED SOIL TESTING PROCEDURES FOR THE NORTHEASTERN UNITED STATES; AND~~

~~(3) PROVIDE A FINAL REPORT TO THE REQUESTOR WITH THE RESULTS OF THE SOIL TEST.~~

~~(C) THE UNIVERSITY OF MARYLAND SHALL REVISE ITS FERTILIZER TURF GUIDELINES EVERY 3 YEARS.~~

~~6–225.~~ 6–223.

(A) EXCEPT FOR ENFORCEMENT PROVIDED UNDER § 8–803.5(G) OF THIS ARTICLE, THE DEPARTMENT HAS THE EXCLUSIVE AUTHORITY TO ESTABLISH STANDARDS REGULATING FERTILIZER AND ITS APPLICATION TO TURF.

(B) A LOCAL GOVERNMENT ENTITY MAY NOT ADOPT LAWS, REGULATIONS, RULES, ORDINANCES, OR STANDARDS REGULATING FERTILIZER AND ITS APPLICATION TO TURF.

(C) SUBSECTIONS (A) AND (B) OF THIS SECTION DO NOT EXEMPT A PERSON FROM COMPLYING WITH ANY PROVISION OF, OR ANY REGULATION ADOPTED IN ACCORDANCE WITH, THE ENVIRONMENT ARTICLE.

SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Agriculture

~~6–226.~~ 6–224.

(A) ~~ANY~~ EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, ANY SPECIALTY FERTILIZER LABELED FOR USE ON TURF MAY NOT:

(1) ~~CONTAIN MORE THAN 0.7 POUNDS OF WATER–SOLUBLE NITROGEN AND NO MORE 0.9 POUNDS OF TOTAL NITROGEN, AT LEAST 20% OF WHICH SHALL CONSIST OF SLOW RELEASE NITROGEN IF TOTAL NITROGEN IS IN EXCESS OF 0.5 POUNDS PER 1,000 SQUARE FEET WHEN APPLIED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE CONTAINER~~ RESULT IN AN APPLICATION OF MORE THAN 0.7 POUNDS PER 1,000 SQUARE FEET OF WATER–SOLUBLE NITROGEN AND NO MORE THAN 0.9 POUNDS PER 1,000 SQUARE FEET OF TOTAL NITROGEN, AT LEAST 20% OF WHICH SHALL CONSIST OF SLOW–RELEASE NITROGEN, WHEN APPLIED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE CONTAINER;

(2) CONTAIN PHOSPHORUS, EXCEPT ~~WHEN~~:

(I) FOR ORGANIC AND NATURAL ORGANIC FERTILIZER SOLD TO A PROFESSIONAL FERTILIZER APPLICATOR; ~~AND~~ *OR*

(II) WHEN SPECIFICALLY LABELED FOR THE FOLLOWING PURPOSES:

~~(I)~~ 1. PROVIDING NUTRIENTS TO SPECIFIC SOILS AND TARGET VEGETATION AS DETERMINED TO BE NECESSARY ~~PURSUANT TO~~ IN ACCORDANCE WITH A SOIL TEST THAT WAS:

~~1.~~ A. CONDUCTED BY A LABORATORY IDENTIFIED UNDER § ~~6–224~~ 8–803.7 OF THIS ~~SUBTITLE~~ ARTICLE; AND

~~2.~~ B. PERFORMED NO MORE THAN 3 YEARS BEFORE THE APPLICATION;

~~(II)~~ 2. ESTABLISHING VEGETATION FOR THE FIRST TIME, SUCH AS AFTER LAND DISTURBANCE, PROVIDED THE APPLICATION IS CONDUCTED IN ACCORDANCE WITH THE RECOMMENDED APPLICATION RATES ESTABLISHED BY THE STATE; OR

~~(III)~~ 3. REESTABLISHING OR REPAIRING A TURF AREA; AND

(3) BE LABELED FOR USE AS A DE–ICER.

(B) AN ENHANCED–EFFICIENCY FERTILIZER LABELED FOR USE ON TURF MAY NOT:

(1) RESULT IN AN ANNUAL APPLICATION OF MORE THAN 2.5 POUNDS PER 1,000 SQUARE FEET OF TOTAL NITROGEN;

(2) RESULT IN AN APPLICATION OF MORE THAN 80% OF THE ANNUAL RECOMMENDED RATE FOR TOTAL NITROGEN ESTABLISHED BY THE UNIVERSITY OF MARYLAND; OR

(3) HAVE A RELEASE RATE OF MORE THAN 0.7 POUNDS PER 1,000 SQUARE FEET OF TOTAL NITROGEN PER MONTH.

~~(B)~~ (C) ~~A~~ EXCEPT AS PROVIDED IN SUBSECTIONS (D) AND (E) OF THIS SECTION, A PERSON MAY NOT OFFER TO SELL ~~AT RETAIL~~ SPECIALTY FERTILIZER FOR USE ON TURF THAT:

(1) ~~CONTAINS MORE THAN 0.7 POUNDS OF WATER-SOLUBLE NITROGEN OR MORE THAN 0.9 POUNDS OF TOTAL NITROGEN PER 1,000 SQUARE FEET, AT LEAST 20% OF WHICH SHALL CONSIST OF SLOW RELEASE NITROGEN IF TOTAL NITROGEN EXCEEDS 0.5 POUNDS WHEN APPLIED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE CONTAINER AND IS INTENDED FOR USE ON TURF~~ RESULTS IN AN APPLICATION OF MORE THAN 0.7 POUNDS PER 1,000 SQUARE FEET OF WATER–SOLUBLE NITROGEN AND NO MORE THAN 0.9 POUNDS PER 1,000 SQUARE FEET OF TOTAL NITROGEN, AT LEAST 20% OF WHICH SHALL CONSIST OF SLOW–RELEASE NITROGEN, WHEN APPLIED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE CONTAINER; AND

(2) CONTAINS PHOSPHORUS AND IS INTENDED FOR USE ON TURF UNLESS THE INTENDED USE OF THE FERTILIZER IS:

(I) FOR APPLICATION TO SPECIFIC SOILS AND TURF AS DETERMINED TO BE NECESSARY PURSUANT TO A SOIL TEST CONDUCTED BY A LABORATORY IDENTIFIED IN § ~~6–224 OF THIS SUBTITLE~~ 8–803.7 OF THIS

ARTICLE AND PERFORMED NO MORE THAN 3 YEARS BEFORE THE APPLICATION, PROVIDED THE APPLICATION COMPLIES WITH RECOMMENDED APPLICATION RATES ESTABLISHED BY THE UNIVERSITY OF MARYLAND;

(II) FOR THE ESTABLISHMENT OF TURF FOR THE FIRST TIME, SUCH AS AFTER LAND DISTURBANCE, PROVIDED THE APPLICATION COMPLIES WITH RECOMMENDED APPLICATION RATES ESTABLISHED BY THE UNIVERSITY OF MARYLAND; OR

(III) FOR THE REESTABLISHMENT OR REPAIR OF A TURF AREA.

(D) A PERSON MAY OFFER TO SELL AN ORGANIC OR NATURAL ORGANIC FERTILIZER CONTAINING PHOSPHORUS TO A PROFESSIONAL FERTILIZER APPLICATOR.

(E) A PERSON MAY NOT OFFER TO SELL ENHANCED–EFFICIENCY FERTILIZER FOR USE ON TURF THAT:

(1) RESULTS IN AN ANNUAL APPLICATION OF MORE THAN 2.5 POUNDS PER 1,000 SQUARE FEET OF TOTAL NITROGEN;

(2) RESULTS IN AN APPLICATION OF MORE THAN 80% OF THE ANNUAL RECOMMENDED RATE FOR TOTAL NITROGEN ESTABLISHED BY THE UNIVERSITY OF MARYLAND; OR

(3) HAS A RELEASE RATE OF MORE THAN 0.7 POUNDS PER 1,000 SQUARE FEET OF TOTAL NITROGEN PER MONTH.

~~(C)~~ (F) A PERSON MAY NOT OFFER TO SELL ~~AT RETAIL~~ A COMMERCIAL OR SPECIALTY FERTILIZER PRODUCT FOR USE AS A DE–ICER.

~~6–227.~~

~~(A) IN THIS SECTION, "FERTILIZER" MEANS COMMERCIAL FERTILIZER AND SPECIALTY FERTILIZER.~~

~~(B) (1) THIS SECTION APPLIES TO A PERSON WHO APPLIES FERTILIZER TO:~~

~~(I) PROPERTY THAT IS NOT USED FOR AGRICULTURAL PURPOSES; OR~~

~~(II) STATE PROPERTY THAT IS NOT USED FOR AGRICULTURAL PURPOSES.~~

~~(2) THIS SECTION DOES NOT APPLY TO THE APPLICATION OF FERTILIZER ON COMMERCIAL FARMS.~~

~~(C) A PERSON MAY NOT:~~

~~(1) APPLY FERTILIZER INTENDED FOR USE ON TURF TO AN IMPERVIOUS SURFACE; AND~~

~~(2) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, APPLY FERTILIZER CONTAINING PHOSPHORUS OR NITROGEN TO TURF:~~

~~(I) BEFORE MARCH 1 OR AFTER NOVEMBER 15 OF ANY CALENDAR YEAR; OR~~

~~(II) AT ANY TIME WHEN THE GROUND IS FROZEN.~~

~~(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PERSON MAY NOT APPLY FERTILIZER CONTAINING PHOSPHORUS OR NITROGEN TO TURF THAT IS WITHIN 15 FEET OF WATERS OF THE STATE.~~

~~(2) WHERE A DROP SPREADER, ROTARY SPREADER WITH A DEFLECTOR, OR TARGETED SPRAY LIQUID IS USED FOR FERTILIZER APPLICATION, THE SETBACK REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY BE REDUCED TO 10 FEET.~~

~~(3) THE ESTABLISHMENT OF SETBACKS FOR FERTILIZER APPLICATION UNDER THIS SUBSECTION DOES NOT PRECLUDE THE ESTABLISHMENT OR APPLICABILITY OF, OR COMPLIANCE WITH, ANY OTHER ENVIRONMENTAL STANDARDS ESTABLISHED UNDER ANY OTHER STATE OR FEDERAL LAW, RULE, OR REGULATION.~~

~~(E) (1) A PERSON MAY APPLY FERTILIZER TO TURF CONTAINING PHOSPHORUS IF THE PERSON:~~

~~(I) DETERMINES THAT THE FERTILIZER IS NECESSARY FOR THE SPECIFIC SOILS AND TARGET VEGETATION IN ACCORDANCE WITH A SOIL TEST PERFORMED NO MORE THAN 3 YEARS BEFORE THE FERTILIZER APPLICATION, PROVIDED THE APPLICATION COMPLIES WITH THE RECOMMENDATIONS ESTABLISHED BY THE UNIVERSITY OF MARYLAND;~~

~~(II) IS ESTABLISHING VEGETATION FOR THE FIRST TIME, SUCH AS AFTER LAND DISTURBANCE, PROVIDED THE APPLICATION COMPLIES WITH THE RECOMMENDATIONS ESTABLISHED BY THE UNIVERSITY OF MARYLAND; OR~~

~~(III) IS REESTABLISHING OR REPAIRING A TURF AREA.~~

~~(2) A PERSON MAY APPLY FERTILIZER TO TURF IN EXCESS OF THE NITROGEN REQUIREMENTS IN § 6–226 OF THIS SUBTITLE, IF THE PERSON IS ESTABLISHING VEGETATION FOR THE FIRST TIME, SUCH AS AFTER LAND DISTURBANCE, PROVIDED THE APPLICATION COMPLIES WITH THE RECOMMENDATIONS OF THE UNIVERSITY OF MARYLAND.~~

~~(F) IN ADDITION TO THE REQUIREMENTS SET FORTH IN THIS SECTION, A PERSON, OTHER THAN A PROFESSIONAL FERTILIZER APPLICATOR, MAY NOT:~~

~~(1) APPLY FERTILIZER TO TURF:~~

~~(I) IN AN AMOUNT THAT IS INCONSISTENT WITH THE ANNUAL RECOMMENDED RATE ESTABLISHED BY THE UNIVERSITY OF MARYLAND; AND~~

~~(II) THAT CONTAINS NITROGEN THAT IS LESS THAN 20% SLOW RELEASE IF TOTAL NITROGEN EXCEEDS 0.5 POUNDS;~~

~~(2) APPLY NITROGEN TO TURF:~~

~~(I) AT A RATE OF MORE THAN 0.7 POUNDS OF WATER–SOLUBLE NITROGEN PER 1,000 SQUARE FEET PER APPLICATION; AND~~

~~(II) AT A RATE THAT IS MORE THAN 0.9 POUNDS OF TOTAL NITROGEN PER 1,000 SQUARE FEET PER APPLICATION; AND~~

~~(3) APPLY FERTILIZER TO A GOLF COURSE.~~

~~(G) A COUNTY OR MUNICIPALITY MAY ENFORCE THIS SUBSECTION.~~

~~(H) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.~~

~~6–228.~~

~~(A) IN THIS SECTION, "FERTILIZER" MEANS COMMERCIAL FERTILIZER AND SPECIALTY FERTILIZER.~~

~~(B) (1) THIS SECTION APPLIES TO A PROFESSIONAL FERTILIZER APPLICATOR WHO APPLIES FERTILIZER TO:~~

~~(I) PROPERTY THAT IS NOT USED FOR AGRICULTURAL PURPOSES; OR~~

~~(II) STATE PROPERTY THAT IS NOT USED FOR AGRICULTURAL PURPOSES.~~

~~(2) THIS SECTION DOES NOT APPLY TO THE APPLICATION OF FERTILIZER ON COMMERCIAL FARMS.~~

~~(C) A PROFESSIONAL FERTILIZER APPLICATOR MAY NOT APPLY FERTILIZER TO TURF WITHOUT FIRST OBTAINING A FERTILIZER APPLICATION CERTIFICATION, UNLESS THE PERSON IS UNDER THE DIRECT SUPERVISION OF A CERTIFIED PROFESSIONAL FERTILIZER APPLICATOR, IN ACCORDANCE WITH § 6–223 OF THIS SUBTITLE.~~

~~(D) A PROFESSIONAL FERTILIZER APPLICATOR MAY NOT:~~

~~(1) APPLY FERTILIZER TO TURF IN AN AMOUNT THAT IS INCONSISTENT WITH THE ANNUAL RECOMMENDED RATE ESTABLISHED BY THE UNIVERSITY OF MARYLAND; AND~~

~~(2) APPLY NITROGEN TO TURF:~~

~~(I) AT A RATE OF MORE THAN 0.7 POUNDS OF WATER–SOLUBLE NITROGEN PER 1,000 SQUARE FEET PER APPLICATION; AND~~

~~(II) AT A RATE THAT IS MORE THAN 0.9 POUNDS OF TOTAL NITROGEN PER 1,000 SQUARE FEET PER APPLICATION.~~

~~(E) (1) A PROFESSIONAL FERTILIZER APPLICATOR WHO VIOLATES THIS SECTION, OR ANY REGULATION ADOPTED UNDER THIS SECTION, IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING $1,000 FOR THE FIRST OFFENSE AND NOT EXCEEDING $2,000 FOR A SECOND OR SUBSEQUENT OFFENSE, TO BE COLLECTED IN A CIVIL ACTION BY A SUMMARY PROCEEDING.~~

~~(2) EACH DAY ON WHICH A VIOLATION OCCURS IS A SEPARATE VIOLATION UNDER THIS SUBSECTION.~~

~~(3) A COUNTY OR MUNICIPALITY MAY ENFORCE THIS SUBSECTION.~~

~~(F) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.~~

8–801.

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

(b) "Certified nutrient management consultant" means an individual certified by the Department to prepare a nutrient management plan.

(C) "COMMERCIAL FARM" MEANS A FARM THAT PERFORMS ACTIVITIES RELATED TO THE PRODUCTION AND SALE OF AGRICULTURAL COMMODITIES, INCLUDING ROW CROPS, FRUITS, VEGETABLES, HORTICULTURE, AND SILVACULTURE.

(D) "ENHANCED EFFICIENCY FERTILIZER" HAS THE MEANING STATED IN § 6–201 OF THIS ARTICLE.

(E) "IMPERVIOUS SURFACE" MEANS ANY STRUCTURE, SURFACE, OR IMPROVEMENT THAT REDUCES OR PREVENTS ABSORPTION OF STORMWATER INTO LAND, AND INCLUDES POROUS PAVING, PAVER BLOCKS, GRAVEL, CRUSHED STONE, DECKS, PATIOS, ELEVATED STRUCTURES, AND OTHER SIMILAR STRUCTURES, SURFACES, OR IMPROVEMENTS.

(F) "NATURAL ORGANIC FERTILIZER" HAS THE MEANING STATED IN § 6–201 OF THIS ARTICLE.

[(c)**] (G)** "Nutrient management plan" means a plan prepared under this subtitle by a certified nutrient management consultant to manage the amount, placement, timing, and application of animal waste, commercial fertilizer, sludge, or other plant nutrients to prevent pollution by transport of bioavailable nutrients and to maintain productivity.

(H) "ORGANIC FERTILIZER" HAS THE MEANING STATED IN § 6–201 OF THIS ARTICLE.

(I) (1) "PROFESSIONAL FERTILIZER APPLICATOR" MEANS ANY PERSON WHO:

(I) IS CERTIFIED TO APPLY FERTILIZER IN ACCORDANCE WITH § 8–803.4 OF THIS SUBTITLE; AND

(II) APPLIES FERTILIZER FOR HIRE.

(2) "PROFESSIONAL FERTILIZER APPLICATOR" INCLUDES THE OWNER OR MANAGER OF PROPERTY, OR AN EMPLOYEE OF A GOVERNMENT ENTITY WHO APPLIES FERTILIZER WITHIN THE SCOPE OF EMPLOYMENT.

(J) "SLOW–RELEASE NITROGEN" MEANS NITROGEN IN A FORM THAT:

(1) DELAYS ITS AVAILABILITY FOR PLANT UPTAKE AND USE AFTER APPLICATION; OR

(2) EXTENDS ITS AVAILABILITY TO THE PLANT SIGNIFICANTLY LONGER THAN A REFERENCE "RAPIDLY AVAILABLE NUTRIENT" SUCH AS AMMONIUM NITRATE OR UREA, AMMONIUM PHOSPHATE, OR POTASSIUM CHLORIDE.

(K) "SOIL TEST" MEANS A TECHNICAL ANALYSIS OF SOIL CONDUCTED BY A LABORATORY USING STANDARDS RECOMMENDED BY THE UNIVERSITY OF MARYLAND.

(L) "TURF" MEANS LAND, INCLUDING RESIDENTIAL PROPERTY AND PUBLICLY OWNED LAND THAT IS PLANTED IN GRASS, EXCEPT LAND THAT IS USED IN THE SALE AND PRODUCTION OF SOD, AS DEFINED IN § 9–101 OF THIS ARTICLE.

(M) "WATER–SOLUBLE NITROGEN" MEANS NITROGEN THAT IS READILY SOLUBLE IN WATER.

(N) "WATERS OF THE STATE" HAS THE MEANING STATED IN § 5–101 OF THE ENVIRONMENT ARTICLE.

SECTION 5. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Agriculture

8–803.4.

[(a) This section applies to an application of commercial fertilizer, as defined in § 6–201 of this article:

(1) That is performed by:

(i) A person who applies commercial fertilizer for hire; or

(ii) An employee of the owner or manager of the property; and

(2) To:

(i) Ten acres or more annually, whether one or multiple parcels, of property that is not used for agricultural purposes; or

(ii) State property that is not used for agricultural purposes.

(b) A person may apply commercial fertilizer only if the person applies the commercial fertilizer in a manner that is consistent with the recommendations of the University of Maryland Cooperative Extension Service.**]**

(A) IN THIS SECTION, "FERTILIZER" MEANS A COMMERCIAL FERTILIZER AND SPECIALTY FERTILIZER.

(B) (1) THIS SECTION APPLIES TO A PROFESSIONAL FERTILIZER APPLICATOR WHO APPLIES FERTILIZER TO:

(I) PROPERTY THAT IS NOT USED FOR AGRICULTURAL PURPOSES; ~~AND~~ *OR*

(II) STATE PROPERTY THAT IS NOT USED FOR AGRICULTURAL PURPOSES.

(2) THIS SECTION DOES NOT APPLY TO THE APPLICATION OF FERTILIZER ON COMMERCIAL FARMS.

(C) A PROFESSIONAL FERTILIZER APPLICATOR MAY NOT:

(1) APPLY FERTILIZER TO TURF WITHOUT FIRST OBTAINING A FERTILIZER APPLICATION CERTIFICATION, UNLESS THE PERSON IS UNDER THE DIRECT SUPERVISION OF A CERTIFIED PROFESSIONAL FERTILIZER APPLICATOR, IN ACCORDANCE WITH § 8–803.6 OF THIS SUBTITLE; OR

(2) APPLY FERTILIZER INTENDED FOR USE ON TURF ON AN IMPERVIOUS SURFACE.

(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PROFESSIONAL FERTILIZER APPLICATOR MAY NOT APPLY FERTILIZER CONTAINING PHOSPHORUS OR NITROGEN TO TURF:

(I) BEFORE MARCH 1 OR AFTER NOVEMBER 15 OF ANY CALENDAR YEAR;

(II) ANY TIME THE GROUND IS FROZEN; OR

(III) IN AN AMOUNT THAT IS INCONSISTENT WITH THE ANNUAL RECOMMENDED RATE ESTABLISHED BY THE UNIVERSITY OF MARYLAND.

(2) FROM NOVEMBER 16 THROUGH DECEMBER 1 OF EACH CALENDAR YEAR, A PROFESSIONAL FERTILIZER APPLICATOR MAY APPLY WATER–SOLUBLE NITROGEN TO TURF AT AN APPLICATION RATE OF NO MORE THAN 0.5 POUNDS PER 1,000 SQUARE FEET OF WATER–SOLUBLE NITROGEN.

(E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PROFESSIONAL FERTILIZER APPLICATOR MAY NOT APPLY FERTILIZER CONTAINING PHOSPHORUS OR NITROGEN TO TURF THAT IS WITHIN 15 FEET OF WATERS OF THE STATE.

(2) WHEN A DROP SPREADER, ROTARY SPREADER WITH A DEFLECTOR, OR TARGETED SPRAY LIQUID IS USED FOR FERTILIZER APPLICATION, THE SETBACK REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY BE REDUCED TO 10 FEET.

(3) THE ESTABLISHMENT OF SETBACKS FOR FERTILIZER APPLICATION UNDER THIS SUBSECTION DOES NOT PRECLUDE THE ESTABLISHMENT OR APPLICABILITY OF, OR COMPLIANCE WITH, ANY OTHER ENVIRONMENTAL STANDARDS ESTABLISHED UNDER ANY OTHER STATE OR FEDERAL LAW, RULE, OR REGULATION.

(F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PROFESSIONAL FERTILIZER APPLICATOR MAY NOT APPLY FERTILIZER CONTAINING NITROGEN TO TURF:

(I) AT AN APPLICATION RATE OF MORE THAN 0.7 POUNDS PER 1,000 FEET OF WATER–SOLUBLE NITROGEN; AND

(II) AT AN APPLICATION RATE OF MORE THAN 0.9 POUNDS PER 1,000 SQUARE FEET OF TOTAL NITROGEN.

(2) (I) SUBJECT TO SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH, A PROFESSIONAL FERTILIZER APPLICATOR MAY APPLY AN ENHANCED EFFICIENCY FERTILIZER:

1. AT AN ANNUAL APPLICATION RATE OF NO MORE THAN 2.5 POUNDS PER 1,000 SQUARE FEET OF NITROGEN; AND

2. THAT HAS A RELEASE RATE OF NO MORE THAN 0.7 POUNDS PER 1,000 SQUARE FEET OF TOTAL NITROGEN PER MONTH.

(II) THE ANNUAL TOTAL APPLICATION RATE OF AN ENHANCED EFFICIENCY FERTILIZER MAY NOT EXCEED 80% OF THE ANNUAL RECOMMENDED RATE FOR TOTAL NITROGEN ESTABLISHED BY THE UNIVERSITY OF MARYLAND.

(III) AN ENHANCED EFFICIENCY FERTILIZER MAY NOT BE APPLIED AFTER NOVEMBER 15 OR BEFORE MARCH 1 OF EACH CALENDAR YEAR.

(G) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2), *AND* (4)~~, AND (5)~~ OF THIS SUBSECTION, A PROFESSIONAL FERTILIZER APPLICATOR MAY NOT APPLY FERTILIZER CONTAINING PHOSPHORUS TO TURF.

(2) A PROFESSIONAL FERTILIZER APPLICATOR MAY APPLY ORGANIC OR NATURAL ORGANIC FERTILIZER CONTAINING PHOSPHORUS TO TURF WHEN:

(I) 1. A SOIL TEST PERFORMED NO MORE THAN 3 YEARS BEFORE THE FERTILIZER APPLICATION INDICATES A LOW OR MEDIUM LEVEL OF PHOSPHORUS; AND

2. THE FERTILIZER IS APPLIED AT A RATE RECOMMENDED BY THE UNIVERSITY OF MARYLAND; ~~OR~~ *AND*

(II) 1. BEGINNING ~~JULY~~ *OCTOBER* 1, 2013, A SOIL TEST PERFORMED NO MORE THAN 3 YEARS BEFORE THE FERTILIZER APPLICATION INDICATES A LOW OR MEDIUM LEVEL OF PHOSPHORUS; AND

2. A LOW PHOSPHORUS FERTILIZER, AS DEFINED UNDER § 6–201 OF THIS ARTICLE, THAT IS AN ORGANIC OR NATURAL ORGANIC FERTILIZER IS APPLIED AT A RATE RECOMMENDED BY THE UNIVERSITY OF MARYLAND.

(3) PARAGRAPH (2) OF THIS SUBSECTION DOES NOT AUTHORIZE A PROFESSIONAL FERTILIZER APPLICATOR TO APPLY FERTILIZER CONTAINING PHOSPHORUS WHEN A SOIL TEST INDICATES AN OPTIMUM OR EXCESSIVE LEVEL OF PHOSPHORUS.

(4) A PROFESSIONAL FERTILIZER APPLICATOR MAY APPLY FERTILIZER TO TURF CONTAINING PHOSPHORUS IF THE PROFESSIONAL FERTILIZER APPLICATOR:

(I) DETERMINES THAT THE FERTILIZER IS NECESSARY FOR THE SPECIFIC SOILS AND TARGET VEGETATION IN ACCORDANCE WITH A SOIL TEST PERFORMED NO MORE THAN 3 YEARS BEFORE THE FERTILIZER APPLICATION, PROVIDED THE APPLICATION COMPLIES WITH THE RECOMMENDATIONS ESTABLISHED BY THE UNIVERSITY OF MARYLAND;

(II) IS ESTABLISHING VEGETATION FOR THE FIRST TIME, SUCH AS AFTER LAND DISTURBANCE, PROVIDED THE APPLICATION COMPLIES WITH THE RECOMMENDATIONS ESTABLISHED BY THE UNIVERSITY OF MARYLAND; OR

(III) IS REESTABLISHING OR REPAIRING A TURF AREA.

~~**(5) A PROFESSIONAL FERTILIZER APPLICATOR MAY APPLY FERTILIZER TO TURF IN EXCESS OF THE PHOSPHORUS REQUIREMENTS IN § 6–224 OF THIS ARTICLE, IF THE PROFESSIONAL FERTILIZER APPLICATOR IS ESTABLISHING VEGETATION FOR THE FIRST TIME, SUCH AS AFTER LAND DISTURBANCE, PROVIDED THE APPLICATION COMPLIES WITH THE RECOMMENDATIONS OF THE UNIVERSITY OF MARYLAND.**~~

[(c)**] (H)** (1) A person who violates any provision of this section is subject to a civil penalty of not more than $1,000 for a first violation.

(2) A person who violates any provision of this section is subject to a civil penalty of not more than $2,000 for each subsequent violation.

(3) Each day a violation occurs under this section is a separate violation.

(4) The total penalties imposed on a person for violations of this section that result from the same set of facts and circumstances may not exceed $10,000.

[(d)**] (I)** The penalty imposed on a person under this section shall be assessed with consideration given to:

(1) The willfulness of the violation, the extent to which the existence of the violation was known to the violator but uncorrected by the violator, and the extent to which the violator exercised reasonable care;

(2) Any actual harm to human health or to the environment including injury to or impairment of the use of the waters of the State or the natural resources of the State;

(3) The cost of control;

(4) The nature and degree of injury to or interference with general welfare, health, and property;

(5) The extent to which the location of the violation, including location near areas of human population, creates the potential for harm to the environment or to human health or safety; and

(6) The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

[(e)**] (J)** Penalties collected by the Secretary under this section shall be paid into the General Fund of the State.

(K) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.

[8–803.5.

The Department may adopt regulations for agricultural research, education, and demonstration exemptions to this subtitle.**]**

8–803.5.

(A) IN THIS SECTION, "FERTILIZER" MEANS COMMERCIAL FERTILIZER AND SPECIALTY FERTILIZER.

(B) (1) THIS SECTION APPLIES TO A PERSON WHO APPLIES FERTILIZER TO:

(I) PROPERTY THAT IS NOT USED FOR AGRICULTURAL PURPOSES; OR

(II) STATE PROPERTY THAT IS NOT USED FOR AGRICULTURAL PURPOSES.

(2) THIS SECTION DOES NOT APPLY TO THE APPLICATION OF FERTILIZER ON COMMERCIAL FARMS.

(C) A PERSON MAY NOT:

(1) APPLY FERTILIZER INTENDED FOR USE ON TURF TO AN IMPERVIOUS SURFACE; AND

(2) APPLY FERTILIZER CONTAINING PHOSPHORUS OR NITROGEN TO TURF:

(I) BEFORE MARCH 1 OR AFTER NOVEMBER 15 OF ANY CALENDAR YEAR; OR

(II) AT ANY TIME WHEN THE GROUND IS FROZEN.

(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PERSON MAY NOT APPLY FERTILIZER CONTAINING PHOSPHORUS OR NITROGEN TO TURF THAT IS WITHIN 15 FEET OF WATERS OF THE STATE.

(2) WHEN A DROP SPREADER, ROTARY SPREADER WITH A DEFLECTOR, OR TARGETED SPRAY LIQUID IS USED FOR FERTILIZER APPLICATION, THE SETBACK REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY BE REDUCED TO 10 FEET.

(3) THE ESTABLISHMENT OF SETBACKS FOR FERTILIZER APPLICATION UNDER THIS SUBSECTION DOES NOT PRECLUDE THE ESTABLISHMENT OR APPLICABILITY OF, OR COMPLIANCE WITH, ANY OTHER ENVIRONMENTAL STANDARDS ESTABLISHED UNDER ANY OTHER STATE OR FEDERAL LAW, RULE, OR REGULATION.

(E) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (D) OF THIS SECTION~~:~~

~~(1) A,~~ *A* PERSON MAY APPLY FERTILIZER TO TURF CONTAINING PHOSPHORUS IF THE PERSON:

~~(I)~~ *(1)* DETERMINES THAT THE FERTILIZER IS NECESSARY FOR THE SPECIFIC SOILS AND TARGET VEGETATION IN ACCORDANCE WITH A SOIL TEST PERFORMED NO MORE THAN 3 YEARS BEFORE THE FERTILIZER APPLICATION, PROVIDED THE APPLICATION COMPLIES WITH THE RECOMMENDATIONS ESTABLISHED BY THE UNIVERSITY OF MARYLAND;

~~(II)~~ *(2)* IS ESTABLISHING VEGETATION FOR THE FIRST TIME, SUCH AS AFTER LAND DISTURBANCE, PROVIDED THE APPLICATION COMPLIES WITH THE RECOMMENDATIONS ESTABLISHED BY THE UNIVERSITY OF MARYLAND; OR

~~(III)~~ *(3)* IS REESTABLISHING OR REPAIRING A TURF AREA~~; AND~~.

~~(2) A PERSON MAY APPLY FERTILIZER TO TURF IN EXCESS OF THE PHOSPHORUS REQUIREMENTS IN § 6–224 OF THIS ARTICLE, IF THE PERSON IS ESTABLISHING VEGETATION FOR THE FIRST TIME, SUCH AS AFTER LAND DISTURBANCE, PROVIDED THE APPLICATION COMPLIES WITH THE RECOMMENDATIONS OF THE UNIVERSITY OF MARYLAND.~~

(F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION AND IN ADDITION TO THE REQUIREMENTS SET FORTH IN THIS SECTION, A PERSON, OTHER THAN A PROFESSIONAL FERTILIZER APPLICATOR, MAY NOT:

(I) APPLY FERTILIZER TO TURF:

1. IN AN AMOUNT THAT IS INCONSISTENT WITH THE ANNUAL RECOMMENDED RATE ESTABLISHED BY THE UNIVERSITY OF MARYLAND; AND

2. THAT CONTAINS NITROGEN THAT IS LESS THAN 20% SLOW RELEASE;

(II) APPLY NITROGEN TO TURF:

1. AT AN APPLICATION RATE OF MORE THAN 0.7 POUNDS PER 1,000 SQUARE FEET OF WATER–SOLUBLE NITROGEN; AND

2. AT AN APPLICATION RATE THAT IS MORE THAN 0.9 POUNDS PER 1,000 SQUARE FEET OF TOTAL NITROGEN; AND

(III) APPLY FERTILIZER TO A GOLF COURSE.

(2) (I) SUBJECT TO SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH, A PERSON MAY APPLY AN ENHANCED EFFICIENCY FERTILIZER:

1. AT AN ANNUAL APPLICATION RATE OF NO MORE THAN 2.5 POUNDS PER 1,000 SQUARE FEET OF NITROGEN; AND

2. THAT HAS A RELEASE RATE OF NO MORE THAN 0.7 POUNDS PER 1,000 SQUARE FEET OF NITROGEN PER MONTH.

(II) THE ANNUAL TOTAL APPLICATION RATE OF AN ENHANCED EFFICIENCY FERTILIZER MAY NOT EXCEED 80% OF THE ANNUAL RECOMMENDATION RATE ESTABLISHED BY THE UNIVERSITY OF MARYLAND.

(III) ENHANCED EFFICIENCY FERTILIZERS MAY NOT BE APPLIED AFTER NOVEMBER 15 OR BEFORE MARCH 1 OF EACH CALENDAR YEAR.

(G) A COUNTY OR MUNICIPALITY MAY ENFORCE THIS SECTION.

(H) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.

SECTION 6. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Agriculture

8–803.6.

(A) (1) THE DEPARTMENT SHALL, IN CONSULTATION WITH THE UNIVERSITY OF MARYLAND, ESTABLISH A PROGRAM TO CERTIFY PROFESSIONAL FERTILIZER APPLICATORS.

(2) THE CERTIFICATION PROGRAM SHALL PROVIDE PROFESSIONAL FERTILIZER APPLICATORS WITH TRAINING AND EDUCATION IN THE FOLLOWING SUBJECT AREAS:

(I) THE PROPER USE AND CALIBRATION OF FERTILIZER APPLICATION EQUIPMENT;

(II) THE HAZARDS INVOLVED IN, AND THE ENVIRONMENTAL IMPACT OF, APPLYING FERTILIZER, INCLUDING NUTRIENT POLLUTION TO THE WATERS OF THE STATE;

(III) ALL APPLICABLE STATE AND FEDERAL LAWS, RULES, AND REGULATIONS;

(IV) THE CORRECT INTERPRETATION OF FERTILIZER LABELING INFORMATION; AND

(V) THE RECOMMENDATIONS DEVELOPED BY THE UNIVERSITY OF MARYLAND FOR NUTRIENT MANAGEMENT ON TURF, INCLUDING THE APPROPRIATE TIME TO:

1. APPLY FERTILIZER WHEN RAIN IS FORECAST; AND

2. APPLY FERTILIZER WHEN SOILS ARE WET AND THE POTENTIAL FOR FERTILIZER MOVEMENT OFF–SITE EXISTS.

(B) IN ESTABLISHING THE CERTIFICATION PROGRAM, THE DEPARTMENT MAY:

(1) CHARGE REASONABLE FEES, INCLUDING AN ANNUAL RECERTIFICATION FEE, TO COVER COSTS ASSOCIATED WITH THE CERTIFICATION PROGRAM;

(2) REQUIRE CONTINUING EDUCATION OR TRAINING FOR PROFESSIONAL FERTILIZER APPLICATORS;

(3) DESIGNATE ONE OR MORE ENTITIES TO TRAIN, CERTIFY, AND RECERTIFY PROFESSIONAL FERTILIZER APPLICATORS, WHICH MAY CHARGE FEES TO COVER THE REASONABLE COSTS ASSOCIATED WITH THE CERTIFICATION TRAINING AND EDUCATION; AND

(4) RECOGNIZE THE TRAINING PROGRAM OF AN ENTITY EMPLOYING PROFESSIONAL FERTILIZER APPLICATORS IF THE PROGRAM MEETS THE CERTIFICATION AND RECERTIFICATION TRAINING AND EDUCATION STANDARDS ESTABLISHED BY THE DEPARTMENT UNDER THIS SECTION.

(C) THE DEPARTMENT SHALL PUBLISH AND MAINTAIN A LIST OF ALL CERTIFIED PROFESSIONAL FERTILIZER APPLICATORS AND MAKE THE LIST AVAILABLE ON THE DEPARTMENT'S INTERNET WEB SITE.

(D) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.

8–803.7.

(A) THE DEPARTMENT, IN CONSULTATION WITH THE UNIVERSITY OF MARYLAND, SHALL DEVELOP A PROGRAM OF PUBLIC EDUCATION THAT SHALL INCLUDE:

(1) THE DISSEMINATION OF INFORMATION REGARDING NUTRIENT POLLUTION;

(2) BEST MANAGEMENT PRACTICES FOR FERTILIZER USE;

(3) SOIL TESTING;

(4) PROPER INTERPRETATION OF FERTILIZER LABEL INSTRUCTIONS; AND

(5) THE PROPER USE AND CALIBRATION OF FERTILIZER APPLICATION EQUIPMENT.

(B) THE UNIVERSITY OF MARYLAND SHALL IDENTIFY LABORATORIES THAT:

(1) FOLLOW THE RECOMMENDED SOIL TESTING PROCEDURES FOR THE MID–ATLANTIC UNITED STATES; AND

(2) PROVIDE A FINAL REPORT TO A REQUESTOR OF SOIL TESTING WITH THE RESULTS OF A SOIL TEST.

(C) THE UNIVERSITY OF MARYLAND SHALL REVIEW ITS FERTILIZER TURF GUIDELINES EVERY 3 YEARS AND REVISE THE GUIDELINES AS NECESSARY, WITH CONSIDERATION OF PLANT NUTRIENT REQUIREMENTS AND ESTABLISHED STATE GOALS TO PROTECT WATER QUALITY IN THE WATERS OF THE STATE.

8–803.8.

(A) EXCEPT FOR ENFORCEMENT AS AUTHORIZED UNDER § 8–803.5(G) OF THIS SUBTITLE, THE DEPARTMENT HAS THE EXCLUSIVE AUTHORITY TO ESTABLISH STANDARDS REGULATING FERTILIZER AND ITS APPLICATION TO TURF.

(B) A LOCAL GOVERNMENT ENTITY MAY NOT ADOPT LAWS, REGULATIONS, RULES, ORDINANCES, OR STANDARDS REGULATING FERTILIZER AND ITS APPLICATION TO TURF.

(C) SUBSECTIONS (A) AND (B) OF THIS SECTION DO NOT EXEMPT A PERSON FROM COMPLYING WITH ANY PROVISION OF, OR ANY REGULATION ADOPTED IN ACCORDANCE WITH, THE ENVIRONMENT ARTICLE.

SECTION 7. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Agriculture

8–803.9.

THE DEPARTMENT MAY ADOPT REGULATIONS FOR AGRICULTURAL RESEARCH, EDUCATION, AND DEMONSTRATION EXEMPTIONS TO THIS SUBTITLE.

SECTION ~~5.~~ 8. AND BE IT FURTHER ENACTED, That, on or before October 1, 2013, the Department of Agriculture shall adopt regulations to require the annual

reporting of the sale of commercial fertilizer and specialty fertilizer at retail by the following sectors:

(1) lawn and turf;

(2) golf course and athletic fields;

(3) gardening; and

(4) greenhouses and nurseries.

SECTION ~~6.~~ 9. AND BE IT FURTHER ENACTED, That, Sections ~~2 and~~ 4 and 5 of this Act shall take effect October 1, 2013.

SECTION ~~7.~~ 10. AND BE IT FURTHER ENACTED, That, ~~Section 3~~ Sections 3 and 6 of this Act shall take effect October 1, 2012.

SECTION ~~8.~~ 11. AND BE IT FURTHER ENACTED, That, except as provided in Sections ~~6 and 7~~ 9 and 10 of this Act, this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 485

(House Bill 573)

AN ACT concerning

Fertilizer Use Act of 2011

FOR the purpose of ~~altering~~ establishing certain ~~specialty fertilizer~~ labeling requirements for specialty fertilizer used on certain turf; removing the exemption for certain contractors, salespersons, employees, and other agents of certain contractors from a certain prohibition; exempting certain organic fertilizer sold to certain professional fertilizer applicators from a certain prohibition; requiring the Department of Agriculture, in consultation with the University of Maryland, to establish a professional fertilizer applicator certification program in accordance with certain requirements; requiring the Department to publish and maintain a certain list; requiring the Department, in consultation with the University of Maryland, to develop a certain public education program; requiring the University of Maryland to identify certain laboratories; requiring the University of Maryland to revise certain guidelines in accordance with a certain schedule; providing the Department with exclusive authority to establish certain standards; prohibiting a local government entity from adopting certain laws, regulations, rules, or ordinances; establishing

certain maximum limits for nitrogen and phosphorus in certain ~~specialty~~ fertilizer under certain circumstances; prohibiting a person from selling ~~at retail certain specialty~~ certain fertilizer; prohibiting a person from applying certain fertilizer to certain surfaces under certain circumstances; authorizing a person to apply certain fertilizer under certain circumstances; establishing certain penalties for certain violations; authorizing a county or municipality to enforce certain provisions of law; authorizing the Department to adopt certain regulations; requiring the Department to adopt certain regulations on or before a certain date; prohibiting a professional fertilizer applicator from applying certain fertilizer without first obtaining a certain certification; prohibiting a professional fertilizer applicator from using or applying certain fertilizer under certain circumstances; providing for delayed effective dates for certain provisions of this Act; defining certain terms; making certain technical changes; and generally relating to the use of fertilizer in the State.

BY repealing and reenacting, with amendments,
Article – Agriculture
Section 6–201, 6–210(d) and (e), 6–219(a) and (b), 6–222(a) and (b), 8–801, and 8–803.4
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY repealing
Article – Agriculture
Section 8–803.5
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY adding to
Article – Agriculture
Section 6–223, 6–224, ~~6–225, 6–226, 6–227, and 6–228~~ 8–803.5, 8–803.6, 8–803.7, 8–803.8, and 8–803.9
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

~~BY repealing~~
~~Article – Agriculture~~
~~Section 8–803.5~~
~~Annotated Code of Maryland~~
~~(2007 Replacement Volume and 2010 Supplement)~~

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

Article – Agriculture

6–201.

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

(b) A commercial fertilizer is "adulterated" if:

(1) Any poisonous, deleterious, or nonnutritive ingredient is added in sufficient amount to render it injurious to the health of plants, humans, or animal life or injurious to the environment;

(2) A valuable constituent is omitted or abstracted wholly or partially from it or any less valuable substance is substituted for it; or

(3) Its composition or quality falls below or differs from that which it is purported or is represented to contain by its labeling.

(c) "Brand" means the term, design, trademark, or other specific designation under which a commercial fertilizer or soil conditioner is distributed in the State.

(d) "Bulk fertilizer" means any commercial fertilizer distributed in a nonpackaged form.

(e) "Buyer's mixture" means commercial fertilizer mixed on specific request of a purchaser according to a formula furnished by him.

~~**(F) "COMMERCIAL FARM" MEANS A FARM THAT PERFORMS ACTIVITIES RELATED TO THE PRODUCTION AND SALE OF AGRICULTURAL COMMODITIES, INCLUDING ROW CROPS, FRUITS, VEGETABLES, HORTICULTURE, AND SILVACULTURE.**~~

~~**[**(f)**]** **(G)**~~ "Commercial fertilizer" means any substance containing a recognized plant nutrient used for its plant nutrient content and designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manure, marl, lime, wood ashes, and gypsum.

~~**[**(g)**]** **(H)**~~ "Custom–mix" means commercial fertilizer mixed on specific request of a purchaser according to a formula furnished by him.

~~**[**(h)**]** **(I)**~~ "Distribute" means to import, manufacture, produce, compound, mix, blend, barter, sell, offer for sale, consign, furnish, provide, or otherwise supply commercial fertilizer or soil conditioners as part of a commercial enterprise.

(I) "ENHANCED EFFICIENCY FERTILIZER" MEANS A FERTILIZER PRODUCT THAT INCREASES PLANT UPTAKE AND DECREASES THE POTENTIAL OF NUTRIENT LOSS TO THE ENVIRONMENT, INCLUDING GASEOUS LOSS, LEACHING, OR RUNOFF, WHEN COMPARED TO AN APPROPRIATE REFERENCE FERTILIZER PRODUCT.

[(i)**] (J)** "Fertilizer material" means a commercial fertilizer containing a recognized plant nutrient, which is used primarily for its plant nutrient content.

[(j)**] (K)** "Grade" means the percentage of total nitrogen (N), available ~~phosphoric acid (H_3PO_4)~~ **PHOSPHATE (P_2O_5)**, and soluble potash (K_2O) stated in whole numbers in the same terms, order, and percentages as in the "guaranteed analysis". In the case of any "specialty fertilizer" or "mixed–to–order fertilizer" guarantees may be stated in decimal fractions of whole numbers.

[(k)**] (L)** "Guaranteed analysis" means the minimum percentage of plant nutrient claimed as follows:

(1) Total nitrogen (N), available ~~phosphoric acid (H_3PO_4)~~ **PHOSPHATE (P_2O_5)**, soluble potash (K_2O);

(2) For unacidulated mineral phosphatic materials and basic slag, both total and available ~~phosphoric acid~~ **PHOSPHATE** and the degree of fineness;

(3) For bone, tankage, and other organic phosphatic materials, total ~~phosphoric acid~~ **PHOSPHATE**;

(4) Additional plant nutrients, when claimed, shall be expressed in elemental form; and

(5) Potential basicity or acidity may be expressed in terms of calcium carbonate equivalent in multiples of 100 pounds per ton.

[(l)**] (M)** "Gypsum" means any product that consists chiefly of calcium sulfate intended for use for agricultural purposes.

~~**(N) "IMPERVIOUS SURFACE" MEANS ANY STRUCTURE, SURFACE, OR IMPROVEMENT THAT REDUCES OR PREVENTS ABSORPTION OF STORMWATER INTO LAND, AND INCLUDES POROUS PAVING, PAVER BLOCKS, GRAVEL, CRUSHED STONE, DECKS, PATIOS, ELEVATED STRUCTURES, AND OTHER SIMILAR STRUCTURES, SURFACES, OR IMPROVEMENTS.**~~

[(m)**] ~~(O)~~ (N)** "Label" means the display of all written, printed, or graphic matter on the immediate container or a statement accompanying a commercial fertilizer or soil conditioner.

[(n)**] ~~(P)~~ (O)** "Labeling" means all written, printed, or graphic matter on or accompanying any commercial fertilizer or soil conditioner, or the contents of any advertisement, brochure, poster or television or radio announcement used in promoting the sale of a commercial fertilizer or soil conditioner.

[(o)**]** ~~**(Q)**~~ **(P)** "Lot" means a definite quantity of commercial fertilizer or soil conditioner, identified by name, grade, or code designation as certified by the Secretary.

[(p)**]** ~~**(R)**~~ **(Q)** "Low phosphorous fertilizer" means fertilizer:

(1) Containing not more than 5% of available ~~phosphoric acid (H_3PO_4)~~ **PHOSPHATE (P_2O_5)**; and

(2) That has an application rate not to exceed 0.25 pound of available ~~phosphoric acid (H_3PO_4)~~ **PHOSPHATE (P_2O_5)**/1,000 square feet/application and 0.5 pound of available ~~phosphoric acid (H_3PO_4)~~ **PHOSPHATE (P_2O_5)**/1,000 square feet/year.

[(q)**]** ~~**(S)**~~ **(R)** A commercial fertilizer or soil conditioner is "misbranded", if:

(1) Its labeling is false or misleading in any particular;

(2) It is distributed under the name of another product;

(3) It is not labeled as required in § 6–210 of this subtitle and in rules and regulations prescribed under this subtitle;

(4) A fertilizer purports to be or is represented as a commercial fertilizer or if it purports to contain or is represented as containing a fertilizer material, unless the fertilizer material conforms to any definition of identity, prescribed by departmental rules and regulations which give due regard to commonly accepted definitions, such as those issued by the Association of American Plant Food Control Officials, Inc.; or

(5) Any word, statement, or other information, required to appear on the label or labeling, is not placed on it prominently and conspicuously as compared with other words, statements, designs, or devices in the labeling, and it is not in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

~~**(T) "MANIPULATED ANIMAL OR VEGETABLE MANURE" MEANS MANURE THAT IS GROUND, PELLETIZED, MECHANICALLY DRIED, OR OTHERWISE TREATED TO ASSIST WITH THE USE OF MANURE AS A FERTILIZER.**~~

[(r)**]** ~~**(U)**~~ **(S)** "Mixed fertilizer" means a commercial fertilizer containing any combination, blend, or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth.

[(s)**]** ~~**(V)**~~ **(T)** "Mixed–to–order" means commercial fertilizer mixed on a specific request of a purchaser according to a formula furnished by him.

(U) (1) "NATURAL ORGANIC FERTILIZER" MEANS A FERTILIZER PRODUCT THAT IS DERIVED FROM EITHER A PLANT OR ANIMAL PRODUCT CONTAINING CARBON, AND ONE OR MORE ELEMENTS, OTHER THAN HYDROGEN OR OXYGEN THAT ARE ESSENTIAL FOR PLANT GROWTH.

(2) "NATURAL ORGANIC FERTILIZER" DOES NOT INCLUDE A FERTILIZER PRODUCT THAT CONTAINS:

(I) SYNTHETIC MATERIALS; OR

(II) MATERIALS THAT ARE CHANGED IN ANY PHYSICAL OR CHEMICAL MANNER FROM THEIR INITIAL STATE, EXCEPT BY PHYSICAL MANIPULATION, INCLUDING DRYING, COOKING, CHOPPING, GRINDING, SHREDDING, OR PELLETING.

[(t)**]** ~~(W)~~ **(V)** "Official sample" means any sample of fertilizer or soil conditioner taken and designated as "official" by the Secretary.

(W) (1) "ORGANIC FERTILIZER" MEANS A FERTILIZER PRODUCT THAT IS DERIVED FROM EITHER A PLANT OR ANIMAL PRODUCT CONTAINING CARBON AND ONE OR MORE ELEMENTS, OTHER THAN HYDROGEN OR OXYGEN THAT ARE ESSENTIAL FOR PLANT GROWTH.

(2) "ORGANIC FERTILIZER" INCLUDES A FERTILIZER PRODUCT THAT CONTAINS:

(I) SYNTHETIC MATERIALS; OR

(II) MATERIALS THAT ARE CHANGED IN A PHYSICAL OR CHEMICAL MANNER FROM THEIR INITIAL STATE.

[(u)**] (X)** "Percent" or "percentage" means percentage by weight.

(Y) (1) "PROFESSIONAL FERTILIZER APPLICATOR" ~~MEANS ANY PERSON WHO:~~

~~(I) IS CERTIFIED TO APPLY FERTILIZER IN ACCORDANCE WITH § 6–226 OF THIS SUBTITLE; AND~~

~~(II) APPLIES FERTILIZER FOR HIRE.~~

~~(2) "PROFESSIONAL FERTILIZER APPLICATOR" INCLUDES THE OWNER OR MANAGER OF PROPERTY, OR AN EMPLOYEE OF A GOVERNMENT~~

~~ENTITY WHO APPLIES FERTILIZER WITHIN THE SCOPE OF EMPLOYMENT~~ **HAS THE MEANING STATED IN § 8–801 OF THIS ARTICLE.**

[(v)**] (Z)** "Registrant" means any person who registers a commercial fertilizer or soil conditioner pursuant to the provisions of this subtitle.

[(w)**] (AA)** "Retail establishment" has the meaning stated in § 5–401 of the Economic Development Article.

(BB) "SLOW RELEASE NITROGEN" MEANS NITROGEN IN A FORM THAT:

(1) DELAYS ITS AVAILABILITY FOR PLANT UPTAKE AND USE AFTER APPLICATION; OR

(2) EXTENDS ITS AVAILABILITY TO THE PLANT SIGNIFICANTLY LONGER THAN A REFERENCE "RAPIDLY AVAILABLE NUTRIENT" SUCH AS AMMONIUM NITRATE OR UREA, AMMONIUM PHOSPHATE, OR POTASSIUM CHLORIDE.

[(x)**] (CC)** (1) "Soil conditioner" means any substance or mixture of substances intended for sale, offered for sale, or sold for:

(i) Manurial, soil enriching, or soil corrective purposes;

(ii) Promoting or stimulating the growth of plants;

(iii) Increasing the productivity of plants;

(iv) Improving the quality of crops; or

(v) Producing any chemical or physical change in the soil, except a commercial fertilizer, unmanipulated animal and vegetable manures, agricultural liming material, and gypsum.

(2) "Soil conditioner" includes but is not limited to materials such as compost, peat, vermiculite, or perlite, that are incorporated into the soil.

(DD) "SOIL TEST" MEANS A TECHNICAL ANALYSIS OF SOIL CONDUCTED BY A LABORATORY USING STANDARDS RECOMMENDED BY THE UNIVERSITY OF MARYLAND.

[(y)**] (EE)** "Specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries, and may include commercial fertilizers used for any research or experimental purpose.

[(z)**] (FF)** "Ton" means a net weight of two thousand pounds avoirdupois.

(GG) "TURF" MEANS LAND, INCLUDING RESIDENTIAL PROPERTY AND PUBLICLY OWNED LAND THAT IS PLANTED IN MOWED, MANAGED GRASS, EXCEPT LAND THAT IS USED IN THE SALE AND PRODUCTION OF SOD, AS DEFINED IN § 9–101 OF THIS ARTICLE.

(HH) "WATER–SOLUBLE NITROGEN" MEANS NITROGEN THAT IS READILY SOLUBLE IN WATER.

~~**(II) "WATERS OF THE STATE" HAS THE MEANING STATED IN § 5–101 OF THE ENVIRONMENT ARTICLE.**~~

6–210.

(d) **(1)** ~~**A**~~ **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A** specialty fertilizer shall be labeled to contain **ALL INFORMATION REQUIRED BY SUBSECTION (A) OF THIS SECTION.**

(2) A SPECIALTY FERTILIZER USED ON TURF SHALL BE LABELED TO CONTAIN [all**]:**

(I) ALL OF THE information required by subsection (a) of this section**;**

(II) THE PERCENTAGE OF TOTAL NITROGEN, INCLUDING THE PERCENTAGE OF OTHER WATER SOLUBLE NITROGEN AND WATER INSOLUBLE NITROGEN;

(III) THE PERCENTAGE OF AVAILABLE PHOSPHATE;

(IV) THE PERCENTAGE OF SOLUBLE POTASH; AND

(V) 1. THE FOLLOWING STATEMENT: "DO NOT APPLY NEAR WATER, STORM DRAINS OR DRAINAGE DITCHES. DO NOT APPLY IF HEAVY RAIN IS EXPECTED. APPLY THIS PRODUCT ONLY TO YOUR LAWN, AND SWEEP ANY PRODUCT THAT LANDS ON THE DRIVEWAY, SIDEWALK, OR STREET BACK ONTO YOUR LAWN."; ~~AND~~ OR

~~(VI)~~ 2. THE ENVIRONMENTAL HAZARD STATEMENT RECOMMENDED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY FOR THAT PRODUCT.

~~(2)~~ (3) **THE INFORMATION REQUIRED UNDER** ~~PARAGRAPH (1)~~ **PARAGRAPHS (1) AND (2) OF THIS SUBSECTION SHALL BE PRINTED** in a legible and conspicuous manner on at least one side of the container**[**. If**], OR IF** it does not appear on the face or display side of the container, it shall appear on the upper third of the side used.

(e) (1) Except as provided in paragraph (2) of this subsection, on or after April 1, 2011, a lawn fertilizer with an available **[**phosphoric acid (H_3PO_4)**] PHOSPHATE (P_2O_5)** content greater than 5%:

(i) May not be labeled for use on established lawns or grass;

(ii) May not be labeled with spreader settings; and

(iii) Shall be marked with the words "NOT FOR USE ON ESTABLISHED LAWNS OR GRASS" in at least a three–quarter inch font and in a legible and conspicuous manner on the front side of the container.

(2) This subsection does not apply to seed starter fertilizer for use on newly established lawns or turf.

6–219.

(a) To determine the commercial value to be applied in subsection (b) of this section, the Secretary shall determine and publish annually the values per pound of nitrogen, available **[**phosphoric acid**] PHOSPHATE**, soluble potash and other plant nutrients in commercial fertilizers in the State as determined by the Secretary.

(b) If an official analysis of a lot shows that a commercial fertilizer is deficient in a guaranteed primary plant nutrient, that is nitrogen, available **[**phosphoric acid**] PHOSPHATE**, and soluble potash, beyond the investigational allowance as established by rule or regulation, the Secretary shall assess against the registrant a penalty of three times the commercial value of the deficiency in the lot analyzed if the deficiency is confirmed in a hearing before him.

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

Article – Agriculture

6–222.

(a) **[**(1) Except as provided in paragraph (2) of this subsection, on or after April 1, 2011, a**] A** person may not sell or distribute for use or sale ~~at a retail establishment in the State~~ any fertilizer intended for use on established lawns or grass unless it is low phosphorous fertilizer.

[(2) This subsection does not apply to:

(i) A landscaping contractor who is licensed under Title 8 of the Business Regulation Article; or

(ii) A salesperson, employee, or other agent of a landscaping contractor who is licensed under Title 8 of the Business Regulation Article.**]**

(2) THIS SUBSECTION DOES NOT APPLY TO ORGANIC OR NATURAL ORGANIC FERTILIZER THAT IS SOLD TO A PROFESSIONAL FERTILIZER APPLICATOR.

(b) (1) On or before April 1, 2011, a manufacturer of lawn fertilizer whose products are sold in the State shall reduce by 50% from 2006 levels the amount of available **[**phosphoric acid (H_3PO_4)**]** **PHOSPHATE (P_2O_5)** resulting from the application of its lawn care products within the State.

(2) The amount of available **[**phosphoric acid (H_3PO_4)**]** **PHOSPHATE (P_2O_5)** resulting from the application within the State of lawn care products sold or distributed by a manufacturer may not exceed an average of 1.5% available **[**phosphoric acid (H_3PO_4)**]** **PHOSPHATE (P_2O_5)** if, prior to April 1, 2010, the manufacturer did not sell or distribute fertilizer in the State intended for use on established lawns or grass.

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

Article – Agriculture

~~**6–223.**~~

~~**(A) (1) THE DEPARTMENT SHALL, IN CONSULTATION WITH THE UNIVERSITY OF MARYLAND, ESTABLISH A PROGRAM TO CERTIFY PROFESSIONAL FERTILIZER APPLICATORS.**~~

~~**(2) THE CERTIFICATION PROGRAM SHALL PROVIDE PROFESSIONAL FERTILIZER APPLICATORS WITH TRAINING AND EDUCATION IN THE FOLLOWING SUBJECT AREAS:**~~

~~**(I) THE PROPER USE AND CALIBRATION OF FERTILIZER APPLICATION EQUIPMENT;**~~

~~(II) THE HAZARDS INVOLVED IN, AND THE ENVIRONMENTAL IMPACT OF, APPLYING FERTILIZER, INCLUDING NUTRIENT POLLUTION TO THE WATERS OF THE STATE;~~

~~(III) ALL APPLICABLE STATE AND FEDERAL LAWS, RULES, AND REGULATIONS;~~

~~(IV) THE CORRECT INTERPRETATION OF FERTILIZER LABELING INFORMATION; AND~~

~~(V) THE RECOMMENDATIONS DEVELOPED BY THE UNIVERSITY OF MARYLAND FOR NUTRIENT MANAGEMENT ON TURF, INCLUDING THE APPROPRIATE TIME TO:~~

~~1. APPLY FERTILIZER WHEN RAIN IS FORECAST; AND~~

~~2. APPLY FERTILIZER WHEN SOILS ARE WET AND THE POTENTIAL FOR FERTILIZER MOVEMENT OFF–SITE EXISTS.~~

~~(B) IN ESTABLISHING THE CERTIFICATION PROGRAM, THE DEPARTMENT MAY:~~

~~(1) CHARGE REASONABLE FEES, INCLUDING AN ANNUAL RECERTIFICATION FEE, TO COVER COSTS ASSOCIATED WITH THE CERTIFICATION PROGRAM;~~

~~(2) REQUIRE CONTINUING EDUCATION OR TRAINING FOR PROFESSIONAL FERTILIZER APPLICATORS;~~

~~(3) DESIGNATE ONE OR MORE ENTITIES TO TRAIN, CERTIFY, AND RECERTIFY PROFESSIONAL FERTILIZER APPLICATORS, WHICH MAY CHARGE FEES TO COVER THE REASONABLE COSTS ASSOCIATED WITH THE CERTIFICATION TRAINING AND EDUCATION; AND~~

~~(4) RECOGNIZE THE TRAINING PROGRAM OF AN ENTITY EMPLOYING PROFESSIONAL FERTILIZER APPLICATORS IF THE PROGRAM MEETS THE CERTIFICATION AND RECERTIFICATION TRAINING AND EDUCATION STANDARDS ESTABLISHED BY THE DEPARTMENT UNDER THIS SECTION.~~

~~(C) THE DEPARTMENT SHALL PUBLISH AND MAINTAIN A LIST OF ALL CERTIFIED PROFESSIONAL FERTILIZER APPLICATORS AND MAKE THE LIST AVAILABLE ON ITS INTERNET WEB SITE.~~

~~(D) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.~~

~~6–224.~~

~~(A) THE DEPARTMENT, IN CONSULTATION WITH THE UNIVERSITY OF MARYLAND, SHALL DEVELOP A PROGRAM OF PUBLIC EDUCATION THAT SHALL INCLUDE:~~

~~(1) THE DISSEMINATION OF INFORMATION REGARDING NUTRIENT POLLUTION;~~

~~(2) BEST MANAGEMENT PRACTICES FOR FERTILIZER USE;~~

~~(3) SOIL TESTING;~~

~~(4) PROPER INTERPRETATION OF FERTILIZER LABEL INSTRUCTIONS; AND~~

~~(5) THE PROPER USE AND CALIBRATION OF FERTILIZER APPLICATION EQUIPMENT.~~

~~(B) THE UNIVERSITY OF MARYLAND SHALL IDENTIFY LABORATORIES THAT:~~

~~(1) PARTICIPATE IN THE NORTH AMERICAN PROFICIENCY TESTING PROGRAM OF THE SOIL SCIENCE SOCIETY OF AMERICA;~~

~~(2) FOLLOW THE RECOMMENDED SOIL TESTING PROCEDURES FOR THE NORTHEASTERN UNITED STATES; AND~~

~~(3) PROVIDE A FINAL REPORT TO THE REQUESTOR WITH THE RESULTS OF THE SOIL TEST.~~

~~(C) THE UNIVERSITY OF MARYLAND SHALL REVISE ITS FERTILIZER TURF GUIDELINES EVERY 3 YEARS.~~

~~6–225.~~

6–223.

(A) EXCEPT FOR ENFORCEMENT PROVIDED UNDER § 8–803.5(G) OF THIS ARTICLE, THE DEPARTMENT HAS THE EXCLUSIVE AUTHORITY TO

ESTABLISH STANDARDS REGULATING FERTILIZER AND ITS APPLICATION TO TURF.

(B) A LOCAL GOVERNMENT ENTITY MAY NOT ADOPT LAWS, REGULATIONS, RULES, ORDINANCES, OR STANDARDS REGULATING FERTILIZER AND ITS APPLICATION TO TURF.

(C) SUBSECTIONS (A) AND (B) OF THIS SECTION DO NOT EXEMPT A PERSON FROM COMPLYING WITH ANY PROVISION OF, OR ANY REGULATION ADOPTED IN ACCORDANCE WITH, THE ENVIRONMENT ARTICLE.

SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Agriculture

~~6–226.~~ 6–224.

(A) ~~ANY~~ EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, ANY SPECIALTY FERTILIZER LABELED FOR USE ON TURF MAY NOT:

(1) ~~CONTAIN MORE THAN 0.7 POUNDS OF WATER-SOLUBLE NITROGEN AND NO MORE 0.9 POUNDS OF TOTAL NITROGEN, AT LEAST 20% OF WHICH SHALL CONSIST OF SLOW RELEASE NITROGEN IF TOTAL NITROGEN IS IN EXCESS OF 0.5 POUNDS PER 1,000 SQUARE FEET WHEN APPLIED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE CONTAINER~~ RESULT IN AN APPLICATION OF MORE THAN 0.7 POUNDS PER 1,000 SQUARE FEET OF WATER–SOLUBLE NITROGEN AND NO MORE THAN 0.9 POUNDS PER 1,000 SQUARE FEET OF TOTAL NITROGEN, AT LEAST 20% OF WHICH SHALL CONSIST OF SLOW–RELEASE NITROGEN, WHEN APPLIED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE CONTAINER;

(2) CONTAIN PHOSPHORUS, EXCEPT ~~WHEN~~:

(I) FOR ORGANIC AND NATURAL ORGANIC FERTILIZER SOLD TO A PROFESSIONAL FERTILIZER APPLICATOR; ~~AND~~ *OR*

(II) WHEN SPECIFICALLY LABELED FOR THE FOLLOWING PURPOSES:

~~(I)~~ 1. PROVIDING NUTRIENTS TO SPECIFIC SOILS AND TARGET VEGETATION AS DETERMINED TO BE NECESSARY ~~PURSUANT TO~~ IN ACCORDANCE WITH A SOIL TEST THAT WAS:

~~1.~~ A. CONDUCTED BY A LABORATORY IDENTIFIED UNDER § ~~6–224~~ 8–803.7 OF THIS ~~SUBTITLE~~ ARTICLE; AND

~~2.~~ B. PERFORMED NO MORE THAN 3 YEARS BEFORE THE APPLICATION;

~~(II)~~ 2. ESTABLISHING VEGETATION FOR THE FIRST TIME, SUCH AS AFTER LAND DISTURBANCE, PROVIDED THE APPLICATION IS CONDUCTED IN ACCORDANCE WITH THE RECOMMENDED APPLICATION RATES ESTABLISHED BY THE STATE; OR

~~(III)~~ 3. REESTABLISHING OR REPAIRING A TURF AREA; AND

(3) BE LABELED FOR USE AS A DE–ICER.

(B) AN ENHANCED–EFFICIENCY FERTILIZER LABELED FOR USE ON TURF MAY NOT:

(1) RESULT IN AN ANNUAL APPLICATION OF MORE THAN 2.5 POUNDS PER 1,000 SQUARE FEET OF TOTAL NITROGEN;

(2) RESULT IN AN APPLICATION OF MORE THAN 80% OF THE ANNUAL RECOMMENDED RATE FOR TOTAL NITROGEN ESTABLISHED BY THE UNIVERSITY OF MARYLAND; OR

(3) HAVE A RELEASE RATE OF MORE THAN 0.7 POUNDS PER 1,000 SQUARE FEET OF TOTAL NITROGEN PER MONTH.

~~(B)~~ (C) ~~A~~ EXCEPT AS PROVIDED IN SUBSECTIONS (D) AND (E) OF THIS SECTION, A PERSON MAY NOT OFFER TO SELL ~~AT RETAIL~~ SPECIALTY FERTILIZER FOR USE ON TURF THAT:

(1) ~~CONTAINS MORE THAN 0.7 POUNDS OF WATER–SOLUBLE NITROGEN OR MORE THAN 0.9 POUNDS OF TOTAL NITROGEN PER 1,000 SQUARE FEET, AT LEAST 20% OF WHICH SHALL CONSIST OF SLOW RELEASE NITROGEN IF TOTAL NITROGEN EXCEEDS 0.5 POUNDS WHEN APPLIED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE CONTAINER AND IS INTENDED FOR USE ON TURF~~ RESULTS IN AN APPLICATION OF MORE THAN 0.7 POUNDS PER 1,000 SQUARE FEET OF WATER–SOLUBLE NITROGEN AND NO MORE THAN 0.9 POUNDS PER 1,000 SQUARE FEET OF TOTAL NITROGEN, AT LEAST 20% OF WHICH SHALL CONSIST OF SLOW–RELEASE NITROGEN, WHEN APPLIED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE CONTAINER; AND

(2) CONTAINS PHOSPHORUS AND IS INTENDED FOR USE ON TURF UNLESS THE INTENDED USE OF THE FERTILIZER IS:

(I) FOR APPLICATION TO SPECIFIC SOILS AND TURF AS DETERMINED TO BE NECESSARY PURSUANT TO A SOIL TEST CONDUCTED BY A LABORATORY IDENTIFIED IN § ~~6–224 OF THIS SUBTITLE~~ 8–803.7 OF THIS ARTICLE AND PERFORMED NO MORE THAN 3 YEARS BEFORE THE APPLICATION, PROVIDED THE APPLICATION COMPLIES WITH RECOMMENDED APPLICATION RATES ESTABLISHED BY THE UNIVERSITY OF MARYLAND;

(II) FOR THE ESTABLISHMENT OF TURF FOR THE FIRST TIME, SUCH AS AFTER LAND DISTURBANCE, PROVIDED THE APPLICATION COMPLIES WITH RECOMMENDED APPLICATION RATES ESTABLISHED BY THE UNIVERSITY OF MARYLAND; OR

(III) FOR THE REESTABLISHMENT OR REPAIR OF A TURF AREA.

(D) A PERSON MAY OFFER TO SELL AN ORGANIC OR NATURAL ORGANIC FERTILIZER CONTAINING PHOSPHORUS TO A PROFESSIONAL FERTILIZER APPLICATOR.

(E) A PERSON MAY NOT OFFER TO SELL ENHANCED–EFFICIENCY FERTILIZER FOR USE ON TURF THAT:

(1) RESULTS IN AN ANNUAL APPLICATION OF MORE THAN 2.5 POUNDS PER 1,000 SQUARE FEET OF TOTAL NITROGEN;

(2) RESULTS IN AN APPLICATION OF MORE THAN 80% OF THE ANNUAL RECOMMENDED RATE FOR TOTAL NITROGEN ESTABLISHED BY THE UNIVERSITY OF MARYLAND; OR

(3) HAS A RELEASE RATE OF MORE THAN 0.7 POUNDS PER 1,000 SQUARE FEET OF TOTAL NITROGEN PER MONTH.

~~(C)~~ (F) A PERSON MAY NOT OFFER TO SELL ~~AT RETAIL~~ A COMMERCIAL OR SPECIALTY FERTILIZER PRODUCT FOR USE AS A DE–ICER.

~~6–227.~~

~~(A) IN THIS SECTION, "FERTILIZER" MEANS COMMERCIAL FERTILIZER AND SPECIALTY FERTILIZER.~~

~~(B) (1) THIS SECTION APPLIES TO A PERSON WHO APPLIES FERTILIZER TO:~~

~~(I) PROPERTY THAT IS NOT USED FOR AGRICULTURAL PURPOSES; OR~~

~~(II) STATE PROPERTY THAT IS NOT USED FOR AGRICULTURAL PURPOSES.~~

~~(2) THIS SECTION DOES NOT APPLY TO THE APPLICATION OF FERTILIZER ON COMMERCIAL FARMS.~~

~~(C) A PERSON MAY NOT:~~

~~(1) APPLY FERTILIZER INTENDED FOR USE ON TURF TO AN IMPERVIOUS SURFACE; AND~~

~~(2) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, APPLY FERTILIZER CONTAINING PHOSPHORUS OR NITROGEN TO TURF:~~

~~(I) BEFORE MARCH 1 OR AFTER NOVEMBER 15 OF ANY CALENDAR YEAR; OR~~

~~(II) AT ANY TIME WHEN THE GROUND IS FROZEN.~~

~~(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PERSON MAY NOT APPLY FERTILIZER CONTAINING PHOSPHORUS OR NITROGEN TO TURF THAT IS WITHIN 15 FEET OF WATERS OF THE STATE.~~

~~(2) WHERE A DROP SPREADER, ROTARY SPREADER WITH A DEFLECTOR, OR TARGETED SPRAY LIQUID IS USED FOR FERTILIZER APPLICATION, THE SETBACK REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY BE REDUCED TO 10 FEET.~~

~~(3) THE ESTABLISHMENT OF SETBACKS FOR FERTILIZER APPLICATION UNDER THIS SUBSECTION DOES NOT PRECLUDE THE ESTABLISHMENT OR APPLICABILITY OF, OR COMPLIANCE WITH, ANY OTHER ENVIRONMENTAL STANDARDS ESTABLISHED UNDER ANY OTHER STATE OR FEDERAL LAW, RULE, OR REGULATION.~~

~~(E) (1) A PERSON MAY APPLY FERTILIZER TO TURF CONTAINING PHOSPHORUS IF THE PERSON:~~

~~(I) DETERMINES THAT THE FERTILIZER IS NECESSARY FOR THE SPECIFIC SOILS AND TARGET VEGETATION IN ACCORDANCE WITH A SOIL TEST PERFORMED NO MORE THAN 3 YEARS BEFORE THE FERTILIZER APPLICATION, PROVIDED THE APPLICATION COMPLIES WITH THE RECOMMENDATIONS ESTABLISHED BY THE UNIVERSITY OF MARYLAND;~~

~~(II) IS ESTABLISHING VEGETATION FOR THE FIRST TIME, SUCH AS AFTER LAND DISTURBANCE, PROVIDED THE APPLICATION COMPLIES WITH THE RECOMMENDATIONS ESTABLISHED BY THE UNIVERSITY OF MARYLAND; OR~~

~~(III) IS REESTABLISHING OR REPAIRING A TURF AREA.~~

~~(2) A PERSON MAY APPLY FERTILIZER TO TURF IN EXCESS OF THE NITROGEN REQUIREMENTS IN § 6–226 OF THIS SUBTITLE, IF THE PERSON IS ESTABLISHING VEGETATION FOR THE FIRST TIME, SUCH AS AFTER LAND DISTURBANCE, PROVIDED THE APPLICATION COMPLIES WITH THE RECOMMENDATIONS OF THE UNIVERSITY OF MARYLAND.~~

~~(F) IN ADDITION TO THE REQUIREMENTS SET FORTH IN THIS SECTION, A PERSON, OTHER THAN A PROFESSIONAL FERTILIZER APPLICATOR, MAY NOT:~~

~~(1) APPLY FERTILIZER TO TURF:~~

~~(I) IN AN AMOUNT THAT IS INCONSISTENT WITH THE ANNUAL RECOMMENDED RATE ESTABLISHED BY THE UNIVERSITY OF MARYLAND; AND~~

~~(II) THAT CONTAINS NITROGEN THAT IS LESS THAN 20% SLOW RELEASE IF TOTAL NITROGEN EXCEEDS 0.5 POUNDS;~~

~~(2) APPLY NITROGEN TO TURF:~~

~~(I) AT A RATE OF MORE THAN 0.7 POUNDS OF WATER–SOLUBLE NITROGEN PER 1,000 SQUARE FEET PER APPLICATION; AND~~

~~(II) AT A RATE THAT IS MORE THAN 0.9 POUNDS OF TOTAL NITROGEN PER 1,000 SQUARE FEET PER APPLICATION; AND~~

~~(3) APPLY FERTILIZER TO A GOLF COURSE.~~

~~(G) A COUNTY OR MUNICIPALITY MAY ENFORCE THIS SUBSECTION.~~

~~(II) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.~~

~~6–228.~~

~~(A) IN THIS SECTION, "FERTILIZER" MEANS COMMERCIAL FERTILIZER AND SPECIALTY FERTILIZER.~~

~~(B) (1) THIS SECTION APPLIES TO A PROFESSIONAL FERTILIZER APPLICATOR WHO APPLIES FERTILIZER TO:~~

~~(I) PROPERTY THAT IS NOT USED FOR AGRICULTURAL PURPOSES; OR~~

~~(II) STATE PROPERTY THAT IS NOT USED FOR AGRICULTURAL PURPOSES.~~

~~(2) THIS SECTION DOES NOT APPLY TO THE APPLICATION OF FERTILIZER ON COMMERCIAL FARMS.~~

~~(C) A PROFESSIONAL FERTILIZER APPLICATOR MAY NOT APPLY FERTILIZER TO TURF WITHOUT FIRST OBTAINING A FERTILIZER APPLICATION CERTIFICATION, UNLESS THE PERSON IS UNDER THE DIRECT SUPERVISION OF A CERTIFIED PROFESSIONAL FERTILIZER APPLICATOR, IN ACCORDANCE WITH § 6–223 OF THIS SUBTITLE.~~

~~(D) A PROFESSIONAL FERTILIZER APPLICATOR MAY NOT:~~

~~(1) APPLY FERTILIZER TO TURF IN AN AMOUNT THAT IS INCONSISTENT WITH THE ANNUAL RECOMMENDED RATE ESTABLISHED BY THE UNIVERSITY OF MARYLAND; AND~~

~~(2) APPLY NITROGEN TO TURF:~~

~~(I) AT A RATE OF MORE THAN 0.7 POUNDS OF WATER–SOLUBLE NITROGEN PER 1,000 SQUARE FEET PER APPLICATION; AND~~

~~(II) AT A RATE THAT IS MORE THAN 0.9 POUNDS OF TOTAL NITROGEN PER 1,000 SQUARE FEET PER APPLICATION.~~

~~(E) (1) A PROFESSIONAL FERTILIZER APPLICATOR WHO VIOLATES THIS SECTION, OR ANY REGULATION ADOPTED UNDER THIS SECTION, IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING $1,000 FOR THE FIRST OFFENSE~~

~~AND NOT EXCEEDING $2,000 FOR A SECOND OR SUBSEQUENT OFFENSE, TO BE COLLECTED IN A CIVIL ACTION BY A SUMMARY PROCEEDING.~~

~~(2) EACH DAY ON WHICH A VIOLATION OCCURS IS A SEPARATE VIOLATION UNDER THIS SUBSECTION.~~

~~(3) A COUNTY OR MUNICIPALITY MAY ENFORCE THIS SUBSECTION.~~

~~(F) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.~~

8–801.

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

(b) "Certified nutrient management consultant" means an individual certified by the Department to prepare a nutrient management plan.

(C) "COMMERCIAL FARM" MEANS A FARM THAT PERFORMS ACTIVITIES RELATED TO THE PRODUCTION AND SALE OF AGRICULTURAL COMMODITIES, INCLUDING ROW CROPS, FRUITS, VEGETABLES, HORTICULTURE, AND SILVACULTURE.

(D) "ENHANCED EFFICIENCY FERTILIZER" HAS THE MEANING STATED IN § 6–201 OF THIS ARTICLE.

(E) "IMPERVIOUS SURFACE" MEANS ANY STRUCTURE, SURFACE, OR IMPROVEMENT THAT REDUCES OR PREVENTS ABSORPTION OF STORMWATER INTO LAND, AND INCLUDES POROUS PAVING, PAVER BLOCKS, GRAVEL, CRUSHED STONE, DECKS, PATIOS, ELEVATED STRUCTURES, AND OTHER SIMILAR STRUCTURES, SURFACES, OR IMPROVEMENTS.

(F) "NATURAL ORGANIC FERTILIZER" HAS THE MEANING STATED IN § 6–201 OF THIS ARTICLE.

[(c)**] (G)** "Nutrient management plan" means a plan prepared under this subtitle by a certified nutrient management consultant to manage the amount, placement, timing, and application of animal waste, commercial fertilizer, sludge, or other plant nutrients to prevent pollution by transport of bioavailable nutrients and to maintain productivity.

(H) "ORGANIC FERTILIZER" HAS THE MEANING STATED IN § 6–201 OF THIS ARTICLE.

(I) (1) "PROFESSIONAL FERTILIZER APPLICATOR" MEANS ANY PERSON WHO:

(I) IS CERTIFIED TO APPLY FERTILIZER IN ACCORDANCE WITH § 8–803.4 OF THIS SUBTITLE; AND

(II) APPLIES FERTILIZER FOR HIRE.

(2) "PROFESSIONAL FERTILIZER APPLICATOR" INCLUDES THE OWNER OR MANAGER OF PROPERTY, OR AN EMPLOYEE OF A GOVERNMENT ENTITY WHO APPLIES FERTILIZER WITHIN THE SCOPE OF EMPLOYMENT.

(J) "SLOW–RELEASE NITROGEN" MEANS NITROGEN IN A FORM THAT:

(1) DELAYS ITS AVAILABILITY FOR PLANT UPTAKE AND USE AFTER APPLICATION; OR

(2) EXTENDS ITS AVAILABILITY TO THE PLANT SIGNIFICANTLY LONGER THAN A REFERENCE "RAPIDLY AVAILABLE NUTRIENT" SUCH AS AMMONIUM NITRATE OR UREA, AMMONIUM PHOSPHATE, OR POTASSIUM CHLORIDE.

(K) "SOIL TEST" MEANS A TECHNICAL ANALYSIS OF SOIL CONDUCTED BY A LABORATORY USING STANDARDS RECOMMENDED BY THE UNIVERSITY OF MARYLAND.

(L) "TURF" MEANS LAND, INCLUDING RESIDENTIAL PROPERTY AND PUBLICLY OWNED LAND THAT IS PLANTED IN GRASS, EXCEPT LAND THAT IS USED IN THE SALE AND PRODUCTION OF SOD, AS DEFINED IN § 9–101 OF THIS ARTICLE.

(M) "WATER–SOLUBLE NITROGEN" MEANS NITROGEN THAT IS READILY SOLUBLE IN WATER.

(N) "WATERS OF THE STATE" HAS THE MEANING STATED IN § 5–101 OF THE ENVIRONMENT ARTICLE.

SECTION 5. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Agriculture

8–803.4.

[(a) This section applies to an application of commercial fertilizer, as defined in § 6–201 of this article:

(1) That is performed by:

(i) A person who applies commercial fertilizer for hire; or

(ii) An employee of the owner or manager of the property; and

(2) To:

(i) Ten acres or more annually, whether one or multiple parcels, of property that is not used for agricultural purposes; or

(ii) State property that is not used for agricultural purposes.

(b) A person may apply commercial fertilizer only if the person applies the commercial fertilizer in a manner that is consistent with the recommendations of the University of Maryland Cooperative Extension Service.**]**

(A) IN THIS SECTION, "FERTILIZER" MEANS A COMMERCIAL FERTILIZER AND SPECIALTY FERTILIZER.

(B) (1) THIS SECTION APPLIES TO A PROFESSIONAL FERTILIZER APPLICATOR WHO APPLIES FERTILIZER TO:

(I) PROPERTY THAT IS NOT USED FOR AGRICULTURAL PURPOSES; ~~AND~~ *OR*

(II) STATE PROPERTY THAT IS NOT USED FOR AGRICULTURAL PURPOSES.

(2) THIS SECTION DOES NOT APPLY TO THE APPLICATION OF FERTILIZER ON COMMERCIAL FARMS.

(C) A PROFESSIONAL FERTILIZER APPLICATOR MAY NOT:

(1) APPLY FERTILIZER TO TURF WITHOUT FIRST OBTAINING A FERTILIZER APPLICATION CERTIFICATION, UNLESS THE PERSON IS UNDER THE DIRECT SUPERVISION OF A CERTIFIED PROFESSIONAL FERTILIZER APPLICATOR, IN ACCORDANCE WITH § 8–803.6 OF THIS SUBTITLE; OR

(2) APPLY FERTILIZER INTENDED FOR USE ON TURF ON AN IMPERVIOUS SURFACE.

(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PROFESSIONAL FERTILIZER APPLICATOR MAY NOT APPLY FERTILIZER CONTAINING PHOSPHORUS OR NITROGEN TO TURF:

(I) BEFORE MARCH 1 OR AFTER NOVEMBER 15 OF ANY CALENDAR YEAR;

(II) ANY TIME THE GROUND IS FROZEN; OR

(III) IN AN AMOUNT THAT IS INCONSISTENT WITH THE ANNUAL RECOMMENDED RATE ESTABLISHED BY THE UNIVERSITY OF MARYLAND.

(2) FROM NOVEMBER ~~15~~ 16 THROUGH DECEMBER 1 OF EACH CALENDAR YEAR, A PROFESSIONAL FERTILIZER APPLICATOR MAY APPLY WATER–SOLUBLE NITROGEN TO TURF AT AN APPLICATION RATE OF NO MORE THAN 0.5 POUNDS PER 1,000 SQUARE FEET OF WATER–SOLUBLE NITROGEN.

(E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PROFESSIONAL FERTILIZER APPLICATOR MAY NOT APPLY FERTILIZER CONTAINING PHOSPHORUS OR NITROGEN TO TURF THAT IS WITHIN 15 FEET OF WATERS OF THE STATE.

(2) WHEN A DROP SPREADER, ROTARY SPREADER WITH A DEFLECTOR, OR TARGETED SPRAY LIQUID IS USED FOR FERTILIZER APPLICATION, THE SETBACK REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY BE REDUCED TO 10 FEET.

(3) THE ESTABLISHMENT OF SETBACKS FOR FERTILIZER APPLICATION UNDER THIS SUBSECTION DOES NOT PRECLUDE THE ESTABLISHMENT OR APPLICABILITY OF, OR COMPLIANCE WITH, ANY OTHER ENVIRONMENTAL STANDARDS ESTABLISHED UNDER ANY OTHER STATE OR FEDERAL LAW, RULE, OR REGULATION.

(F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PROFESSIONAL FERTILIZER APPLICATOR MAY NOT APPLY FERTILIZER CONTAINING NITROGEN TO TURF:

(I) AT AN APPLICATION RATE OF MORE THAN 0.7 POUNDS PER 1,000 FEET OF WATER–SOLUBLE NITROGEN; AND

(II) AT AN APPLICATION RATE OF MORE THAN 0.9 POUNDS PER 1,000 SQUARE FEET OF TOTAL NITROGEN.

(2) (I) SUBJECT TO SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH, A PROFESSIONAL FERTILIZER APPLICATOR MAY APPLY AN ENHANCED EFFICIENCY FERTILIZER:

1. AT AN ANNUAL APPLICATION RATE OF NO MORE THAN 2.5 POUNDS PER 1,000 SQUARE FEET OF NITROGEN; AND

2. THAT HAS A RELEASE RATE OF NO MORE THAN 0.7 POUNDS PER 1,000 SQUARE FEET OF TOTAL NITROGEN PER MONTH.

(II) THE ANNUAL TOTAL APPLICATION RATE OF AN ENHANCED EFFICIENCY FERTILIZER MAY NOT EXCEED 80% OF THE ANNUAL RECOMMENDED RATE FOR TOTAL NITROGEN ESTABLISHED BY THE UNIVERSITY OF MARYLAND.

(III) AN ENHANCED EFFICIENCY FERTILIZER MAY NOT BE APPLIED AFTER NOVEMBER 15 OR BEFORE MARCH 1 OF EACH CALENDAR YEAR.

(G) (1) EXCEPT AS PROVIDED IN ~~PARAGRAPH (2)~~ PARAGRAPHS (2)~~,~~ *AND* (4)~~, AND (5)~~ OF THIS SUBSECTION, A PROFESSIONAL FERTILIZER APPLICATOR MAY NOT APPLY FERTILIZER CONTAINING PHOSPHORUS TO TURF.

(2) A PROFESSIONAL FERTILIZER APPLICATOR MAY APPLY ORGANIC OR NATURAL ORGANIC FERTILIZER CONTAINING PHOSPHORUS TO TURF WHEN:

(I) 1. A SOIL TEST PERFORMED NO MORE THAN 3 YEARS BEFORE THE FERTILIZER APPLICATION INDICATES A LOW OR MEDIUM LEVEL OF PHOSPHORUS ~~DEFICIENCY~~; AND

2. THE FERTILIZER IS APPLIED AT A RATE RECOMMENDED BY THE UNIVERSITY OF MARYLAND; ~~OR~~ *AND*

(II) ~~1. A SOIL TEST INDICATES A LOW OR MEDIUM LEVEL OF PHOSPHORUS; AND~~

~~2. AN ORGANIC OR NATURAL ORGANIC FERTILIZER CONTAINING PHOSPHORUS IS APPLIED AT A RATE RECOMMENDED BY THE UNIVERSITY OF MARYLAND; OR~~

~~(III)~~ 1. BEGINNING ~~2015~~ *OCTOBER 1, 2013*, A SOIL TEST PERFORMED NO MORE THAN 3 YEARS BEFORE THE FERTILIZER APPLICATION INDICATES A LOW OR MEDIUM LEVEL OF PHOSPHORUS; AND

2. A LOW PHOSPHORUS FERTILIZER, AS DEFINED UNDER § 6–201 OF THIS ARTICLE, THAT IS AN ORGANIC OR NATURAL ORGANIC FERTILIZER IS APPLIED AT A RATE RECOMMENDED BY THE UNIVERSITY OF MARYLAND.

(3) PARAGRAPH (2) OF THIS SUBSECTION DOES NOT AUTHORIZE A PROFESSIONAL FERTILIZER APPLICATOR TO APPLY FERTILIZER CONTAINING PHOSPHORUS WHEN A SOIL TEST INDICATES AN OPTIMUM OR EXCESSIVE LEVEL OF PHOSPHORUS.

(4) A PROFESSIONAL FERTILIZER APPLICATOR MAY APPLY FERTILIZER TO TURF CONTAINING PHOSPHORUS IF THE PROFESSIONAL FERTILIZER APPLICATOR:

(I) DETERMINES THAT THE FERTILIZER IS NECESSARY FOR THE SPECIFIC SOILS AND TARGET VEGETATION IN ACCORDANCE WITH A SOIL TEST PERFORMED NO MORE THAN 3 YEARS BEFORE THE FERTILIZER APPLICATION, PROVIDED THE APPLICATION COMPLIES WITH THE RECOMMENDATIONS ESTABLISHED BY THE UNIVERSITY OF MARYLAND;

(II) IS ESTABLISHING VEGETATION FOR THE FIRST TIME, SUCH AS AFTER LAND DISTURBANCE, PROVIDED THE APPLICATION COMPLIES WITH THE RECOMMENDATIONS ESTABLISHED BY THE UNIVERSITY OF MARYLAND; OR

(III) IS REESTABLISHING OR REPAIRING A TURF AREA.

~~**(5) A PROFESSIONAL FERTILIZER APPLICATOR MAY APPLY FERTILIZER TO TURF IN EXCESS OF THE PHOSPHORUS REQUIREMENTS IN § 6–224 OF THIS ARTICLE, IF THE PROFESSIONAL FERTILIZER APPLICATOR IS ESTABLISHING VEGETATION FOR THE FIRST TIME, SUCH AS AFTER LAND DISTURBANCE, PROVIDED THE APPLICATION COMPLIES WITH THE RECOMMENDATIONS OF THE UNIVERSITY OF MARYLAND.**~~

[(c)**] (H)** (1) A person who violates any provision of this section is subject to a civil penalty of not more than $1,000 for a first violation.

(2) A person who violates any provision of this section is subject to a civil penalty of not more than $2,000 for each subsequent violation.

(3) Each day a violation occurs under this section is a separate violation.

(4) The total penalties imposed on a person for violations of this section that result from the same set of facts and circumstances may not exceed $10,000.

[(d)**] (I)** The penalty imposed on a person under this section shall be assessed with consideration given to:

(1) The willfulness of the violation, the extent to which the existence of the violation was known to the violator but uncorrected by the violator, and the extent to which the violator exercised reasonable care;

(2) Any actual harm to human health or to the environment including injury to or impairment of the use of the waters of the State or the natural resources of the State;

(3) The cost of control;

(4) The nature and degree of injury to or interference with general welfare, health, and property;

(5) The extent to which the location of the violation, including location near areas of human population, creates the potential for harm to the environment or to human health or safety; and

(6) The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

[(e)**] (J)** Penalties collected by the Secretary under this section shall be paid into the General Fund of the State.

(K) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.

[8–803.5.

The Department may adopt regulations for agricultural research, education, and demonstration exemptions to this subtitle.**]**

8–803.5.

(A) IN THIS SECTION, "FERTILIZER" MEANS COMMERCIAL FERTILIZER AND SPECIALTY FERTILIZER.

(B) (1) THIS SECTION APPLIES TO A PERSON WHO APPLIES FERTILIZER TO:

(I) PROPERTY THAT IS NOT USED FOR AGRICULTURAL PURPOSES; OR

(II) STATE PROPERTY THAT IS NOT USED FOR AGRICULTURAL PURPOSES.

(2) THIS SECTION DOES NOT APPLY TO THE APPLICATION OF FERTILIZER ON COMMERCIAL FARMS.

(C) A PERSON MAY NOT:

(1) APPLY FERTILIZER INTENDED FOR USE ON TURF TO AN IMPERVIOUS SURFACE; AND

(2) APPLY FERTILIZER CONTAINING PHOSPHORUS OR NITROGEN TO TURF:

(I) BEFORE MARCH 1 OR AFTER NOVEMBER 15 OF ANY CALENDAR YEAR; OR

(II) AT ANY TIME WHEN THE GROUND IS FROZEN.

(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PERSON MAY NOT APPLY FERTILIZER CONTAINING PHOSPHORUS OR NITROGEN TO TURF THAT IS WITHIN 15 FEET OF WATERS OF THE STATE.

(2) WHEN A DROP SPREADER, ROTARY SPREADER WITH A DEFLECTOR, OR TARGETED SPRAY LIQUID IS USED FOR FERTILIZER APPLICATION, THE SETBACK REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY BE REDUCED TO 10 FEET.

(3) THE ESTABLISHMENT OF SETBACKS FOR FERTILIZER APPLICATION UNDER THIS SUBSECTION DOES NOT PRECLUDE THE ESTABLISHMENT OR APPLICABILITY OF, OR COMPLIANCE WITH, ANY OTHER ENVIRONMENTAL STANDARDS ESTABLISHED UNDER ANY OTHER STATE OR FEDERAL LAW, RULE, OR REGULATION.

(E) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (D) OF THIS SECTION~~:~~

~~(1)~~ ~~A~~, *A* PERSON MAY APPLY FERTILIZER TO TURF CONTAINING PHOSPHORUS IF THE PERSON:

~~(I)~~ *(1)* DETERMINES THAT THE FERTILIZER IS NECESSARY FOR THE SPECIFIC SOILS AND TARGET VEGETATION IN ACCORDANCE WITH A SOIL TEST PERFORMED NO MORE THAN 3 YEARS BEFORE THE FERTILIZER APPLICATION, PROVIDED THE APPLICATION COMPLIES WITH THE RECOMMENDATIONS ESTABLISHED BY THE UNIVERSITY OF MARYLAND;

~~(II)~~ *(2)* IS ESTABLISHING VEGETATION FOR THE FIRST TIME, SUCH AS AFTER LAND DISTURBANCE, PROVIDED THE APPLICATION COMPLIES WITH THE RECOMMENDATIONS ESTABLISHED BY THE UNIVERSITY OF MARYLAND; OR

~~(III)~~ *(3)* IS REESTABLISHING OR REPAIRING A TURF AREA~~; AND~~.

~~(2) A PERSON MAY APPLY FERTILIZER TO TURF IN EXCESS OF THE NITROGEN PHOSPHORUS REQUIREMENTS IN § 6–224 OF THIS ARTICLE, IF THE PERSON IS ESTABLISHING VEGETATION FOR THE FIRST TIME, SUCH AS AFTER LAND DISTURBANCE, PROVIDED THE APPLICATION COMPLIES WITH THE RECOMMENDATIONS OF THE UNIVERSITY OF MARYLAND.~~

(F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION AND IN ADDITION TO THE REQUIREMENTS SET FORTH IN THIS SECTION, A PERSON, OTHER THAN A PROFESSIONAL FERTILIZER APPLICATOR, MAY NOT:

(I) APPLY FERTILIZER TO TURF:

1. IN AN AMOUNT THAT IS INCONSISTENT WITH THE ANNUAL RECOMMENDED RATE ESTABLISHED BY THE UNIVERSITY OF MARYLAND; AND

2. THAT CONTAINS NITROGEN THAT IS LESS THAN 20% SLOW RELEASE;

(II) APPLY NITROGEN TO TURF:

1. AT AN APPLICATION RATE OF MORE THAN 0.7 POUNDS PER 1,000 SQUARE FEET OF WATER–SOLUBLE NITROGEN; AND

2. AT AN APPLICATION RATE THAT IS MORE THAN 0.9 POUNDS PER 1,000 SQUARE FEET OF TOTAL NITROGEN; AND

(III) APPLY FERTILIZER TO A GOLF COURSE.

(2) (I) SUBJECT TO SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH, A PERSON MAY APPLY AN ENHANCED EFFICIENCY FERTILIZER:

1. AT AN ANNUAL APPLICATION RATE OF NO MORE THAN 2.5 POUNDS PER 1,000 SQUARE FEET OF NITROGEN; AND

2. THAT HAS A RELEASE RATE OF NO MORE THAN 0.7 POUNDS PER 1,000 SQUARE FEET OF NITROGEN PER MONTH.

(II) THE ANNUAL TOTAL APPLICATION RATE OF AN ENHANCED EFFICIENCY FERTILIZER MAY NOT EXCEED 80% OF THE ANNUAL RECOMMENDATION RATE ESTABLISHED BY THE UNIVERSITY OF MARYLAND.

(III) ENHANCED EFFICIENCY FERTILIZERS MAY NOT BE APPLIED AFTER NOVEMBER 15 OR BEFORE MARCH 1 OF EACH CALENDAR YEAR.

(G) A COUNTY OR MUNICIPALITY MAY ENFORCE THIS SECTION.

(H) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.

SECTION 6. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Agriculture

8–803.6.

(A) (1) THE DEPARTMENT SHALL, IN CONSULTATION WITH THE UNIVERSITY OF MARYLAND, ESTABLISH A PROGRAM TO CERTIFY PROFESSIONAL FERTILIZER APPLICATORS.

(2) THE CERTIFICATION PROGRAM SHALL PROVIDE PROFESSIONAL FERTILIZER APPLICATORS WITH TRAINING AND EDUCATION IN THE FOLLOWING SUBJECT AREAS:

(I) THE PROPER USE AND CALIBRATION OF FERTILIZER APPLICATION EQUIPMENT;

(II) THE HAZARDS INVOLVED IN, AND THE ENVIRONMENTAL IMPACT OF, APPLYING FERTILIZER, INCLUDING NUTRIENT POLLUTION TO THE WATERS OF THE STATE;

(III) ALL APPLICABLE STATE AND FEDERAL LAWS, RULES, AND REGULATIONS;

(IV) THE CORRECT INTERPRETATION OF FERTILIZER LABELING INFORMATION; AND

(V) THE RECOMMENDATIONS DEVELOPED BY THE UNIVERSITY OF MARYLAND FOR NUTRIENT MANAGEMENT ON TURF, INCLUDING THE APPROPRIATE TIME TO:

1. APPLY FERTILIZER WHEN RAIN IS FORECAST; AND

2. APPLY FERTILIZER WHEN SOILS ARE WET AND THE POTENTIAL FOR FERTILIZER MOVEMENT OFF–SITE EXISTS.

(B) IN ESTABLISHING THE CERTIFICATION PROGRAM, THE DEPARTMENT MAY:

(1) CHARGE REASONABLE FEES, INCLUDING AN ANNUAL RECERTIFICATION FEE, TO COVER COSTS ASSOCIATED WITH THE CERTIFICATION PROGRAM;

(2) REQUIRE CONTINUING EDUCATION OR TRAINING FOR PROFESSIONAL FERTILIZER APPLICATORS;

(3) DESIGNATE ONE OR MORE ENTITIES TO TRAIN, CERTIFY, AND RECERTIFY PROFESSIONAL FERTILIZER APPLICATORS, WHICH MAY CHARGE FEES TO COVER THE REASONABLE COSTS ASSOCIATED WITH THE CERTIFICATION TRAINING AND EDUCATION; AND

(4) RECOGNIZE THE TRAINING PROGRAM OF AN ENTITY EMPLOYING PROFESSIONAL FERTILIZER APPLICATORS IF THE PROGRAM MEETS THE CERTIFICATION AND RECERTIFICATION TRAINING AND EDUCATION STANDARDS ESTABLISHED BY THE DEPARTMENT UNDER THIS SECTION.

(C) THE DEPARTMENT SHALL PUBLISH AND MAINTAIN A LIST OF ALL CERTIFIED PROFESSIONAL FERTILIZER APPLICATORS AND MAKE THE LIST AVAILABLE ON THE DEPARTMENT'S INTERNET WEB SITE.

(D) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.

8–803.7.

(A) THE DEPARTMENT, IN CONSULTATION WITH THE UNIVERSITY OF MARYLAND, SHALL DEVELOP A PROGRAM OF PUBLIC EDUCATION THAT SHALL INCLUDE:

(1) THE DISSEMINATION OF INFORMATION REGARDING NUTRIENT POLLUTION;

(2) BEST MANAGEMENT PRACTICES FOR FERTILIZER USE;

(3) SOIL TESTING;

(4) PROPER INTERPRETATION OF FERTILIZER LABEL INSTRUCTIONS; AND

(5) THE PROPER USE AND CALIBRATION OF FERTILIZER APPLICATION EQUIPMENT.

(B) THE UNIVERSITY OF MARYLAND SHALL IDENTIFY LABORATORIES THAT:

(1) FOLLOW THE RECOMMENDED SOIL TESTING PROCEDURES FOR THE MID–ATLANTIC UNITED STATES; AND

(2) PROVIDE A FINAL REPORT TO A REQUESTOR OF SOIL TESTING WITH THE RESULTS OF A SOIL TEST.

(C) THE UNIVERSITY OF MARYLAND SHALL REVIEW ITS FERTILIZER TURF GUIDELINES EVERY 3 YEARS AND REVISE THE GUIDELINES AS NECESSARY, WITH CONSIDERATION OF PLANT NUTRIENT REQUIREMENTS AND ~~PROTECTION OF~~ *ESTABLISHED STATE GOALS TO PROTECT* WATER QUALITY IN THE WATERS OF THE STATE.

8–803.8.

(A) EXCEPT FOR ENFORCEMENT AS AUTHORIZED UNDER § 8–803.5(G) OF THIS SUBTITLE, THE DEPARTMENT HAS THE EXCLUSIVE AUTHORITY TO ESTABLISH STANDARDS REGULATING FERTILIZER AND ITS APPLICATION TO TURF.

(B) A LOCAL GOVERNMENT ENTITY MAY NOT ADOPT LAWS, REGULATIONS, RULES, ORDINANCES, OR STANDARDS REGULATING FERTILIZER AND ITS APPLICATION TO TURF.

(C) SUBSECTIONS (A) AND (B) OF THIS SECTION DO NOT EXEMPT A PERSON FROM COMPLYING WITH ANY PROVISION OF, OR ANY REGULATION ADOPTED IN ACCORDANCE WITH, THE ENVIRONMENT ARTICLE.

SECTION 7. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Agriculture

8–803.9.

THE DEPARTMENT MAY ADOPT REGULATIONS FOR AGRICULTURAL RESEARCH, EDUCATION, AND DEMONSTRATION EXEMPTIONS TO THIS SUBTITLE.

SECTION ~~5.~~ 8. AND BE IT FURTHER ENACTED, That, on or before October 1, 2013, the Department of Agriculture shall adopt regulations to require the annual reporting of the sale of commercial fertilizer and specialty fertilizer at retail by the following sectors:

(1) lawn and turf;

(2) golf course and athletic fields;

(3) gardening; and

(4) greenhouses and nurseries.

SECTION ~~6.~~ 9. AND BE IT FURTHER ENACTED, That, Sections ~~2 and 4, 4, and 5~~ *4 and 5* of this Act shall take effect October 1, 2013.

SECTION ~~7.~~ 10. AND BE IT FURTHER ENACTED, That, ~~Section 3~~ Sections 3 and 6 of this Act shall take effect October 1, 2012.

SECTION ~~8.~~ 11. AND BE IT FURTHER ENACTED, That, except as provided in Sections ~~6 and 7~~ 9 and 10 of this Act, this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 486

(Senate Bill 489)

AN ACT concerning

Nonpublic Schools ~~Accepting State Funds~~ ~~That Participate in State~~ *Participating in State–Funded Education* Programs – Bullying, Harassment, and Intimidation – Policies

FOR the purpose of requiring nonpublic schools that ~~accept State funds~~ participate in ~~State~~ *State–funded education* programs to adopt a policy prohibiting bullying, harassment, and intimidation by a certain date; requiring the policy to include certain provisions; encouraging a nonpublic school to develop the policy in consultation with certain groups; encouraging a nonpublic school to publicize the policy in a certain manner; encouraging a nonpublic school to develop certain educational programs in its efforts to prevent bullying, harassment, and intimidation; providing that certain nonpublic school employees who report acts of bullying, harassment, or intimidation are not civilly liable under certain circumstances; providing that this Act may not be construed to limit the legal rights of a victim of bullying, harassment, or intimidation, *or to require a certain statewide policy*; defining certain terms; and generally relating to policies prohibiting bullying, harassment, and intimidation in nonpublic schools that ~~accept State funds~~ participate in ~~State~~ *State–funded education* programs.

BY adding to
Article – Education
Section 7–424.3
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

Preamble

WHEREAS, The National Institutes of Health reports that bullying affects more than 5 million students in grades 6 through 11; and

WHEREAS, According to the United States Department of Health and Human Services, bullies identified by age 8 are six times more likely to have criminal convictions by age 24; and

WHEREAS, The increased use of the Internet by students is presenting new challenges regarding bullying in schools; and

WHEREAS, Bullying may lead to an increase in absenteeism or the dropout rate; and

WHEREAS, Maintaining a safe environment in schools is integral to promoting learning and success in students; now, therefore,

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

Article – Education

7–424.3.

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

(2) "BULLYING, HARASSMENT, AND INTIMIDATION" MEANS ANY INTENTIONAL WRITTEN, VERBAL, OR PHYSICAL ACT, INCLUDING AN ELECTRONIC COMMUNICATION, THAT:

(I) 1. PHYSICALLY HARMS AN INDIVIDUAL;

2. DAMAGES AN INDIVIDUAL'S PROPERTY;

3. SUBSTANTIALLY INTERFERES WITH AN INDIVIDUAL'S EDUCATION OR LEARNING ENVIRONMENT; OR

4. PLACES AN INDIVIDUAL IN REASONABLE FEAR OF HARM TO THE INDIVIDUAL'S PERSON OR PROPERTY; AND

(II) 1. OCCURS ON SCHOOL PROPERTY, AT A SCHOOL ACTIVITY OR EVENT, OR ON A SCHOOL BUS; OR

2. SUBSTANTIALLY DISRUPTS THE ORDERLY OPERATION OF A SCHOOL.

(3) "ELECTRONIC COMMUNICATION" MEANS A COMMUNICATION TRANSMITTED BY MEANS OF AN ELECTRONIC DEVICE, INCLUDING A TELEPHONE, CELLULAR PHONE, COMPUTER, OR PAGER.

(4) "NONPUBLIC SCHOOL" MEANS A NONPUBLIC SCHOOL THAT ~~ACCEPTS STATE FUNDS~~ PARTICIPATES IN ~~STATE~~ *STATE–FUNDED EDUCATION* PROGRAMS.

(B) BY MARCH 31, 2012, EACH NONPUBLIC SCHOOL SHALL ADOPT A POLICY PROHIBITING BULLYING, HARASSMENT, AND INTIMIDATION.

(C) THE POLICY ADOPTED UNDER SUBSECTION (B) OF THIS SECTION SHALL INCLUDE:

(1) A STATEMENT PROHIBITING BULLYING, HARASSMENT, AND INTIMIDATION IN THE SCHOOL;

(2) A STATEMENT PROHIBITING REPRISAL OR RETALIATION AGAINST INDIVIDUALS WHO REPORT ACTS OF BULLYING, HARASSMENT, OR INTIMIDATION;

(3) A DEFINITION OF BULLYING, HARASSMENT, AND INTIMIDATION THAT IS EITHER THE SAME AS SET FORTH IN SUBSECTION (A) OF THIS SECTION OR A DEFINITION THAT IS NOT LESS INCLUSIVE THAN THAT DEFINITION;

(4) STANDARD CONSEQUENCES AND REMEDIAL ACTIONS FOR PERSONS COMMITTING ACTS OF BULLYING, HARASSMENT, OR INTIMIDATION AND FOR PERSONS ENGAGED IN REPRISAL OR RETALIATION, INCLUDING:

(I) SPECIFIC PENALTIES FOR PERSONS WHO REPEATEDLY COMMIT ACTS OF BULLYING, HARASSMENT, OR INTIMIDATION; AND

(II) A REQUIREMENT THAT PERSONS WHO COMMIT ACTS OF BULLYING, HARASSMENT, OR INTIMIDATION RECEIVE EDUCATIONAL AND THERAPEUTIC SERVICES CONCERNING BULLYING PREVENTION;

(5) STANDARD CONSEQUENCES AND REMEDIAL ACTIONS FOR PERSONS FOUND TO HAVE MADE FALSE ACCUSATIONS;

(6) STANDARD PROCEDURES FOR REPORTING ACTS OF BULLYING, HARASSMENT, OR INTIMIDATION, INCLUDING A CHAIN OF COMMAND IN THE REPORTING PROCESS;

(7) STANDARD PROCEDURES FOR THE PROMPT INVESTIGATION OF ACTS OF BULLYING, HARASSMENT, OR INTIMIDATION;

(8) STANDARD PROCEDURES FOR PROTECTING VICTIMS OF BULLYING, HARASSMENT, OR INTIMIDATION FROM ADDITIONAL ACTS OF BULLYING, HARASSMENT, OR INTIMIDATION, AND FROM RETALIATION; AND

(9) INFORMATION ABOUT THE TYPES OF SUPPORT SERVICES AVAILABLE TO A STUDENT BULLY OR VICTIM AND ANY BYSTANDERS.

(D) A NONPUBLIC SCHOOL IS ENCOURAGED TO DEVELOP THE POLICY ADOPTED UNDER SUBSECTION (B) OF THIS SECTION IN CONSULTATION WITH THE FOLLOWING GROUPS:

(1) PARENTS OR GUARDIANS OF STUDENTS;

(2) SCHOOL EMPLOYEES AND ADMINISTRATORS;

(3) SCHOOL VOLUNTEERS; AND

(4) STUDENTS.

(E) A NONPUBLIC SCHOOL IS ENCOURAGED TO PUBLICIZE THE POLICY ADOPTED UNDER SUBSECTION (B) OF THIS SECTION IN STUDENT HANDBOOKS, ON THE SCHOOL'S WEBSITE, AND ANY OTHER LOCATION OR VENUE THE SCHOOL DETERMINES IS NECESSARY OR APPROPRIATE.

(F) A NONPUBLIC SCHOOL IS ENCOURAGED TO DEVELOP THE FOLLOWING EDUCATIONAL PROGRAMS IN ITS EFFORTS TO PREVENT BULLYING, HARASSMENT, AND INTIMIDATION:

(1) AN EDUCATIONAL BULLYING, HARASSMENT, AND INTIMIDATION PREVENTION PROGRAM FOR STUDENTS, STAFF, VOLUNTEERS, AND PARENTS; AND

(2) A TEACHER AND ADMINISTRATOR DEVELOPMENT PROGRAM THAT TRAINS TEACHERS AND ADMINISTRATORS TO IMPLEMENT THE POLICY ADOPTED UNDER SUBSECTION (B) OF THIS SECTION.

(G) AN EMPLOYEE OF A NONPUBLIC SCHOOL WHO REPORTS AN ACT OF BULLYING, HARASSMENT, OR INTIMIDATION IN ACCORDANCE WITH THE NONPUBLIC SCHOOL'S POLICY ADOPTED UNDER SUBSECTION (B) OF THIS SECTION IS NOT CIVILLY LIABLE FOR ANY ACT OR OMISSION IN REPORTING OR FAILING TO REPORT AN ACT OF BULLYING, HARASSMENT, OR INTIMIDATION IN ACCORDANCE WITH THE POLICY.

(H) THE PROVISIONS OF THIS SECTION MAY NOT BE CONSTRUED TO*:*

(1) **~~LIMIT~~** ***LIMIT*** **THE LEGAL RIGHTS OF A VICTIM OF BULLYING, HARASSMENT, OR INTIMIDATION*; OR***

***(2) REQUIRE A STATEWIDE POLICY IN NONPUBLIC SCHOOLS RELATING TO BULLYING, HARASSMENT, AND INTIMIDATION*.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 487

(House Bill 38)

AN ACT concerning

Nonpublic Schools ~~Accepting State Funds~~ Participating in State–Funded Education Programs – Bullying, Harassment, and Intimidation – Policies

FOR the purpose of requiring nonpublic schools that ~~accept State funds~~ participate in State–funded education programs to adopt a policy prohibiting bullying, harassment, and intimidation by a certain date; requiring the policy to include certain provisions; encouraging a nonpublic school to develop the policy in consultation with certain groups; encouraging a nonpublic school to publicize the policy in a certain manner; encouraging a nonpublic school to develop certain educational programs in its efforts to prevent bullying, harassment, and intimidation; providing that certain nonpublic school employees who report acts of bullying, harassment, or intimidation are not civilly liable under certain circumstances; providing that this Act may not be construed to limit the legal rights of a victim of bullying, harassment, or intimidation, *or to require a certain statewide policy*; defining certain terms; and generally relating to policies prohibiting bullying, harassment, and intimidation in nonpublic schools that ~~accept State funds~~ participate in State–funded education programs.

BY adding to
Article – Education
Section 7–424.3
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

Preamble

WHEREAS, The National Institutes of Health reports that bullying affects more than 5 million students in grades 6 through 11; and

WHEREAS, According to the United States Department of Health and Human Services, bullies identified by age 8 are six times more likely to have criminal convictions by age 24; and

WHEREAS, The increased use of the Internet by students is presenting new challenges regarding bullying in schools; and

WHEREAS, Bullying may lead to an increase in absenteeism or the dropout rate; and

WHEREAS, Maintaining a safe environment in schools is integral to promoting learning and success in students; now, therefore,

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

Article – Education

7–424.3.

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

(2) "BULLYING, HARASSMENT, AND INTIMIDATION" MEANS ANY INTENTIONAL WRITTEN, VERBAL, OR PHYSICAL ACT, INCLUDING AN ELECTRONIC COMMUNICATION, THAT:

(I) 1. PHYSICALLY HARMS AN INDIVIDUAL;

2. DAMAGES AN INDIVIDUAL'S PROPERTY;

3. SUBSTANTIALLY INTERFERES WITH AN INDIVIDUAL'S EDUCATION OR LEARNING ENVIRONMENT; OR

4. PLACES AN INDIVIDUAL IN REASONABLE FEAR OF HARM TO THE INDIVIDUAL'S PERSON OR PROPERTY; AND

(II) 1. OCCURS ON SCHOOL PROPERTY, AT A SCHOOL ACTIVITY OR EVENT, OR ON A SCHOOL BUS; OR

2. SUBSTANTIALLY DISRUPTS THE ORDERLY OPERATION OF A SCHOOL.

(3) "ELECTRONIC COMMUNICATION" MEANS A COMMUNICATION TRANSMITTED BY MEANS OF AN ELECTRONIC DEVICE, INCLUDING A TELEPHONE, CELLULAR PHONE, COMPUTER, OR PAGER.

(4) "NONPUBLIC SCHOOL" MEANS A NONPUBLIC SCHOOL THAT ~~ACCEPTS STATE FUNDS~~ PARTICIPATES IN STATE–FUNDED EDUCATION PROGRAMS.

~~(5) "STANDARD" MEANS WITHIN EACH SCHOOL.~~

(B) BY MARCH 31, 2012, EACH NONPUBLIC SCHOOL SHALL ADOPT A POLICY PROHIBITING BULLYING, HARASSMENT, AND INTIMIDATION.

(C) THE POLICY ADOPTED UNDER SUBSECTION (B) OF THIS SECTION SHALL INCLUDE:

(1) A STATEMENT PROHIBITING BULLYING, HARASSMENT, AND INTIMIDATION IN THE SCHOOL;

(2) A STATEMENT PROHIBITING REPRISAL OR RETALIATION AGAINST INDIVIDUALS WHO REPORT ACTS OF BULLYING, HARASSMENT, OR INTIMIDATION;

(3) A DEFINITION OF BULLYING, HARASSMENT, AND INTIMIDATION THAT IS EITHER THE SAME AS SET FORTH IN SUBSECTION (A) OF THIS SECTION OR A DEFINITION THAT IS NOT LESS INCLUSIVE THAN THAT DEFINITION;

(4) STANDARD CONSEQUENCES AND REMEDIAL ACTIONS FOR PERSONS COMMITTING ACTS OF BULLYING, HARASSMENT, OR INTIMIDATION AND FOR PERSONS ENGAGED IN REPRISAL OR RETALIATION, INCLUDING:

(I) SPECIFIC PENALTIES FOR PERSONS WHO REPEATEDLY COMMIT ACTS OF BULLYING, HARASSMENT, OR INTIMIDATION; AND

(II) A REQUIREMENT THAT PERSONS WHO COMMIT ACTS OF BULLYING, HARASSMENT, OR INTIMIDATION RECEIVE EDUCATIONAL AND THERAPEUTIC SERVICES CONCERNING BULLYING PREVENTION;

(5) STANDARD CONSEQUENCES AND REMEDIAL ACTIONS FOR PERSONS FOUND TO HAVE MADE FALSE ACCUSATIONS;

(6) STANDARD PROCEDURES FOR REPORTING ACTS OF BULLYING, HARASSMENT, OR INTIMIDATION, INCLUDING A CHAIN OF COMMAND IN THE REPORTING PROCESS;

(7) STANDARD PROCEDURES FOR THE PROMPT INVESTIGATION OF ACTS OF BULLYING, HARASSMENT, OR INTIMIDATION;

(8) STANDARD PROCEDURES FOR PROTECTING VICTIMS OF BULLYING, HARASSMENT, OR INTIMIDATION FROM ADDITIONAL ACTS OF BULLYING, HARASSMENT, OR INTIMIDATION, AND FROM RETALIATION; AND

(9) INFORMATION ABOUT THE TYPES OF SUPPORT SERVICES AVAILABLE TO A STUDENT BULLY OR VICTIM AND ANY BYSTANDERS.

(D) A NONPUBLIC SCHOOL IS ENCOURAGED TO DEVELOP THE POLICY ADOPTED UNDER SUBSECTION (B) OF THIS SECTION IN CONSULTATION WITH THE FOLLOWING GROUPS:

(1) PARENTS OR GUARDIANS OF STUDENTS;

(2) SCHOOL EMPLOYEES AND ADMINISTRATORS;

(3) SCHOOL VOLUNTEERS; AND

(4) STUDENTS.

(E) A NONPUBLIC SCHOOL IS ENCOURAGED TO PUBLICIZE THE POLICY ADOPTED UNDER SUBSECTION (B) OF THIS SECTION IN STUDENT HANDBOOKS, ON THE SCHOOL'S WEBSITE, AND ANY OTHER LOCATION OR VENUE THE SCHOOL DETERMINES IS NECESSARY OR APPROPRIATE.

(F) A NONPUBLIC SCHOOL IS ENCOURAGED TO DEVELOP THE FOLLOWING EDUCATIONAL PROGRAMS IN ITS EFFORTS TO PREVENT BULLYING, HARASSMENT, AND INTIMIDATION:

(1) AN EDUCATIONAL BULLYING, HARASSMENT, AND INTIMIDATION PREVENTION PROGRAM FOR STUDENTS, STAFF, VOLUNTEERS, AND PARENTS; AND

(2) A TEACHER AND ADMINISTRATOR DEVELOPMENT PROGRAM THAT TRAINS TEACHERS AND ADMINISTRATORS TO IMPLEMENT THE POLICY ADOPTED UNDER SUBSECTION (B) OF THIS SECTION.

(G) AN EMPLOYEE OF A NONPUBLIC SCHOOL WHO REPORTS AN ACT OF BULLYING, HARASSMENT, OR INTIMIDATION IN ACCORDANCE WITH THE NONPUBLIC SCHOOL'S POLICY ADOPTED UNDER SUBSECTION (B) OF THIS SECTION IS NOT CIVILLY LIABLE FOR ANY ACT OR OMISSION IN REPORTING OR FAILING TO REPORT AN ACT OF BULLYING, HARASSMENT, OR INTIMIDATION IN ACCORDANCE WITH THE POLICY.

(H) THE PROVISIONS OF THIS SECTION MAY NOT BE CONSTRUED TO*:*

(1) **~~LIMIT~~** ***LIMIT*** **THE LEGAL RIGHTS OF A VICTIM OF BULLYING, HARASSMENT, OR INTIMIDATION*; OR***

***(2) REQUIRE A STATEWIDE POLICY IN NONPUBLIC SCHOOLS RELATING TO BULLYING, HARASSMENT, AND INTIMIDATION*.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 488

(Senate Bill 493)

AN ACT concerning

Prince George's County Public Schools – Funding Accountability and Transparency Act

FOR the purpose of requiring the Prince George's County Board of Education to develop and operate a certain Web site that includes certain information about certain payments; specifying certain parameters of the Web site; defining certain terms; and generally relating to the development and operation of a searchable Web site by the Prince George's County Board of Education.

BY adding to
Article – Education
Section 5–117
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

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

Article – Education

5–117.

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

(2) (I) "PAYEE" MEANS ANY PARTY WHO RECEIVES FROM THE PRINCE GEORGE'S COUNTY BOARD OF EDUCATION AN AGGREGATE PAYMENT OF $25,000 IN A FISCAL YEAR.

(II) "PAYEE" DOES NOT INCLUDE:

1. A PRINCE GEORGE'S COUNTY PUBLIC SCHOOL EMPLOYEE WITH RESPECT TO THE EMPLOYEE'S COMPENSATION; OR

2. A PRINCE GEORGE'S COUNTY PUBLIC SCHOOL RETIREE WITH RESPECT TO THE RETIREE'S RETIREMENT ALLOWANCE.

(3) "SEARCHABLE WEB SITE" MEANS A WEB SITE CREATED IN ACCORDANCE WITH THIS SECTION THAT DISPLAYS AND SEARCHES PAYMENT DATA OF THE PRINCE GEORGE'S COUNTY BOARD OF EDUCATION.

(B) ON OR BEFORE JANUARY 1, 2013, THE PRINCE GEORGE'S COUNTY BOARD OF EDUCATION SHALL DEVELOP AND OPERATE A SINGLE SEARCHABLE WEB SITE ACCESSIBLE TO THE PUBLIC AT NO COST THROUGH THE INTERNET.

(C) THE SEARCHABLE WEB SITE SHALL CONTAIN PRINCE GEORGE'S COUNTY BOARD OF EDUCATION PAYMENT DATA INCLUDING:

(1) THE NAME OF A PAYEE RECEIVING A PAYMENT;

(2) THE LOCATION OF A PAYEE BY ZIP CODE; AND

(3) THE AMOUNT OF A PAYMENT.

(D) THE SEARCHABLE WEB SITE SHALL ALLOW THE USER TO:

(1) SEARCH DATA FOR FISCAL YEAR 2012 AND EACH FISCAL YEAR THEREAFTER; AND

(2) SEARCH BY THE FOLLOWING DATA FIELDS:

(I) A PAYEE RECEIVING A PAYMENT; AND

(II) THE ZIP CODE OF A PAYEE RECEIVING A PAYMENT.

(E) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE THE DISCLOSURE OF INFORMATION THAT IS CONFIDENTIAL UNDER FEDERAL, STATE, OR LOCAL LAW.

(F) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE "PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT".

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 489

(House Bill 1113)

AN ACT concerning

Prince George's County Public Schools – Funding Accountability and Transparency Act

PG 421–11

FOR the purpose of requiring the Prince George's County Board of Education to develop and operate a certain Web site that includes certain information about certain payments; specifying certain parameters of the Web site; defining certain terms; and generally relating to the development and operation of a searchable Web site by the Prince George's County Board of Education.

BY adding to
Article – Education
Section 5–117
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

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

Article – Education

5–117.

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

(2) (I) "PAYEE" MEANS ANY PARTY WHO RECEIVES FROM THE PRINCE GEORGE'S COUNTY BOARD OF EDUCATION AN AGGREGATE PAYMENT OF $25,000 IN A FISCAL YEAR.

(II) "PAYEE" DOES NOT INCLUDE:

1. A PRINCE GEORGE'S COUNTY PUBLIC SCHOOL EMPLOYEE WITH RESPECT TO THE EMPLOYEE'S COMPENSATION; OR

2. A PRINCE GEORGE'S COUNTY PUBLIC SCHOOL RETIREE WITH RESPECT TO THE RETIREE'S RETIREMENT ALLOWANCE.

(3) "SEARCHABLE WEB SITE" MEANS A WEB SITE CREATED IN ACCORDANCE WITH THIS SECTION THAT DISPLAYS AND SEARCHES PAYMENT DATA OF THE PRINCE GEORGE'S COUNTY BOARD OF EDUCATION.

(B) ON OR BEFORE JANUARY 1, 2013, THE PRINCE GEORGE'S COUNTY BOARD OF EDUCATION SHALL DEVELOP AND OPERATE A SINGLE SEARCHABLE WEB SITE ACCESSIBLE TO THE PUBLIC AT NO COST THROUGH THE INTERNET.

(C) THE SEARCHABLE WEB SITE SHALL CONTAIN PRINCE GEORGE'S COUNTY BOARD OF EDUCATION PAYMENT DATA INCLUDING:

(1) THE NAME OF A PAYEE RECEIVING A PAYMENT;

(2) THE LOCATION OF A PAYEE BY ZIP CODE; AND

(3) THE AMOUNT OF A PAYMENT.

(D) THE SEARCHABLE WEB SITE SHALL ALLOW THE USER TO:

(1) SEARCH DATA FOR FISCAL YEAR 2012 AND EACH FISCAL YEAR THEREAFTER; AND

(2) SEARCH BY THE FOLLOWING DATA FIELDS:

(I) A PAYEE RECEIVING A PAYMENT; AND

(II) THE ZIP CODE OF A PAYEE RECEIVING A PAYMENT.

(E) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE THE DISCLOSURE OF INFORMATION THAT IS CONFIDENTIAL UNDER FEDERAL, STATE, OR LOCAL LAW.

(F) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE "PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT".

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 490

(Senate Bill 494)

AN ACT concerning

Income Tax Credit – Teachers at State and Local Correctional Facilities for Adults and Juveniles

FOR the purpose of altering a credit against the State income tax for certain tuition costs of certain teachers to include teachers at ~~a~~ State or local correctional ~~facility for adults or juveniles~~ facilities and certain juvenile facilities; providing that a teacher at a State or local correctional facility or certain juvenile facilities who is reimbursed ~~by the State or a county~~ for the tuition may not claim the credit for the amount of tuition that is reimbursed; providing for the application of this Act; and generally relating to a State income tax credit for certain tuition paid by a teacher at ~~a~~ State or local correctional ~~facility for adults or juveniles~~ facilities and certain juvenile facilities.

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 10–717
Annotated Code of Maryland
(2010 Replacement Volume)

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

Article – Tax – General

10–717.

(a) An individual who is a classroom teacher **OR A TEACHER AT A STATE OR LOCAL CORRECTIONAL FACILITY** ~~**FOR ADULTS OR JUVENILES** holding~~ **OR A JUVENILE FACILITY LISTED IN § 9–226 OF THE HUMAN SERVICES ARTICLE AND WHO HOLDS** a standard professional certificate or an advanced professional certificate may claim a credit against the State income tax for up to $1,500 of tuition paid by the individual during the taxable year for graduate level courses required to maintain certification if the individual:

(1) successfully completes the courses with a grade of B or better;

(2) is employed by a county board of education ~~**OR**~~**, A STATE OR LOCAL CORRECTIONAL FACILITY** ~~**FOR ADULTS OR JUVENILES**~~**, OR A JUVENILE FACILITY LISTED IN § 9–226 OF THE HUMAN SERVICES ARTICLE**;

(3) teaches in a public school ~~OR~~, ~~AT~~ **A STATE OR LOCAL CORRECTIONAL FACILITY** ~~FOR ADULTS OR JUVENILES~~**, OR A JUVENILE FACILITY LISTED IN § 9–226 OF THE HUMAN SERVICES ARTICLE** and receives a satisfactory performance evaluation for that teaching; and

(4) has not been reimbursed by the **STATE OR A** county for the tuition paid.

(b) (1) If a county ~~OR~~, **THE STATE OR LOCAL CORRECTIONAL FACILITY** ~~FOR ADULTS OR JUVENILES~~ **, OR A JUVENILE FACILITY LISTED IN § 9–226 OF THE HUMAN SERVICES ARTICLE** partially reimburses an individual for tuition paid, the individual may claim a tax credit allowed under this section for the balance of the tuition not paid by the county **OR THE STATE**.

(2) The credit allowed under this section may not exceed the State income tax for that taxable year, calculated before the application of the credits allowed under this section and §§ 10–701 and 10–701.1 of this subtitle but after the application of the other credits allowable under this subtitle.

(3) The unused amount of the credit for any taxable year may not be carried over to any other taxable year.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011, and shall be applicable to all taxable years beginning after December 31, 2010.

Approved by the Governor, May 19, 2011.

Chapter 491

(Senate Bill 532)

AN ACT concerning

Real Property – Homeowners Association Elections – Enforcement by the Division of Consumer Protection

FOR the purpose of ~~providing that a violation of a provision of the governing documents of a homeowners association that regulates procedures for the election of the governing body of the association is within the enforcement duties and powers of~~ authorizing a lot owner who believes that the board of directors or other governing body of a homeowners association has failed to comply with the election procedures provisions of the governing documents of the homeowners association to submit the dispute to the Division of Consumer

Protection of the Office of the Attorney General if the provisions concern certain elements of the election procedures; and generally relating to enforcement of the election procedures of a homeowners association.

BY repealing and reenacting, ~~with~~ without amendments,
Article – Real Property
Section 11B–115(c)
Annotated Code of Maryland
(2010 Replacement Volume and 2010 Supplement)

BY adding to
Article – Real Property
Section 11B–115.1
Annotated Code of Maryland
(2010 Replacement Volume and 2010 Supplement)

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

Article – Real Property

11B–115.

(c) (1) [To the extent that a] ~~A~~ violation [of any provision of this title affects a consumer, that violation shall be] ~~IS~~ within the scope of the enforcement duties and powers of the Division of Consumer Protection of the Office of the Attorney General, as described in Title 13 of the Commercial Law Article~~, IF THE VIOLATION IS OF:~~

~~(I) ANY PROVISION OF THIS TITLE, TO THE EXTENT THAT THE VIOLATION AFFECTS A CONSUMER; OR~~

~~(II) A PROVISION OF THE GOVERNING DOCUMENTS OF A HOMEOWNERS ASSOCIATION THAT REGULATES PROCEDURES FOR THE ELECTION OF THE GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION~~.

(2) The provisions of this title shall otherwise be enforced by each unit of State government within the scope of the authority of the unit.

11B–115.1.

A LOT OWNER WHO BELIEVES THAT THE BOARD OF DIRECTORS OR OTHER GOVERNING BODY OF A HOMEOWNERS ASSOCIATION HAS FAILED TO COMPLY WITH THE ELECTION PROCEDURES PROVISIONS OF THE GOVERNING DOCUMENTS OF THE HOMEOWNERS ASSOCIATION MAY SUBMIT THE DISPUTE TO

THE DIVISION OF CONSUMER PROTECTION OF THE OFFICE OF THE ATTORNEY GENERAL IF THE PROVISIONS CONCERN:

(1) NOTICE ABOUT THE DATE, TIME, AND PLACE FOR THE ELECTION OF THE BOARD OF DIRECTORS OR OTHER GOVERNING BODY;

(2) THE MANNER IN WHICH A CALL IS MADE FOR NOMINATIONS FOR THE BOARD OF DIRECTORS OR OTHER GOVERNING BODY;

(3) THE FORMAT OF THE ELECTION BALLOT;

(4) THE FORMAT, PROVISION, AND USE OF PROXIES DURING THE ELECTION PROCESS; OR

(5) THE MANNER IN WHICH A QUORUM IS DETERMINED FOR ELECTION PURPOSES.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 492

(Senate Bill 539)

AN ACT concerning

Environment – Bay Restoration Fund – Authorized Uses

FOR the purpose of authorizing certain fee revenue collected for the Bay Restoration Fund to be used to pay the cost of connecting properties served by onsite sewage disposal systems to certain existing municipal wastewater facilities under certain circumstances; establishing certain conditions for certain funding of certain costs; and generally relating to authorized uses of the Bay Restoration Fund.

BY repealing and reenacting, without amendments,
Article – Environment
Section 9–1605.2(a) and (h)(1)
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,

Article – Environment
Section 9–1605.2(h)(2) and (3)
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

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

Article – Environment

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.

(h) (1) With regard to the funds collected under subsection (b)(1)(i), from users of an onsite sewage disposal system or holding tank that receive a water bill, (ii), and (iii) 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; **[**or**]**

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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 493

(House Bill 57)

AN ACT concerning

Environment – Bay Restoration Fund – Authorized Uses

FOR the purpose of authorizing certain fee revenue collected for the Bay Restoration Fund to be used to pay the cost of connecting properties served by onsite sewage disposal systems to certain existing municipal wastewater facilities under certain circumstances; establishing certain conditions for certain funding of certain costs; and generally relating to authorized uses of the Bay Restoration Fund.

BY repealing and reenacting, without amendments,
Article – Environment
Section 9–1605.2(a) and (h)(1)
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Environment
Section 9–1605.2(h)(2) and (3)
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

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

Article – Environment

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.

(h) (1) With regard to the funds collected under subsection (b)(1)(i), from users of an onsite sewage disposal system or holding tank that receive a water bill, (ii), and (iii) 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; **[**or**]**

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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 494

(Senate Bill 551)

AN ACT concerning

Maryland Wage and Hour Law – Prohibited Acts of Employers – Adverse Action

FOR the purpose of prohibiting an employer from taking adverse action against an employee who makes a complaint, brings an action, or testifies in an action under the Maryland Wage and Hour Law; specifying that the adverse action prohibited includes certain retaliatory actions; prohibiting the conviction of an employer without certain evidence; defining a certain term; and generally relating to prohibited acts of employers under the Maryland Wage and Hour Law.

BY repealing and reenacting, without amendments,
Article – Labor and Employment
Section 3–401
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section 3–428
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

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

Article – Labor and Employment

3–401.

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

(b) "Employer" includes a person who acts directly or indirectly in the interest of another employer with an employee.

(c) "Federal Act" means the federal Fair Labor Standards Act of 1938.

(d) "Wage" means all compensation that is due to an employee for employment.

3–428.

(a) **IN THIS SECTION, "COMPLAINT" INCLUDES A WRITTEN OR ORAL COMPLAINT, CLAIM, OR ASSERTION OF RIGHT BY AN EMPLOYEE, REGARDING THE PAYMENT OF WAGES UNDER THIS SUBTITLE, THAT IS MADE TO:**

(1) THE EMPLOYER OR A SUPERVISOR, MANAGER, OR FOREMAN EMPLOYED BY THE EMPLOYER WHETHER IT IS MADE THROUGH THE EMPLOYER'S INTERNAL GRIEVANCE PROCESS OR OTHERWISE; OR

~~**(2) THE EMPLOYEE'S UNION REPRESENTATIVE;**~~

~~**(3) A REPRESENTATIVE OF A LABOR UNION OR LABOR ORGANIZATION WHO IS CONSULTED BY THE EMPLOYEE WITH RESPECT TO A COMPLAINT IF THE LABOR UNION OR LABOR ORGANIZATION IS IN THE PROCESS OF ORGANIZING AT THE EMPLOYEE'S WORKSITE;**~~

~~**(4) AN ATTORNEY WHO IS CONSULTED OR RETAINED BY THE EMPLOYEE WITH RESPECT TO A COMPLAINT; OR**~~

~~**(5)**~~ **(2) THE COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER.**

(B) (1) An employer may not:

[(1)**] (I)** pay or agree to pay less than the wage required under this subtitle;

[(2)**] (II)** hinder or delay the Commissioner or an authorized representative of the Commissioner in the enforcement of this subtitle;

[(3)**]** **(III)** **[**discharge**]** **TAKE ADVERSE ACTION AGAINST** an employee because the employee:

[(i)**]** **1.** makes **[**to the employer, the Commissioner, or an authorized representative of the Commissioner**]** a complaint that the employee has not been paid in accordance with this subtitle;

[(ii)**]** **2.** brings an action under this subtitle or a proceeding that relates to the subject of this subtitle; or

[(iii)**]** **3.** has testified in an action under this subtitle or a proceeding related to the subject of this subtitle; or

[(4)**]** **(IV)** violate any other provision of this subtitle.

(2) ADVERSE ACTION PROHIBITED UNDER PARAGRAPH (1) OF THIS SUBSECTION INCLUDES:

(I) DISCHARGE;

(II) DEMOTION;

(III) THREATENING THE EMPLOYEE WITH DISCHARGE OR DEMOTION; AND

(IV) ANY OTHER RETALIATORY ACTION THAT RESULTS IN A CHANGE TO THE TERMS OR CONDITIONS OF EMPLOYMENT THAT WOULD DISSUADE A REASONABLE EMPLOYEE FROM MAKING A COMPLAINT, BRINGING AN ACTION, OR TESTIFYING IN AN ACTION UNDER THIS SUBTITLE.

[(b)**]** **(C)** An employee may not:

(1) make a groundless or malicious complaint to the Commissioner or an authorized representative of the Commissioner;

(2) in bad faith, bring an action under this subtitle or a proceeding related to the subject of this subtitle; or

(3) in bad faith, testify in an action under this subtitle or a proceeding related to the subject of this subtitle.

[(c)**]** **(D)** A person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000.

(E) AN EMPLOYER MAY NOT BE CONVICTED UNDER THIS SECTION UNLESS THE EVIDENCE DEMONSTRATES THAT THE EMPLOYER HAD KNOWLEDGE OF THE RELEVANT COMPLAINT, TESTIMONY, OR ACTION FOR WHICH THE PROSECUTION FOR RETALIATION IS SOUGHT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 495

(House Bill 1130)

AN ACT concerning

Maryland Wage and Hour Law – Prohibited Acts of Employers – Adverse Action

FOR the purpose of prohibiting an employer from taking adverse action against an employee who makes a complaint, brings an action, or testifies in an action under the Maryland Wage and Hour Law; specifying that the adverse action prohibited includes certain retaliatory actions; prohibiting the conviction of an employer without certain evidence; defining a certain term; and generally relating to prohibited acts of employers under the Maryland Wage and Hour Law.

BY repealing and reenacting, without amendments,
Article – Labor and Employment
Section 3–401
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section 3–428
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

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

Article – Labor and Employment

3–401.

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

(b) "Employer" includes a person who acts directly or indirectly in the interest of another employer with an employee.

(c) "Federal Act" means the federal Fair Labor Standards Act of 1938.

(d) "Wage" means all compensation that is due to an employee for employment.

3–428.

(a) **IN THIS SECTION, "COMPLAINT" INCLUDES A WRITTEN OR ORAL COMPLAINT, CLAIM, OR ASSERTION OF RIGHT BY AN EMPLOYEE, REGARDING THE PAYMENT OF WAGES UNDER THIS SUBTITLE, THAT IS MADE TO:**

(1) THE EMPLOYER OR A SUPERVISOR, MANAGER, OR FOREMAN EMPLOYED BY THE EMPLOYER WHETHER IT IS MADE THROUGH THE EMPLOYER'S INTERNAL GRIEVANCE PROCESS OR OTHERWISE; OR

~~**(2) THE EMPLOYEE'S UNION REPRESENTATIVE;**~~

~~**(3) A REPRESENTATIVE OF A LABOR UNION OR LABOR ORGANIZATION WHO IS CONSULTED BY THE EMPLOYEE WITH RESPECT TO A COMPLAINT IF THE LABOR UNION OR LABOR ORGANIZATION IS IN THE PROCESS OF ORGANIZING AT THE EMPLOYEE'S WORKSITE;**~~

~~**(4) AN ATTORNEY WHO IS CONSULTED OR RETAINED BY THE EMPLOYEE WITH RESPECT TO A COMPLAINT; OR**~~

~~**(5)**~~ **(2) THE COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER.**

(B) (1) An employer may not:

[(1)**]** **(I)** pay or agree to pay less than the wage required under this subtitle;

[(2)**]** **(II)** hinder or delay the Commissioner or an authorized representative of the Commissioner in the enforcement of this subtitle;

[(3)**]** **(III)** **[**discharge**]** **TAKE ADVERSE ACTION AGAINST** an employee because the employee:

[(i)**]** **1.** makes **[**to the employer, the Commissioner, or an authorized representative of the Commissioner**]** a complaint that the employee has not been paid in accordance with this subtitle;

[(ii)**]** **2.** brings an action under this subtitle or a proceeding that relates to the subject of this subtitle; or

[(iii)**]** **3.** has testified in an action under this subtitle or a proceeding related to the subject of this subtitle; or

[(4)**]** **(IV)** violate any other provision of this subtitle.

(2) ADVERSE ACTION PROHIBITED UNDER PARAGRAPH (1) OF THIS SUBSECTION INCLUDES:

(I) DISCHARGE;

(II) DEMOTION;

(III) THREATENING THE EMPLOYEE WITH DISCHARGE OR DEMOTION; AND

(IV) ANY OTHER RETALIATORY ACTION THAT RESULTS IN A CHANGE TO THE TERMS OR CONDITIONS OF EMPLOYMENT THAT WOULD DISSUADE A REASONABLE EMPLOYEE FROM MAKING A COMPLAINT, BRINGING AN ACTION, OR TESTIFYING IN AN ACTION UNDER THIS SUBTITLE.

[(b)**]** **(C)** An employee may not:

(1) make a groundless or malicious complaint to the Commissioner or an authorized representative of the Commissioner;

(2) in bad faith, bring an action under this subtitle or a proceeding related to the subject of this subtitle; or

(3) in bad faith, testify in an action under this subtitle or a proceeding related to the subject of this subtitle.

[(c)**]** **(D)** A person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000.

(E) AN EMPLOYER MAY NOT BE CONVICTED UNDER THIS SECTION UNLESS THE EVIDENCE DEMONSTRATES THAT THE EMPLOYER HAD KNOWLEDGE OF THE RELEVANT COMPLAINT, TESTIMONY, OR ACTION FOR WHICH THE PROSECUTION FOR RETALIATION IS SOUGHT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 496

(Senate Bill 578)

AN ACT concerning

~~Health Occupations – Temporary Volunteer Dentist's License, Temporary Volunteer Dental Hygienist's License, and Temporary Dental Clinic Permit~~
State Board of Dental Examiners – Dentists and Dental Hygienists – Licenses, Temporary Volunteer Licenses, and Temporary Dental Clinic Permits

FOR the purpose of establishing a temporary volunteer dentist's license, a temporary volunteer dental hygienist's license, and a temporary dental clinic permit under the State Board of Dental Examiners; altering a certain qualification for certain dentists and dental hygienists for a certain license to practice dentistry or practice dental hygiene in the State; establishing certain procedures for dentists, dental hygienists, and bona fide charitable organizations to apply for certain licenses and permits; establishing the scope of practice of certain licenses; prohibiting the Board from requiring continuing education as a condition for the issuance of certain licenses; requiring temporary dental clinics to have a medical emergency plan, certain equipment, and certain safeguards; specifying certain powers of the Board; altering certain definitions; defining a certain term; making a stylistic change; and generally relating to ~~the establishment of a temporary volunteer dentist's license, a temporary volunteer dental hygienist's license, and a temporary dental clinic permit~~ the State Board of Dental Examiners and dentist and dental hygienist licenses, temporary volunteer licenses, and temporary dental clinic permits.

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 4–101, 4–304, 4–306(b), and 4–308
Annotated Code of Maryland
(2009 Replacement Volume and 2010 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.

(b) "Board" means the State Board of Dental Examiners.

(c) "Dental appliance" means any:

(1) Oral prosthesis;

(2) Orthodontic appliance;

(3) Regulatory appliance;

(4) Supportive appliance; or

(5) Other intraoral appliance or restoration.

(d) "Dental hygienist" means an individual, other than a dentist, who practices dental hygiene.

(e) "Dental laboratory" means any commercial laboratory or workroom in which a person engages in dental laboratory work.

(f) "Dental laboratory work" means making, repairing, or altering a dental appliance extraorally.

(g) "Dentist" means an individual who practices dentistry.

(h) (1) "License" means, unless the context requires otherwise, a license issued by the Board to:

(i) Practice dentistry; or

(ii) Practice dental hygiene.

(2) "License" includes, unless the context requires otherwise:

(i) A general license to practice dentistry;

(ii) A limited license to practice dentistry;

(iii) A teacher's license to practice dentistry;

(iv) A general license to practice dental hygiene;

(v) A teacher's license to practice dental hygiene;

(vi) A retired volunteer dentist's license to practice dentistry;

(vii) A retired volunteer dental hygienist's license to practice dental hygiene;

(viii) A volunteer dentist's license to practice dentistry; **[**and**]**

(ix) A volunteer dental hygienist's license to practice dental hygiene**;**

(X) A TEMPORARY VOLUNTEER DENTIST'S LICENSE TO PRACTICE DENTISTRY; AND

(XI) A TEMPORARY DENTAL HYGIENIST'S LICENSE TO PRACTICE DENTAL HYGIENE.

(i) (1) "Licensed dental hygienist" means, unless the context requires otherwise, a dental hygienist who is licensed by the Board to practice dental hygiene.

(2) "Licensed dental hygienist" includes, unless the context requires otherwise, a holder of:

(i) A general license to practice dental hygiene;

(ii) A teacher's license to practice dental hygiene;

(iii) A retired volunteer dental hygienist's license to practice dental hygiene; **[**or**]**

(iv) A volunteer dental hygienist's license to practice dental hygiene**; OR**

(V) A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE TO PRACTICE DENTAL HYGIENE.

(j) (1) "Licensed dentist" means, unless the context requires otherwise, a dentist who is licensed by the Board to practice dentistry.

(2) "Licensed dentist" includes, unless the context requires otherwise, a holder of:

(i) A general license to practice dentistry;

(ii) A limited license to practice dentistry;

(iii) A teacher's license to practice dentistry;

(iv) A retired volunteer dentist's license to practice dentistry; **[**or**]**

(v) A volunteer dentist's license to practice dentistry**; OR**

(VI) A TEMPORARY VOLUNTEER DENTIST'S LICENSE TO PRACTICE DENTISTRY.

(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 of this title; or

(9) Perform any other intraoral function that the Board authorizes by a rule or regulation adopted under § 4–206 of this title.

(l) "Practice dentistry" means to:

(1) Be a manager, a proprietor, or a conductor of or an operator in any place in which a dental service or dental operation is performed intraorally;

(2) Perform or attempt to perform any intraoral dental service or intraoral dental operation;

(3) Diagnose, treat, or attempt to diagnose or treat any disease, injury, malocclusion, or malposition of a tooth, gum, or jaw, or structures associated with a tooth, gum, or jaw if the service, operation, or procedure is included in the curricula of

an accredited dental school or in an approved dental residency program of an accredited hospital or teaching institution;

(4) Perform or offer to perform dental laboratory work;

(5) Place or adjust a dental appliance in a human mouth; or

(6) Administer anesthesia for the purposes of dentistry and not as a medical specialty.

(m) Except as provided in § **[**4–308(e)(2)**] 4–308(F)(2)** of this title, "supervision" means supervision of a dental hygienist by a dentist, where the dentist may or may not be present when the dental hygienist performs the dental hygiene procedures but is available on the premises.

(N) "TEMPORARY DENTAL CLINIC PERMIT" MEANS, UNLESS THE CONTEXT REQUIRES OTHERWISE, A TEMPORARY PERMIT ISSUED BY THE BOARD TO A BONA FIDE CHARITABLE ORGANIZATION TO PROVIDE DENTAL SERVICES TO THE POOR, ELDERLY, OR DISABLED AT A DENTAL CLINIC.

[(n)**] (O)** "Third party" means any person who collects premiums, assumes financial risks, pays claims, or provides administrative services relating to any:

(1) Insurance policy;

(2) Insurance contract;

(3) Health prepayment contract;

(4) Health care plan; or

(5) Nonprofit health service plan contract.

4–304.

(a) To apply for a license, an applicant shall:

(1) Submit an application to the Board on the form that the Board requires; and

(2) Pay to the Board an application fee set by the Board.

(b) In addition to the other requirements of this section, an applicant for a limited license to practice dentistry shall submit to the Board a written request, from the hospital, sanatorium, dental school, or public health program to which the practice is to be limited, that the license be issued.

(c) To apply for a retired volunteer dentist's license **[**or**],** a volunteer dentist's license**, OR A TEMPORARY VOLUNTEER DENTIST'S LICENSE** to practice dentistry, an applicant:

(1) Shall submit an application to the Board on the form that the Board requires; and

(2) May not be required to pay an application fee.

(d) (1) At least 30 days before the examination, an applicant for a general license to practice dental hygiene shall submit the application to the Board.

(2) In addition to the other requirements of this section, an applicant for a license to practice dental hygiene shall submit to the Board:

(i) Satisfactory evidence of graduation from a dental hygiene program accredited by the American Dental Association Commission on Dental Accreditation; and

(ii) Any other credentials that the Board requires.

(e) To apply for a retired volunteer dental hygienist's license **[**or**],** a volunteer dental hygienist's license**, OR A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE** to practice dental hygiene, an applicant:

(1) Shall submit an application to the Board on the form that the Board requires; and

(2) May not be required to pay an application fee.

(F) TO APPLY FOR A TEMPORARY DENTAL CLINIC PERMIT, AN APPLICANT:

(1) SHALL SUBMIT AN APPLICATION ON THE FORM THAT THE BOARD REQUIRES; AND

(2) MAY NOT BE REQUIRED TO PAY AN APPLICATION FEE.

4–306.

(b) (1) (i) A dentist licensed in any other state who has passed a regional board shall be granted a license in this State if the applicant passes the following examinations given by or designated by the Board:

1. A comprehensive examination on applied clinical diagnosis and treatment planning; and

2. A law examination.

(ii) A dentist licensed in any other state who has not passed a regional board shall be granted a license in this State if:

1. For the 5 preceding years the dentist has been actively engaged in practicing dentistry **FOR AT LEAST 850 HOURS ON AVERAGE PER YEAR**; and

2. The applicant passes the following examinations given by or designated by the Board:

A. A comprehensive examination on applied clinical diagnosis and treatment planning; and

B. A law examination.

(2) (i) A dental hygienist licensed in any other state who has passed a regional board shall be granted a license in this State if the applicant passes an examination given by the Board.

(ii) A dental hygienist licensed in any other state who has not passed a regional board shall be granted a license in this State if:

1. For the 3 preceding years the dental hygienist has been actively engaged in practicing dental hygiene **FOR AT LEAST 150 HOURS ON AVERAGE PER YEAR**; and

2. The applicant passes an examination given by or designated by the Board.

4–308.

(a) A general license to practice dentistry issued under this title authorizes the licensee to practice dentistry while the license is effective.

(b) While it is effective, a limited license to practice dentistry issued under this title authorizes the licensee to practice dentistry, including as an intern or a resident:

(1) Only for the institution or public health program named on the license; and

(2) Only on patients of the institution or public health program named on the license.

(c) While it is effective, a retired volunteer dentist's license or a volunteer dentist's license to practice dentistry issued under this title authorizes the licensee to practice dentistry:

(1) Only in a dental office, dental clinic, ambulatory care facility, or hospital;

(2) Only for an entity providing medical care to the poor, elderly, or **[**handicapped**]** **DISABLED** that is operated by:

(i) The State or a local government;

(ii) A bona fide charitable organization; or

(iii) Any other entity authorized under regulations adopted by the Board;

(3) If the dentist signs a written statement agreeing to donate at least 100 hours of dental services without compensation in a facility that satisfies the requirements of items (1) and (2) of this subsection;

(4) If the dentist provides documentation as required by the Board which evidences that the licensee is covered by malpractice insurance; and

(5) If the dentist does not otherwise practice dentistry for profit in Maryland.

(D) (1) WHILE IT IS EFFECTIVE, A TEMPORARY VOLUNTEER DENTIST'S LICENSE ISSUED UNDER THIS TITLE AUTHORIZES THE LICENSEE TO PRACTICE DENTISTRY:

(I) ONLY IN A TEMPORARY DENTAL CLINIC PROVIDING MEDICAL CARE TO THE POOR, ELDERLY, OR DISABLED THAT IS OPERATED BY:

1. A BONA FIDE CHARITABLE ORGANIZATION;

2. THE STATE OR A LOCAL GOVERNMENT; OR

3. A LOCAL HEALTH DEPARTMENT;

(II) 1. IF THE DENTIST HOLDS A GENERAL LICENSE TO PRACTICE DENTISTRY IN ANOTHER STATE THAT PERMITS CLINICAL PRACTICE AND THE DENTIST IS NOT SUBJECT TO CLINICAL RESTRICTIONS; AND

2. THE DENTIST HAS ~~PASSED~~:

A. ~~THE~~ *PASSED THE* NORTH EAST BOARD REGIONAL CLINICAL EXAMINATION; OR

B. ~~HAS SUBMITTED~~ *SUBMITTED* TO THE BOARD A NOTARIZED AFFIDAVIT OR OTHER EVIDENCE SATISFACTORY TO THE BOARD INDICATING THAT FOR THE 5 YEARS PRECEDING APPLICATION, THE APPLICANT HAS ACTIVELY ENGAGED IN PRACTICING DENTISTRY FOR AT LEAST 850 HOURS ON AVERAGE PER YEAR;

(III) IF THE DENTIST HAS FULFILLED ANY REQUIREMENTS OF THE BOARD RELATING TO KNOWLEDGE OF THE REGULATIONS ADOPTED BY THE BOARD AND THE LAWS CONCERNING THE PRACTICE OF DENTISTRY IN THE STATE;

(IV) IF THE DENTIST PROVIDES A NOTARIZED AFFIDAVIT TO THE BOARD AGREEING TO DONATE DENTAL SERVICES WITHOUT COMPENSATION FOR A ~~BONA FIDE CHARITABLE ORGANIZATION~~ TEMPORARY DENTAL CLINIC THAT SATISFIES THE REQUIREMENTS OF SUBSECTION (I) OF THIS SECTION;

(V) IF THE DENTIST PROVIDES DOCUMENTATION AS REQUIRED BY THE BOARD THAT EVIDENCES THAT THE DENTIST IS COVERED BY MALPRACTICE INSURANCE;

(VI) IF THE DENTIST DOES NOT OTHERWISE PRACTICE DENTISTRY FOR PROFIT IN THE STATE; AND

(VII) IF THE DENTIST PROVIDES VERIFICATION OF CURRENT CARDIOPULMONARY RESUSCITATION CERTIFICATION.

(2) A DENTIST WHO HOLDS A TEMPORARY VOLUNTEER DENTIST'S LICENSE MAY NOT ADMINISTER, MAINTAIN, OR MONITOR GENERAL ANESTHESIA OR SEDATION.

(3) A DENTIST WHO HOLDS A TEMPORARY VOLUNTEER DENTIST'S LICENSE MAY ONLY PROVIDE SERVICES AUTHORIZED UNDER THE MARYLAND DENTISTRY ACT AND THE REGULATIONS ADOPTED BY THE BOARD.

(4) A DENTIST WHO HOLDS A TEMPORARY VOLUNTEER DENTIST'S LICENSE OR THE TEMPORARY DENTAL CLINIC IN WHICH THE DENTIST IS

PROVIDING SERVICES SHALL PROVIDE A FORM TO A PATIENT AT THE CONCLUSION OF TREATMENT THAT CONTAINS:

(I) A SUMMARY OF THE SERVICES THAT WERE PROVIDED TO THE PATIENT BY THE DENTIST AND, IF APPLICABLE, THE DENTAL HYGIENIST; AND

(II) INSTRUCTIONS FOR ANY RECOMMENDED FOLLOW–UP DENTAL CARE.

(5) THE BOARD MAY DENY A TEMPORARY VOLUNTEER DENTIST'S LICENSE ON THE GROUNDS PROVIDED UNDER § 4–315 OF THIS SUBTITLE.

(6) A TEMPORARY VOLUNTEER DENTIST'S LICENSE ISSUED TO A DENTIST UNDER THIS TITLE SHALL BE ISSUED FOR THE DURATION OF THE TEMPORARY DENTAL CLINIC ONLY AND MAY NOT BE RENEWED.

(7) THE BOARD MAY ISSUE A TEMPORARY VOLUNTEER DENTIST'S LICENSE TO A DENTIST WHO PREVIOUSLY HELD A TEMPORARY VOLUNTEER DENTIST'S LICENSE IF THE DENTIST APPLIES FOR A NEW LICENSE AND SATISFIES THE REQUIREMENTS OF THIS SUBTITLE.

~~(7)~~ (8) THE BOARD MAY NOT REQUIRE CONTINUING EDUCATION AS A CONDITION FOR THE ISSUANCE OF A TEMPORARY VOLUNTEER DENTIST'S LICENSE.

[(d)**] (E)** While it is effective, a teacher's license to practice dentistry issued under this title authorizes the licensee to practice dentistry at only the following institutions:

(1) The institution named on the license; and

(2) Other affiliated institutions as appropriate because of the specialized nature of the services to be performed.

[(e)**] (F)** (1) Except as provided in subsection **[**(h)**] (K)** of this section, while it is effective, a general license to practice dental hygiene issued under this title authorizes the licensee to practice dental hygiene:

(i) Under the supervision of a licensed dentist who is:

1. On the premises and available for personal consultation while the services are being performed; or

2. Not on the premises while authorized dental hygiene services are provided when the requirements of subsection **[**(i)**] (L)** of this section have been fully satisfied; and

(ii) Only in a:

1. Dental office;

2. Dental clinic;

3. Hospital;

4. School;

5. Charitable institution; or

6. Health maintenance organization certified by the State Insurance Commissioner.

(2) (i) The Board may waive, on a case by case basis only, the supervision requirements of this subsection for:

1. A dental facility owned and operated by the federal, the State, or a local government;

2. A health facility licensed by the Department of Health and Mental Hygiene;

3. A facility providing medical care to the poor, elderly, or handicapped that is owned and operated by:

A. The State or a local government; or

B. A bona fide charitable organization; or

4. Any other setting authorized under regulations adopted by the Board.

(ii) A waiver is not required to practice dental hygiene under general supervision in accordance with subsection **[**(h)**] (K)** of this section.

(3) The Board may grant a waiver under paragraph (2) of this subsection if:

(i) The facility requesting the waiver has submitted a written application;

(ii) The facility requesting the waiver has submitted a medical emergency plan of action at the time of application; and

(iii) The Board finds that:

1. Good cause exists to justify the granting of the waiver;

2. Adequate facilities and equipment, including portable equipment where appropriate and appropriate armamentarium, are available for the appropriate delivery of dental hygiene services; and

3. Adequate safeguards are present to protect the patient's health and safety.

(4) (i) The Board, upon written request or its own motion, may conduct a public informational meeting on any waiver application.

(ii) The Board shall maintain records of all waiver applications and the criteria and basis for its action on each application.

(iii) The Board shall have the power to inspect or review any facility, location, person, or entity applying for, covered by, or acting under a waiver.

(5) (i) Except as provided under subparagraph (ii) of this paragraph, the Board shall accept or deny a waiver under paragraph (2) of this subsection within 60 calendar days of the receipt of the application for the waiver or it shall be deemed to have been accepted.

(ii) If extraordinary circumstances exist, the Board shall accept or deny a waiver under paragraph (2) of this subsection within 90 calendar days of the receipt of the application for the waiver or it shall be deemed to have been accepted.

(6) Any changes in the procedures or personnel of a facility with a waiver granted under this subsection shall be reported to the Board within 15 business days after the change.

[(f)**] (G)** While it is effective, a retired volunteer dental hygienist's license or a volunteer hygienist's license to practice dental hygiene issued under this title authorizes the licensee to practice dental hygiene:

(1) Only in a dental office, dental clinic, ambulatory care facility, or hospital;

(2) Only for an entity providing medical care to the poor, elderly, or handicapped that is operated by:

(i) The State or a local government;

(ii) A bona fide charitable organization; or

(iii) Any other entity authorized under regulations adopted by the Board;

(3) If the dental hygienist signs a written statement agreeing to donate at least 100 hours of dental hygiene services without compensation in a facility that satisfies the requirements of items (1) and (2) of this subsection;

(4) If the dental hygienist provides documentation as required by the Board which evidences that the licensee is covered by malpractice insurance; and

(5) If the dental hygienist does not otherwise practice dental hygiene for profit in Maryland.

(H) (1) WHILE IT IS EFFECTIVE, A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE ISSUED UNDER THIS TITLE AUTHORIZES THE LICENSEE TO PRACTICE DENTAL HYGIENE:

(I) ONLY IN A TEMPORARY DENTAL CLINIC PROVIDING MEDICAL CARE TO THE POOR, ELDERLY, OR DISABLED THAT IS OPERATED BY:

1. A BONA FIDE CHARITABLE ORGANIZATION;

2. THE STATE OR A LOCAL GOVERNMENT; OR

3. A LOCAL HEALTH DEPARTMENT;

(II) IF THE DENTAL HYGIENIST HOLDS A GENERAL LICENSE TO PRACTICE DENTAL HYGIENE IN ANOTHER STATE THAT PERMITS CLINICAL PRACTICE AND THE DENTAL HYGIENIST IS NOT SUBJECT TO CLINICAL RESTRICTIONS;

(III) IN ADDITION TO HOLDING A GENERAL LICENSE TO PRACTICE DENTAL HYGIENE, IF THE DENTAL HYGIENIST:

1. PROVIDES DOCUMENTATION AS REQUIRED BY THE BOARD WHICH EVIDENCES THAT THE DENTAL HYGIENIST PASSED THE NORTH EAST REGIONAL CLINICAL EXAMINATION; OR

2. SUBMITS TO THE BOARD A NOTARIZED AFFIDAVIT OR OTHER EVIDENCE SATISFACTORY TO THE BOARD INDICATING THAT FOR THE 3 YEARS PRECEDING APPLICATION, THE DENTAL HYGIENIST HAS ACTIVELY

ENGAGED IN PRACTICING DENTAL HYGIENE FOR AT LEAST 150 HOURS ON AVERAGE PER YEAR;

(IV) IF THE DENTAL HYGIENIST HAS FULFILLED ANY REQUIREMENTS OF THE BOARD RELATED TO KNOWLEDGE OF THE LAWS AND REGULATIONS GOVERNING THE PRACTICE OF DENTAL HYGIENE IN THE STATE;

(V) IF THE DENTAL HYGIENIST PROVIDES A NOTARIZED AFFIDAVIT TO THE BOARD AGREEING TO DONATE DENTAL HYGIENE SERVICES WITHOUT COMPENSATION FOR A ~~BONA FIDE CHARITABLE ORGANIZATION~~ TEMPORARY DENTAL CLINIC THAT SATISFIES THE REQUIREMENTS OF SUBSECTION (I) OF THIS SECTION;

(VI) IF THE DENTAL HYGIENIST PROVIDES DOCUMENTATION AS REQUIRED BY THE BOARD EVIDENCING THAT THE DENTAL HYGIENIST IS COVERED BY MALPRACTICE INSURANCE;

(VII) IF THE DENTAL HYGIENIST DOES NOT OTHERWISE PRACTICE DENTAL HYGIENE FOR PROFIT IN THE STATE; AND

(VIII) IF THE DENTAL HYGIENIST PROVIDES VERIFICATION OF CURRENT CARDIOPULMONARY RESUSCITATION CERTIFICATION.

(2) A DENTAL HYGIENIST WHO HOLDS A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE MAY ONLY PROVIDE SERVICES AUTHORIZED UNDER THE MARYLAND DENTISTRY ACT AND THE REGULATIONS ADOPTED BY THE BOARD.

(3) A DENTAL HYGIENIST WHO HOLDS A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE MAY NOT:

(I) ADMINISTER LOCAL ANESTHESIA; OR

(II) ADMINISTER, MAINTAIN, OR MONITOR NITROUS OXIDE OXYGEN.

(4) WHILE IT IS EFFECTIVE, A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE ISSUED UNDER THIS TITLE AUTHORIZES THE LICENSEE TO PRACTICE DENTAL HYGIENE UNDER THE GENERAL SUPERVISION OF A DENTIST WHO:

(I) IS ON THE PREMISES;

(II) EXAMINES THE PATIENT AT ANY TIME DURING THE TREATMENT; AND

(III) IS AVAILABLE FOR PERSONAL CONSULTATION WHILE THE SERVICES ARE BEING PERFORMED.

(5) A DENTAL HYGIENIST MAY PERFORM AN ASSESSMENT OF DENTAL NEEDS AND PROVIDE DENTAL HYGIENE SERVICES PRIOR TO AN EXAMINATION BY A SUPERVISING DENTIST.

(6) THIS SUBSECTION MAY NOT BE CONSTRUED TO:

(I) REQUIRE A PRELIMINARY DENTAL EXAMINATION OR TREATMENT BY A DENTAL HYGIENIST; OR

(II) PROHIBIT A SUPERVISING DENTIST FROM EITHER EXAMINING A PATIENT OR PROVIDING TREATMENT TO A PATIENT PRIOR TO TREATMENT BY A DENTAL HYGIENIST.

(7) THE BOARD MAY DENY A TEMPORARY VOLUNTEER LICENSE TO PRACTICE DENTAL HYGIENE ON THE GROUNDS PROVIDED UNDER § 4–315 OF THIS SUBTITLE.

(8) A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE ISSUED TO A DENTAL HYGIENIST UNDER THIS SECTION SHALL BE ISSUED FOR THE DURATION OF THE TEMPORARY DENTAL CLINIC ONLY AND MAY NOT BE RENEWED.

(9) THE BOARD MAY ISSUE A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE TO A DENTAL HYGIENIST WHO PREVIOUSLY HELD A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE IF THE DENTAL HYGIENIST APPLIES FOR A NEW LICENSE AND SATISFIES THE REQUIREMENTS OF THIS SUBTITLE.

~~(9)~~ (10) THE BOARD MAY NOT REQUIRE CONTINUING EDUCATION AS A CONDITION FOR THE ISSUANCE OF A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE.

(I) (1) WHILE IT IS EFFECTIVE, A TEMPORARY DENTAL CLINIC PERMIT ISSUED TO A BONA FIDE CHARITABLE ORGANIZATION UNDER THIS TITLE AUTHORIZES THE PERMIT HOLDER TO UTILIZE HOLDERS OF A TEMPORARY VOLUNTEER DENTIST'S LICENSE OR A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE TO PROVIDE DENTAL SERVICES TO THE POOR,

ELDERLY, OR DISABLED AT A TEMPORARY DENTAL CLINIC THAT IS OPERATED BY THE BONA FIDE CHARITABLE ORGANIZATION.

(2) THE BOARD SHALL ISSUE A TEMPORARY DENTAL CLINIC PERMIT TO A BONA FIDE CHARITABLE ORGANIZATION THAT MEETS THE REQUIREMENTS OF THIS SUBSECTION.

(3) A TEMPORARY DENTAL CLINIC PERMIT ISSUED TO A BONA FIDE CHARITABLE ORGANIZATION UNDER THIS TITLE SHALL BE ISSUED FOR THE DURATION OF THE DENTAL CLINIC ONLY AND MAY NOT BE RENEWED.

(4) THE BOARD MAY ISSUE A TEMPORARY DENTAL CLINIC PERMIT TO A BONA FIDE CHARITABLE ORGANIZATION THAT PREVIOUSLY HELD A TEMPORARY DENTAL CLINIC PERMIT IF THE BONA FIDE CHARITABLE ORGANIZATION APPLIES FOR A NEW PERMIT AND SATISFIES THE REQUIREMENTS OF THIS SUBTITLE.

~~(4)~~ (5) A BONA FIDE CHARITABLE ORGANIZATION THAT CONDUCTS A TEMPORARY DENTAL CLINIC UNDER THIS TITLE MAY NOT BE CONSTRUED TO BE PRACTICING DENTISTRY AS DEFINED IN § 4–101 OF THIS TITLE.

~~(5)~~ (6) (I) THE STATE, A LOCAL GOVERNMENT, OR A LOCAL HEALTH DEPARTMENT THAT PROVIDES DENTAL SERVICES TO THE POOR, ELDERLY, OR DISABLED:

1. MAY NOT BE REQUIRED BY THE BOARD TO SEEK AUTHORIZATION UNDER THIS TITLE TO PROVIDE THE SERVICES; AND

2. SHALL PROVIDE WRITTEN NOTICE TO THE BOARD OF ITS INTENTION TO PROVIDE DENTAL SERVICES TO THE POOR, ELDERLY, OR DISABLED AT LEAST 60 DAYS PRIOR TO THE DATE THE SERVICES ARE TO BE PROVIDED.

(II) A HOLDER OF AN OUT–OF–STATE LICENSE TO PRACTICE DENTISTRY OR DENTAL HYGIENE WHO WOULD LIKE TO PROVIDE DENTAL SERVICES SPONSORED BY THE STATE, A LOCAL GOVERNMENT, OR A LOCAL HEALTH DEPARTMENT SHALL OBTAIN A TEMPORARY VOLUNTEER DENTIST'S LICENSE OR TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE AS PROVIDED IN THIS TITLE BEFORE PROVIDING THE DENTAL SERVICES.

~~(6)~~ (7) A HOLDER OF A TEMPORARY DENTAL CLINIC PERMIT SHALL HAVE:

(I) A MEDICAL EMERGENCY PLAN;

(II) ADEQUATE EQUIPMENT, INCLUDING PORTABLE EQUIPMENT WHERE APPROPRIATE, AND APPROPRIATE ARMAMENTARIUM AVAILABLE FOR THE APPROPRIATE DELIVERY OF DENTAL SERVICES; AND

(III) ADEQUATE SAFEGUARDS TO PROTECT THE HEALTH AND SAFETY OF PATIENTS.

~~(7)~~ (8) THE BOARD MAY:

(I) ENTER AND INSPECT A TEMPORARY DENTAL CLINIC IN ORDER TO CARRY OUT A DUTY UNDER THIS TITLE; AND

(II) CONDUCT AN INVESTIGATION OF A TEMPORARY DENTAL CLINIC OR A HOLDER OF A TEMPORARY VOLUNTEER DENTIST'S LICENSE OR A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE PROVIDING DENTAL SERVICES AT THE TEMPORARY DENTAL CLINIC.

[(g)**] (J)** While it is effective, a teacher's license to practice dental hygiene issued under this title authorizes the licensee to:

(1) Teach dental hygiene only at the institution named on the license; and

(2) Practice dental hygiene under the general supervision of a licensed dentist with the institution named on the license.

[(h)**] (K)** (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Contractual employee" means a dental hygienist who has an annual contract to practice dental hygiene an average of at least 8 hours per week in a facility specified under paragraph (3)(i) of this subsection.

(iii) "Facility" includes a program operated within a facility that is specified under paragraph (3)(i) of this subsection.

(iv) "Federally qualified health center" has the meaning stated in 42 U.S.C. § 254b(a).

(v) "Federally qualified health center look–alike" has the meaning stated in 42 U.S.C. § 1396d(l)(2)(B).

(vi) "General supervision" means supervision of a dental hygienist by a dentist, where the dentist may or may not be present when the dental hygienist performs the dental hygiene procedures.

(2) (i) While effective, a general license to practice dental hygiene issued under this title authorizes the licensee to practice dental hygiene and apply sealants or fluoride agents such as professional topical fluoride treatments, mouth rinse, or varnish:

1. Under general supervision in accordance with this subsection; and

2. In a facility specified under paragraph (3)(i) of this subsection that complies with the requirements of this subsection.

(ii) This subsection may not be construed to:

1. Authorize a dental hygienist to practice dental hygiene independent of a supervising dentist;

2. Prohibit a dentist from being available for personal consultation or on the premises where a dental hygienist is practicing; or

3. Require a waiver under subsection **[**(e)**]** **(F)** of this section.

(3) (i) While it is effective, a general license to practice dental hygiene issued under this title authorizes the licensee to practice dental hygiene under general supervision in:

1. A dental facility owned and operated by the federal, the State, or a local government;

2. A public health department or public school of the State or a county;

3. A facility in which a program licensed by the Department is operating;

4. A facility owned and operated by the Department of Juvenile Services;

5. A facility owned and operated by the State or a local government that provides medical care to the poor, elderly, or handicapped;

6. A facility in which a federally qualified health center or a federally qualified health center look–alike is located; or

7. A facility in which a State licensed Head Start Program or Early Head Start Program operates.

(ii) Before a facility may allow a dental hygienist authorized to practice dental hygiene under general supervision in accordance with this subsection to practice in the facility, the facility shall report to the Board:

1. That the facility is operating under general supervision; and

2. The identity of each supervising dentist and each dental hygienist.

(4) A facility in which a dental hygienist is authorized to practice under the general supervision of a licensed dentist in accordance with this subsection shall ensure that:

(i) The supervising dentist for the facility:

1. Holds an active general license to practice dentistry in the State;

2. Holds a current certificate evidencing health provider level C proficiency, or its equivalent, in cardiopulmonary resuscitation; and

3. Has at least 2 years of active clinical practice in direct patient care;

(ii) Each dental hygienist authorized to practice under the general supervision of a licensed dentist in accordance with this subsection:

1. Holds an active general license to practice dental hygiene in the State;

2. Holds a current certificate evidencing health provider level C proficiency, or its equivalent, in cardiopulmonary resuscitation;

3. Has at least 2 years of active clinical practice in direct patient care; and

4. Is a permanent or contractual employee of the federal government, a state or local government, or a federally qualified health center;

(iii) The facility has:

1. A medical emergency plan;

2. Adequate equipment, including portable equipment where appropriate and appropriate armamentarium, available for the appropriate delivery of dental hygiene services; and

3. Adequate safeguards to protect the patient's health and safety;

(iv) A recall patient who has been examined by a dental hygienist practicing under the general supervision of a licensed dentist will be scheduled for an oral examination every 6 months, or as otherwise recommended by the supervising dentist;

(v) A dental hygienist practicing under the general supervision of a licensed dentist ascertains before treating a recall patient that there has been no change in the patient's medical history;

(vi) A dental hygienist consults with the supervising dentist, the patient's dentist, or a treating physician before proceeding with treatment if there is a change in the patient's medical history;

(vii) Adequate facilities and equipment are available for the delivery of dental hygiene services other than fluoride rinse programs; and

(viii) Reports to the Board any changes in the status of the facility's general supervision, any supervising dentist, or any dental hygienist within 30 days after the change.

[(i)**] (L)** (1) In this subsection, "private dental office" means a dental office owned and operated by:

(i) A licensed dentist; or

(ii) A professional corporation, partnership, limited liability company, or limited liability partnership owned and controlled by a licensed dentist.

(2) While it is effective, a general license to practice dental hygiene issued under this title authorizes the licensee to practice dental hygiene under the general supervision of a licensed dentist in a private dental office.

(3) A private dental office in which a dental hygienist is authorized to practice under the general supervision of a licensed dentist shall ensure that:

(i) The supervising dentist holds an active license to practice dentistry in this State;

(ii) The dental hygienist holds an active license to practice dental hygiene in this State;

(iii) The dental hygienist has at least 1,500 hours of dental hygiene clinical practice in direct patient care; and

(iv) There is a written agreement between the supervising dentist and the dental hygienist practicing under general supervision that clearly sets forth the terms and conditions under which the dental hygienist may practice, including a statement that the dental hygienist may provide dental hygiene services without the supervising dentist on the premises.

(4) A dental hygienist may perform authorized dental hygiene services without the supervising dentist on the premises only if:

(i) After the supervising dentist examines and evaluates a patient, the prescribed and authorized treatment to be provided by the dental hygienist is written in the patient's records;

(ii) 1. Treatments authorized by a supervising dentist to be provided by the dental hygienist are rendered no later than 7 months from the date the patient was examined and evaluated by the supervising dentist; and

2. Upon expiration of a prescription or prescribed treatment, the supervising dentist examines and reevaluates the patient before writing a new prescription and authorization for treatment;

(iii) Prior to an appointment, the patient or the custodial parent or legal guardian of a minor or incompetent adult shall:

1. Be informed that a dental hygienist will be providing services previously prescribed by a dentist who will not be on the premises during the appointment; and

2. Consent to receiving the dental hygiene services;

(iv) Written emergency procedures are in place and the dental hygienist is trained to implement the emergency procedures;

(v) A designated licensed dentist is available for consultation with the dental hygienist; and

(vi) The number of unsupervised clinical hours worked by a supervised dental hygienist in any given 3–month period is less than 60 percent of the dental hygienist's total hours worked during that 3–month period.

(5) A supervising dentist may not employ more than two dental hygienists to work under the dentist's general supervision at any given time.

[(j)**] (M)** (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Assisted living program" has the meaning stated in § 19–1801 of the Health – General Article.

(iii) "General supervision" means supervision of a dental hygienist by a dentist, where the dentist may or may not be present when the dental hygienist performs the dental hygiene procedures.

(iv) "Long–term care facility" means:

1. A nursing home; or

2. An assisted living program.

(v) "Nursing home" has the meaning stated in § 19–1401 of the Health – General Article.

(2) (i) While it is effective, a general license to practice dental hygiene issued under this title authorizes the licensee to practice dental hygiene under the general supervision of a licensed dentist in a long–term care facility in accordance with this subsection.

(ii) This subsection may not be construed to:

1. Authorize a dental hygienist to practice dental hygiene independent of a supervising dentist;

2. Prohibit a dentist from being available for personal consultation or on the premises where a dental hygienist is practicing;

3. Prohibit a dental hygienist, without the supervision of a dentist, from performing a preliminary dental examination with subsequent referral to a dentist; or

4. Require a waiver under subsection **[**(e)**] (F)** of this section.

(3) Before a dental hygienist is authorized to practice dental hygiene under general supervision in a long–term care facility in accordance with this subsection, the dental hygienist shall:

(i) Hold an active license to practice dental hygiene in the State;

(ii) Hold a current certificate evidencing health provider level C proficiency, or its equivalent, in cardiopulmonary resuscitation;

(iii) Have at least 2 years of active clinical practice in direct patient care; and

(iv) Ensure that the long–term care facility where the dental hygienist will practice under general supervision has:

1. A written medical emergency plan in place;

2. Adequate equipment, including portable equipment and appropriate armamentarium, available for the appropriate delivery of dental hygiene services; and

3. Adequate safeguards to protect the patient's health and safety.

(4) Before a dental hygienist is authorized to practice dental hygiene under general supervision in a long–term care facility in accordance with this subsection, the supervising dentist shall:

(i) Hold an active general license to practice dentistry in the State;

(ii) Hold a current certificate evidencing health provider level C proficiency, or its equivalent, in cardiopulmonary resuscitation; and

(iii) Have at least 2 years of active clinical practice in direct patient care.

(5) A dental hygienist practicing under the general supervision of a licensed dentist in a long–term care facility and performing an authorized dental hygiene service for a patient's initial appointment shall:

(i) Have a written agreement between the supervising dentist and the dental hygienist that clearly sets forth the terms and conditions under which the dental hygienist may practice, including a statement that the dental hygienist may provide dental hygiene services without the supervising dentist on the premises;

(ii) Ensure that the supervising dentist is available for consultation with the dental hygienist:

1. In person;

2. By telephone; or

3. Electronically;

(iii) Consult with the supervising dentist or a treating physician before proceeding with initial treatment if there is a change in a recall patient's medical history;

(iv) Assess the appropriate recall interval based on the individual needs of the patient, or as otherwise recommended by the supervising dentist;

(v) Limit dental hygiene tasks and procedures to:

1. Toothbrush prophylaxis;

2. Application of fluoride;

3. Dental hygiene instruction;

4. Assessment of the patient's apparent need for further evaluation by a dentist in order to diagnose the presence of dental disease; and

5. Other duties as may be delegated, verbally or in writing, by the supervising dentist; and

(vi) Submit findings of the initial assessment to the supervising dentist for a determination of future treatment.

(6) A dental hygienist may perform subsequent authorized dental hygiene services without the supervising dentist on the premises only if:

(i) The supervising dentist examines the patient and authorizes in the patient's record a prescription of specific treatment to be provided by the dental hygienist;

(ii) An authorized treatment is provided by the dental hygienist as soon as possible, but no later than 7 months from the date the patient was examined by the supervising dentist; and

(iii) Upon expiration of a prescribed treatment, the supervising dentist is responsible for determining future protocols for the treatment of the patient.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 497

(House Bill 354)

AN ACT concerning

~~Health Occupations – Temporary Volunteer Dentist's License, Temporary Volunteer Dental Hygienist's License, and Temporary Dental Clinic Permit~~
State Board of Dental Examiners – Dentists and Dental Hygienists – Licenses, Temporary Volunteer Licenses, and Temporary Dental Clinic Permits

FOR the purpose of establishing a temporary volunteer dentist's license, a temporary volunteer dental hygienist's license, and a temporary dental clinic permit under the State Board of Dental Examiners; altering a certain qualification for certain dentists and dental hygienists ~~licensed in another state to be granted a license in this~~ *for a certain license to practice dentistry or practice dental hygiene in the* State; establishing certain procedures for dentists, dental hygienists, and bona fide charitable organizations to apply for certain licenses and permits; establishing the scope of practice of certain licenses; prohibiting the Board from requiring continuing education as a condition for the issuance of certain licenses; requiring temporary dental clinics to have a medical emergency plan, certain equipment, and certain safeguards; specifying certain powers of the Board; altering certain definitions; defining a certain term; making a stylistic change; and generally relating to ~~the establishment of a temporary volunteer dentist's license, a temporary volunteer dental hygienist's license, and a temporary dental clinic permit~~ *the State Board of Dental Examiners and dentist and dental hygienist licenses, temporary volunteer licenses, and temporary dental clinic permits*.

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 4–101, 4–304, 4–306(b), and 4–308
Annotated Code of Maryland
(2009 Replacement Volume and 2010 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.

(b) "Board" means the State Board of Dental Examiners.

(c) "Dental appliance" means any:

(1) Oral prosthesis;

(2) Orthodontic appliance;

(3) Regulatory appliance;

(4) Supportive appliance; or

(5) Other intraoral appliance or restoration.

(d) "Dental hygienist" means an individual, other than a dentist, who practices dental hygiene.

(e) "Dental laboratory" means any commercial laboratory or workroom in which a person engages in dental laboratory work.

(f) "Dental laboratory work" means making, repairing, or altering a dental appliance extraorally.

(g) "Dentist" means an individual who practices dentistry.

(h) (1) "License" means, unless the context requires otherwise, a license issued by the Board to:

(i) Practice dentistry; or

(ii) Practice dental hygiene.

(2) "License" includes, unless the context requires otherwise:

(i) A general license to practice dentistry;

(ii) A limited license to practice dentistry;

(iii) A teacher's license to practice dentistry;

(iv) A general license to practice dental hygiene;

(v) A teacher's license to practice dental hygiene;

(vi) A retired volunteer dentist's license to practice dentistry;

(vii) A retired volunteer dental hygienist's license to practice dental hygiene;

(viii) A volunteer dentist's license to practice dentistry; **[**and**]**

(ix) A volunteer dental hygienist's license to practice dental hygiene**;**

(X) A TEMPORARY VOLUNTEER DENTIST'S LICENSE TO PRACTICE DENTISTRY; AND

(XI) A TEMPORARY DENTAL HYGIENIST'S LICENSE TO PRACTICE DENTAL HYGIENE.

(i) (1) "Licensed dental hygienist" means, unless the context requires otherwise, a dental hygienist who is licensed by the Board to practice dental hygiene.

(2) "Licensed dental hygienist" includes, unless the context requires otherwise, a holder of:

(i) A general license to practice dental hygiene;

(ii) A teacher's license to practice dental hygiene;

(iii) A retired volunteer dental hygienist's license to practice dental hygiene; **[**or**]**

(iv) A volunteer dental hygienist's license to practice dental hygiene**; OR**

(V) A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE TO PRACTICE DENTAL HYGIENE.

(j) (1) "Licensed dentist" means, unless the context requires otherwise, a dentist who is licensed by the Board to practice dentistry.

(2) "Licensed dentist" includes, unless the context requires otherwise, a holder of:

(i) A general license to practice dentistry;

(ii) A limited license to practice dentistry;

(iii) A teacher's license to practice dentistry;

(iv) A retired volunteer dentist's license to practice dentistry; **[**or**]**

(v) A volunteer dentist's license to practice dentistry**; OR**

(VI) A TEMPORARY VOLUNTEER DENTIST'S LICENSE TO PRACTICE DENTISTRY.

(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 of this title; or

(9) Perform any other intraoral function that the Board authorizes by a rule or regulation adopted under § 4–206 of this title.

(l) "Practice dentistry" means to:

(1) Be a manager, a proprietor, or a conductor of or an operator in any place in which a dental service or dental operation is performed intraorally;

(2) Perform or attempt to perform any intraoral dental service or intraoral dental operation;

(3) Diagnose, treat, or attempt to diagnose or treat any disease, injury, malocclusion, or malposition of a tooth, gum, or jaw, or structures associated with a tooth, gum, or jaw if the service, operation, or procedure is included in the curricula of an accredited dental school or in an approved dental residency program of an accredited hospital or teaching institution;

(4) Perform or offer to perform dental laboratory work;

(5) Place or adjust a dental appliance in a human mouth; or

(6) Administer anesthesia for the purposes of dentistry and not as a medical specialty.

(m) Except as provided in § **[**4–308(e)(2)**]** **4–308(F)(2)** of this title, "supervision" means supervision of a dental hygienist by a dentist, where the dentist may or may not be present when the dental hygienist performs the dental hygiene procedures but is available on the premises.

(N) "TEMPORARY DENTAL CLINIC PERMIT" MEANS, UNLESS THE CONTEXT REQUIRES OTHERWISE, A TEMPORARY PERMIT ISSUED BY THE BOARD TO A BONA FIDE CHARITABLE ORGANIZATION TO PROVIDE DENTAL SERVICES TO THE POOR, ELDERLY, OR DISABLED AT A DENTAL CLINIC.

[(n)**] (O)** "Third party" means any person who collects premiums, assumes financial risks, pays claims, or provides administrative services relating to any:

(1) Insurance policy;

(2) Insurance contract;

(3) Health prepayment contract;

(4) Health care plan; or

(5) Nonprofit health service plan contract.

4–304.

(a) To apply for a license, an applicant shall:

(1) Submit an application to the Board on the form that the Board requires; and

(2) Pay to the Board an application fee set by the Board.

(b) In addition to the other requirements of this section, an applicant for a limited license to practice dentistry shall submit to the Board a written request, from the hospital, sanatorium, dental school, or public health program to which the practice is to be limited, that the license be issued.

(c) To apply for a retired volunteer dentist's license **[**or**],** a volunteer dentist's license**, OR A TEMPORARY VOLUNTEER DENTIST'S LICENSE** to practice dentistry, an applicant:

(1) Shall submit an application to the Board on the form that the Board requires; and

(2) May not be required to pay an application fee.

(d) (1) At least 30 days before the examination, an applicant for a general license to practice dental hygiene shall submit the application to the Board.

(2) In addition to the other requirements of this section, an applicant for a license to practice dental hygiene shall submit to the Board:

(i) Satisfactory evidence of graduation from a dental hygiene program accredited by the American Dental Association Commission on Dental Accreditation; and

(ii) Any other credentials that the Board requires.

(e) To apply for a retired volunteer dental hygienist's license **[**or**],** a volunteer dental hygienist's license**, OR A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE** to practice dental hygiene, an applicant:

(1) Shall submit an application to the Board on the form that the Board requires; and

(2) May not be required to pay an application fee.

(F) TO APPLY FOR A TEMPORARY DENTAL CLINIC PERMIT, AN APPLICANT:

(1) SHALL SUBMIT AN APPLICATION ON THE FORM THAT THE BOARD REQUIRES; AND

(2) MAY NOT BE REQUIRED TO PAY AN APPLICATION FEE.

4–306.

(b) (1) (i) A dentist licensed in any other state who has passed a regional board shall be granted a license in this State if the applicant passes the following examinations given by or designated by the Board:

1. A comprehensive examination on applied clinical diagnosis and treatment planning; and

2. A law examination.

(ii) A dentist licensed in any other state who has not passed a regional board shall be granted a license in this State if:

1. For the 5 preceding years the dentist has been actively engaged in practicing dentistry **FOR AT LEAST 850 HOURS ON AVERAGE PER YEAR**; and

2. The applicant passes the following examinations given by or designated by the Board:

A. A comprehensive examination on applied clinical diagnosis and treatment planning; and

B. A law examination.

(2) (i) A dental hygienist licensed in any other state who has passed a regional board shall be granted a license in this State if the applicant passes an examination given by the Board.

(ii) A dental hygienist licensed in any other state who has not passed a regional board shall be granted a license in this State if:

1. For the 3 preceding years the dental hygienist has been actively engaged in practicing dental hygiene **FOR AT LEAST 150 HOURS ON AVERAGE PER YEAR**; and

2. The applicant passes an examination given by or designated by the Board.

4–308.

(a) A general license to practice dentistry issued under this title authorizes the licensee to practice dentistry while the license is effective.

(b) While it is effective, a limited license to practice dentistry issued under this title authorizes the licensee to practice dentistry, including as an intern or a resident:

(1) Only for the institution or public health program named on the license; and

(2) Only on patients of the institution or public health program named on the license.

(c) While it is effective, a retired volunteer dentist's license or a volunteer dentist's license to practice dentistry issued under this title authorizes the licensee to practice dentistry:

(1) Only in a dental office, dental clinic, ambulatory care facility, or hospital;

(2) Only for an entity providing medical care to the poor, elderly, or **[**handicapped**]** **DISABLED** that is operated by:

(i) The State or a local government;

(ii) A bona fide charitable organization; or

(iii) Any other entity authorized under regulations adopted by the Board;

(3) If the dentist signs a written statement agreeing to donate at least 100 hours of dental services without compensation in a facility that satisfies the requirements of items (1) and (2) of this subsection;

(4) If the dentist provides documentation as required by the Board which evidences that the licensee is covered by malpractice insurance; and

(5) If the dentist does not otherwise practice dentistry for profit in Maryland.

(D) (1) WHILE IT IS EFFECTIVE, A TEMPORARY VOLUNTEER DENTIST'S LICENSE ISSUED UNDER THIS TITLE AUTHORIZES THE LICENSEE TO PRACTICE DENTISTRY:

(I) ONLY IN A TEMPORARY DENTAL CLINIC PROVIDING MEDICAL CARE TO THE POOR, ELDERLY, OR DISABLED THAT IS OPERATED BY:

1. A BONA FIDE CHARITABLE ORGANIZATION;

2. THE STATE OR A LOCAL GOVERNMENT; OR

3. A LOCAL HEALTH DEPARTMENT;

(II) 1. IF THE DENTIST HOLDS A GENERAL LICENSE TO PRACTICE DENTISTRY IN ANOTHER STATE THAT PERMITS CLINICAL PRACTICE AND THE DENTIST IS NOT SUBJECT TO CLINICAL RESTRICTIONS; AND

2. THE DENTIST HAS ~~PASSED~~:

A. ~~THE~~ *PASSED THE* NORTH EAST BOARD REGIONAL CLINICAL EXAMINATION; OR

B. ~~HAS SUBMITTED~~ *SUBMITTED* TO THE BOARD A NOTARIZED AFFIDAVIT OR OTHER EVIDENCE SATISFACTORY TO THE BOARD INDICATING THAT FOR THE 5 YEARS PRECEDING APPLICATION, THE APPLICANT HAS ACTIVELY ENGAGED IN PRACTICING DENTISTRY FOR AT LEAST 850 HOURS ON AVERAGE PER YEAR;

(III) IF THE DENTIST HAS FULFILLED ANY REQUIREMENTS OF THE BOARD RELATING TO KNOWLEDGE OF THE REGULATIONS ADOPTED BY THE BOARD AND THE LAWS CONCERNING THE PRACTICE OF DENTISTRY IN THE STATE;

(IV) IF THE DENTIST PROVIDES A NOTARIZED AFFIDAVIT TO THE BOARD AGREEING TO DONATE DENTAL SERVICES WITHOUT COMPENSATION FOR A ~~BONA FIDE CHARITABLE ORGANIZATION~~ TEMPORARY DENTAL CLINIC THAT SATISFIES THE REQUIREMENTS OF SUBSECTION (I) OF THIS SECTION;

(V) IF THE DENTIST PROVIDES DOCUMENTATION AS REQUIRED BY THE BOARD THAT EVIDENCES THAT THE DENTIST IS COVERED BY MALPRACTICE INSURANCE;

(VI) IF THE DENTIST DOES NOT OTHERWISE PRACTICE DENTISTRY FOR PROFIT IN THE STATE; AND

(VII) IF THE DENTIST PROVIDES VERIFICATION OF CURRENT CARDIOPULMONARY RESUSCITATION CERTIFICATION.

(2) A DENTIST WHO HOLDS A TEMPORARY VOLUNTEER DENTIST'S LICENSE MAY NOT ADMINISTER, MAINTAIN, OR MONITOR GENERAL ANESTHESIA OR SEDATION.

(3) A DENTIST WHO HOLDS A TEMPORARY VOLUNTEER DENTIST'S LICENSE MAY ONLY PROVIDE SERVICES AUTHORIZED UNDER THE MARYLAND DENTISTRY ACT AND THE REGULATIONS ADOPTED BY THE BOARD.

(4) A DENTIST WHO HOLDS A TEMPORARY VOLUNTEER DENTIST'S LICENSE OR THE TEMPORARY DENTAL CLINIC IN WHICH THE DENTIST IS PROVIDING SERVICES SHALL PROVIDE A FORM TO A PATIENT AT THE CONCLUSION OF TREATMENT THAT CONTAINS:

(I) A SUMMARY OF THE SERVICES THAT WERE PROVIDED TO THE PATIENT BY THE DENTIST AND, IF APPLICABLE, THE DENTAL HYGIENIST; AND

(II) INSTRUCTIONS FOR ANY RECOMMENDED FOLLOW–UP DENTAL CARE.

(5) THE BOARD MAY DENY A TEMPORARY VOLUNTEER DENTIST'S LICENSE ON THE GROUNDS PROVIDED UNDER § 4–315 OF THIS SUBTITLE.

(6) ~~(I)~~ A TEMPORARY VOLUNTEER DENTIST'S LICENSE ISSUED TO A DENTIST UNDER THIS TITLE SHALL BE ISSUED FOR THE DURATION OF THE TEMPORARY DENTAL CLINIC ONLY AND MAY NOT BE RENEWED.

~~**(II) THE BOARD MAY ISSUE ANOTHER TEMPORARY VOLUNTEER DENTIST'S LICENSE IF THE DENTIST APPLIES FOR THE LICENSE AND SATISFIES THE REQUIREMENTS OF THIS SUBSECTION.**~~

(7) THE BOARD MAY ISSUE A TEMPORARY VOLUNTEER DENTIST'S LICENSE TO A DENTIST WHO PREVIOUSLY HELD A TEMPORARY VOLUNTEER DENTIST'S LICENSE IF THE DENTIST APPLIES FOR A NEW LICENSE AND SATISFIES THE REQUIREMENTS OF THIS SUBTITLE.

~~(7)~~ *(8)* THE BOARD MAY NOT REQUIRE CONTINUING EDUCATION AS A CONDITION FOR THE ISSUANCE OF A TEMPORARY VOLUNTEER DENTIST'S LICENSE.

[(d)**] (E)** While it is effective, a teacher's license to practice dentistry issued under this title authorizes the licensee to practice dentistry at only the following institutions:

(1) The institution named on the license; and

(2) Other affiliated institutions as appropriate because of the specialized nature of the services to be performed.

[(e)**] (F)** (1) Except as provided in subsection **[**(h)**] (K)** of this section, while it is effective, a general license to practice dental hygiene issued under this title authorizes the licensee to practice dental hygiene:

(i) Under the supervision of a licensed dentist who is:

1. On the premises and available for personal consultation while the services are being performed; or

2. Not on the premises while authorized dental hygiene services are provided when the requirements of subsection **[**(i)**] (L)** of this section have been fully satisfied; and

(ii) Only in a:

1. Dental office;

2. Dental clinic;

3. Hospital;

4. School;

5. Charitable institution; or

6. Health maintenance organization certified by the State Insurance Commissioner.

(2) (i) The Board may waive, on a case by case basis only, the supervision requirements of this subsection for:

1. A dental facility owned and operated by the federal, the State, or a local government;

2. A health facility licensed by the Department of Health and Mental Hygiene;

3. A facility providing medical care to the poor, elderly, or handicapped that is owned and operated by:

A. The State or a local government; or

B. A bona fide charitable organization; or

4. Any other setting authorized under regulations adopted by the Board.

(ii) A waiver is not required to practice dental hygiene under general supervision in accordance with subsection **[**(h)**] (K)** of this section.

(3) The Board may grant a waiver under paragraph (2) of this subsection if:

(i) The facility requesting the waiver has submitted a written application;

(ii) The facility requesting the waiver has submitted a medical emergency plan of action at the time of application; and

(iii) The Board finds that:

1. Good cause exists to justify the granting of the waiver;

2. Adequate facilities and equipment, including portable equipment where appropriate and appropriate armamentarium, are available for the appropriate delivery of dental hygiene services; and

3. Adequate safeguards are present to protect the patient's health and safety.

(4) (i) The Board, upon written request or its own motion, may conduct a public informational meeting on any waiver application.

(ii) The Board shall maintain records of all waiver applications and the criteria and basis for its action on each application.

(iii) The Board shall have the power to inspect or review any facility, location, person, or entity applying for, covered by, or acting under a waiver.

(5) (i) Except as provided under subparagraph (ii) of this paragraph, the Board shall accept or deny a waiver under paragraph (2) of this subsection within 60 calendar days of the receipt of the application for the waiver or it shall be deemed to have been accepted.

(ii) If extraordinary circumstances exist, the Board shall accept or deny a waiver under paragraph (2) of this subsection within 90 calendar days of the receipt of the application for the waiver or it shall be deemed to have been accepted.

(6) Any changes in the procedures or personnel of a facility with a waiver granted under this subsection shall be reported to the Board within 15 business days after the change.

[(f)**] (G)** While it is effective, a retired volunteer dental hygienist's license or a volunteer hygienist's license to practice dental hygiene issued under this title authorizes the licensee to practice dental hygiene:

(1) Only in a dental office, dental clinic, ambulatory care facility, or hospital;

(2) Only for an entity providing medical care to the poor, elderly, or handicapped that is operated by:

(i) The State or a local government;

(ii) A bona fide charitable organization; or

(iii) Any other entity authorized under regulations adopted by the Board;

(3) If the dental hygienist signs a written statement agreeing to donate at least 100 hours of dental hygiene services without compensation in a facility that satisfies the requirements of items (1) and (2) of this subsection;

(4) If the dental hygienist provides documentation as required by the Board which evidences that the licensee is covered by malpractice insurance; and

(5) If the dental hygienist does not otherwise practice dental hygiene for profit in Maryland.

(H) (1) WHILE IT IS EFFECTIVE, A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE ISSUED UNDER THIS TITLE AUTHORIZES THE LICENSEE TO PRACTICE DENTAL HYGIENE:

(I) ONLY IN A TEMPORARY DENTAL CLINIC PROVIDING MEDICAL CARE TO THE POOR, ELDERLY, OR DISABLED THAT IS OPERATED BY:

1. A BONA FIDE CHARITABLE ORGANIZATION;

2. THE STATE OR A LOCAL GOVERNMENT; OR

3. A LOCAL HEALTH DEPARTMENT;

(II) IF THE DENTAL HYGIENIST HOLDS A GENERAL LICENSE TO PRACTICE DENTAL HYGIENE IN ANOTHER STATE THAT PERMITS CLINICAL PRACTICE AND THE DENTAL HYGIENIST IS NOT SUBJECT TO CLINICAL RESTRICTIONS;

(III) IN ADDITION TO HOLDING A GENERAL LICENSE TO PRACTICE DENTAL HYGIENE, IF THE DENTAL HYGIENIST:

1. PROVIDES DOCUMENTATION AS REQUIRED BY THE BOARD WHICH EVIDENCES THAT THE DENTAL HYGIENIST PASSED THE NORTH EAST REGIONAL CLINICAL EXAMINATION; OR

2. SUBMITS TO THE BOARD A NOTARIZED AFFIDAVIT OR OTHER EVIDENCE SATISFACTORY TO THE BOARD INDICATING THAT FOR THE 3 YEARS PRECEDING APPLICATION, THE DENTAL HYGIENIST HAS ACTIVELY

ENGAGED IN PRACTICING DENTAL HYGIENE FOR AT LEAST 150 HOURS ON AVERAGE PER YEAR;

(IV) IF THE DENTAL HYGIENIST HAS FULFILLED ANY REQUIREMENTS OF THE BOARD RELATED TO KNOWLEDGE OF THE LAWS AND REGULATIONS GOVERNING THE PRACTICE OF DENTAL HYGIENE IN THE STATE;

(V) IF THE DENTAL HYGIENIST PROVIDES A NOTARIZED AFFIDAVIT TO THE BOARD AGREEING TO DONATE DENTAL HYGIENE SERVICES WITHOUT COMPENSATION FOR A ~~BONA FIDE CHARITABLE ORGANIZATION~~ TEMPORARY DENTAL CLINIC THAT SATISFIES THE REQUIREMENTS OF SUBSECTION (I) OF THIS SECTION;

(VI) IF THE DENTAL HYGIENIST PROVIDES DOCUMENTATION AS REQUIRED BY THE BOARD EVIDENCING THAT THE DENTAL HYGIENIST IS COVERED BY MALPRACTICE INSURANCE;

(VII) IF THE DENTAL HYGIENIST DOES NOT OTHERWISE PRACTICE DENTAL HYGIENE FOR PROFIT IN THE STATE; AND

(VIII) IF THE DENTAL HYGIENIST PROVIDES VERIFICATION OF CURRENT CARDIOPULMONARY RESUSCITATION CERTIFICATION.

(2) A DENTAL HYGIENIST WHO HOLDS A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE MAY ONLY PROVIDE SERVICES AUTHORIZED UNDER THE MARYLAND DENTISTRY ACT AND THE REGULATIONS ADOPTED BY THE BOARD.

(3) A DENTAL HYGIENIST WHO HOLDS A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE MAY NOT:

(I) ADMINISTER LOCAL ANESTHESIA; OR

(II) ADMINISTER, MAINTAIN, OR MONITOR NITROUS OXIDE OXYGEN.

(4) WHILE IT IS EFFECTIVE, A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE ISSUED UNDER THIS TITLE AUTHORIZES THE LICENSEE TO PRACTICE DENTAL HYGIENE UNDER THE GENERAL SUPERVISION OF A DENTIST WHO:

(I) IS ON THE PREMISES;

(II) EXAMINES THE PATIENT AT ANY TIME DURING THE TREATMENT; AND

(III) IS AVAILABLE FOR PERSONAL CONSULTATION WHILE THE SERVICES ARE BEING PERFORMED.

(5) A DENTAL HYGIENIST MAY PERFORM AN ASSESSMENT OF DENTAL NEEDS AND PROVIDE DENTAL HYGIENE SERVICES PRIOR TO AN EXAMINATION BY A SUPERVISING DENTIST.

(6) THIS SUBSECTION MAY NOT BE CONSTRUED TO:

(I) REQUIRE A PRELIMINARY DENTAL EXAMINATION OR TREATMENT BY A DENTAL HYGIENIST; OR

(II) PROHIBIT A SUPERVISING DENTIST FROM EITHER EXAMINING A PATIENT OR PROVIDING TREATMENT TO A PATIENT PRIOR TO TREATMENT BY A DENTAL HYGIENIST.

(7) THE BOARD MAY DENY A TEMPORARY VOLUNTEER LICENSE TO PRACTICE DENTAL HYGIENE ON THE GROUNDS PROVIDED UNDER § 4–315 OF THIS SUBTITLE.

(8) ~~(I)~~ A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE ISSUED TO A DENTAL HYGIENIST UNDER THIS SECTION SHALL BE ISSUED FOR THE DURATION OF THE TEMPORARY DENTAL CLINIC ONLY AND MAY NOT BE RENEWED.

~~**(II) THE BOARD MAY ISSUE ANOTHER TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE IF THE DENTAL HYGIENIST APPLIES FOR THE LICENSE AND SATISFIES THE REQUIREMENTS OF THIS SUBSECTION.**~~

(9) THE BOARD MAY ISSUE A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE TO A DENTAL HYGIENIST WHO PREVIOUSLY HELD A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE IF THE DENTAL HYGIENIST APPLIES FOR A NEW LICENSE AND SATISFIES THE REQUIREMENTS OF THIS SUBTITLE.

~~(9)~~ *(10)* THE BOARD MAY NOT REQUIRE CONTINUING EDUCATION AS A CONDITION FOR THE ISSUANCE OF A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE.

(I) (1) WHILE IT IS EFFECTIVE, A TEMPORARY DENTAL CLINIC PERMIT ISSUED TO A BONA FIDE CHARITABLE ORGANIZATION UNDER THIS

TITLE AUTHORIZES THE PERMIT HOLDER TO UTILIZE HOLDERS OF A TEMPORARY VOLUNTEER DENTIST'S LICENSE OR A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE TO PROVIDE DENTAL SERVICES TO THE POOR, ELDERLY, OR DISABLED AT A TEMPORARY DENTAL CLINIC THAT IS OPERATED BY THE BONA FIDE CHARITABLE ORGANIZATION.

(2) THE BOARD SHALL ISSUE A TEMPORARY DENTAL CLINIC PERMIT TO A BONA FIDE CHARITABLE ORGANIZATION THAT MEETS THE REQUIREMENTS OF THIS SUBSECTION.

(3) ~~(I)~~ A TEMPORARY DENTAL CLINIC PERMIT ISSUED TO A BONA FIDE CHARITABLE ORGANIZATION UNDER THIS TITLE SHALL BE ISSUED FOR THE DURATION OF THE DENTAL CLINIC ONLY AND MAY NOT BE RENEWED.

~~**(II) THE BOARD MAY ISSUE ANOTHER TEMPORARY DENTAL CLINIC PERMIT TO A BONA FIDE CHARITABLE ORGANIZATION IF THE BONA FIDE CHARITABLE ORGANIZATION APPLIES FOR THE PERMIT AND SATISFIES THE REQUIREMENTS OF THIS SUBSECTION.**~~

(4) THE BOARD MAY ISSUE A TEMPORARY DENTAL CLINIC PERMIT TO A BONA FIDE CHARITABLE ORGANIZATION THAT PREVIOUSLY HELD A TEMPORARY DENTAL CLINIC PERMIT IF THE BONA FIDE CHARITABLE ORGANIZATION APPLIES FOR A NEW PERMIT AND SATISFIES THE REQUIREMENTS OF THIS SUBTITLE.

~~(4)~~ *(5)* A BONA FIDE CHARITABLE ORGANIZATION THAT CONDUCTS A TEMPORARY DENTAL CLINIC UNDER THIS TITLE MAY NOT BE CONSTRUED TO BE PRACTICING DENTISTRY AS DEFINED IN § 4–101 OF THIS TITLE.

~~(5)~~ *(6)* (I) THE STATE, A LOCAL GOVERNMENT, OR A LOCAL HEALTH DEPARTMENT THAT PROVIDES DENTAL SERVICES TO THE POOR, ELDERLY, OR DISABLED:

1. MAY NOT BE REQUIRED BY THE BOARD TO SEEK AUTHORIZATION UNDER THIS TITLE TO PROVIDE THE SERVICES; AND

2. SHALL PROVIDE WRITTEN NOTICE TO THE BOARD OF ITS INTENTION TO PROVIDE DENTAL SERVICES TO THE POOR, ELDERLY, OR DISABLED AT LEAST 60 DAYS PRIOR TO THE DATE THE SERVICES ARE TO BE PROVIDED.

(II) A HOLDER OF AN OUT–OF–STATE LICENSE TO PRACTICE DENTISTRY OR DENTAL HYGIENE WHO WOULD LIKE TO PROVIDE DENTAL

SERVICES SPONSORED BY THE STATE, A LOCAL GOVERNMENT, OR A LOCAL HEALTH DEPARTMENT SHALL OBTAIN A TEMPORARY VOLUNTEER DENTIST'S LICENSE OR TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE AS PROVIDED IN THIS TITLE BEFORE PROVIDING THE DENTAL SERVICES.

~~(6)~~ *(7)* A HOLDER OF A TEMPORARY DENTAL CLINIC PERMIT SHALL HAVE:

(I) A MEDICAL EMERGENCY PLAN;

(II) ADEQUATE EQUIPMENT, INCLUDING PORTABLE EQUIPMENT WHERE APPROPRIATE, AND APPROPRIATE ARMAMENTARIUM AVAILABLE FOR THE APPROPRIATE DELIVERY OF DENTAL SERVICES; AND

(III) ADEQUATE SAFEGUARDS TO PROTECT THE HEALTH AND SAFETY OF PATIENTS.

~~(7)~~ *(8)* THE BOARD MAY:

(I) ENTER AND INSPECT A TEMPORARY DENTAL CLINIC IN ORDER TO CARRY OUT A DUTY UNDER THIS TITLE; AND

(II) CONDUCT AN INVESTIGATION OF A TEMPORARY DENTAL CLINIC OR A HOLDER OF A TEMPORARY VOLUNTEER DENTIST'S LICENSE OR A TEMPORARY VOLUNTEER DENTAL HYGIENIST'S LICENSE PROVIDING DENTAL SERVICES AT THE TEMPORARY DENTAL CLINIC.

[(g)**] (J)** While it is effective, a teacher's license to practice dental hygiene issued under this title authorizes the licensee to:

(1) Teach dental hygiene only at the institution named on the license; and

(2) Practice dental hygiene under the general supervision of a licensed dentist with the institution named on the license.

[(h)**] (K)** (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Contractual employee" means a dental hygienist who has an annual contract to practice dental hygiene an average of at least 8 hours per week in a facility specified under paragraph (3)(i) of this subsection.

(iii) "Facility" includes a program operated within a facility that is specified under paragraph (3)(i) of this subsection.

(iv) "Federally qualified health center" has the meaning stated in 42 U.S.C. § 254b(a).

(v) "Federally qualified health center look–alike" has the meaning stated in 42 U.S.C. § 1396d(l)(2)(B).

(vi) "General supervision" means supervision of a dental hygienist by a dentist, where the dentist may or may not be present when the dental hygienist performs the dental hygiene procedures.

(2) (i) While effective, a general license to practice dental hygiene issued under this title authorizes the licensee to practice dental hygiene and apply sealants or fluoride agents such as professional topical fluoride treatments, mouth rinse, or varnish:

1. Under general supervision in accordance with this subsection; and

2. In a facility specified under paragraph (3)(i) of this subsection that complies with the requirements of this subsection.

(ii) This subsection may not be construed to:

1. Authorize a dental hygienist to practice dental hygiene independent of a supervising dentist;

2. Prohibit a dentist from being available for personal consultation or on the premises where a dental hygienist is practicing; or

3. Require a waiver under subsection **[**(e)**]** **(F)** of this section.

(3) (i) While it is effective, a general license to practice dental hygiene issued under this title authorizes the licensee to practice dental hygiene under general supervision in:

1. A dental facility owned and operated by the federal, the State, or a local government;

2. A public health department or public school of the State or a county;

3. A facility in which a program licensed by the Department is operating;

4. A facility owned and operated by the Department of Juvenile Services;

5. A facility owned and operated by the State or a local government that provides medical care to the poor, elderly, or handicapped;

6. A facility in which a federally qualified health center or a federally qualified health center look–alike is located; or

7. A facility in which a State licensed Head Start Program or Early Head Start Program operates.

(ii) Before a facility may allow a dental hygienist authorized to practice dental hygiene under general supervision in accordance with this subsection to practice in the facility, the facility shall report to the Board:

1. That the facility is operating under general supervision; and

2. The identity of each supervising dentist and each dental hygienist.

(4) A facility in which a dental hygienist is authorized to practice under the general supervision of a licensed dentist in accordance with this subsection shall ensure that:

(i) The supervising dentist for the facility:

1. Holds an active general license to practice dentistry in the State;

2. Holds a current certificate evidencing health provider level C proficiency, or its equivalent, in cardiopulmonary resuscitation; and

3. Has at least 2 years of active clinical practice in direct patient care;

(ii) Each dental hygienist authorized to practice under the general supervision of a licensed dentist in accordance with this subsection:

1. Holds an active general license to practice dental hygiene in the State;

2. Holds a current certificate evidencing health provider level C proficiency, or its equivalent, in cardiopulmonary resuscitation;

3. Has at least 2 years of active clinical practice in direct patient care; and

4. Is a permanent or contractual employee of the federal government, a state or local government, or a federally qualified health center;

(iii) The facility has:

1. A medical emergency plan;

2. Adequate equipment, including portable equipment where appropriate and appropriate armamentarium, available for the appropriate delivery of dental hygiene services; and

3. Adequate safeguards to protect the patient's health and safety;

(iv) A recall patient who has been examined by a dental hygienist practicing under the general supervision of a licensed dentist will be scheduled for an oral examination every 6 months, or as otherwise recommended by the supervising dentist;

(v) A dental hygienist practicing under the general supervision of a licensed dentist ascertains before treating a recall patient that there has been no change in the patient's medical history;

(vi) A dental hygienist consults with the supervising dentist, the patient's dentist, or a treating physician before proceeding with treatment if there is a change in the patient's medical history;

(vii) Adequate facilities and equipment are available for the delivery of dental hygiene services other than fluoride rinse programs; and

(viii) Reports to the Board any changes in the status of the facility's general supervision, any supervising dentist, or any dental hygienist within 30 days after the change.

[(i)**] (L)** (1) In this subsection, "private dental office" means a dental office owned and operated by:

(i) A licensed dentist; or

(ii) A professional corporation, partnership, limited liability company, or limited liability partnership owned and controlled by a licensed dentist.

(2) While it is effective, a general license to practice dental hygiene issued under this title authorizes the licensee to practice dental hygiene under the general supervision of a licensed dentist in a private dental office.

(3) A private dental office in which a dental hygienist is authorized to practice under the general supervision of a licensed dentist shall ensure that:

(i) The supervising dentist holds an active license to practice dentistry in this State;

(ii) The dental hygienist holds an active license to practice dental hygiene in this State;

(iii) The dental hygienist has at least 1,500 hours of dental hygiene clinical practice in direct patient care; and

(iv) There is a written agreement between the supervising dentist and the dental hygienist practicing under general supervision that clearly sets forth the terms and conditions under which the dental hygienist may practice, including a statement that the dental hygienist may provide dental hygiene services without the supervising dentist on the premises.

(4) A dental hygienist may perform authorized dental hygiene services without the supervising dentist on the premises only if:

(i) After the supervising dentist examines and evaluates a patient, the prescribed and authorized treatment to be provided by the dental hygienist is written in the patient's records;

(ii) 1. Treatments authorized by a supervising dentist to be provided by the dental hygienist are rendered no later than 7 months from the date the patient was examined and evaluated by the supervising dentist; and

2. Upon expiration of a prescription or prescribed treatment, the supervising dentist examines and reevaluates the patient before writing a new prescription and authorization for treatment;

(iii) Prior to an appointment, the patient or the custodial parent or legal guardian of a minor or incompetent adult shall:

1. Be informed that a dental hygienist will be providing services previously prescribed by a dentist who will not be on the premises during the appointment; and

2. Consent to receiving the dental hygiene services;

(iv) Written emergency procedures are in place and the dental hygienist is trained to implement the emergency procedures;

(v) A designated licensed dentist is available for consultation with the dental hygienist; and

(vi) The number of unsupervised clinical hours worked by a supervised dental hygienist in any given 3–month period is less than 60 percent of the dental hygienist's total hours worked during that 3–month period.

(5) A supervising dentist may not employ more than two dental hygienists to work under the dentist's general supervision at any given time.

[(j)**] (M)** (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Assisted living program" has the meaning stated in § 19–1801 of the Health – General Article.

(iii) "General supervision" means supervision of a dental hygienist by a dentist, where the dentist may or may not be present when the dental hygienist performs the dental hygiene procedures.

(iv) "Long–term care facility" means:

1. A nursing home; or

2. An assisted living program.

(v) "Nursing home" has the meaning stated in § 19–1401 of the Health – General Article.

(2) (i) While it is effective, a general license to practice dental hygiene issued under this title authorizes the licensee to practice dental hygiene under the general supervision of a licensed dentist in a long–term care facility in accordance with this subsection.

(ii) This subsection may not be construed to:

1. Authorize a dental hygienist to practice dental hygiene independent of a supervising dentist;

2. Prohibit a dentist from being available for personal consultation or on the premises where a dental hygienist is practicing;

3. Prohibit a dental hygienist, without the supervision of a dentist, from performing a preliminary dental examination with subsequent referral to a dentist; or

4. Require a waiver under subsection **[**(e)**]** **(F)** of this section.

(3) Before a dental hygienist is authorized to practice dental hygiene under general supervision in a long–term care facility in accordance with this subsection, the dental hygienist shall:

(i) Hold an active license to practice dental hygiene in the State;

(ii) Hold a current certificate evidencing health provider level C proficiency, or its equivalent, in cardiopulmonary resuscitation;

(iii) Have at least 2 years of active clinical practice in direct patient care; and

(iv) Ensure that the long–term care facility where the dental hygienist will practice under general supervision has:

1. A written medical emergency plan in place;

2. Adequate equipment, including portable equipment and appropriate armamentarium, available for the appropriate delivery of dental hygiene services; and

3. Adequate safeguards to protect the patient's health and safety.

(4) Before a dental hygienist is authorized to practice dental hygiene under general supervision in a long–term care facility in accordance with this subsection, the supervising dentist shall:

(i) Hold an active general license to practice dentistry in the State;

(ii) Hold a current certificate evidencing health provider level C proficiency, or its equivalent, in cardiopulmonary resuscitation; and

(iii) Have at least 2 years of active clinical practice in direct patient care.

(5) A dental hygienist practicing under the general supervision of a licensed dentist in a long–term care facility and performing an authorized dental hygiene service for a patient's initial appointment shall:

(i) Have a written agreement between the supervising dentist and the dental hygienist that clearly sets forth the terms and conditions under which the dental hygienist may practice, including a statement that the dental hygienist may provide dental hygiene services without the supervising dentist on the premises;

(ii) Ensure that the supervising dentist is available for consultation with the dental hygienist:

1. In person;

2. By telephone; or

3. Electronically;

(iii) Consult with the supervising dentist or a treating physician before proceeding with initial treatment if there is a change in a recall patient's medical history;

(iv) Assess the appropriate recall interval based on the individual needs of the patient, or as otherwise recommended by the supervising dentist;

(v) Limit dental hygiene tasks and procedures to:

1. Toothbrush prophylaxis;

2. Application of fluoride;

3. Dental hygiene instruction;

4. Assessment of the patient's apparent need for further evaluation by a dentist in order to diagnose the presence of dental disease; and

5. Other duties as may be delegated, verbally or in writing, by the supervising dentist; and

(vi) Submit findings of the initial assessment to the supervising dentist for a determination of future treatment.

(6) A dental hygienist may perform subsequent authorized dental hygiene services without the supervising dentist on the premises only if:

(i) The supervising dentist examines the patient and authorizes in the patient's record a prescription of specific treatment to be provided by the dental hygienist;

(ii) An authorized treatment is provided by the dental hygienist as soon as possible, but no later than 7 months from the date the patient was examined by the supervising dentist; and

(iii) Upon expiration of a prescribed treatment, the supervising dentist is responsible for determining future protocols for the treatment of the patient.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 498

(Senate Bill 584)

AN ACT concerning

Public Health – Cord Blood Transplant Program ~~Support Fund~~

FOR the purpose of establishing the Cord Blood Transplant Program ~~Support Fund;~~ in the Department of Health and Mental Hygiene for certain purposes; establishing the Cord Blood Transplant Center Support Fund; providing for the purpose of the Fund; requiring the Department ~~of Health and Mental Hygiene~~ to administer the Fund; specifying that the Fund is a special, nonlapsing fund that is not subject to a certain provision of law; requiring the State Treasurer to hold the fund separately and invest and reinvest money in the Fund in a certain manner; requiring the State Comptroller to account for the Fund; specifying that the Fund consists of certain money, and that investment earnings be paid into the Fund; specifying the purposes for which the Fund may be used; specifying that expenditures from the Fund may be made only in accordance with the State budget; authorizing certain qualified medical institutions to apply for a certain grant from the Fund each year; requiring the Department to adopt certain regulations; defining certain terms; and generally relating to the Cord Blood Transplant ~~Program~~ Center Support Fund.

BY adding to
Article – Health – General
Section ~~13–2901 through 13–2903~~ 13–3001 through 13–3004 to be under the new subtitle "Subtitle ~~29.~~ 30. Cord Blood Transplant Program ~~Support Fund~~"

Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

SUBTITLE ~~29.~~ 30. CORD BLOOD TRANSPLANT PROGRAM ~~SUPPORT FUND~~.

~~13–2901.~~ 13–3001.

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

(B) "CORD BLOOD TRANSPLANT ~~PROGRAM~~ CENTER" MEANS ~~A PROGRAM~~ A MEDICAL FACILITY THAT USES CELLS OBTAINED FROM A HUMAN UMBILICAL CORD OR PLACENTA TO TREAT PEDIATRIC OR ADULT PATIENTS AFFLICTED WITH A DISEASE OR INJURY.

(C) "FUND" MEANS THE CORD BLOOD TRANSPLANT ~~PROGRAM~~ CENTER SUPPORT FUND.

(D) "QUALIFIED MEDICAL INSTITUTION" MEANS A MEDICAL INSTITUTION ACCREDITED BY THE JOINT COMMISSION ON ACCREDITATION OF HEALTH CARE ORGANIZATIONS THAT:

(1) IS LOCATED IN THE STATE; AND

(2) HAS AN ESTABLISHED HEMATOLOGIC MALIGNANCIES RESEARCH PROGRAM.

13–3002.

(A) THERE IS A CORD BLOOD TRANSPLANT PROGRAM IN THE DEPARTMENT.

(B) THE PURPOSE OF THE CORD BLOOD TRANSPLANT PROGRAM IS TO PROVIDE FUNDING, SUBJECT TO THE LIMITATIONS OF THE STATE BUDGET, TO QUALIFIED MEDICAL INSTITUTIONS TO ESTABLISH OR MAINTAIN A CORD BLOOD TRANSPLANT CENTER.

~~13–2902.~~ 13–3003.

(A) THERE IS A CORD BLOOD TRANSPLANT ~~PROGRAM~~ CENTER SUPPORT FUND.

(B) THE PURPOSE OF THE FUND IS TO PROMOTE ECONOMIC DEVELOPMENT BY SUPPORTING CORD BLOOD TRANSPLANT ~~PROGRAMS~~ CENTERS AT QUALIFIED MEDICAL INSTITUTIONS WITH A GOAL OF BEING RECOGNIZED AS A REGIONAL CENTER OF EXCELLENCE IN THE AREA OF CORD BLOOD TRANSPLANTATION.

(C) THE DEPARTMENT SHALL ADMINISTER THE FUND.

(D) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7–302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(E) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

(F) THE FUND CONSISTS OF:

(1) ~~MONEY~~ BEGINNING IN 2013, ANY MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND; AND

(2) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE BENEFIT OF THE FUND.

(G) THE FUND MAY BE USED ONLY FOR THE ESTABLISHMENT OF OR SUPPORT FOR A CORD BLOOD TRANSPLANT ~~PROGRAM~~ CENTER AT A QUALIFIED MEDICAL INSTITUTION.

(H) (1) THE STATE TREASURER SHALL INVEST AND REINVEST THE MONEY OF THE FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

(2) ANY INVESTMENT EARNINGS OF THE FUND SHALL PAID INTO THE FUND.

(I) (1) THE COMPTROLLER SHALL PAY OUT MONEY FROM THE FUND AS DIRECTED BY THE SECRETARY.

(2) NO PART OF THE FUND MAY REVERT OR BE CREDITED TO:

(I) THE GENERAL FUND OF THE STATE; OR

(II) ANY OTHER SPECIAL FUND OF THE STATE.

(J) EXPENDITURES FROM THE FUND MAY BE MADE ONLY IN ACCORDANCE WITH THE STATE BUDGET.

~~13–2903.~~ 13–3004.

(A) A QUALIFIED MEDICAL INSTITUTION MAY APPLY FOR A GRANT FROM THE FUND EACH YEAR.

(B) THE DEPARTMENT SHALL ADOPT REGULATIONS TO ADMINISTER THE FUND IN ACCORDANCE WITH THE PURPOSES OF THIS ~~SECTION~~ SUBTITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 499

(House Bill 983)

AN ACT concerning

Public Health – Cord Blood Transplant Program

FOR the purpose of establishing the Cord Blood Transplant Program in the Department of Health and Mental Hygiene for certain purposes; establishing the Cord Blood Transplant Center Support Fund; providing for the purpose of the Fund; requiring the Department to administer the Fund; specifying that the Fund is a special, nonlapsing fund that is not subject to a certain provision of law; requiring the State Treasurer to hold the fund separately and invest and reinvest money in the Fund in a certain manner; requiring the State Comptroller to account for the Fund; specifying that the Fund consists of certain money, and that investment earnings be paid into the Fund; specifying the purposes for which the Fund may be used; specifying that expenditures from the Fund may be made only in accordance with the State budget; authorizing certain qualified medical institutions to apply for a certain grant from the Fund each year; requiring the Department to adopt certain regulations; defining certain terms; and generally relating to the Cord Blood Transplant Center Support Fund.

BY adding to
Article – Health – General

Section 13–3001 through 13–3004 to be under the new subtitle "Subtitle 30. Cord Blood Transplant Program"
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

SUBTITLE 30. CORD BLOOD TRANSPLANT PROGRAM.

13–3001.

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

(B) "CORD BLOOD TRANSPLANT CENTER" MEANS A MEDICAL FACILITY THAT USES CELLS OBTAINED FROM A HUMAN UMBILICAL CORD OR PLACENTA TO TREAT PEDIATRIC OR ADULT PATIENTS AFFLICTED WITH A DISEASE OR INJURY.

(C) "FUND" MEANS THE CORD BLOOD TRANSPLANT CENTER SUPPORT FUND.

(D) "QUALIFIED MEDICAL INSTITUTION" MEANS A MEDICAL INSTITUTION ACCREDITED BY THE JOINT COMMISSION ON ACCREDITATION OF HEALTH CARE ORGANIZATIONS THAT:

(1) IS LOCATED IN THE STATE; AND

(2) HAS AN ESTABLISHED HEMATOLOGIC MALIGNANCIES RESEARCH PROGRAM.

13–3002.

(A) THERE IS A CORD BLOOD TRANSPLANT PROGRAM IN THE DEPARTMENT.

(B) THE PURPOSE OF THE CORD BLOOD ~~TRANSPORT~~ TRANSPLANT PROGRAM IS TO PROVIDE FUNDING, SUBJECT TO THE LIMITATIONS OF THE STATE BUDGET, TO QUALIFIED MEDICAL INSTITUTIONS TO ESTABLISH OR MAINTAIN A CORD BLOOD TRANSPLANT CENTER.

13–3003.

(A) THERE IS A CORD BLOOD TRANSPLANT CENTER SUPPORT FUND.

(B) THE PURPOSE OF THE FUND IS TO PROMOTE ECONOMIC DEVELOPMENT BY SUPPORTING CORD BLOOD TRANSPLANT CENTERS AT QUALIFIED MEDICAL INSTITUTIONS WITH A GOAL OF BEING RECOGNIZED AS A REGIONAL CENTER OF EXCELLENCE IN THE AREA OF CORD BLOOD TRANSPLANTATION.

(C) THE DEPARTMENT SHALL ADMINISTER THE FUND.

(D) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7–302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(E) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

(F) THE FUND CONSISTS OF:

(1) BEGINNING IN 2013, <u>ANY</u> MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND; AND

(2) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE BENEFIT OF THE FUND.

(G) THE FUND MAY BE USED ONLY FOR THE ESTABLISHMENT OF OR SUPPORT FOR A CORD BLOOD TRANSPLANT CENTER AT A QUALIFIED MEDICAL INSTITUTION.

(H) (1) THE STATE TREASURER SHALL INVEST AND REINVEST THE MONEY OF THE FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

(2) ANY INVESTMENT EARNINGS OF THE FUND SHALL PAID INTO THE FUND.

(I) (1) THE COMPTROLLER SHALL PAY OUT MONEY FROM THE FUND AS DIRECTED BY THE SECRETARY.

(2) NO PART OF THE FUND MAY REVERT OR BE CREDITED TO:

(I) THE GENERAL FUND OF THE STATE; OR

(II) ANY OTHER SPECIAL FUND OF THE STATE.

(J) EXPENDITURES FROM THE FUND MAY BE MADE ONLY IN ACCORDANCE WITH THE STATE BUDGET.

13–3004.

(A) A QUALIFIED MEDICAL INSTITUTION MAY APPLY FOR A GRANT FROM THE FUND EACH YEAR.

(B) THE DEPARTMENT SHALL ADOPT REGULATIONS TO ADMINISTER THE FUND IN ACCORDANCE WITH THE PURPOSES OF THIS ~~SECTION~~ SUBTITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 500

(Senate Bill 595)

AN ACT concerning

Corporations and Associations – *Name Requirements for Benefit Corporations and* Limited Liability Companies – Election to Be a Benefit ~~Corporation~~ Limited Liability Company

FOR the purpose of authorizing a Maryland limited liability company to elect to be a benefit ~~corporation; specifying the process by which a limited liability company may elect to be a benefit corporation~~ limited liability company by including a certain statement in its articles of organization; specifying the process by which a limited liability company may terminate its status as a benefit ~~corporation~~ limited liability company; requiring a clear reference to the fact that a limited liability company is a benefit ~~corporation~~ limited liability company to appear prominently at the head of certain articles of organization ~~of the limited liability company~~ or an amendment to the articles of organization; *establishing certain requirements for the name of certain benefit limited liability companies;* requiring ~~the limited liability company~~ a benefit limited liability company to have a certain purpose; authorizing ~~the limited liability company~~ a benefit limited liability company to have a certain purpose; requiring a ~~member of the limited liability company~~ person managing the business and affairs of a benefit limited liability company to consider the effects of certain actions or decisions not to act on certain persons and interests; providing that a person managing the business and affairs of a benefit limited liability company does not have any

duty to certain persons on account of certain factors or interests; requiring ~~the limited liability company~~ a benefit limited liability company to deliver a certain annual benefit report to each member ~~of the limited liability company~~ within a certain time period and to post the report on a certain portion of its Web site under certain circumstances; prohibiting a provision of the articles of organization or operating agreement of ~~the limited liability company~~ a benefit limited liability company from being inconsistent with certain provisions of law; *establishing certain requirements for the name of certain benefit corporations;* ~~altering a certain definition; making certain conforming changes;~~ defining certain terms; and generally relating to limited liability companies ~~and~~, benefit ~~corporations~~ limited liability companies, *and benefit corporations*.

~~BY repealing and reenacting, with amendments,~~
~~Article – Corporations and Associations~~
~~Section 5–6C–01, 5–6C–02, and 5–6C–04 through 5–6C–08~~
~~Annotated Code of Maryland~~
~~(2007 Replacement Volume and 2010 Supplement)~~

~~BY repealing and reenacting, with amendments,~~
~~Article – Corporations and Associations~~
~~Section 5–6C–03~~
~~Annotated Code of Maryland~~
~~(2007 Replacement Volume and 2010 Supplement)~~
~~(As enacted by Chapters 97 and 98 of the Acts of the General Assembly of 2010)~~

BY renumbering
Article – Corporations and Associations
Section 4A–1101 through 4A–1103, respectively, and the subtitle "Subtitle 11. Miscellaneous"
to be Section 4A–1201 through 4A–1203, respectively, and the subtitle "Subtitle 12. Miscellaneous"
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Corporations and Associations
Section 1–502(a) and (b) and 5–6C–03
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY adding to
Article – Corporations and Associations
Section 4A–1101 through 4A–1108, to be under the new subtitle "Subtitle 11. Benefit Limited Liability Companies"
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

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

~~**Article – Corporations and Associations**~~

~~5–6C–01.~~

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

~~(b) "Benefit corporation" means a Maryland corporation **OR MARYLAND LIMITED LIABILITY COMPANY** that elects to be a benefit corporation in accordance with § 5–6C–03 of this subtitle and has not ceased to be a benefit corporation through the operation of § 5–6C–04 of this subtitle.~~

~~(c) "General public benefit" means a material, positive impact on society and the environment, as measured by a third–party standard, through activities that promote a combination of specific public benefits.~~

~~(d) "Specific public benefit" includes:~~

~~(1) Providing individuals or communities with beneficial products or services;~~

~~(2) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;~~

~~(3) Preserving the environment;~~

~~(4) Improving human health;~~

~~(5) Promoting the arts, sciences, or advancement of knowledge;~~

~~(6) Increasing the flow of capital to entities with a public benefit purpose; or~~

~~(7) The accomplishment of any other particular benefit for society or the environment.~~

~~(e) "Third–party standard" means a standard for defining, reporting, and assessing best practices in corporate social and environmental performance that:~~

~~(1) Is developed by a person or entity that is independent of the benefit corporation; and~~

~~(2) Is transparent because the following information about the standard is publicly available or accessible:~~

~~(i) The factors considered when measuring the performance of a business;~~

~~(ii) The relative weightings of those factors; and~~

~~(iii) The identity of the persons who developed and control changes to the standard and the process by which those changes were made.~~

~~5–6C–02.~~

~~(a) The provisions of the Maryland General Corporation Law apply to benefit corporations except to the extent that:~~

~~(1) The context of a provision clearly requires otherwise; or~~

~~(2) A specific provision of this subtitle or another provision of law governing specific classes of corporations **OR LIMITED LIABILITY COMPANIES** provides otherwise.~~

~~(b) This subtitle applies only to benefit corporations.~~

~~(c) (1) The existence of a provision of this subtitle does not of itself create any implication that a contrary or different rule of law is or would be applicable to a corporation **OR LIMITED LIABILITY COMPANY** that is not a benefit corporation.~~

~~(2) This subtitle does not affect any statute or rule of law as it applies to a corporation **OR LIMITED LIABILITY COMPANY** that is not a benefit corporation.~~

~~(d) A provision of the charter **[**or**],** bylaws**, ARTICLES OF ORGANIZATION, OR OPERATING AGREEMENT** of a benefit corporation may not be inconsistent with any provision of this subtitle.~~

~~5–6C–03.~~

~~(a) **(1)** A corporation may elect to be a benefit corporation under this subtitle by amending or including in the charter of the corporation a statement that the corporation is a benefit corporation.~~

~~**(2) A LIMITED LIABILITY COMPANY MAY ELECT TO BE A BENEFIT CORPORATION UNDER THIS SUBTITLE BY AMENDING OR INCLUDING IN THE ARTICLES OF ORGANIZATION OF THE LIMITED LIABILITY COMPANY A STATEMENT THAT THE LIMITED LIABILITY COMPANY IS A BENEFIT CORPORATION.**~~

~~(b) **(1)** An amendment described in subsection **[**(a)**] (A)(1)** of this section shall be approved in accordance with Title 2, Subtitle 6 of this article.~~

~~**(2) AN AMENDMENT DESCRIBED IN SUBSECTION (A)(2) OF THIS SECTION SHALL BE APPROVED IN ACCORDANCE WITH § 4A–204(C)(2) OF THIS ARTICLE.**~~

~~5–6C–04.~~

~~(a) A corporation **OR LIMITED LIABILITY COMPANY** may terminate **ITS** status as a benefit corporation and cease to be subject to this subtitle by amending the charter of the corporation **OR THE ARTICLES OF ORGANIZATION OF THE LIMITED LIABILITY COMPANY** to delete the statement that the corporation **OR LIMITED LIABILITY COMPANY** is a benefit corporation.~~

~~(b) An amendment terminating **[**a corporation's**] THE** status **OF A CORPORATION OR LIMITED LIABILITY COMPANY** as a benefit corporation shall be approved by the stockholders of the corporation in accordance with Title 2, Subtitle 6 of this article **OR THE MEMBERS OF THE LIMITED LIABILITY COMPANY IN ACCORDANCE WITH § 4A–204(C)(2) OF THIS ARTICLE.**~~

~~5–6C–05.~~

~~Clear reference to the fact that a corporation **OR LIMITED LIABILITY COMPANY** is a benefit corporation shall appear prominently:~~

~~(1) At the head of the charter document **OR ARTICLES OF ORGANIZATION** in which the election to be a benefit corporation is made;~~

~~(2) At the head of each subsequent charter document **OR ARTICLES OF ORGANIZATION** of the benefit corporation; and~~

~~(3) On each certificate representing outstanding stock of the benefit corporation.~~

~~5–6C–06.~~

~~(a) (1) Each benefit corporation shall have the purpose of creating a general public benefit.~~

~~(2) The purpose described in paragraph (1) of this subsection is in addition to, and may be a limitation on, the purposes of the corporation under § 2–101 of this article **OR OF THE LIMITED LIABILITY COMPANY UNDER § 4A–201 OF THIS ARTICLE.**~~

~~(b) (1) In addition to its purposes under § 2–101 **OR § 4A–201** of this article and subsection (a) of this section, the charter **OR ARTICLES OF**~~

~~**ORGANIZATION** of a benefit corporation may identify as one of the purposes of the benefit corporation the creation of one or more specific public benefits.~~

~~(2) The identification in its charter **OR ARTICLES OF ORGANIZATION** of a specific public benefit purpose under paragraph (1) of this subsection does not limit the obligation of a benefit corporation to create a general public benefit.~~

~~(c) The creation of a general public benefit or specific public benefit as provided in subsections (a) and (b) of this section is in the best interests of the benefit corporation.~~

~~5–6C–07.~~

~~(a) A director **OR MEMBER** of a benefit corporation, in performing the duties of a director **OR MEMBER**, including the director's duties as a member of a committee and in addition to the duties described in § 2–405.1 of this article:~~

~~(1) In determining what the director **OR MEMBER** reasonably believes to be in the best interests of the benefit corporation, shall consider the effects of any action or decision not to act on:~~

~~(i) The stockholders **OR MEMBERS** of the benefit corporation;~~

~~(ii) The employees and workforce of the benefit corporation and the subsidiaries and suppliers of the benefit corporation;~~

~~(iii) The interests of customers as beneficiaries of the general or specific public benefit purposes of the benefit corporation;~~

~~(iv) Community and societal considerations, including those of any community in which offices or facilities of the benefit corporation or the subsidiaries or suppliers of the benefit corporation are located; and~~

~~(v) The local and global environment; and~~

~~(2) May consider any other pertinent factors or the interests of any other group that the director **OR MEMBER** determines are appropriate to consider.~~

~~(b) A director **OR MEMBER** of a benefit corporation, in the performance of duties in that capacity, does not have any duty to a person that is a beneficiary of the public benefit purposes of the benefit corporation.~~

~~(c) A director of a benefit corporation, in the reasonable performance of duties in accordance with the standard provided in this subtitle, shall have the immunity from liability described in § 5–417 of the Courts Article.~~

~~5–6C–08.~~

~~(a) A benefit corporation shall deliver to each stockholder **OR MEMBER** an annual benefit report including:~~

~~(1) A description of:~~

~~(i) The ways in which the benefit corporation pursued a general public benefit during the year and the extent to which the general public benefit was created;~~

~~(ii) The ways in which the benefit corporation pursued any specific public benefit that its charter **OR ARTICLES OF ORGANIZATION** states is the purpose of the benefit corporation to create and the extent to which that specific public benefit was created; and~~

~~(iii) Any circumstances that have hindered the creation by the benefit corporation of the public benefit; and~~

~~(2) An assessment of the societal and environmental performance of the benefit corporation prepared in accordance with a third–party standard applied consistently with the prior year's benefit report or accompanied by an explanation of the reasons for any inconsistent application.~~

~~(b) The benefit report shall be delivered to each stockholder **OR MEMBER** within 120 days following the end of each fiscal year of the benefit corporation.~~

~~(c) (1) A benefit corporation shall post its most recent benefit report on the public portion of its website, if any.~~

~~(2) If a benefit corporation does not have a public website, the benefit corporation shall provide a copy of its most recent benefit report on demand and without charge to any person who requests a copy.~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 4A–1101 through 4A–1103, respectively, and the subtitle "Subtitle 11. Miscellaneous" of Article – Corporations and Associations of the Annotated Code of Maryland be renumbered to be Section(s) 4A–1201 through 4A–1203, respectively, and the subtitle "Subtitle 12. Miscellaneous."

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

Article – Corporations and Associations

1–502.

(a) ***(1)*** *The name of a corporation must include one of the following words or an abbreviation of one of the following words:*

[*(1)****]*** ***(I)*** *"Company", if it is not preceded by the word "and" or a symbol for the word "and";*

[*(2)****]*** ***(II)*** *"Corporation";*

[*(3)****]*** ***(III)*** *"Incorporated"; or*

[*(4)****]*** ***(IV)*** *"Limited".*

(2) IF A CORPORATION IS A BENEFIT CORPORATION, THE NAME OF THE BENEFIT CORPORATION MUST INCLUDE:

(I) THE WORDS "BENEFIT CORPORATION";

(II) "BENEFIT CORP.";

(III) THE WORDS "BENEFIT COMPANY", IF NOT PRECEDED BY THE WORD "AND" OR A SYMBOL FOR THE WORD "AND"; OR

(IV) "BENEFIT CO.", IF NOT PRECEDED BY THE WORD "AND" OR A SYMBOL FOR THE WORD "AND".

(b) ***(1)*** *The name of a limited liability company must include:*

[*(1)****]*** ***(I)*** *The words "limited liability company";*

[*(2)****]*** ***(II)*** *"L.L.C.";*

[*(3)****]*** ***(III)*** *"LLC";*

[*(4)****]*** ***(IV)*** *"L.C."; or*

[*(5)****]*** ***(V)*** *"LC".*

(2) IF A LIMITED LIABILITY COMPANY IS A BENEFIT LIMITED LIABILITY COMPANY, THE NAME OF THE BENEFIT LIMITED LIABILITY COMPANY MUST INCLUDE:

(I) THE WORDS "BENEFIT LIMITED LIABILITY COMPANY";

(II) "BENEFIT L.L.C.";

(III) "BENEFIT LLC";

(IV) "BENEFIT L.C."; OR

(V) "BENEFIT LC".

SUBTITLE 11. BENEFIT LIMITED LIABILITY COMPANIES.

4A–1101.

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

(B) "BENEFIT LIMITED LIABILITY COMPANY" MEANS A MARYLAND LIMITED LIABILITY COMPANY THAT ELECTS TO BE A BENEFIT LIMITED LIABILITY COMPANY IN ACCORDANCE WITH § 4A–1103 OF THIS SUBTITLE AND HAS NOT CEASED TO BE A BENEFIT LIMITED LIABILITY COMPANY THROUGH THE OPERATION OF § 4A–1105 OF THIS SUBTITLE.

(C) "GENERAL PUBLIC BENEFIT" MEANS A MATERIAL, POSITIVE IMPACT ON SOCIETY AND THE ENVIRONMENT, AS MEASURED BY A THIRD–PARTY STANDARD, THROUGH ACTIVITIES THAT PROMOTE A COMBINATION OF SPECIFIC PUBLIC BENEFITS.

(D) "SPECIFIC PUBLIC BENEFIT" INCLUDES:

(1) PROVIDING INDIVIDUALS OR COMMUNITIES WITH BENEFICIAL PRODUCTS OR SERVICES;

(2) PROMOTING ECONOMIC OPPORTUNITY FOR INDIVIDUALS OR COMMUNITIES BEYOND THE CREATION OF JOBS IN THE NORMAL COURSE OF BUSINESS;

(3) PRESERVING THE ENVIRONMENT;

(4) IMPROVING HUMAN HEALTH;

(5) PROMOTING THE ARTS, SCIENCES, OR ADVANCEMENT OF KNOWLEDGE;

(6) INCREASING THE FLOW OF CAPITAL TO ENTITIES WITH A PUBLIC BENEFIT PURPOSE; OR

(7) THE ACCOMPLISHMENT OF ANY OTHER PARTICULAR BENEFIT FOR SOCIETY OR THE ENVIRONMENT.

(E) "THIRD–PARTY STANDARD" MEANS A STANDARD FOR DEFINING, REPORTING, AND ASSESSING BEST PRACTICES IN SOCIAL AND ENVIRONMENTAL PERFORMANCE THAT:

(1) IS DEVELOPED BY A PERSON OR ENTITY THAT IS INDEPENDENT OF THE BENEFIT LIMITED LIABILITY COMPANY; AND

(2) IS TRANSPARENT BECAUSE THE FOLLOWING INFORMATION ABOUT THE STANDARD IS PUBLICLY AVAILABLE OR ACCESSIBLE:

(I) THE FACTORS CONSIDERED WHEN MEASURING THE PERFORMANCE OF A BUSINESS;

(II) THE RELATIVE WEIGHTINGS OF THOSE FACTORS; AND

(III) THE IDENTITY OF THE PERSONS WHO DEVELOPED AND CONTROL CHANGES TO THE STANDARD AND THE PROCESS BY WHICH THOSE CHANGES WERE MADE.

4A–1102.

(A) THE PROVISIONS OF THIS TITLE APPLY TO BENEFIT LIMITED LIABILITY COMPANIES EXCEPT TO THE EXTENT THAT:

(1) THE CONTEXT OF A PROVISION CLEARLY REQUIRES OTHERWISE; OR

(2) A SPECIFIC PROVISION OF THIS TITLE PROVIDES OTHERWISE.

(B) THIS SUBTITLE APPLIES ONLY TO A BENEFIT LIMITED LIABILITY COMPANY.

(C) (1) THE EXISTENCE OF A PROVISION OF THIS SUBTITLE DOES NOT OF ITSELF CREATE ANY IMPLICATION THAT A CONTRARY OR DIFFERENT RULE OF LAW IS OR WOULD BE APPLICABLE TO A LIMITED LIABILITY COMPANY THAT IS NOT A BENEFIT LIMITED LIABILITY COMPANY.

(2) THIS SUBTITLE DOES NOT AFFECT ANY STATUTE OR RULE OF LAW AS IT APPLIES TO A LIMITED LIABILITY COMPANY THAT IS NOT A BENEFIT LIMITED LIABILITY COMPANY.

(D) A PROVISION OF THE ARTICLES OF ORGANIZATION OR OPERATING AGREEMENT OF A BENEFIT LIMITED LIABILITY COMPANY MAY NOT BE INCONSISTENT WITH ANY PROVISION OF THIS SUBTITLE.

4A–1103.

(A) A LIMITED LIABILITY COMPANY MAY ELECT TO BE A BENEFIT LIMITED LIABILITY COMPANY UNDER THIS SUBTITLE BY INCLUDING IN ITS ARTICLES OF ORGANIZATION A STATEMENT THAT THE LIMITED LIABILITY COMPANY IS A BENEFIT LIMITED LIABILITY COMPANY.

(B) THE NAME OF A DOMESTIC BENEFIT LIMITED LIABILITY COMPANY OR A FOREIGN BENEFIT LIMITED LIABILITY COMPANY AUTHORIZED TO TRANSACT BUSINESS IN THE STATE MUST COMPLY WITH TITLE 1, SUBTITLE 5 OF THIS ARTICLE.

4A–1104.

CLEAR REFERENCE TO THE FACT THAT A LIMITED LIABILITY COMPANY IS A BENEFIT LIMITED LIABILITY COMPANY SHALL APPEAR PROMINENTLY:

(1) AT THE HEAD OF THE ARTICLES OF ORGANIZATION OR AN AMENDMENT TO THE ARTICLES OF ORGANIZATION IN WHICH THE ELECTION TO BE A BENEFIT LIMITED LIABILITY COMPANY IS MADE;

(2) AT THE HEAD OF EACH SUBSEQUENT ARTICLES OF ORGANIZATION OF THE BENEFIT LIMITED LIABILITY COMPANY; AND

(3) ON EACH CERTIFICATE REPRESENTING OUTSTANDING INTERESTS IN THE BENEFIT LIMITED LIABILITY COMPANY.

4A–1105.

A BENEFIT LIMITED LIABILITY COMPANY MAY TERMINATE ITS STATUS AS A BENEFIT LIMITED LIABILITY COMPANY AND CEASE TO BE SUBJECT TO THIS SUBTITLE BY AMENDING ITS ARTICLES OF ORGANIZATION TO DELETE THE STATEMENT REQUIRED UNDER § 4A–1103 OF THIS SUBTITLE THAT IT IS A BENEFIT LIMITED LIABILITY COMPANY.

4A–1106.

(A) (1) EACH BENEFIT LIMITED LIABILITY COMPANY SHALL HAVE THE PURPOSE OF CREATING A GENERAL PUBLIC BENEFIT.

(2) THE PURPOSE DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION IS IN ADDITION TO, AND MAY BE A LIMITATION ON, THE PURPOSES OF THE BENEFIT LIMITED LIABILITY COMPANY UNDER § 4A–201 OF THIS TITLE.

(B) (1) IN ADDITION TO ITS PURPOSES UNDER § 4A–201 OF THIS TITLE AND SUBSECTION (A) OF THIS SECTION, THE ARTICLES OF ORGANIZATION OR OPERATING AGREEMENT OF A BENEFIT LIMITED LIABILITY COMPANY MAY IDENTIFY AS ONE OF THE PURPOSES OF THE BENEFIT LIMITED LIABILITY COMPANY THE CREATION OF ONE OR MORE SPECIFIC PUBLIC BENEFITS.

(2) THE IDENTIFICATION IN ITS ARTICLES OF ORGANIZATION OR OPERATING AGREEMENT OF A SPECIFIC PUBLIC BENEFIT PURPOSE UNDER PARAGRAPH (1) OF THIS SUBSECTION DOES NOT LIMIT THE OBLIGATION OF A BENEFIT LIMITED LIABILITY COMPANY TO CREATE A GENERAL PUBLIC BENEFIT.

4A–1107.

(A) A PERSON MANAGING THE BUSINESS AND AFFAIRS OF A BENEFIT LIMITED LIABILITY COMPANY:

(1) SHALL CONSIDER THE EFFECTS OF ANY ACTION OR DECISION NOT TO ACT ON:

(I) THE MEMBERS OF THE BENEFIT LIMITED LIABILITY COMPANY;

(II) THE EMPLOYEES AND WORKFORCE OF THE BENEFIT LIMITED LIABILITY COMPANY AND THE SUBSIDIARIES AND SUPPLIERS OF THE BENEFIT LIMITED LIABILITY COMPANY;

(III) THE INTERESTS OF CUSTOMERS AS BENEFICIARIES OF THE GENERAL OR SPECIFIC PUBLIC BENEFIT PURPOSES OF THE BENEFIT LIMITED LIABILITY COMPANY;

(IV) COMMUNITY AND SOCIETAL CONSIDERATIONS, INCLUDING THOSE OF ANY COMMUNITY IN WHICH OFFICES OR FACILITIES OF THE BENEFIT LIMITED LIABILITY COMPANY OR THE SUBSIDIARIES OR SUPPLIERS OF THE BENEFIT LIMITED LIABILITY COMPANY ARE LOCATED; AND

(V) THE LOCAL AND GLOBAL ENVIRONMENT; AND

(2) MAY CONSIDER ANY OTHER PERTINENT FACTORS OR THE INTERESTS OF ANY OTHER GROUP THAT THE PERSON DETERMINES ARE APPROPRIATE TO CONSIDER.

(B) A PERSON MANAGING THE BUSINESS AND AFFAIRS OF A BENEFIT LIMITED LIABILITY COMPANY DOES NOT HAVE ANY DUTY ON ACCOUNT OF THE FACTORS OR INTERESTS SET FORTH IN THIS SECTION TO:

(1) A PERSON THAT IS A BENEFICIARY OF THE PUBLIC BENEFIT PURPOSES OF THE BENEFIT LIMITED LIABILITY COMPANY; OR

(2) A MEMBER OF THE BENEFIT LIMITED LIABILITY COMPANY.

4A–1108.

(A) A BENEFIT LIMITED LIABILITY COMPANY SHALL DELIVER TO EACH MEMBER AN ANNUAL BENEFIT REPORT INCLUDING:

(1) A DESCRIPTION OF:

(I) THE WAYS IN WHICH THE BENEFIT LIMITED LIABILITY COMPANY PURSUED A GENERAL PUBLIC BENEFIT DURING THE YEAR AND THE EXTENT TO WHICH THE GENERAL PUBLIC BENEFIT WAS CREATED;

(II) THE WAYS IN WHICH THE BENEFIT LIMITED LIABILITY COMPANY PURSUED ANY SPECIFIC PUBLIC BENEFIT THAT ITS ARTICLES OF ORGANIZATION OR OPERATING AGREEMENT STATES IS THE PURPOSE OF THE BENEFIT LIMITED LIABILITY COMPANY TO CREATE AND THE EXTENT TO WHICH THAT SPECIFIC PUBLIC BENEFIT WAS CREATED; AND

(III) ANY CIRCUMSTANCES THAT HAVE HINDERED THE CREATION BY THE BENEFIT LIMITED LIABILITY COMPANY OF THE PUBLIC BENEFIT; AND

(2) AN ASSESSMENT OF THE SOCIETAL AND ENVIRONMENTAL PERFORMANCE OF THE BENEFIT LIMITED LIABILITY COMPANY PREPARED IN ACCORDANCE WITH A THIRD–PARTY STANDARD APPLIED CONSISTENTLY WITH THE PRIOR YEAR'S BENEFIT REPORT OR ACCOMPANIED BY AN EXPLANATION OF THE REASONS FOR ANY INCONSISTENT APPLICATION.

(B) THE BENEFIT REPORT SHALL BE DELIVERED TO EACH MEMBER WITHIN 120 DAYS FOLLOWING THE END OF EACH FISCAL YEAR OF THE BENEFIT LIMITED LIABILITY COMPANY.

(C) (1) A BENEFIT LIMITED LIABILITY COMPANY SHALL POST ITS MOST RECENT BENEFIT REPORT ON THE PUBLIC PORTION OF ITS WEB SITE, IF ANY.

(2) IF A BENEFIT LIMITED LIABILITY COMPANY DOES NOT HAVE A PUBLIC WEB SITE, THE BENEFIT LIMITED LIABILITY COMPANY SHALL PROVIDE A COPY OF ITS MOST RECENT BENEFIT REPORT ON DEMAND AND WITHOUT CHARGE TO ANY PERSON WHO REQUESTS A COPY.

5–6C–03.

(a) A corporation may elect to be a benefit corporation under this subtitle by amending or including in the charter of the corporation a statement that the corporation is a benefit corporation.

(b) An amendment described in subsection (a) of this section shall be approved in accordance with Title 2, Subtitle 6 of this article.

(C) THE NAME OF A DOMESTIC BENEFIT CORPORATION OR A FOREIGN BENEFIT CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THE STATE MUST COMPLY WITH TITLE 1, SUBTITLE 5 OF THIS ARTICLE.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ *June* 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 501

(House Bill 1151)

AN ACT concerning

Corporations and Associations – *Name Requirements for Benefit Corporations and* Limited Liability Companies – Election to Be a Benefit ~~Corporation~~ Limited Liability Company

FOR the purpose of authorizing a Maryland limited liability company to elect to be a benefit ~~corporation; specifying the process by which a limited liability company may elect to be a benefit corporation~~ limited liability company by including a certain statement in its articles of organization; specifying the process by which a limited liability company may terminate its status as a benefit ~~corporation~~ limited liability company; requiring a clear reference to the fact that a limited liability company is a benefit ~~corporation~~ limited liability company to appear

prominently at the head of certain articles of organization ~~of the limited liability company~~ or an amendment to the articles of organization; *establishing certain requirements for the name of certain benefit limited liability companies;* requiring ~~the limited liability company~~ a benefit limited liability company to have a certain purpose; authorizing ~~the limited liability company~~ a benefit limited liability company to have a certain purpose; requiring a ~~member of the limited liability company~~ person managing the business and affairs of a benefit limited liability company to consider the effects of certain actions or decisions not to act on certain persons and interests; providing that a person managing the business and affairs of a benefit limited liability company does not have any duty to certain persons on account of certain factors or interests; requiring ~~the limited liability company~~ a benefit limited liability company to deliver a certain annual benefit report to each member ~~of the limited liability company~~ within a certain time period and to post the report on a certain portion of its Web site under certain circumstances; prohibiting a provision of the articles of organization or operating agreement of ~~the limited liability company~~ a benefit limited liability company from being inconsistent with certain provisions of law; *establishing certain requirements for the name of certain benefit corporations;* ~~altering a certain definition; making certain conforming changes;~~ defining certain terms; and generally relating to limited liability companies ~~and~~, benefit ~~corporations~~ limited liability companies, *and benefit corporations*.

~~BY repealing and reenacting, with amendments,~~
~~Article – Corporations and Associations~~
~~Section 5–6C–01, 5–6C–02, and 5–6C–04 through 5–6C–08~~
~~Annotated Code of Maryland~~
~~(2007 Replacement Volume and 2010 Supplement)~~

~~BY repealing and reenacting, with amendments,~~
~~Article – Corporations and Associations~~
~~Section 5–6C–03~~
~~Annotated Code of Maryland~~
~~(2007 Replacement Volume and 2010 Supplement)~~
~~(As enacted by Chapters 97 and 98 of the Acts of the General Assembly of 2010)~~

BY renumbering
Article – Corporations and Associations
Section 4A–1101 through 4A–1103, respectively, and the subtitle "Subtitle 11. Miscellaneous"
to be Section 4A–1201 through 4A–1203, respectively, and the subtitle "Subtitle 12. Miscellaneous"
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY adding to
Article – Corporations and Associations

Section 4A–1101 through 4A–1108, to be under the new subtitle "Subtitle 11. Benefit Limited Liability Companies"
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Corporations and Associations
Section 1–502(a) and (b) and 5–6C–03
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

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

~~**Article – Corporations and Associations**~~

~~5–6C–01.~~

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

~~(b) "Benefit corporation" means a Maryland corporation **OR MARYLAND LIMITED LIABILITY COMPANY** that elects to be a benefit corporation in accordance with § 5–6C–03 of this subtitle and has not ceased to be a benefit corporation through the operation of § 5–6C–04 of this subtitle.~~

~~(c) "General public benefit" means a material, positive impact on society and the environment, as measured by a third–party standard, through activities that promote a combination of specific public benefits.~~

~~(d) "Specific public benefit" includes:~~

~~(1) Providing individuals or communities with beneficial products or services;~~

~~(2) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;~~

~~(3) Preserving the environment;~~

~~(4) Improving human health;~~

~~(5) Promoting the arts, sciences, or advancement of knowledge;~~

~~(6) Increasing the flow of capital to entities with a public benefit purpose; or~~

~~(7) The accomplishment of any other particular benefit for society or the environment.~~

~~(e) "Third-party standard" means a standard for defining, reporting, and assessing best practices in corporate social and environmental performance that:~~

~~(1) Is developed by a person or entity that is independent of the benefit corporation; and~~

~~(2) Is transparent because the following information about the standard is publicly available or accessible:~~

~~(i) The factors considered when measuring the performance of a business;~~

~~(ii) The relative weightings of those factors; and~~

~~(iii) The identity of the persons who developed and control changes to the standard and the process by which those changes were made.~~

~~5–6C–02.~~

~~(a) The provisions of the Maryland General Corporation Law apply to benefit corporations except to the extent that:~~

~~(1) The context of a provision clearly requires otherwise; or~~

~~(2) A specific provision of this subtitle or another provision of law governing specific classes of corporations **OR LIMITED LIABILITY COMPANIES** provides otherwise.~~

~~(b) This subtitle applies only to benefit corporations.~~

~~(c) (1) The existence of a provision of this subtitle does not of itself create any implication that a contrary or different rule of law is or would be applicable to a corporation **OR LIMITED LIABILITY COMPANY** that is not a benefit corporation.~~

~~(2) This subtitle does not affect any statute or rule of law as it applies to a corporation **OR LIMITED LIABILITY COMPANY** that is not a benefit corporation.~~

~~(d) A provision of the charter **[**or**]**, bylaws**, ARTICLES OF ORGANIZATION, OR OPERATING AGREEMENT** of a benefit corporation may not be inconsistent with any provision of this subtitle.~~

~~5–6C–03.~~

~~(a) **(1)** A corporation may elect to be a benefit corporation under this subtitle by amending or including in the charter of the corporation a statement that the corporation is a benefit corporation.~~

~~**(2) A LIMITED LIABILITY COMPANY MAY ELECT TO BE A BENEFIT CORPORATION UNDER THIS SUBTITLE BY AMENDING OR INCLUDING IN THE ARTICLES OF ORGANIZATION OF THE LIMITED LIABILITY COMPANY A STATEMENT THAT THE LIMITED LIABILITY COMPANY IS A BENEFIT CORPORATION.**~~

~~(b) **(1)** An amendment described in subsection **[**(a)**] (A)(1)** of this section shall be approved in accordance with Title 2, Subtitle 6 of this article.~~

~~**(2) AN AMENDMENT DESCRIBED IN SUBSECTION (A)(2) OF THIS SECTION SHALL BE APPROVED IN ACCORDANCE WITH § 4A–204(C)(2) OF THIS ARTICLE.**~~

~~5–6C–04.~~

~~(a) A corporation **OR LIMITED LIABILITY COMPANY** may terminate **ITS** status as a benefit corporation and cease to be subject to this subtitle by amending the charter of the corporation **OR THE ARTICLES OF ORGANIZATION OF THE LIMITED LIABILITY COMPANY** to delete the statement that the corporation **OR LIMITED LIABILITY COMPANY** is a benefit corporation.~~

~~(b) An amendment terminating **[**a corporation's**] THE** status **OF A CORPORATION OR LIMITED LIABILITY COMPANY** as a benefit corporation shall be approved by the stockholders of the corporation in accordance with Title 2, Subtitle 6 of this article **OR THE MEMBERS OF THE LIMITED LIABILITY COMPANY IN ACCORDANCE WITH § 4A–204(C)(2) OF THIS ARTICLE.**~~

~~5–6C–05.~~

~~Clear reference to the fact that a corporation **OR LIMITED LIABILITY COMPANY** is a benefit corporation shall appear prominently:~~

~~(1) At the head of the charter document **OR ARTICLES OF ORGANIZATION** in which the election to be a benefit corporation is made;~~

~~(2) At the head of each subsequent charter document **OR ARTICLES OF ORGANIZATION** of the benefit corporation; and~~

~~(3) On each certificate representing outstanding stock of the benefit corporation.~~

~~5–6C–06.~~

~~(a) (1) Each benefit corporation shall have the purpose of creating a general public benefit.~~

~~(2) The purpose described in paragraph (1) of this subsection is in addition to, and may be a limitation on, the purposes of the corporation under § 2–101 of this article~~ **OR OF THE LIMITED LIABILITY COMPANY UNDER § 4A–201 OF THIS ARTICLE.**

~~(b) (1) In addition to its purposes under § 2–101~~ **OR § 4A–201** ~~of this article and subsection (a) of this section, the charter~~ **OR ARTICLES OF ORGANIZATION** ~~of a benefit corporation may identify as one of the purposes of the benefit corporation the creation of one or more specific public benefits.~~

~~(2) The identification in its charter~~ **OR ARTICLES OF ORGANIZATION** ~~of a specific public benefit purpose under paragraph (1) of this subsection does not limit the obligation of a benefit corporation to create a general public benefit.~~

~~(c) The creation of a general public benefit or specific public benefit as provided in subsections (a) and (b) of this section is in the best interests of the benefit corporation.~~

~~5–6C–07.~~

~~(a) A director~~ **OR MEMBER** ~~of a benefit corporation, in performing the duties of a director~~ **OR MEMBER**~~, including the director's duties as a member of a committee and in addition to the duties described in § 2–405.1 of this article:~~

~~(1) In determining what the director~~ **OR MEMBER** ~~reasonably believes to be in the best interests of the benefit corporation, shall consider the effects of any action or decision not to act on:~~

~~(i) The stockholders~~ **OR MEMBERS** ~~of the benefit corporation;~~

~~(ii) The employees and workforce of the benefit corporation and the subsidiaries and suppliers of the benefit corporation;~~

~~(iii) The interests of customers as beneficiaries of the general or specific public benefit purposes of the benefit corporation;~~

~~(iv) Community and societal considerations, including those of any community in which offices or facilities of the benefit corporation or the subsidiaries or suppliers of the benefit corporation are located; and~~

~~(v) The local and global environment; and~~

~~(2) May consider any other pertinent factors or the interests of any other group that the director **OR MEMBER** determines are appropriate to consider.~~

~~(b) A director **OR MEMBER** of a benefit corporation, in the performance of duties in that capacity, does not have any duty to a person that is a beneficiary of the public benefit purposes of the benefit corporation.~~

~~(c) A director of a benefit corporation, in the reasonable performance of duties in accordance with the standard provided in this subtitle, shall have the immunity from liability described in § 5–417 of the Courts Article.~~

~~5–6C–08.~~

~~(a) A benefit corporation shall deliver to each stockholder **OR MEMBER** an annual benefit report including:~~

~~(1) A description of:~~

~~(i) The ways in which the benefit corporation pursued a general public benefit during the year and the extent to which the general public benefit was created;~~

~~(ii) The ways in which the benefit corporation pursued any specific public benefit that its charter **OR ARTICLES OF ORGANIZATION** states is the purpose of the benefit corporation to create and the extent to which that specific public benefit was created; and~~

~~(iii) Any circumstances that have hindered the creation by the benefit corporation of the public benefit; and~~

~~(2) An assessment of the societal and environmental performance of the benefit corporation prepared in accordance with a third–party standard applied consistently with the prior year's benefit report or accompanied by an explanation of the reasons for any inconsistent application.~~

~~(b) The benefit report shall be delivered to each stockholder **OR MEMBER** within 120 days following the end of each fiscal year of the benefit corporation.~~

~~(c) (1) A benefit corporation shall post its most recent benefit report on the public portion of its website, if any.~~

~~(2) If a benefit corporation does not have a public website, the benefit corporation shall provide a copy of its most recent benefit report on demand and without charge to any person who requests a copy.~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 4A–1101 through 4A–1103, respectively, and the subtitle "Subtitle 11. Miscellaneous" of Article – Corporations and Associations of the Annotated Code of Maryland be renumbered to be Section(s) 4A–1201 through 4A–1203, respectively, and the subtitle "Subtitle 12. Miscellaneous."

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

Article – Corporations and Associations

SUBTITLE 11. BENEFIT LIMITED LIABILITY COMPANIES.

4A–1101.

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

(B) "BENEFIT LIMITED LIABILITY COMPANY" MEANS A MARYLAND LIMITED LIABILITY COMPANY THAT ELECTS TO BE A BENEFIT LIMITED LIABILITY COMPANY IN ACCORDANCE WITH § 4A–1103 OF THIS SUBTITLE AND HAS NOT CEASED TO BE A BENEFIT LIMITED LIABILITY COMPANY THROUGH THE OPERATION OF § 4A–1105 OF THIS SUBTITLE.

(C) "GENERAL PUBLIC BENEFIT" MEANS A MATERIAL, POSITIVE IMPACT ON SOCIETY AND THE ENVIRONMENT, AS MEASURED BY A THIRD–PARTY STANDARD, THROUGH ACTIVITIES THAT PROMOTE A COMBINATION OF SPECIFIC PUBLIC BENEFITS.

(D) "SPECIFIC PUBLIC BENEFIT" INCLUDES:

(1) PROVIDING INDIVIDUALS OR COMMUNITIES WITH BENEFICIAL PRODUCTS OR SERVICES;

(2) PROMOTING ECONOMIC OPPORTUNITY FOR INDIVIDUALS OR COMMUNITIES BEYOND THE CREATION OF JOBS IN THE NORMAL COURSE OF BUSINESS;

(3) PRESERVING THE ENVIRONMENT;

(4) IMPROVING HUMAN HEALTH;

(5) PROMOTING THE ARTS, SCIENCES, OR ADVANCEMENT OF KNOWLEDGE;

(6) INCREASING THE FLOW OF CAPITAL TO ENTITIES WITH A PUBLIC BENEFIT PURPOSE; OR

(7) THE ACCOMPLISHMENT OF ANY OTHER PARTICULAR BENEFIT FOR SOCIETY OR THE ENVIRONMENT.

(E) "THIRD–PARTY STANDARD" MEANS A STANDARD FOR DEFINING, REPORTING, AND ASSESSING BEST PRACTICES IN SOCIAL AND ENVIRONMENTAL PERFORMANCE THAT:

(1) IS DEVELOPED BY A PERSON OR ENTITY THAT IS INDEPENDENT OF THE BENEFIT LIMITED LIABILITY COMPANY; AND

(2) IS TRANSPARENT BECAUSE THE FOLLOWING INFORMATION ABOUT THE STANDARD IS PUBLICLY AVAILABLE OR ACCESSIBLE:

(I) THE FACTORS CONSIDERED WHEN MEASURING THE PERFORMANCE OF A BUSINESS;

(II) THE RELATIVE WEIGHTINGS OF THOSE FACTORS; AND

(III) THE IDENTITY OF THE PERSONS WHO DEVELOPED AND CONTROL CHANGES TO THE STANDARD AND THE PROCESS BY WHICH THOSE CHANGES WERE MADE.

4A–1102.

(A) THE PROVISIONS OF THIS TITLE APPLY TO BENEFIT LIMITED LIABILITY COMPANIES EXCEPT TO THE EXTENT THAT:

(1) THE CONTEXT OF A PROVISION CLEARLY REQUIRES OTHERWISE; OR

(2) A SPECIFIC PROVISION OF THIS TITLE PROVIDES OTHERWISE.

(B) THIS SUBTITLE APPLIES ONLY TO A BENEFIT LIMITED LIABILITY COMPANY.

(C) (1) THE EXISTENCE OF A PROVISION OF THIS SUBTITLE DOES NOT OF ITSELF CREATE ANY IMPLICATION THAT A CONTRARY OR DIFFERENT RULE OF LAW IS OR WOULD BE APPLICABLE TO A LIMITED LIABILITY COMPANY THAT IS NOT A BENEFIT LIMITED LIABILITY COMPANY.

(2) THIS SUBTITLE DOES NOT AFFECT ANY STATUTE OR RULE OF LAW AS IT APPLIES TO A LIMITED LIABILITY COMPANY THAT IS NOT A BENEFIT LIMITED LIABILITY COMPANY.

(D) A PROVISION OF THE ARTICLES OF ORGANIZATION OR OPERATING AGREEMENT OF A BENEFIT LIMITED LIABILITY COMPANY MAY NOT BE INCONSISTENT WITH ANY PROVISION OF THIS SUBTITLE.

4A–1103.

(A) A LIMITED LIABILITY COMPANY MAY ELECT TO BE A BENEFIT LIMITED LIABILITY COMPANY UNDER THIS SUBTITLE BY INCLUDING IN ITS ARTICLES OF ORGANIZATION A STATEMENT THAT THE LIMITED LIABILITY COMPANY IS A BENEFIT LIMITED LIABILITY COMPANY.

(B) THE NAME OF A DOMESTIC BENEFIT LIMITED LIABILITY COMPANY OR A FOREIGN BENEFIT LIMITED LIABILITY COMPANY AUTHORIZED TO TRANSACT BUSINESS IN THE STATE MUST COMPLY WITH TITLE 1, SUBTITLE 5 OF THIS ARTICLE.

4A–1104.

CLEAR REFERENCE TO THE FACT THAT A LIMITED LIABILITY COMPANY IS A BENEFIT LIMITED LIABILITY COMPANY SHALL APPEAR PROMINENTLY:

(1) AT THE HEAD OF THE ARTICLES OF ORGANIZATION OR AN AMENDMENT TO THE ARTICLES OF ORGANIZATION IN WHICH THE ELECTION TO BE A BENEFIT LIMITED LIABILITY COMPANY IS MADE;

(2) AT THE HEAD OF EACH SUBSEQUENT ARTICLES OF ORGANIZATION OF THE BENEFIT LIMITED LIABILITY COMPANY; AND

(3) ON EACH CERTIFICATE REPRESENTING OUTSTANDING INTERESTS IN THE BENEFIT LIMITED LIABILITY COMPANY.

4A–1105.

A BENEFIT LIMITED LIABILITY COMPANY MAY TERMINATE ITS STATUS AS A BENEFIT LIMITED LIABILITY COMPANY AND CEASE TO BE SUBJECT TO THIS SUBTITLE BY AMENDING ITS ARTICLES OF ORGANIZATION TO DELETE THE STATEMENT REQUIRED UNDER § 4A–1103 OF THIS SUBTITLE THAT IT IS A BENEFIT LIMITED LIABILITY COMPANY.

4A–1106.

(A) (1) EACH BENEFIT LIMITED LIABILITY COMPANY SHALL HAVE THE PURPOSE OF CREATING A GENERAL PUBLIC BENEFIT.

(2) THE PURPOSE DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION IS IN ADDITION TO, AND MAY BE A LIMITATION ON, THE PURPOSES OF THE BENEFIT LIMITED LIABILITY COMPANY UNDER § 4A–201 OF THIS TITLE.

(B) (1) IN ADDITION TO ITS PURPOSES UNDER § 4A–201 OF THIS TITLE AND SUBSECTION (A) OF THIS SECTION, THE ARTICLES OF ORGANIZATION OR OPERATING AGREEMENT OF A BENEFIT LIMITED LIABILITY COMPANY MAY IDENTIFY AS ONE OF THE PURPOSES OF THE BENEFIT LIMITED LIABILITY COMPANY THE CREATION OF ONE OR MORE SPECIFIC PUBLIC BENEFITS.

(2) THE IDENTIFICATION IN ITS ARTICLES OF ORGANIZATION OR OPERATING AGREEMENT OF A SPECIFIC PUBLIC BENEFIT PURPOSE UNDER PARAGRAPH (1) OF THIS SUBSECTION DOES NOT LIMIT THE OBLIGATION OF A BENEFIT LIMITED LIABILITY COMPANY TO CREATE A GENERAL PUBLIC BENEFIT.

4A–1107.

(A) A PERSON MANAGING THE BUSINESS AND AFFAIRS OF A BENEFIT LIMITED LIABILITY COMPANY:

(1) SHALL CONSIDER THE EFFECTS OF ANY ACTION OR DECISION NOT TO ACT ON:

(I) THE MEMBERS OF THE BENEFIT LIMITED LIABILITY COMPANY;

(II) THE EMPLOYEES AND WORKFORCE OF THE BENEFIT LIMITED LIABILITY COMPANY AND THE SUBSIDIARIES AND SUPPLIERS OF THE BENEFIT LIMITED LIABILITY COMPANY;

(III) THE INTERESTS OF CUSTOMERS AS BENEFICIARIES OF THE GENERAL OR SPECIFIC PUBLIC BENEFIT PURPOSES OF THE BENEFIT LIMITED LIABILITY COMPANY;

(IV) COMMUNITY AND SOCIETAL CONSIDERATIONS, INCLUDING THOSE OF ANY COMMUNITY IN WHICH OFFICES OR FACILITIES OF THE BENEFIT LIMITED LIABILITY COMPANY OR THE SUBSIDIARIES OR SUPPLIERS OF THE BENEFIT LIMITED LIABILITY COMPANY ARE LOCATED; AND

(V) THE LOCAL AND GLOBAL ENVIRONMENT; AND

(2) MAY CONSIDER ANY OTHER PERTINENT FACTORS OR THE INTERESTS OF ANY OTHER GROUP THAT THE PERSON DETERMINES ARE APPROPRIATE TO CONSIDER.

(B) A PERSON MANAGING THE BUSINESS AND AFFAIRS OF A BENEFIT LIMITED LIABILITY COMPANY DOES NOT HAVE ANY DUTY ON ACCOUNT OF THE FACTORS OR INTERESTS SET FORTH IN THIS SECTION TO:

(1) A PERSON THAT IS A BENEFICIARY OF THE PUBLIC BENEFIT PURPOSES OF THE BENEFIT LIMITED LIABILITY COMPANY; OR

(2) A MEMBER OF THE BENEFIT LIMITED LIABILITY COMPANY.

4A–1108.

(A) A BENEFIT LIMITED LIABILITY COMPANY SHALL DELIVER TO EACH MEMBER AN ANNUAL BENEFIT REPORT INCLUDING:

(1) A DESCRIPTION OF:

(I) THE WAYS IN WHICH THE BENEFIT LIMITED LIABILITY COMPANY PURSUED A GENERAL PUBLIC BENEFIT DURING THE YEAR AND THE EXTENT TO WHICH THE GENERAL PUBLIC BENEFIT WAS CREATED;

(II) THE WAYS IN WHICH THE BENEFIT LIMITED LIABILITY COMPANY PURSUED ANY SPECIFIC PUBLIC BENEFIT THAT ITS ARTICLES OF ORGANIZATION OR OPERATING AGREEMENT STATES IS THE PURPOSE OF THE BENEFIT LIMITED LIABILITY COMPANY TO CREATE AND THE EXTENT TO WHICH THAT SPECIFIC PUBLIC BENEFIT WAS CREATED; AND

(III) ANY CIRCUMSTANCES THAT HAVE HINDERED THE CREATION BY THE BENEFIT LIMITED LIABILITY COMPANY OF THE PUBLIC BENEFIT; AND

(2) AN ASSESSMENT OF THE SOCIETAL AND ENVIRONMENTAL PERFORMANCE OF THE BENEFIT LIMITED LIABILITY COMPANY PREPARED IN ACCORDANCE WITH A THIRD–PARTY STANDARD APPLIED CONSISTENTLY WITH THE PRIOR YEAR'S BENEFIT REPORT OR ACCOMPANIED BY AN EXPLANATION OF THE REASONS FOR ANY INCONSISTENT APPLICATION.

(B) THE BENEFIT REPORT SHALL BE DELIVERED TO EACH MEMBER WITHIN 120 DAYS FOLLOWING THE END OF EACH FISCAL YEAR OF THE BENEFIT LIMITED LIABILITY COMPANY.

(C) (1) A BENEFIT LIMITED LIABILITY COMPANY SHALL POST ITS MOST RECENT BENEFIT REPORT ON THE PUBLIC PORTION OF ITS WEB SITE, IF ANY.

(2) IF A BENEFIT LIMITED LIABILITY COMPANY DOES NOT HAVE A PUBLIC WEB SITE, THE BENEFIT LIMITED LIABILITY COMPANY SHALL PROVIDE A COPY OF ITS MOST RECENT BENEFIT REPORT ON DEMAND AND WITHOUT CHARGE TO ANY PERSON WHO REQUESTS A COPY.

1–502.

(a) ***(1)*** *The name of a corporation must include one of the following words or an abbreviation of one of the following words:*

[*(1)****]*** ***(I)*** *"Company", if it is not preceded by the word "and" or a symbol for the word "and";*

[*(2)****]*** ***(II)*** *"Corporation";*

[*(3)****]*** ***(III)*** *"Incorporated"; or*

[*(4)****]*** ***(IV)*** *"Limited".*

(2) IF A CORPORATION IS A BENEFIT CORPORATION, THE NAME OF THE BENEFIT CORPORATION MUST INCLUDE:

(I) THE WORDS "BENEFIT CORPORATION";

(II) "BENEFIT CORP.";

(III) THE WORDS "BENEFIT COMPANY", IF NOT PRECEDED BY THE WORD "AND" OR A SYMBOL FOR THE WORD "AND"; OR

(IV) "BENEFIT CO.", IF NOT PRECEDED BY THE WORD "AND" OR A SYMBOL FOR THE WORD "AND".

(b) ***(1)*** *The name of a limited liability company must include:*

[*(1)****]*** ***(I)*** *The words "limited liability company";*

[*(2)****]*** ***(II)*** *"L.L.C.";*

[(3)] ***(III)*** *"LLC";*

[(4)] ***(IV)*** *"L.C."; or*

[(5)] ***(V)*** *"LC".*

(2) IF A LIMITED LIABILITY COMPANY IS A BENEFIT LIMITED LIABILITY COMPANY, THE NAME OF THE BENEFIT LIMITED LIABILITY COMPANY MUST INCLUDE:

(I) THE WORDS "BENEFIT LIMITED LIABILITY COMPANY";

(II) "BENEFIT L.L.C.";

(III) "BENEFIT LLC";

(IV) "BENEFIT L.C."; OR

(V) "BENEFIT LC".

5–6C–03.

(a) A corporation may elect to be a benefit corporation under this subtitle by amending or including in the charter of the corporation a statement that the corporation is a benefit corporation.

(b) An amendment described in subsection (a) of this section shall be approved in accordance with Title 2, Subtitle 6 of this article.

(C) THE NAME OF A DOMESTIC BENEFIT CORPORATION OR A FOREIGN BENEFIT CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THE STATE MUST COMPLY WITH TITLE 1, SUBTITLE 5 OF THIS ARTICLE.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ *June* 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 502

(Senate Bill 609)

AN ACT concerning

Public Charter Schools – ~~Occupation and Use of~~ School Sites and Buildings – Availability for Occupation and Use

FOR the purpose of requiring certain county boards of education to inform the county commissioners or the county council if certain land, schools sites, or buildings have been determined by the county board to be no longer needed for school purposes under certain circumstances; requiring the county commissioners or county council to provide a certain notice to a county board under certain circumstances within a certain period of time; requiring certain county boards ~~of education~~ to inform certain public charter schools in the county if school sites or buildings have been determined by the county board to be no longer needed for school purposes under certain circumstances; requiring certain county boards to establish certain procedures; prohibiting a public charter school that is occupying and using a certain school site or building from selling, disposing of, or otherwise transferring the school site or building; exempting certain buildings or property occupied and used by a public charter school from certain real property taxes for a certain period of time; and generally relating to the disposition of certain property owned by a county board of education and to public charter schools.

BY repealing and reenacting, with amendments,
Article – Education
Section 4–115
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

BY adding to
Article – Education
Section 9–111 and 9–112
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

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

Article – Education

4–115.

(a) In this subtitle, "county council" means, in Baltimore City, the Mayor and City Council of Baltimore.

(b) With the approval of the State Superintendent, each county board may:

(1) Buy or otherwise acquire land, school sites, or buildings; and

(2) Rent, repair, improve, and build school buildings or approve contracts for doing so, if the plans conform to the bylaws, rules, and regulations of the State Board.

(c) (1) (i) Except as provided in ~~§ 9–111 OF THIS ARTICLE AND~~ this ~~paragraph~~ **SUBSECTION**, if, with the approval of the State Superintendent, a county board finds that any land, school site, or building no longer is needed for school purposes, it shall **INFORM THE COUNTY COMMISSIONERS OR COUNTY COUNCIL OF THE COUNTY BOARD'S DETERMINATION UNDER THIS SUBPARAGRAPH.**

(II) WHEN THE COUNTY COMMISSIONERS OR COUNTY COUNCIL RECEIVE NOTICE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COUNTY COMMISSIONERS OR COUNTY COUNCIL SHALL NOTIFY THE COUNTY BOARD WITHIN 30 DAYS AFTER RECEIVING THE NOTICE FROM THE COUNTY BOARD:

1. OF THE NEED TO TRANSFER THE LAND, SCHOOL SITE, OR BUILDING TO THE COUNTY COMMISSIONERS OR COUNTY COUNCIL IF THE LAND, SCHOOL SITE, OR BUILDING IS AN INTEGRAL COMPONENT OF AN EXISTING ECONOMIC DEVELOPMENT PLAN THAT WILL, IN THE JUDGMENT OF THE COUNTY COMMISSIONERS OR COUNTY COUNCIL, SIGNIFICANTLY BENEFIT THE COUNTY; OR

2. THAT THE COUNTY COMMISSIONERS OR COUNTY COUNCIL HAVE NO EXISTING PLANS FOR THE USE OF THE LAND, SCHOOL SITE, OR BUILDING.

(III) 1. IF THE COUNTY COMMISSIONERS OR COUNTY COUNCIL PROVIDE THE REQUIRED NOTICE TO THE COUNTY BOARD UNDER SUBPARAGRAPH (II)1 OF THIS PARAGRAPH OR A PUBLIC CHARTER SCHOOL DOES NOT NEED THE SCHOOL SITE OR BUILDING UNDER § 9–111 OF THIS ARTICLE, THE LAND, SCHOOL SITE, OR BUILDING SHALL be transferred by the county board to the county commissioners or county council and may be used, sold, leased, or otherwise disposed of, except by gift, by the county commissioners or county council**; OR**

2. IF THE COUNTY COMMISSIONERS OR COUNTY COUNCIL PROVIDE THE REQUIRED NOTICE TO THE COUNTY BOARD UNDER SUBPARAGRAPH (II)2 OF THIS PARAGRAPH, THE COUNTY BOARD SHALL COMPLY WITH THE PROVISIONS OF § 9–111 OF THIS ARTICLE.

~~(ii)~~ **(2)** In Harford County, if, with the approval of the State Superintendent, the county board finds that any land, school site, or building is no

longer needed for school purposes, it shall be transferred by the county board to Harford County, Maryland, and disposed of in accordance with this section.

~~(2)~~ **(3)** With the approval of the State Superintendent, the Cecil County Board may transfer, with or without charge, any of its property to the board of trustees of a public community college.

(d) In Baltimore County, the Baltimore County Board of Education must notify the Baltimore County Office of Planning and Zoning of any schools it is considering for closure and request from that Office a written recommendation on the proposed action. If the Office of Planning and Zoning wishes to make a recommendation, it must be submitted to the board no later than November 1 of the calendar year preceding the proposed closure. The board of education shall consider these recommendations at least 3 months before taking final action. These provisions may be waived by mutual agreement.

9–111.

(A) (1) IF, WITH THE APPROVAL OF THE STATE SUPERINTENDENT, A COUNTY BOARD DETERMINES THAT A SCHOOL SITE OR BUILDING NO LONGER IS NEEDED FOR SCHOOL PURPOSES~~, BEFORE TRANSFERRING THE SCHOOL SITE OR BUILDING~~ AND AFTER THE COUNTY COMMISSIONERS OR COUNTY COUNCIL HAVE PROVIDED THE REQUIRED NOTICE UNDER § 4–115 OF THIS ARTICLE, THE COUNTY BOARD SHALL INFORM THE PUBLIC CHARTER SCHOOLS IN THE COUNTY THAT THE SCHOOL SITE OR BUILDING IS AVAILABLE FOR OCCUPATION AND USE BY A PUBLIC CHARTER SCHOOL ON THE TERMS DETERMINED BY THE COUNTY BOARD.

(2) EACH COUNTY BOARD SHALL ESTABLISH A PROCEDURE TO DETERMINE WHICH PUBLIC CHARTER SCHOOL MAY OCCUPY AND USE AN AVAILABLE SCHOOL SITE OR BUILDING IF MORE THAN ONE PUBLIC CHARTER SCHOOL NOTIFIES THE COUNTY BOARD OF AN INTEREST IN OCCUPYING AND USING A SCHOOL SITE OR BUILDING.

(B) A PUBLIC CHARTER SCHOOL THAT OCCUPIES OR USES A SCHOOL SITE OR BUILDING UNDER SUBSECTION (A) OF THIS SECTION MAY NOT SELL, DISPOSE OF, OR OTHERWISE TRANSFER THE SCHOOL SITE OR BUILDING.

9–112.

ANY PORTION OF A BUILDING OR PROPERTY OCCUPIED AND USED BY A PUBLIC CHARTER SCHOOL SHALL BE EXEMPT FROM PROPERTY TAXES UNDER § 7–202 OF THE TAX – PROPERTY ARTICLE FOR THE DURATION OF THE OCCUPATION AND USE OF THE BUILDING OR PROPERTY AS A PUBLIC CHARTER SCHOOL.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 503

(Senate Bill 615)

AN ACT concerning

Education – Residential Boarding Education Programs for At–Risk Youth – Funding

FOR the purpose of requiring the Governor to appropriate certain funds to the State Department of Education to cover the transportation, boarding, and administrative costs of residential boarding education programs for at–risk youth; limiting the total amount of funds to an amount adequate to fund a certain maximum number of students; defining certain terms; and generally relating to funding for residential boarding education programs for at–risk youth.

BY repealing and reenacting, with amendments,
Article – Education
Section 8–710
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

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

Article – Education

8–710.

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

(2) "CHANGE IN THE PER PUPIL AMOUNT" MEANS THE CHANGE IN THE PER PUPIL FOUNDATION AMOUNT FROM THE PRIOR FISCAL YEAR TO THE CURRENT FISCAL YEAR DIVIDED BY THE PER PUPIL FOUNDATION AMOUNT FROM THE PRIOR FISCAL YEAR.

(3) "PER PUPIL ALLOCATION" MEANS THE PER PUPIL FIGURE CALCULATED EACH FISCAL YEAR UNDER SUBSECTION (C) OF THIS SECTION TO COVER THE TRANSPORTATION, BOARDING, AND ADMINISTRATIVE COSTS OF A PROGRAM.

(4) "PER PUPIL FOUNDATION AMOUNT" MEANS THE FIGURE CALCULATED FOR EACH FISCAL YEAR BY THE DEPARTMENT IN ACCORDANCE WITH § 5–202 OF THIS ARTICLE.

(B) In addition to the funds disbursed in accordance with § 8–709 of this subtitle, the Governor shall appropriate funds to the Department in accordance with this section to cover the transportation, boarding, and administrative costs of a program.

[(b)**] (C)** (1) Subject to paragraph **[**(3)**] (4)** of this subsection, beginning in fiscal year 2009, the Governor shall appropriate at least $2,000,000 to the Department in order for a program to serve up to 80 students.

(2) For ~~**FISCAL YEARS 2010 THROUGH 2012, FOR**~~ each additional 10 students enrolled in a program, as reported by the Department, the Governor shall appropriate an additional $250,000.

(3) ~~**BEGINNING IN FISCAL YEAR 2013, FOR EACH STUDENT ENROLLED IN A PROGRAM, AS REPORTED BY THE DEPARTMENT, THE GOVERNOR SHALL APPROPRIATE:**~~

~~**(I) FOR FISCAL YEAR 2013, AN ADDITIONAL AMOUNT OF AT LEAST $25,000 MULTIPLIED BY THE CHANGE IN THE PER PUPIL AMOUNT PLUS ONE; AND**~~

~~**(II)**~~ **FOR FISCAL YEAR 2014 AND EACH FISCAL YEAR THEREAFTER, FOR EACH STUDENT ENROLLED IN A PROGRAM, AS REPORTED BY THE DEPARTMENT, THE GOVERNOR SHALL APPROPRIATE AN ADDITIONAL AMOUNT THAT IS AT LEAST EQUAL TO THE PRIOR YEAR PER PUPIL AMOUNT MULTIPLIED BY THE CHANGE IN THE PER PUPIL AMOUNT PLUS ONE.**

(4) The total amount of funds appropriated under this subsection may not exceed **[**$10,000,000**] AN AMOUNT ADEQUATE TO FUND THE PER PUPIL ALLOCATION FOR 400 STUDENTS** for any fiscal year.

[(c)**] (D)** This section may not be construed to prohibit a program from receiving funds from private, federal, or other sources.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 504

(House Bill 448)

AN ACT concerning

Education – Residential Boarding Education Programs for At–Risk Youth – Funding

FOR the purpose of requiring the Governor to appropriate certain funds to the State Department of Education to cover the transportation, boarding, and administrative costs of residential boarding education programs for at–risk youth; limiting the total amount of funds to an amount adequate to fund a certain maximum number of students; defining certain terms; and generally relating to funding for residential boarding education programs for at–risk youth.

BY repealing and reenacting, with amendments,
Article – Education
Section 8–710
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

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

Article – Education

8–710.

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

(2) "CHANGE IN THE PER PUPIL AMOUNT" MEANS THE CHANGE IN THE PER PUPIL FOUNDATION AMOUNT FROM THE PRIOR FISCAL YEAR TO THE CURRENT FISCAL YEAR DIVIDED BY THE PER PUPIL FOUNDATION AMOUNT FROM THE PRIOR FISCAL YEAR.

(3) "PER PUPIL ALLOCATION" MEANS THE PER PUPIL FIGURE CALCULATED EACH FISCAL YEAR UNDER SUBSECTION (C) OF THIS SECTION TO

COVER THE TRANSPORTATION, BOARDING, AND ADMINISTRATIVE COSTS OF A PROGRAM.

(4) "PER PUPIL FOUNDATION AMOUNT" MEANS THE FIGURE CALCULATED FOR EACH FISCAL YEAR BY THE DEPARTMENT IN ACCORDANCE WITH § 5–202 OF THIS ARTICLE.

(B) In addition to the funds disbursed in accordance with § 8–709 of this subtitle, the Governor shall appropriate funds to the Department in accordance with this section to cover the transportation, boarding, and administrative costs of a program.

[(b)**] (C)** (1) Subject to paragraph **[**(3)**] (4)** of this subsection, beginning in fiscal year 2009, the Governor shall appropriate at least $2,000,000 to the Department in order for a program to serve up to 80 students.

(2) For ~~**FISCAL YEARS 2010 THROUGH 2012, FOR**~~ each additional 10 students enrolled in a program, as reported by the Department, the Governor shall appropriate an additional $250,000.

(3) ~~**BEGINNING IN FISCAL YEAR 2013, FOR EACH STUDENT ENROLLED IN A PROGRAM, AS REPORTED BY THE DEPARTMENT, THE GOVERNOR SHALL APPROPRIATE:**~~

~~**(I) FOR FISCAL YEAR 2013, AN ADDITIONAL AMOUNT OF AT LEAST $25,000 MULTIPLIED BY THE CHANGE IN THE PER PUPIL AMOUNT PLUS ONE; AND**~~

~~**(II)**~~ **FOR FISCAL YEAR 2014 AND EACH FISCAL YEAR THEREAFTER, FOR EACH STUDENT ENROLLED IN A PROGRAM, AS REPORTED BY THE DEPARTMENT, THE GOVERNOR SHALL APPROPRIATE AN ADDITIONAL AMOUNT THAT IS AT LEAST EQUAL TO THE PRIOR YEAR PER PUPIL AMOUNT MULTIPLIED BY THE CHANGE IN THE PER PUPIL AMOUNT PLUS ONE.**

(4) The total amount of funds appropriated under this subsection may not exceed **[**$10,000,000**] AN AMOUNT ADEQUATE TO FUND THE PER PUPIL ALLOCATION FOR 400 STUDENTS** for any fiscal year.

[(c)**] (D)** This section may not be construed to prohibit a program from receiving funds from private, federal, or other sources.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 505

(Senate Bill 635)

AN ACT concerning

Natural Resources – Authorization to Catch Striped Bass and Crabs – Revocation

FOR the purpose of providing that a certain person who ~~receives a citation for~~ commits a certain offense related to unlawfully taking striped bass or crabs may have a certain authorization revoked under certain circumstances; requiring the Department of Natural Resources, in consultation with the Tidal Fisheries Advisory Commission and the Sport Fisheries Advisory Commission, to adopt regulations that establish certain grounds for the revocation of a certain authorization, including certain categories of ~~offenses~~ violations; requiring the Department to hold a certain hearing under certain circumstances in accordance with the Administrative Procedure Act; requiring the Department to revoke a person's authorization to catch striped bass or crabs under certain circumstances; authorizing certain aggrieved persons to obtain judicial review of a certain decision; prohibiting a certain person from engaging or working in a certain fishery under certain circumstances; and generally relating to unlawfully taking striped bass or crabs and authorization revocation.

BY adding to
Article – Natural Resources
Section 4–1210
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

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

Article – Natural Resources

4–1210.

(A) (1) IN ADDITION TO ANY OTHER PENALTY OR FINE PROVIDED IN THIS TITLE, A PERSON WHO IS AUTHORIZED TO CATCH STRIPED BASS OR CRABS UNDER § 4–701 OF THIS TITLE AND WHO COMMITS AN OFFENSE ESTABLISHED UNDER PARAGRAPH (2) OF THIS SUBSECTION MAY HAVE THE AUTHORIZATION TO CATCH STRIPED BASS OR CRABS REVOKED IN ACCORDANCE WITH THIS SECTION.

(2) THE DEPARTMENT, IN CONSULTATION WITH THE TIDAL FISHERIES ADVISORY COMMISSION AND THE SPORT FISHERIES ADVISORY COMMISSION, SHALL ADOPT REGULATIONS THAT ESTABLISH GROUNDS FOR THE REVOCATION OF AN AUTHORIZATION TO CATCH STRIPED BASS OR CRABS UNDER § 4–701 OF THIS TITLE, WHICH SHALL INCLUDE ~~OFFENSES~~ EGREGIOUS OR REPEAT VIOLATIONS IN THE FOLLOWING CATEGORIES:

(I) USING ILLEGAL GEAR;

(II) HARVESTING DURING CLOSED SEASONS;

(III) HARVESTING FROM A CLOSED AREA;

(IV) ~~EXCEEDING~~ *VIOLATING* ESTABLISHED HARVEST, CATCH, OR SIZE LIMITS; AND

(V) VIOLATING TAGGING AND REPORTING REQUIREMENTS.

(B) (1) BEFORE THE REVOCATION OF AN AUTHORIZATION TO CATCH STRIPED BASS OR CRABS UNDER THIS SECTION, THE DEPARTMENT SHALL HOLD A HEARING ON THE MATTER IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT UNDER TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(2) AFTER A HEARING IS CONDUCTED UNDER PARAGRAPH (1) OF THIS SUBSECTION, IF THE PRESIDING OFFICER FINDS OR CONCLUDES THAT THE PERSON KNOWINGLY HAS COMMITTED AN OFFENSE LISTED UNDER SUBSECTION (A)(2) OF THIS SECTION, THE DEPARTMENT SHALL REVOKE THE PERSON'S AUTHORIZATION TO CATCH STRIPED BASS OR CRABS.

(C) A PERSON WHO IS AGGRIEVED BY THE FINAL DECISION OF THE DEPARTMENT MAY OBTAIN JUDICIAL REVIEW OF THE DECISION IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT UNDER TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(D) A PERSON WHOSE AUTHORIZATION HAS BEEN REVOKED IN ACCORDANCE WITH THIS SECTION MAY NOT ENGAGE OR WORK IN THE FISHERY FOR WHICH THE AUTHORIZATION WAS REVOKED WHETHER OR NOT IT REQUIRES THE USE OF ANOTHER AUTHORIZATION.

SECTION 2. AND BE IT FURTHER ENACTED, That on or before January 1, 2012, the Department of Natural Resources shall adopt regulations to:

(a) establish grounds for revocation of authorizations to catch striped bass and crabs under § 4–701 of the Natural Resources Article; and

(b) implement the provisions of Section 1 of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 506

(House Bill 1154)

AN ACT concerning

Natural Resources – Authorization to Catch Striped Bass and Crabs – Revocation

FOR the purpose of providing that a certain person who ~~receives a citation for~~ commits a certain offense related to unlawfully taking striped bass or crabs may have a certain authorization revoked under certain circumstances; requiring the Department of Natural Resources, in consultation with the Tidal Fisheries Advisory Commission and the Sport Fisheries Advisory Commission, to adopt regulations that establish certain grounds for the revocation of a certain authorization, including certain categories of ~~offenses~~ violations; requiring the Department to hold a certain hearing under certain circumstances in accordance with the Administrative Procedure Act; requiring the Department to revoke a person's authorization to catch striped bass or crabs under certain circumstances; authorizing certain aggrieved persons to obtain judicial review of a certain decision; prohibiting a certain person from engaging or working in a certain fishery under certain circumstances; and generally relating to unlawfully taking striped bass or crabs and authorization revocation.

BY adding to
Article – Natural Resources
Section 4–1210
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

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

Article – Natural Resources

4–1210.

(A) (1) IN ADDITION TO ANY OTHER PENALTY OR FINE PROVIDED IN THIS TITLE, A PERSON WHO IS AUTHORIZED TO CATCH STRIPED BASS OR CRABS UNDER § 4–701 OF THIS TITLE AND WHO COMMITS AN OFFENSE ESTABLISHED UNDER PARAGRAPH (2) OF THIS SUBSECTION MAY HAVE THE AUTHORIZATION TO CATCH STRIPED BASS OR CRABS REVOKED IN ACCORDANCE WITH THIS SECTION.

(2) THE DEPARTMENT, IN CONSULTATION WITH THE TIDAL FISHERIES ADVISORY COMMISSION AND THE SPORT FISHERIES ADVISORY COMMISSION, SHALL ADOPT REGULATIONS THAT ESTABLISH GROUNDS FOR THE REVOCATION OF AN AUTHORIZATION TO CATCH STRIPED BASS OR CRABS UNDER § 4–701 OF THIS TITLE, WHICH SHALL INCLUDE ~~OFFENSES~~ EGREGIOUS OR REPEAT VIOLATIONS IN THE FOLLOWING CATEGORIES:

(I) USING ILLEGAL GEAR;

(II) HARVESTING DURING CLOSED SEASONS;

(III) HARVESTING FROM A CLOSED AREA;

(IV) ~~EXCEEDING~~ VIOLATING ESTABLISHED HARVEST, CATCH, OR SIZE LIMITS; AND

(V) VIOLATING TAGGING AND REPORTING REQUIREMENTS.

(B) (1) BEFORE THE REVOCATION OF AN AUTHORIZATION TO CATCH STRIPED BASS OR CRABS UNDER THIS SECTION, THE DEPARTMENT SHALL HOLD A HEARING ON THE MATTER IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT UNDER TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(2) AFTER A HEARING IS CONDUCTED UNDER PARAGRAPH (1) OF THIS SUBSECTION, IF THE PRESIDING OFFICER FINDS OR CONCLUDES THAT THE PERSON KNOWINGLY HAS COMMITTED AN OFFENSE LISTED UNDER SUBSECTION (A)(2) OF THIS SECTION, THE DEPARTMENT SHALL REVOKE THE PERSON'S AUTHORIZATION TO CATCH STRIPED BASS OR CRABS.

(C) A PERSON WHO IS AGGRIEVED BY THE FINAL DECISION OF THE DEPARTMENT MAY OBTAIN JUDICIAL REVIEW OF THE DECISION IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT UNDER TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(D) A PERSON WHOSE AUTHORIZATION HAS BEEN REVOKED IN ACCORDANCE WITH THIS SECTION MAY NOT ENGAGE OR WORK IN THE FISHERY FOR WHICH THE AUTHORIZATION WAS REVOKED WHETHER OR NOT IT REQUIRES THE USE OF ANOTHER AUTHORIZATION.

SECTION 2. AND BE IT FURTHER ENACTED, That on or before January 1, 2012, the Department of Natural Resources shall adopt regulations to:

(a) establish grounds for revocation of authorizations to catch striped bass and crabs under § 4–701 of the Natural Resources Article; and

(b) implement the provisions of Section 1 of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 507

(Senate Bill 638)

AN ACT concerning

Video Lottery Terminal Applicants and Licensees – Minority Business Participation – Modifications and Sunset Extension

FOR the purpose of ~~adding maintenance and ongoing service delivery to the requirements that certain applicants or licensees for video lottery operations must meet regarding minority business participation under certain circumstances;~~ extending a certain termination date for certain provisions of law relating to minority participation in video lottery facility operations; providing a termination date for certain monitoring, reporting, and other duties of the State Lottery Commission and the Governor's Office of Minority Affairs; and generally relating to minority business participation requirements and video lottery operation licenses.

BY repealing and reenacting, with amendments,
Article – State Government
Section 9–1A–10
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – State Government

9–1A–10.

(a) (1) For the construction [and], procurement~~, MAINTENANCE, AND ONGOING SERVICE DELIVERY~~ related to the operation of video lottery terminals, the applicant or licensee shall at a minimum meet the same requirements of a designated unit for minority business participation as described under Title 14, Subtitle 3 of the State Finance and Procurement Article.

(2) If the county in which a video lottery facility will be located has higher minority business participation requirements than the State as described in paragraph (1) of this subsection, the applicant shall meet the county's minority business participation requirements [to the extent possible].

(3) Any collective bargaining agreement or agreements, including a project labor agreement or a neutrality agreement, entered into by an applicant or licensee may not negate the requirements of this subsection.

(4) If an applicant for employment at a video lottery facility believes that the applicant has been discriminated against in the employment process, the applicant may appeal the employment decision to the local human relations board in the county where the facility is located.

(5) Notwithstanding any collective bargaining agreement or agreements, a licensee shall:

(i) provide health insurance coverage for its employees; and

(ii) give a preference to hiring qualified employees from the communities within 10 miles of the video lottery facility.

(6) A licensee shall:

(i) provide retirement benefits for its employees; and

(ii) if the licensee is a racetrack licensee, provide retirement benefits to its video lottery operation employees that are equivalent to the level of benefits provided to the racetrack employees who are eligible under the Maryland Racetrack Employees Pension Fund.

(7) Notwithstanding any collective bargaining agreement or agreements, if the licensee is a racetrack location, the licensee shall provide health insurance coverage to all employees of the racetrack, including the employees of the racetrack on the backstretch of the racetrack.

(b) (1) The Commission shall ensure that a video lottery operation licensee complies with the requirements of subsection (a)(1) and (2) of this section as a condition of holding the video lottery operation license.

(2) The Governor's Office of Minority Affairs shall monitor a licensee's compliance with subsection (a)(1) and (2) of this section.

(3) The Governor's Office of Minority Affairs shall report to the Commission at least every 6 months on the compliance of licensees with subsection (a)(1) and (2) of this section.

(4) If the Governor's Office of Minority Affairs reports that a licensee is not in compliance with subsection (a)(1) and (2) of this section, the Commission may take immediate action to ensure the compliance of the licensee.

(c) On or after July 1, **[**2011**] 2018**, the provisions of **[**subsection**] SUBSECTIONS** (a)(1) and (2) **AND (B)** of this section and any regulations adopted under **[**subsection**] SUBSECTIONS** (a)(1) and (2) **AND (B)** of this section shall be of no effect and may not be enforced.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 508

(Senate Bill 644)

AN ACT concerning

~~Joint Committee on Transparency and Open Government Act~~
State Government – Transparency and Open Government

FOR the purpose of establishing the Joint Committee on Transparency and Open Government; specifying the membership, chairs, and staff of the Committee; requiring the Committee to hold meetings under certain circumstances; authorizing the Committee to hold certain hearings and to consider certain votes and resolutions; specifying the purposes of the Committee; requiring the Committee to make certain recommendations, review certain laws, programs, services, and policies, consult with certain State entities, and perform certain other duties; requiring the Committee to submit a certain report to the General Assembly on or before a certain date each year; *providing that a public body need not prepare written minutes of an open meeting under certain circumstances; specifying that certain information shall be deemed the minutes*

of a certain session; clarifying provisions regarding the minutes of certain meetings of a public body; altering a provision that requires a public body to keep a copy of certain tape recordings; and generally relating to the Joint Committee on Transparency and Open Government *and minutes of meetings of a public body*.

BY adding to
Article – State Government
Section 2–10A–14
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 10–509
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

Preamble

WHEREAS, An open and transparent government is vital to encourage citizen participation and input; and

WHEREAS, The presiding officers of the Senate of Maryland and the House of Delegates implemented changes to the General Assembly Web site to increase constituent access to government resources and actions by disclosing committee votes, granting free access to all areas to the General Assembly Web site, and posting video and audio streaming of committee hearings online; and

WHEREAS, It is in Maryland's best interest to continue to build on and improve citizen engagement in all aspects of our government; and

WHEREAS, Maryland's overall rankings on government transparency by prominent national organizations continues to lag behind other states; and

WHEREAS, Advocates have expressed a desire and need for a body that can accept and consider ideas related to transparency and open government year–round; and

WHEREAS, Other states have created special committees and work groups to develop transparency policies and use technology to improve transparency and have reported increases in both citizen engagement and budget savings as a result of those efforts; and

WHEREAS, Transparency Web sites developed in other states have been proven to save states millions of dollars through more efficient government operations,

fewer manual information requests, more competitive contracting bids, and the prevention of waste and abuse of public funds due to enhanced public scrutiny; and

WHEREAS, Maryland needs a central legislative body that can consider various policies and proposals regarding government transparency; and

WHEREAS, A joint committee on transparency and open government can develop policies and advise the General Assembly on implementing those policies and improving transparency while working with existing entities, programs, and resources; now, therefore,

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

Article – State Government

2–10A–14.

(A) THERE IS A JOINT COMMITTEE ON TRANSPARENCY AND OPEN GOVERNMENT.

(B) (1) THE COMMITTEE CONSISTS OF 12 MEMBERS.

(2) OF THE 12 MEMBERS:

(I) 6 SHALL BE MEMBERS OF THE SENATE OF MARYLAND, APPOINTED BY THE PRESIDENT OF THE SENATE; AND

(II) 6 SHALL BE MEMBERS OF THE HOUSE OF DELEGATES, APPOINTED BY THE SPEAKER OF THE HOUSE.

(C) FROM AMONG THE MEMBERSHIP OF THE COMMITTEE, THE PRESIDENT OF THE SENATE SHALL APPOINT A SENATOR TO SERVE AS THE SENATE CHAIR OF THE COMMITTEE, AND THE SPEAKER OF THE HOUSE SHALL APPOINT A DELEGATE TO SERVE AS THE HOUSE CHAIR OF THE COMMITTEE.

(D) THE DEPARTMENT OF LEGISLATIVE SERVICES SHALL PROVIDE STAFF ASSISTANCE TO THE COMMITTEE.

(E) THE PURPOSES OF THE COMMITTEE ARE TO:

(1) PROVIDE CONTINUING LEGISLATIVE OVERSIGHT REGARDING TRANSPARENCY AND OPEN GOVERNMENT; AND

(2) MAKE RECOMMENDATIONS REGARDING INITIATIVES THAT WILL INCREASE CITIZEN ACCESS TO GOVERNMENT RESOURCES, PUBLICATIONS, AND ACTIONS.

(F) THE COMMITTEE SHALL HOLD:

(1) AN ORGANIZATIONAL MEETING PROMPTLY AFTER THE APPOINTMENT OF ITS MEMBERS; AND

(2) ANY OTHER MEETINGS THAT THE COMMITTEE CONSIDERS NECESSARY TO CARRY OUT ITS DUTIES EFFICIENTLY.

(G) THE COMMITTEE MAY:

(1) HOLD A HEARING ON ANY MATTER RELATING TO THE FUNCTIONS OF THE COMMITTEE; AND

(2) CONSIDER A VOTE ON A BILL OR RESOLUTION REFERRED TO IT BY THE PRESIDENT OR THE SPEAKER.

(H) THE COMMITTEE SHALL:

(1) IDENTIFY AREAS IN WHICH THE STATE CAN IMPROVE ITS TECHNOLOGY AND WEB SITES TO INCREASE TRANSPARENCY AND CITIZEN ENGAGEMENT;

(2) MAKE RECOMMENDATIONS REGARDING STATE TRANSPARENCY GOALS AND POLICIES;

(3) CONSULT WITH STATE ENTITIES THAT FOSTER TRANSPARENCY, INCLUDING THE GOVERNOR'S STATESTAT OFFICE:

(I) WHEN DEVELOPING STATE TRANSPARENCY GOALS AND POLICIES; AND

(II) TO IDENTIFY METHODS OF COORDINATING TRANSPARENCY POLICIES ACROSS STATE GOVERNMENT;

(4) REVIEW STATE LAWS, PROGRAMS, SERVICES, AND POLICIES AND MAKE RECOMMENDATIONS TO ALIGN THEM WITH STATE TRANSPARENCY POLICIES AND GOALS;

(5) DETERMINE WHETHER THERE ARE INTERDEPARTMENTAL GAPS, INCONSISTENCIES, AND INEFFICIENCIES IN THE IMPLEMENTATION OR ATTAINMENT OF STATE TRANSPARENCY POLICIES AND GOALS;

(6) IDENTIFY LAWS, PROGRAMS, SERVICES, OR BUDGETARY PRIORITIES THAT NEED TO BE ADOPTED TO ENSURE AND PROMOTE TRANSPARENCY AND OPEN GOVERNMENT IN THE STATE;

(7) SURVEY TRANSPARENCY INITIATIVES IN OTHER STATES THAT HAVE PROVEN EFFECTIVE AT SAVING PUBLIC FUNDS AND RESOURCES AND ASSESS WHETHER THOSE POLICIES SHOULD BE MODIFIED AND ADOPTED FOR USE BY THE STATE;

(8) SERVE AS AN INFORMATIONAL RESOURCE AND LIAISON FOR ADVOCATES AND CITIZENS WITH IDEAS AND SUGGESTIONS FOR TOOLS AND PRACTICAL IMPLEMENTATION OF INITIATIVES THAT WILL INCREASE TRANSPARENCY;

(9) REVIEW AND MAKE RECOMMENDATIONS REGARDING ACTIONS SUGGESTED BY ADVOCATES AND CITIZENS TO INCREASE CITIZEN ACCESS TO GOVERNMENT RESOURCES, PUBLICATIONS, AND ACTIONS;

(10) RECOMMEND METHODS OF INCREASING PUBLIC AWARENESS OF GOVERNMENT RESOURCES, PUBLICATIONS, AND WEB SITES; AND

(11) PERFORM ANY OTHER ACTIVITY THAT IS REQUIRED TO FULFILL THE PURPOSES OF THE COMMITTEE.

(I) (1) SUBJECT TO § 2–1246 OF THIS TITLE, THE COMMITTEE SHALL SUBMIT A REPORT TO THE GENERAL ASSEMBLY ON OR BEFORE DECEMBER 1 EACH YEAR.

(2) THE REPORT SHALL INCLUDE:

(I) A DESCRIPTION OF THE WORK OF THE COMMITTEE; AND

(II) ANY RECOMMENDATIONS OF THE COMMITTEE.

10–509.

(a) This section does not:

(1) require any change in the form or content of the Journal of the Senate of Maryland or Journal of the House of Delegates of Maryland; or

(2) limit the matters that a public body may include in its minutes.

(b) ***(1)*** *[As]* ***SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, AS*** *soon as practicable after a public body meets, it shall have written minutes of its session prepared.*

(2) A PUBLIC BODY NEED NOT PREPARE WRITTEN MINUTES OF AN OPEN SESSION:

(I) IF LIVE AND ARCHIVED VIDEO OR AUDIO STREAMING OF THE OPEN SESSION IS AVAILABLE; OR

(II) IF THE PUBLIC BODY VOTES ON LEGISLATION AND THE INDIVIDUAL VOTES TAKEN BY EACH MEMBER OF THE PUBLIC BODY WHO PARTICIPATES IN THE VOTING ARE POSTED PROMPTLY ON THE INTERNET.

(3) THE INFORMATION SPECIFIED UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL BE DEEMED THE MINUTES OF THE OPEN SESSION.

(c) (1) The ***WRITTEN*** *minutes shall reflect:*

(i) each item that the public body considered;

(ii) the action that the public body took on each item; and

(iii) each vote that was recorded.

(2) If a public body meets in closed session, the ***WRITTEN*** *minutes for its next open session shall include:*

(i) a statement of the time, place, and purpose of the closed session;

(ii) a record of the vote of each member as to closing the session;

(iii) a citation of the authority under this subtitle for closing the session; and

(iv) a listing of the topics of discussion, persons present, and each action taken during the session.

(3) (i) A session may be tape recorded by a public body.

(ii) Except as otherwise provided in paragraph (4) of this subsection, the ***WRITTEN*** *minutes and any tape recording of a closed session shall be sealed and may not be open to public inspection.*

*(4) The **WRITTEN** minutes and any tape recording shall be unsealed and open to inspection as follows:*

(i) for a meeting closed under § 10–508(a)(5) of this subtitle, when the public body invests the funds;

(ii) for a meeting closed under § 10–508(a)(6) of this subtitle, when the public securities being discussed have been marketed; or

*(iii) on request of a person or on the public body's own initiative, if a majority of the members of the public body present and voting vote in favor of unsealing the **WRITTEN** minutes and any tape recording.*

*(d) Except as provided in subsection (c) of this section, **WRITTEN** minutes of a public body are public records and shall be open to public inspection during ordinary business hours.*

*(e) A public body shall keep a copy of the **WRITTEN** minutes of each session and any tape recording made under **[**subsection**]** **SUBSECTIONS (B)(2) OR** (c)(3)(i) of this section for at least 1 year after the date of the session.*

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ *June* 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 509

(House Bill 766)

AN ACT concerning

~~**Joint Committee on Transparency and Open Government Act**~~
State Government – Transparency and Open Government

FOR the purpose of establishing the Joint Committee on Transparency and Open Government; specifying the membership, chairs, and staff of the Committee; requiring the Committee to hold meetings under certain circumstances; authorizing the Committee to hold certain hearings and to consider certain votes and resolutions; specifying the purposes of the Committee; requiring the Committee to make certain recommendations, review certain laws, programs, services, and policies, consult with certain State entities, and perform certain other duties; requiring the Committee to submit a certain report to the General

Assembly on or before a certain date each year; *providing that a public body need not prepare written minutes of an open meeting under certain circumstances; specifying that certain information shall be deemed the minutes of a certain session; clarifying provisions regarding the minutes of certain meetings of a public body; altering a provision that requires a public body to keep a copy of certain tape recordings;* and generally relating to the Joint Committee on Transparency and Open Government *and minutes of meetings of a public body*.

BY adding to
Article – State Government
Section 2–10A–14
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 10–509
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

Preamble

WHEREAS, An open and transparent government is vital to encourage citizen participation and input; and

WHEREAS, The presiding officers of the Senate of Maryland and the House of Delegates implemented changes to the General Assembly Web site to increase constituent access to government resources and actions by disclosing committee votes, granting free access to all areas to the General Assembly Web site, and posting video and audio streaming of committee hearings online; and

WHEREAS, It is in Maryland's best interest to continue to build on and improve citizen engagement in all aspects of our government; and

WHEREAS, Maryland's overall rankings on government transparency by prominent national organizations continues to lag behind other states; and

WHEREAS, Advocates have expressed a desire and need for a body that can accept and consider ideas related to transparency and open government year–round; and

WHEREAS, Other states have created special committees and work groups to develop transparency policies and use technology to improve transparency and have reported increases in both citizen engagement and budget savings as a result of those efforts; and

WHEREAS, Transparency Web sites developed in other states have been proven to save states millions of dollars through more efficient government operations, fewer manual information requests, more competitive contracting bids, and the prevention of waste and abuse of public funds due to enhanced public scrutiny; and

WHEREAS, Maryland needs a central legislative body that can consider various policies and proposals regarding government transparency; and

WHEREAS, A joint committee on transparency and open government can develop policies and advise the General Assembly on implementing those policies and improving transparency while working with existing entities, programs, and resources; now, therefore,

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(2) OF THE 12 MEMBERS:

(I) 6 SHALL BE MEMBERS OF THE SENATE OF MARYLAND, APPOINTED BY THE PRESIDENT OF THE SENATE; AND

(II) 6 SHALL BE MEMBERS OF THE HOUSE OF DELEGATES, APPOINTED BY THE SPEAKER OF THE HOUSE.

(C) FROM AMONG THE MEMBERSHIP OF THE COMMITTEE, THE PRESIDENT OF THE SENATE SHALL APPOINT A SENATOR TO SERVE AS THE SENATE CHAIR OF THE COMMITTEE, AND THE SPEAKER OF THE HOUSE SHALL APPOINT A DELEGATE TO SERVE AS THE HOUSE CHAIR OF THE COMMITTEE.

(D) THE DEPARTMENT OF LEGISLATIVE SERVICES SHALL PROVIDE STAFF ASSISTANCE TO THE COMMITTEE.

(E) THE PURPOSES OF THE COMMITTEE ARE TO:

(1) PROVIDE CONTINUING LEGISLATIVE OVERSIGHT REGARDING TRANSPARENCY AND OPEN GOVERNMENT; AND

(2) MAKE RECOMMENDATIONS REGARDING INITIATIVES THAT WILL INCREASE CITIZEN ACCESS TO GOVERNMENT RESOURCES, PUBLICATIONS, AND ACTIONS.

(F) THE COMMITTEE SHALL HOLD:

(1) AN ORGANIZATIONAL MEETING PROMPTLY AFTER THE APPOINTMENT OF ITS MEMBERS; AND

(2) ANY OTHER MEETINGS THAT THE COMMITTEE CONSIDERS NECESSARY TO CARRY OUT ITS DUTIES EFFICIENTLY.

(G) THE COMMITTEE MAY:

(1) HOLD A HEARING ON ANY MATTER RELATING TO THE FUNCTIONS OF THE COMMITTEE; AND

(2) CONSIDER A VOTE ON A BILL OR RESOLUTION REFERRED TO IT BY THE PRESIDENT OR THE SPEAKER.

(H) THE COMMITTEE SHALL:

(1) IDENTIFY AREAS IN WHICH THE STATE CAN IMPROVE ITS TECHNOLOGY AND WEB SITES TO INCREASE TRANSPARENCY AND CITIZEN ENGAGEMENT;

(2) MAKE RECOMMENDATIONS REGARDING STATE TRANSPARENCY GOALS AND POLICIES;

(3) CONSULT WITH STATE ENTITIES THAT FOSTER TRANSPARENCY, INCLUDING THE GOVERNOR'S STATESTAT OFFICE:

(I) WHEN DEVELOPING STATE TRANSPARENCY GOALS AND POLICIES; AND

(II) TO IDENTIFY METHODS OF COORDINATING TRANSPARENCY POLICIES ACROSS STATE GOVERNMENT;

(4) REVIEW STATE LAWS, PROGRAMS, SERVICES, AND POLICIES AND MAKE RECOMMENDATIONS TO ALIGN THEM WITH STATE TRANSPARENCY POLICIES AND GOALS;

(5) DETERMINE WHETHER THERE ARE INTERDEPARTMENTAL GAPS, INCONSISTENCIES, AND INEFFICIENCIES IN THE IMPLEMENTATION OR ATTAINMENT OF STATE TRANSPARENCY POLICIES AND GOALS;

(6) IDENTIFY LAWS, PROGRAMS, SERVICES, OR BUDGETARY PRIORITIES THAT NEED TO BE ADOPTED TO ENSURE AND PROMOTE TRANSPARENCY AND OPEN GOVERNMENT IN THE STATE;

(7) SURVEY TRANSPARENCY INITIATIVES IN OTHER STATES THAT HAVE PROVEN EFFECTIVE AT SAVING PUBLIC FUNDS AND RESOURCES AND ASSESS WHETHER THOSE POLICIES SHOULD BE MODIFIED AND ADOPTED FOR USE BY THE STATE;

(8) SERVE AS AN INFORMATIONAL RESOURCE AND LIAISON FOR ADVOCATES AND CITIZENS WITH IDEAS AND SUGGESTIONS FOR TOOLS AND PRACTICAL IMPLEMENTATION OF INITIATIVES THAT WILL INCREASE TRANSPARENCY;

(9) REVIEW AND MAKE RECOMMENDATIONS REGARDING ACTIONS SUGGESTED BY ADVOCATES AND CITIZENS TO INCREASE CITIZEN ACCESS TO GOVERNMENT RESOURCES, PUBLICATIONS, AND ACTIONS;

(10) RECOMMEND METHODS OF INCREASING PUBLIC AWARENESS OF GOVERNMENT RESOURCES, PUBLICATIONS, AND WEB SITES; AND

(11) PERFORM ANY OTHER ACTIVITY THAT IS REQUIRED TO FULFILL THE PURPOSES OF THE COMMITTEE.

(I) (1) SUBJECT TO § 2–1246 OF THIS TITLE, THE COMMITTEE SHALL SUBMIT A REPORT TO THE GENERAL ASSEMBLY ON OR BEFORE DECEMBER 1 EACH YEAR.

(2) THE REPORT SHALL INCLUDE:

(I) A DESCRIPTION OF THE WORK OF THE COMMITTEE; AND

(II) ANY RECOMMENDATIONS OF THE COMMITTEE.

10–509.

(a) This section does not:

(1) require any change in the form or content of the Journal of the Senate of Maryland or Journal of the House of Delegates of Maryland; or

(2) limit the matters that a public body may include in its minutes.

(b) ***(1)*** *[As]* ***SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, AS*** *soon as practicable after a public body meets, it shall have written minutes of its session prepared.*

(2) A PUBLIC BODY NEED NOT PREPARE WRITTEN MINUTES OF AN OPEN SESSION:

(I) IF LIVE AND ARCHIVED VIDEO OR AUDIO STREAMING OF THE OPEN SESSION IS AVAILABLE; OR

(II) IF THE PUBLIC BODY VOTES ON LEGISLATION AND THE INDIVIDUAL VOTES TAKEN BY EACH MEMBER OF THE PUBLIC BODY WHO PARTICIPATES IN THE VOTING ARE POSTED PROMPTLY ON THE INTERNET.

(3) THE INFORMATION SPECIFIED UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL BE DEEMED THE MINUTES OF THE OPEN SESSION.

(c) (1) The ***WRITTEN*** *minutes shall reflect:*

(i) each item that the public body considered;

(ii) the action that the public body took on each item; and

(iii) each vote that was recorded.

(2) If a public body meets in closed session, the ***WRITTEN*** *minutes for its next open session shall include:*

(i) a statement of the time, place, and purpose of the closed session;

(ii) a record of the vote of each member as to closing the session;

(iii) a citation of the authority under this subtitle for closing the session; and

(iv) a listing of the topics of discussion, persons present, and each action taken during the session.

(3) (i) A session may be tape recorded by a public body.

(ii) Except as otherwise provided in paragraph (4) of this subsection, the ***WRITTEN*** *minutes and any tape recording of a closed session shall be sealed and may not be open to public inspection.*

*(4) The **WRITTEN** minutes and any tape recording shall be unsealed and open to inspection as follows:*

(i) for a meeting closed under § 10–508(a)(5) of this subtitle, when the public body invests the funds;

(ii) for a meeting closed under § 10–508(a)(6) of this subtitle, when the public securities being discussed have been marketed; or

*(iii) on request of a person or on the public body's own initiative, if a majority of the members of the public body present and voting vote in favor of unsealing the **WRITTEN** minutes and any tape recording.*

*(d) Except as provided in subsection (c) of this section, **WRITTEN** minutes of a public body are public records and shall be open to public inspection during ordinary business hours.*

*(e) A public body shall keep a copy of the **WRITTEN** minutes of each session and any tape recording made under **[**subsection**]** **SUBSECTIONS (B)(2) OR** (c)(3)(i) of this section for at least 1 year after the date of the session.*

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ *June* 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 510

(Senate Bill 645)

AN ACT concerning

Baltimore City – Sale of Property to Enforce Lien for Water and Sewer Service

FOR the purpose of prohibiting the Mayor and City Council of Baltimore City from selling property to enforce a certain lien for unpaid charges for water and sewer service under certain circumstances; and generally relating to the sale of property in Baltimore City to enforce liens for unpaid charges for water and sewer service.

BY adding to
Article – Tax – Property

Section 14–849.1
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

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

Article – Tax – Property

14–849.1.

(A) IN BALTIMORE CITY, THE MAYOR AND CITY COUNCIL MAY NOT SELL A PROPERTY SOLELY TO ENFORCE A LIEN FOR UNPAID CHARGES FOR WATER AND SEWER SERVICE UNLESS:

(1) THE LIEN IS FOR AT LEAST $350; AND

(2) THE UNPAID CHARGES FOR WATER AND SEWER SERVICE ARE AT LEAST 3 QUARTERS IN ARREARS.

(B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THE MAYOR AND CITY COUNCIL MAY ENFORCE A LIEN ON A PROPERTY FOR UNPAID WATER AND SEWER SERVICE THAT IS LESS THAN $350 IF THE PROPERTY IS BEING SOLD TO ENFORCE ANOTHER LIEN.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 511

(House Bill 867)

AN ACT concerning

Baltimore City – Sale of Property to Enforce Lien for Water and Sewer Service

FOR the purpose of prohibiting the Mayor and City Council of Baltimore City from selling property to enforce a certain lien for unpaid charges for water and sewer service under certain circumstances; and generally relating to the sale of property in Baltimore City to enforce liens for unpaid charges for water and sewer service.

BY adding to
Article – Tax – Property
Section 14–849.1
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

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

Article – Tax – Property

14–849.1.

(A) IN BALTIMORE CITY, THE MAYOR AND CITY COUNCIL MAY NOT SELL A PROPERTY SOLELY TO ENFORCE A LIEN FOR UNPAID CHARGES FOR WATER AND SEWER SERVICE UNLESS:

(1) THE LIEN IS FOR AT LEAST $350; AND

(2) THE UNPAID CHARGES FOR WATER AND SEWER SERVICE ARE AT LEAST 3 QUARTERS IN ARREARS.

(B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THE MAYOR AND CITY COUNCIL MAY ENFORCE A LIEN ON A PROPERTY FOR UNPAID WATER AND SEWER SERVICE THAT IS LESS THAN $350 IF THE PROPERTY IS BEING SOLD TO ENFORCE ANOTHER LIEN.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 512

(Senate Bill 655)

AN ACT concerning

Natural Resources – Commercial Fishing Violations – Enhanced Penalties

FOR the purpose of establishing certain enhanced penalties for a person who commits a certain separate commercial fisheries violation while the person's commercial fishing license or authorization is suspended or revoked or who engages in

commercial fishing activities without an appropriate license or authorization; requiring that certain fines imposed under this Act be paid into the Fisheries Research and Development Fund; clarifying certain commercial fishing violations; and generally relating to enhanced penalties for certain commercial fishing violations.

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 4–708 and 4–1202
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – Natural Resources
Section 4–1201(a) and (b)
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

BY adding to
Article – Natural Resources
Section 4–1201(h)
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

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

Article – Natural Resources

4–708.

(A) A PERSON MAY NOT:

(1) COMMIT A SEPARATE VIOLATION OF THIS TITLE RELATED TO THE SUSPENDED OR REVOKED LICENSE OR AUTHORIZATION WHILE THE PERSON'S LICENSE OR AUTHORIZATION TO FISH OR DEAL IN FISH UNDER § 4–701 OF THIS SUBTITLE IS SUSPENDED OR REVOKED; OR

(2) ENGAGE IN AN ACTIVITY FOR WHICH A LICENSE OR AN AUTHORIZATION IS REQUIRED UNDER § 4–701 OF THIS SUBTITLE WITHOUT HOLDING THAT LICENSE OR AUTHORIZATION.

(B) A person may not set any net during the time his commercial net fishing license is suspended or revoked.

4–1201.

(a) Except as otherwise specifically provided in this title, a person who violates any provision of this title is guilty of a misdemeanor and, upon conviction, is subject to a fine not exceeding $1,000, with costs imposed in the discretion of the court.

(b) Unless another penalty is specifically provided elsewhere in this title, any person found guilty of a second or subsequent violation of any provision of this title is subject to a fine not exceeding $2,000, or imprisonment not exceeding one year, or both, with costs imposed in the discretion of the court. For the purpose of this subsection, a second or subsequent violation is one which has occurred within two years of any prior violation of this title.

(H) IN ADDITION TO ANY OTHER APPLICABLE PENALTY UNDER THIS TITLE, A PERSON WHO VIOLATES § 4–708(A)(1) OF THIS TITLE (COMMITTING SEPARATE COMMERCIAL FISHING VIOLATION WHILE LICENSE OR AUTHORIZATION IS SUSPENDED OR REVOKED) OR § 4–708(A)(2) OF THIS TITLE (ENGAGING IN COMMERCIAL FISHING ACTIVITY WITHOUT HOLDING APPROPRIATE LICENSE OR AUTHORIZATION) IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $25,000 OR BOTH, WITH COSTS IMPOSED IN THE DISCRETION OF THE COURT.

4–1202.

(a) **(1)** [If] **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF** any fine is imposed by the District Court for a violation of any provision of this title, the fine shall be collected pursuant to the provisions of law of the District Court system.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A FINE IMPOSED BY THE DISTRICT COURT UNDER § 4–1201(H) OF THIS SUBTITLE ON A PERSON WHO COMMITS A SEPARATE COMMERCIAL FISHING VIOLATION WHILE THE LICENSE OR AUTHORIZATION IS SUSPENDED OR REVOKED OR WHO ENGAGES IN COMMERCIAL FISHING ACTIVITY WITHOUT HOLDING THE APPROPRIATE LICENSE OR AUTHORIZATION, LESS THE COSTS OF COLLECTION, SHALL BE PAID TO THE FISHERIES RESEARCH AND DEVELOPMENT FUND.

(b) If any fine is imposed by the circuit court of any county, the fine, less the costs of collection, shall be paid to the Fisheries Research and Development Fund, unless otherwise provided for.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 513

(House Bill 1225)

AN ACT concerning

Natural Resources – Commercial Fishing Violations – Enhanced Penalties

FOR the purpose of establishing certain enhanced penalties for a person who commits a certain separate commercial fisheries violation while the person's commercial fishing license or authorization is suspended or revoked or who engages in commercial fishing activities without an appropriate license or authorization; requiring that certain fines imposed under this Act be paid into the Fisheries Research and Development Fund; clarifying certain commercial fishing violations; and generally relating to enhanced penalties for certain commercial fishing violations.

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 4–708 and 4–1202
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – Natural Resources
Section 4–1201(a) and (b)
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

BY adding to
Article – Natural Resources
Section 4–1201(h)
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

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

Article – Natural Resources

4–708.

(A) A PERSON MAY NOT:

(1) COMMIT A SEPARATE VIOLATION OF THIS TITLE RELATED TO THE SUSPENDED OR REVOKED LICENSE OR AUTHORIZATION WHILE THE PERSON'S LICENSE OR AUTHORIZATION TO FISH OR DEAL IN FISH UNDER § 4–701 OF THIS SUBTITLE IS SUSPENDED OR REVOKED; OR

(2) ENGAGE IN AN ACTIVITY FOR WHICH A LICENSE OR AN AUTHORIZATION IS REQUIRED UNDER § 4–701 OF THIS SUBTITLE WITHOUT HOLDING THAT LICENSE OR AUTHORIZATION.

(B) A person may not set any net during the time his commercial net fishing license is suspended or revoked.

4–1201.

(a) Except as otherwise specifically provided in this title, a person who violates any provision of this title is guilty of a misdemeanor and, upon conviction, is subject to a fine not exceeding $1,000, with costs imposed in the discretion of the court.

(b) Unless another penalty is specifically provided elsewhere in this title, any person found guilty of a second or subsequent violation of any provision of this title is subject to a fine not exceeding $2,000, or imprisonment not exceeding one year, or both, with costs imposed in the discretion of the court. For the purpose of this subsection, a second or subsequent violation is one which has occurred within two years of any prior violation of this title.

(H) IN ADDITION TO ANY OTHER APPLICABLE PENALTY UNDER THIS TITLE, A PERSON WHO VIOLATES § 4–708(A)(1) OF THIS TITLE (COMMITTING SEPARATE COMMERCIAL FISHING VIOLATION WHILE LICENSE OR AUTHORIZATION IS SUSPENDED OR REVOKED) OR § 4–708(A)(2) OF THIS TITLE (ENGAGING IN COMMERCIAL FISHING ACTIVITY WITHOUT HOLDING APPROPRIATE LICENSE OR AUTHORIZATION) IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $25,000 OR BOTH, WITH COSTS IMPOSED IN THE DISCRETION OF THE COURT.

4–1202.

(a) **(1) [**If**] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF** any fine is imposed by the District Court for a violation of any provision of this title, the fine shall be collected pursuant to the provisions of law of the District Court system.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A FINE IMPOSED BY THE DISTRICT COURT UNDER § 4–1201(H) OF THIS SUBTITLE ON A PERSON WHO COMMITS A SEPARATE COMMERCIAL FISHING VIOLATION WHILE

THE LICENSE OR AUTHORIZATION IS SUSPENDED OR REVOKED OR WHO ENGAGES IN COMMERCIAL FISHING ACTIVITY WITHOUT HOLDING THE APPROPRIATE LICENSE OR AUTHORIZATION, LESS THE COSTS OF COLLECTION, SHALL BE PAID TO THE FISHERIES RESEARCH AND DEVELOPMENT FUND.

(b) If any fine is imposed by the circuit court of any county, the fine, less the costs of collection, shall be paid to the Fisheries Research and Development Fund, unless otherwise provided for.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 514

(Senate Bill 656)

AN ACT concerning

Property and Casualty Insurance – Certificates of Insurance and Certificate of Insurance Forms

FOR the purpose of ~~prohibiting a person from preparing or issuing or requiring the preparation or issuance of a certificate of insurance unless the certificate of insurance form has been filed with and approved by the Maryland Insurance Commissioner; providing a certain exception; prohibiting a person from altering or modifying a certain certificate of insurance form; requiring the Commissioner to disapprove a certificate of insurance form or withdraw approval of a certificate of insurance form under certain circumstances; requiring a certificate of insurance to contain certain language; prohibiting a certificate of insurance from containing a reference to a certain contract;~~ prohibiting a person from requiring an insurer or insurance producer to prepare or issue, or a policyholder to provide, a certificate of insurance that contains false or misleading information relating to the policy of insurance referenced in the certificate; prohibiting a person from preparing or issuing a certificate of insurance that the person knows contains certain information or that purports to amend, alter, or extend certain coverage; prohibiting a person from preparing, issuing, or requiring, either in addition to or in lieu of a certificate of insurance, an opinion letter or other document that is inconsistent with this Act; providing that a certificate of insurance is not a policy of insurance and does not amend, alter, or extend certain coverage or confer certain rights on a certificate holder; ~~specifying the circumstances under which a certificate holder has a legal right to~~ providing that the terms and conditions of a certain notice shall be governed by the policy of insurance and may not be altered by a certificate of insurance;

providing that a certificate of insurance or any other document prepared, issued, or required in violation of this Act is void and unenforceable; authorizing the Maryland Insurance Commissioner to examine and investigate the activities of any person that the Commissioner reasonably believes has been or is engaged in an act or practice prohibited by this Act; ~~authorizing the Commissioner to enforce this Act and impose certain penalties and remedies; requiring the Commissioner to adopt certain regulations;~~ providing for the application and construction of this Act; defining certain terms; requiring the Commissioner to conduct a certain study and report to certain committees of the General Assembly on or before a certain date; and generally relating to certificates of insurance and certificate of insurance forms.

BY adding to
Article – Insurance
Section 19–116
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

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

Article – Insurance

19–116.

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

(2) "CERTIFICATE HOLDER" MEANS ANY PERSON, OTHER THAN A POLICYHOLDER, THAT REQUESTS, OBTAINS, OR POSSESSES A CERTIFICATE OF INSURANCE.

(3) (I) "CERTIFICATE OF INSURANCE" OR "CERTIFICATE" MEANS ANY DOCUMENT OR INSTRUMENT, HOWEVER TITLED OR DESCRIBED, THAT IS PREPARED OR ISSUED BY AN INSURER OR INSURANCE PRODUCER AS EVIDENCE OF PROPERTY INSURANCE OR CASUALTY INSURANCE COVERAGE.

(II) "CERTIFICATE OF INSURANCE" OR "CERTIFICATE" DOES NOT INCLUDE A POLICY OF INSURANCE OR AN INSURANCE BINDER.

(4) "INSURER" INCLUDES A PERSON THAT IS SELF–INSURED.

(5) "PERSON" INCLUDES A UNIT OF STATE OR LOCAL GOVERNMENT.

(6) "POLICYHOLDER" MEANS THE OWNER OF A POLICY OF PROPERTY INSURANCE OR CASUALTY INSURANCE.

(B) (1) THIS SECTION APPLIES TO ALL CERTIFICATE HOLDERS, POLICYHOLDERS, INSURERS, INSURANCE PRODUCERS, AND CERTIFICATES OF INSURANCE PREPARED OR ISSUED AS EVIDENCE OF INSURANCE COVERAGE ON PROPERTY, OPERATIONS, OR RISKS LOCATED IN THE STATE, REGARDLESS OF WHERE THE CERTIFICATE HOLDER, POLICYHOLDER, INSURER, OR INSURANCE PRODUCER IS LOCATED.

(2) THIS SECTION MAY NOT BE CONSTRUED TO APPLY TO A STATEMENT, SUMMARY, OR EVIDENCE OF PROPERTY INSURANCE, INCLUDING A CERTIFICATE, REQUIRED BY A LENDER THAT HOLDS A LOAN SECURED BY:

(I) A MORTGAGE;

(II) A LIEN;

(III) A DEED OF TRUST; OR

(IV) ANY OTHER SECURITY INTEREST IN REAL OR PERSONAL PROPERTY AS SECURITY FOR THE LOAN.

~~**(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PERSON MAY NOT PREPARE OR ISSUE OR REQUIRE THE PREPARATION OR ISSUANCE OF A CERTIFICATE OF INSURANCE UNLESS THE CERTIFICATE OF INSURANCE FORM HAS BEEN FILED WITH AND APPROVED BY THE COMMISSIONER.**~~

~~**(2) ANY STANDARD CERTIFICATE OF INSURANCE FORM ADOPTED BY THE ASSOCIATION FOR COOPERATIVE OPERATIONS RESEARCH AND DEVELOPMENT (ACORD) OR THE INSURANCE SERVICES OFFICE (ISO) THAT OTHERWISE COMPLIES WITH THE REQUIREMENTS OF THIS SECTION IS DEEMED APPROVED BY THE COMMISSIONER.**~~

~~**(3) A PERSON MAY NOT ALTER OR MODIFY A CERTIFICATE OF INSURANCE FORM THAT IS APPROVED BY THE COMMISSIONER UNDER PARAGRAPH (1) OF THIS SUBSECTION OR DEEMED APPROVED BY THE COMMISSIONER UNDER PARAGRAPH (2) OF THIS SUBSECTION.**~~

~~**(D) THE COMMISSIONER SHALL DISAPPROVE A CERTIFICATE OF INSURANCE FORM FILED WITH THE COMMISSIONER UNDER THIS SECTION, OR WITHDRAW APPROVAL OF A CERTIFICATE OF INSURANCE FORM, IF THE FORM:**~~

~~(1) IS UNJUST, UNFAIR, MISLEADING, OR DECEPTIVE, OR VIOLATES PUBLIC POLICY;~~

~~(2) FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION; OR~~

~~(3) VIOLATES ANY LAW, INCLUDING ANY REGULATION ADOPTED BY THE COMMISSIONER.~~

~~(E) EACH CERTIFICATE OF INSURANCE MUST CONTAIN SUBSTANTIALLY THE FOLLOWING LANGUAGE: "THIS CERTIFICATE OF INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS ON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, ALTER, OR EXTEND THE COVERAGE PROVIDED BY, OR THE TERMS, EXCLUSIONS, OR CONDITIONS STATED IN, THE POLICY OF INSURANCE REFERENCED IN THIS CERTIFICATE."~~

~~(F) (1) A CERTIFICATE OF INSURANCE MAY NOT CONTAIN A REFERENCE TO ANY CONTRACT, INCLUDING A CONSTRUCTION OR SERVICE CONTRACT, OTHER THAN THE CONTRACT OF INSURANCE REFERENCED IN THE CERTIFICATE.~~

~~(2) NOTWITHSTANDING ANY REQUIREMENT, TERM, OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH A CERTIFICATE OF INSURANCE IS PREPARED OR ISSUED, THE INSURANCE COVERAGE PROVIDED BY THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF THE POLICY.~~

~~(G)~~ (C) A PERSON MAY NOT REQUIRE AN INSURER OR INSURANCE PRODUCER TO PREPARE OR ISSUE, OR A POLICYHOLDER TO PROVIDE, A CERTIFICATE OF INSURANCE THAT CONTAINS FALSE OR MISLEADING INFORMATION RELATING TO THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE.

~~(H)~~ (D) A PERSON MAY NOT PREPARE OR ISSUE A CERTIFICATE OF INSURANCE THAT THE PERSON KNOWS CONTAINS FALSE OR MISLEADING INFORMATION OR THAT PURPORTS TO AMEND, ALTER, OR EXTEND THE COVERAGE PROVIDED BY THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE.

~~(I)~~ (E) A PERSON MAY NOT PREPARE, ISSUE, OR REQUIRE, EITHER IN ADDITION TO OR IN LIEU OF A CERTIFICATE OF INSURANCE, AN OPINION LETTER OR OTHER DOCUMENT THAT IS INCONSISTENT WITH THIS SECTION.

~~(J)~~ (F) (1) A CERTIFICATE OF INSURANCE IS NOT A POLICY OF INSURANCE AND DOES NOT AMEND, ALTER, OR EXTEND THE COVERAGE PROVIDED BY THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE.

(2) A CERTIFICATE OF INSURANCE DOES NOT CONFER ON A CERTIFICATE HOLDER NEW OR ADDITIONAL ~~RIGHTS~~ COVERAGE BEYOND ~~THE RIGHTS~~ THE COVERAGE PROVIDED IN THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE.

~~(K) (1) A CERTIFICATE HOLDER SHALL HAVE A LEGAL RIGHT TO NOTICE OF CANCELLATION, NONRENEWAL, MATERIAL CHANGE, OR OTHER SIMILAR MATTERS RELATING TO A POLICY OF INSURANCE REFERENCED IN A CERTIFICATE OF INSURANCE ONLY IF THE CERTIFICATE HOLDER IS LISTED AS A NAMED INSURED OR AN ADDITIONAL INSURED IN THE POLICY OR AN ENDORSEMENT TO THE POLICY, AND THE POLICY OR ENDORSEMENT REQUIRES THE NOTICE TO BE PROVIDED.~~

~~(2)~~ (G) THE TERMS AND CONDITIONS OF ~~THE~~ A NOTICE OF CANCELLATION, NONRENEWAL, MATERIAL CHANGE, OR OTHER SIMILAR MATTERS RELATING TO A POLICY OF INSURANCE REFERENCED IN A CERTIFICATE OF INSURANCE:

~~(I)~~ (1) SHALL BE GOVERNED BY THE POLICY OF INSURANCE; AND

~~(II)~~ (2) MAY NOT BE ALTERED BY A CERTIFICATE OF INSURANCE.

~~(L)~~ (H) A CERTIFICATE OF INSURANCE OR ANY OTHER DOCUMENT PREPARED, ISSUED, OR REQUIRED IN VIOLATION OF THIS SECTION IS VOID AND UNENFORCEABLE.

~~(M) (1)~~ (I) THE COMMISSIONER MAY EXAMINE AND INVESTIGATE THE ACTIVITIES OF ANY PERSON THAT THE COMMISSIONER REASONABLY BELIEVES HAS BEEN OR IS ENGAGED IN AN ACT OR PRACTICE PROHIBITED BY THIS SECTION.

~~(2) THE COMMISSIONER MAY ENFORCE THIS SECTION AND IMPOSE ANY AUTHORIZED PENALTY OR REMEDY AGAINST A PERSON THAT VIOLATES THIS SECTION.~~

~~(N) THE COMMISSIONER SHALL ADOPT REGULATIONS TO CARRY OUT THIS SECTION, INCLUDING REGULATIONS THAT ESTABLISH AN APPROVAL PROCESS FOR CERTIFICATE OF INSURANCE FORMS.~~

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Insurance Commissioner shall study the impact of requiring a certificate of insurance to be in a form that must be filed with and approved by the Commissioner before use.

(b) The study shall include a review of states having similar requirements.

(c) The Commissioner shall include representatives of all interested parties in the conduct of the study.

(d) On or before December 1, 2011, the Commissioner shall report the findings and conclusions of the study, in accordance with § 2–1246 of the State Government Article, to the Senate Finance Committee and the House Economic Matters Committee.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 515

(House Bill 982)

AN ACT concerning

Property and Casualty Insurance – Certificates of Insurance and Certificate of Insurance Forms

FOR the purpose of ~~prohibiting a person from preparing or issuing or requiring the preparation or issuance of a certificate of insurance unless the certificate of insurance form has been filed with and approved by the Maryland Insurance Commissioner; providing a certain exception; prohibiting a person from altering or modifying a certain certificate of insurance form; requiring the Commissioner to disapprove a certificate of insurance form or withdraw approval of a certificate of insurance form under certain circumstances; requiring a certificate of insurance to contain certain language; prohibiting a certificate of insurance from containing a reference to a certain contract;~~ prohibiting a person from requiring an insurer or insurance producer to prepare or issue, or a policyholder to provide, a certificate of insurance that contains false or misleading

information relating to the policy of insurance referenced in the certificate; prohibiting a person from preparing or issuing a certificate of insurance that the person knows contains certain information or that purports to amend, alter, or extend certain coverage; prohibiting a person from preparing, issuing, or requiring, either in addition to or in lieu of a certificate of insurance, an opinion letter or other document that is inconsistent with this Act; providing that a certificate of insurance is not a policy of insurance and does not amend, alter, or extend certain coverage or confer certain rights on a certificate holder; ~~specifying the circumstances under which a certificate holder has a legal right to~~ providing that the terms and conditions of a certain notice shall be governed by the policy of insurance and may not be altered by a certificate of insurance; providing that a certificate of insurance or any other document prepared, issued, or required in violation of this Act is void and unenforceable; authorizing the Maryland Insurance Commissioner to examine and investigate the activities of any person that the Commissioner reasonably believes has been or is engaged in an act or practice prohibited by this Act; ~~authorizing the Commissioner to enforce this Act and impose certain penalties and remedies; requiring the Commissioner to adopt certain regulations;~~ providing for the application and construction of this Act; defining certain terms; requiring the Commissioner to conduct a certain study and report to certain committees of the General Assembly on or before a certain date; and generally relating to certificates of insurance and certificate of insurance forms.

BY adding to
Article – Insurance
Section 19–116
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

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

Article – Insurance

19–116.

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

(2) "CERTIFICATE HOLDER" MEANS ANY PERSON, OTHER THAN A POLICYHOLDER, THAT REQUESTS, OBTAINS, OR POSSESSES A CERTIFICATE OF INSURANCE.

(3) (I) "CERTIFICATE OF INSURANCE" OR "CERTIFICATE" MEANS ANY DOCUMENT OR INSTRUMENT, HOWEVER TITLED OR DESCRIBED,

THAT IS PREPARED OR ISSUED BY AN INSURER OR INSURANCE PRODUCER AS EVIDENCE OF PROPERTY INSURANCE OR CASUALTY INSURANCE COVERAGE.

(II) "CERTIFICATE OF INSURANCE" OR "CERTIFICATE" DOES NOT INCLUDE A POLICY OF INSURANCE OR AN INSURANCE BINDER.

(4) "INSURER" INCLUDES A PERSON THAT IS SELF–INSURED.

(5) "PERSON" INCLUDES A UNIT OF STATE OR LOCAL GOVERNMENT.

(6) "POLICYHOLDER" MEANS THE OWNER OF A POLICY OF PROPERTY INSURANCE OR CASUALTY INSURANCE.

(B) (1) THIS SECTION APPLIES TO ALL CERTIFICATE HOLDERS, POLICYHOLDERS, INSURERS, INSURANCE PRODUCERS, AND CERTIFICATES OF INSURANCE PREPARED OR ISSUED AS EVIDENCE OF INSURANCE COVERAGE ON PROPERTY, OPERATIONS, OR RISKS LOCATED IN THE STATE, REGARDLESS OF WHERE THE CERTIFICATE HOLDER, POLICYHOLDER, INSURER, OR INSURANCE PRODUCER IS LOCATED.

(2) THIS SECTION MAY NOT BE CONSTRUED TO APPLY TO A STATEMENT, SUMMARY, OR EVIDENCE OF PROPERTY INSURANCE, INCLUDING A CERTIFICATE, REQUIRED BY A LENDER THAT HOLDS A LOAN SECURED BY:

(I) A MORTGAGE;

(II) A LIEN;

(III) A DEED OF TRUST; OR

(IV) ANY OTHER SECURITY INTEREST IN REAL OR PERSONAL PROPERTY AS SECURITY FOR THE LOAN.

~~**(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PERSON MAY NOT PREPARE OR ISSUE OR REQUIRE THE PREPARATION OR ISSUANCE OF A CERTIFICATE OF INSURANCE UNLESS THE CERTIFICATE OF INSURANCE FORM HAS BEEN FILED WITH AND APPROVED BY THE COMMISSIONER.**~~

~~**(2) ANY STANDARD CERTIFICATE OF INSURANCE FORM ADOPTED BY THE ASSOCIATION FOR COOPERATIVE OPERATIONS RESEARCH AND DEVELOPMENT (ACORD) OR THE INSURANCE SERVICES OFFICE (ISO) THAT**~~

~~OTHERWISE COMPLIES WITH THE REQUIREMENTS OF THIS SECTION IS DEEMED APPROVED BY THE COMMISSIONER.~~

~~(3) A PERSON MAY NOT ALTER OR MODIFY A CERTIFICATE OF INSURANCE FORM THAT IS APPROVED BY THE COMMISSIONER UNDER PARAGRAPH (1) OF THIS SUBSECTION OR DEEMED APPROVED BY THE COMMISSIONER UNDER PARAGRAPH (2) OF THIS SUBSECTION.~~

~~(D) THE COMMISSIONER SHALL DISAPPROVE A CERTIFICATE OF INSURANCE FORM FILED WITH THE COMMISSIONER UNDER THIS SECTION, OR WITHDRAW APPROVAL OF A CERTIFICATE OF INSURANCE FORM, IF THE FORM:~~

~~(1) IS UNJUST, UNFAIR, MISLEADING, OR DECEPTIVE, OR VIOLATES PUBLIC POLICY;~~

~~(2) FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION; OR~~

~~(3) VIOLATES ANY LAW, INCLUDING ANY REGULATION ADOPTED BY THE COMMISSIONER.~~

~~(E) EACH CERTIFICATE OF INSURANCE MUST CONTAIN SUBSTANTIALLY THE FOLLOWING LANGUAGE: "THIS CERTIFICATE OF INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS ON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, ALTER, OR EXTEND THE COVERAGE PROVIDED BY, OR THE TERMS, EXCLUSIONS, OR CONDITIONS STATED IN, THE POLICY OF INSURANCE REFERENCED IN THIS CERTIFICATE."~~

~~(F) (1) A CERTIFICATE OF INSURANCE MAY NOT CONTAIN A REFERENCE TO ANY CONTRACT, INCLUDING A CONSTRUCTION OR SERVICE CONTRACT, OTHER THAN THE CONTRACT OF INSURANCE REFERENCED IN THE CERTIFICATE.~~

~~(2) NOTWITHSTANDING ANY REQUIREMENT, TERM, OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH A CERTIFICATE OF INSURANCE IS PREPARED OR ISSUED, THE INSURANCE COVERAGE PROVIDED BY THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF THE POLICY.~~

~~(G)~~ (C) A PERSON MAY NOT REQUIRE AN INSURER OR INSURANCE PRODUCER TO PREPARE OR ISSUE, OR A POLICYHOLDER TO PROVIDE, A CERTIFICATE OF INSURANCE THAT CONTAINS FALSE OR MISLEADING

INFORMATION RELATING TO THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE.

~~(H)~~ (D) A PERSON MAY NOT PREPARE OR ISSUE A CERTIFICATE OF INSURANCE THAT THE PERSON KNOWS CONTAINS FALSE OR MISLEADING INFORMATION OR THAT PURPORTS TO AMEND, ALTER, OR EXTEND THE COVERAGE PROVIDED BY THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE.

~~(I)~~ (E) A PERSON MAY NOT PREPARE, ISSUE, OR REQUIRE, EITHER IN ADDITION TO OR IN LIEU OF A CERTIFICATE OF INSURANCE, AN OPINION LETTER OR OTHER DOCUMENT THAT IS INCONSISTENT WITH THIS SECTION.

~~(J)~~ (F) (1) A CERTIFICATE OF INSURANCE IS NOT A POLICY OF INSURANCE AND DOES NOT AMEND, ALTER, OR EXTEND THE COVERAGE PROVIDED BY THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE.

(2) A CERTIFICATE OF INSURANCE DOES NOT CONFER ON A CERTIFICATE HOLDER NEW OR ADDITIONAL ~~RIGHTS~~ COVERAGE BEYOND ~~THE RIGHTS~~ THE COVERAGE PROVIDED IN THE POLICY OF INSURANCE REFERENCED IN THE CERTIFICATE.

~~(K) (1) A CERTIFICATE HOLDER SHALL HAVE A LEGAL RIGHT TO NOTICE OF CANCELLATION, NONRENEWAL, MATERIAL CHANGE, OR OTHER SIMILAR MATTERS RELATING TO A POLICY OF INSURANCE REFERENCED IN A CERTIFICATE OF INSURANCE ONLY IF THE CERTIFICATE HOLDER IS LISTED AS A NAMED INSURED OR AN ADDITIONAL INSURED IN THE POLICY OR AN ENDORSEMENT TO THE POLICY, AND THE POLICY OR ENDORSEMENT REQUIRES THE NOTICE TO BE PROVIDED.~~

~~(2)~~ (G) THE TERMS AND CONDITIONS OF ~~THE~~ A NOTICE OF CANCELLATION, NONRENEWAL, MATERIAL CHANGE, OR OTHER SIMILAR MATTERS RELATING TO A POLICY OF INSURANCE REFERENCED IN A CERTIFICATE OF INSURANCE:

~~(I)~~ (1) SHALL BE GOVERNED BY THE POLICY OF INSURANCE; AND

~~(II)~~ (2) MAY NOT BE ALTERED BY A CERTIFICATE OF INSURANCE.

~~(L)~~ (H) A CERTIFICATE OF INSURANCE OR ANY OTHER DOCUMENT PREPARED, ISSUED, OR REQUIRED IN VIOLATION OF THIS SECTION IS VOID AND UNENFORCEABLE.

~~(M)~~ ~~(1)~~ (I) **THE COMMISSIONER MAY EXAMINE AND INVESTIGATE THE ACTIVITIES OF ANY PERSON THAT THE COMMISSIONER REASONABLY BELIEVES HAS BEEN OR IS ENGAGED IN AN ACT OR PRACTICE PROHIBITED BY THIS SECTION.**

~~(2) THE COMMISSIONER MAY ENFORCE THIS SECTION AND IMPOSE ANY AUTHORIZED PENALTY OR REMEDY AGAINST A PERSON THAT VIOLATES THIS SECTION.~~

~~(N) THE COMMISSIONER SHALL ADOPT REGULATIONS TO CARRY OUT THIS SECTION, INCLUDING REGULATIONS THAT ESTABLISH AN APPROVAL PROCESS FOR CERTIFICATE OF INSURANCE FORMS.~~

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Insurance Commissioner shall study the impact of requiring a certificate of insurance to be in a form that must be filed with and approved by the Commissioner before use.

(b) The study shall include a review of states having similar requirements.

(c) The Commissioner shall include representatives of all interested parties in the conduct of the study.

(d) On or before December 1, 2011, the Commissioner shall report the findings and conclusions of the study, in accordance with § 2–1246 of the State Government Article, to the Senate Finance Committee and the House Economic Matters Committee.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 516

(Senate Bill 672)

AN ACT concerning

~~Income Tax –~~ Maryland Film Production ~~Activity Credit~~ Employment Act of 2011

FOR the purpose of repealing the Film Production Rebate Program; allowing certain film production entities to claim a credit against the State income tax for certain costs incurred for certain film production activities within the State; requiring a film production entity to apply to the Department of Business and Economic Development to be a qualified film production entity; requiring the Secretary of Business and Economic Development to determine if a film production entity qualifies for the credit; requiring that to qualify for the credit certain estimated costs incurred in the State must exceed a certain amount; authorizing the Secretary to require the entity to provide certain information; authorizing the Secretary to require that certain information be verified by an independent auditor; requiring a qualified film production entity to apply for a tax credit certificate from the Department; authorizing the Secretary to provide for the form of the application; requiring the application to include certain information; requiring the Secretary to determine the total direct costs that qualify for the tax credit and issue a tax credit certificate for a certain percentage of the total direct costs; limiting the total credit amounts for which the Secretary may issue initial tax credit certificates for each fiscal year; requiring the Secretary to notify the Comptroller of the amount of any tax credit certificate issued; providing that the total direct costs for a film production activity may not include the wages of an employee if the employee's wages exceed a certain amount; requiring that each year the Department report to the Governor and the General Assembly certain information regarding the tax credit <u>and certain economic impacts of the credit</u>; requiring the Department and the Comptroller to jointly adopt certain regulations; defining certain terms; providing for the application of this Act; <u>*providing for the termination of certain provisions of this Act;*</u> and generally relating to an income tax credit for certain film production activities.

BY repealing
Article – Economic Development
Section 4–401 through 4–407 and the subtitle "Subtitle 4. Film Production Rebate Fund"
Annotated Code of Maryland
(2008 Volume and 2010 Supplement)

BY adding to
Article – Tax – General
Section 10–729
Annotated Code of Maryland
(2010 Replacement Volume)

Preamble

WHEREAS, The State of Maryland has a long and successful history of movie making in the State; and

WHEREAS, Producing large scale movies in Maryland provides strong stimulus to the State's economy by creating jobs for Maryland workers and generating sales by Maryland businesses; and

WHEREAS, Significant amounts of State and local tax revenues are generated by the economic activity created from producing films in Maryland; and

WHEREAS, Maryland's geographic, cultural, physical, and historic attributes provide many favorable settings for film production in the State; and

WHEREAS, Key decision makers in the movie industry have demonstrated a preference for and commitment to making movies in the State; and

WHEREAS, The scope of film production activity is broad and diverse resulting in substantial expenditures within a state on local companies and businesses that become part of the film production activity; and

WHEREAS, In addition to economic benefits derived from film production activity, the long–term benefits include development and establishment of spin–off film production activities such as editing, sound production, creative and artistic activities, development of permanent facilities such as sound stages and studios and cottage industries related to independent movie making, documentaries, advertising, and other film and video activity; and

WHEREAS, Other states have established proven models for attracting film production activity to their states to the detriment of such activity in Maryland; and

WHEREAS, Maryland can adopt such proven methods resulting in the immediate generation of new economic activity within the State, including the derivative benefits described above; and

WHEREAS, Maryland's economy and Maryland's State and local tax revenues would receive the direct benefit of these new activities prior to issuance of the tax credit certificates enabling the film production entity to claim the tax credit; and

WHEREAS, The production of television series in Maryland results in even greater positive economic benefits to the State, providing extended employment for Maryland residents and sustained revenues for local companies providing goods and services to production entities producing television series in Maryland; and

WHEREAS, The Governor and the General Assembly find and declare that the net benefit to Maryland as a result of this increased economic activity is positive and is necessary for strengthening the State's economic condition; now, therefore,

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

Article – Economic Development

[Subtitle 4. Film Promotion Rebate Fund.**]**

[4–401.

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

(b) (1) "Film production activity" means the production of a film or video project that is intended for nationwide commercial distribution.

(2) "Film production activity" includes the production of:

(i) a feature film;

(ii) a television project;

(iii) a commercial;

(iv) a corporate film;

(v) an infomercial;

(vi) a music video;

(vii) a digital project;

(viii) an animation project; and

(ix) a multimedia project.

(3) "Film production activity" does not include:

(i) production of a:

1. student film;

2. noncommercial personal video;

3. sports broadcast;

4. broadcast of a live event; or

5. talk show; or

(ii) any activity not necessary to and undertaken directly and exclusively for the making of a master film, tape, or image.

(c) "Fund" means the Film Production Rebate Fund established under § 4–405 of this subtitle.

(d) "Qualified film production entity" means an entity that:

(1) is carrying out a film production activity; and

(2) the Secretary determines to be eligible for the rebate provided under this subtitle in accordance with § 4–403 of this subtitle.

(e) (1) "Total direct costs", with respect to a film production activity, means the total costs incurred in the State that are necessary to carry out the film production activity.

(2) "Total direct costs" includes costs incurred for:

(i) employee wages and benefits;

(ii) fees for services;

(iii) acquiring or leasing property; and

(iv) any other expense necessary to carry out a film production activity.**]**

[4–402.

It is the intent of the General Assembly that the rebate provided under this subtitle is for the purpose of:

(1) increasing film production activity in the State;

(2) bringing economic benefits to the residents of the State; and

(3) generating increased employment opportunities for the residents of the State.**]**

[4–403.

(a) To be eligible for a rebate under this subtitle, a qualified film production entity shall incur total direct costs of at least $500,000 in the State for a single film production activity.

(b) To qualify for the rebate provided under this subtitle, a film production entity shall notify the Department of the intent of the entity to seek the rebate before beginning the film production activity.

(c) To apply for the rebate, the film production entity shall submit to the Secretary:

(1) a description of the anticipated film production activity, including its projected total budget with estimated number of employees and total wages, and anticipated dates for carrying out the major elements of the film production activity; and

(2) any other information that the Secretary requires related to the film production activity and the entity seeking the rebate.

(d) The Secretary may require any information required under this section to be verified by an independent auditor that:

(1) the film production entity seeking the rebate certification selects and pays for; and

(2) the Secretary approves.

(e) As a condition of applying for and receiving the rebate, the qualified film production entity shall enter into a grant agreement with the Department that is satisfactory to the Department.**]**

[4–404.

The Department may grant to a qualified film production entity, from the Fund, a rebate not to exceed 25% of the total direct costs that the qualified film production entity has paid for a particular film production activity.**]**

[4–405.

(a) There is a Film Production Rebate Fund in the Department.

(b) The Department shall administer the Fund.

(c) (1) The Fund is a special, nonlapsing fund that is not subject to reversion under § 7–302 of the State Finance and Procurement Article.

(2) The Treasurer shall hold the Fund separately and the Comptroller shall account for the Fund.

(d) The Fund consists of:

(1) money appropriated by the State to the Fund;

(2) repayments of any defaulted grant from the Fund; and

(3) any other money made available to the Department for the Fund.

(e) The Department may use the Fund to:

(1) make grants to qualified film production entities as rebates in accordance with this subtitle; and

(2) pay the administrative, legal, and actuarial expenses of the Fund.

(f) (1) The Treasurer shall invest the money of the Fund in the same manner as other money of the State may be invested.

(2) Any investment earnings of the Fund shall be credited to the Fund.**]**

[4–406.

The Secretary shall adopt regulations to specify eligibility criteria and application procedures for the rebate under this subtitle.**]**

[4–407.

(a) On or before December 31 of each year, the Department shall report to the Governor and, in accordance with § 2–1246 of the State Government Article, to the General Assembly on the grants provided as rebates for film production activity in the preceding fiscal year.

(b) The report shall include:

(1) the number of local technicians, actors, and extras hired for film production activity during the reporting period;

(2) a list of companies doing business in the State, including hotels, that directly provided goods or services for film production activity during the reporting period; and

(3) any other information that indicates the economic benefits to the State resulting from film production activity during the reporting period.**]**

Article – Tax – General

10–729.

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

(2) "DEPARTMENT" MEANS THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT.

(3) (I) "FILM PRODUCTION ACTIVITY" MEANS THE PRODUCTION OF A FILM OR VIDEO PROJECT THAT IS INTENDED FOR NATIONWIDE COMMERCIAL DISTRIBUTION.

(II) "FILM PRODUCTION ACTIVITY" INCLUDES THE PRODUCTION OF:

1. A FEATURE FILM;

2. A TELEVISION PROJECT;

3. A COMMERCIAL;

4. A CORPORATE FILM;

5. AN INFOMERCIAL;

6. A MUSIC VIDEO;

7. A DIGITAL PROJECT;

8. AN ANIMATION PROJECT; OR

9. A MULTIMEDIA PROJECT.

(III) "FILM PRODUCTION ACTIVITY" DOES NOT INCLUDE PRODUCTION OF:

1. A STUDENT FILM;

2. A NONCOMMERCIAL PERSONAL VIDEO;

3. A SPORTS BROADCAST;

4. A BROADCAST OF A LIVE EVENT;

5. A TALK SHOW;

6. A VIDEO, COMPUTER, OR SOCIAL NETWORKING GAME; OR

7. PORNOGRAPHY.

(4) "PORNOGRAPHY" MEANS ANY PRODUCTION FOR WHICH RECORDS ARE REQUIRED TO BE MAINTAINED UNDER § 2257 OF TITLE 18, U.S.C., WITH RESPECT TO ANY PERFORMER IN SUCH PRODUCTION ENGAGING IN SEXUALLY EXPLICIT CONDUCT.

(5) "QUALIFIED FILM PRODUCTION ENTITY" MEANS AN ENTITY THAT:

(I) IS CARRYING OUT A FILM PRODUCTION ACTIVITY; AND

(II) THE SECRETARY DETERMINES TO BE ELIGIBLE FOR THE TAX CREDIT UNDER THIS SECTION IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION.

(6) "SECRETARY" MEANS THE SECRETARY OF BUSINESS AND ECONOMIC DEVELOPMENT.

(7) "TELEVISION SERIES" MEANS A GROUP OF PROGRAM EPISODES INTENDED FOR TELEVISION BROADCAST OR TRANSMISSION WITH A COMMON SERIES TITLE, WITH OR WITHOUT A PREDETERMINED NUMBER OF EPISODES, AND SHALL INCLUDE A MINISERIES AND A PILOT EPISODE PRODUCED FOR AN INTENDED TELEVISION SERIES.

(8) (I) "TOTAL DIRECT COSTS", WITH RESPECT TO A FILM PRODUCTION ACTIVITY, MEANS THE TOTAL COSTS INCURRED IN THE STATE THAT ARE NECESSARY TO CARRY OUT THE FILM PRODUCTION ACTIVITY.

(II) "TOTAL DIRECT COSTS" INCLUDES COSTS INCURRED FOR:

1. EMPLOYEE WAGES AND BENEFITS;

2. FEES FOR SERVICES;

3. ACQUIRING OR LEASING PROPERTY; AND

4. ANY OTHER EXPENSE NECESSARY TO CARRY OUT A FILM PRODUCTION ACTIVITY, INCLUDING COSTS ASSOCIATED WITH:

A. SET CONSTRUCTION AND OPERATION;

B. WARDROBE, MAKEUP, AND RELATED SERVICES;

C. PHOTOGRAPHY AND SOUND SYNCHRONIZATION, LIGHTING, AND RELATED SERVICES AND MATERIALS;

D. EDITING AND RELATED SERVICES, INCLUDING FILM PROCESSING, TRANSFERS OF FILM TO TAPE OR DIGITAL FORMAT, SOUND MIXING, COMPUTER GRAPHIC SERVICES, SPECIAL EFFECTS SERVICES, AND ANIMATION SERVICES;

E. SALARY, WAGES, AND OTHER COMPENSATION INCLUDING RELATED BENEFITS, FOR WORK PERFORMED IN THE STATE, PAID TO PERSONS EMPLOYED IN THE PRODUCTION, WRITERS, DIRECTORS, AND PRODUCERS;

F. RENTAL OF FACILITIES IN THE STATE AND EQUIPMENT USED IN THE STATE;

G. LEASING OF VEHICLES;

H. FOOD AND LODGING;

I. MUSIC, IF PERFORMED, COMPOSED, OR RECORDED BY A MARYLAND MUSICIAN OR PUBLISHED BY A PERSON OR COMPANY DOMICILED IN MARYLAND;

J. TRAVEL EXPENSES INCURRED TO BRING PERSONS EMPLOYED, EITHER DIRECTLY OR INDIRECTLY, IN THE PRODUCTION OF THE PROJECT TO MARYLAND, BUT NOT INCLUDING EXPENSES OF THESE PERSONS DEPARTING FROM MARYLAND; AND

K. LEGAL AND ACCOUNTING SERVICES PERFORMED BY ATTORNEYS OR ACCOUNTANTS LICENSED IN MARYLAND.

(III) "TOTAL DIRECT COSTS" DOES NOT INCLUDE ANY SALARY, WAGES, OR OTHER COMPENSATION FOR PERSONAL SERVICES OF AN INDIVIDUAL WHO RECEIVES MORE THAN ~~$1,000,000~~ *$500,000* IN SALARY, WAGES, OR OTHER COMPENSATION FOR PERSONAL SERVICES IN CONNECTION WITH ANY FILM PRODUCTION ACTIVITY.

(B) (1) A QUALIFIED FILM PRODUCTION ENTITY MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX FOR FILM PRODUCTION ACTIVITIES IN THE STATE IN AN AMOUNT EQUAL TO THE AMOUNT STATED IN THE FINAL TAX CREDIT CERTIFICATE APPROVED BY THE SECRETARY FOR FILM PRODUCTION ACTIVITIES.

(2) IF THE TAX CREDIT ALLOWED UNDER THIS SECTION IN ANY TAXABLE YEAR EXCEEDS THE TOTAL TAX OTHERWISE PAYABLE BY THE QUALIFIED FILM PRODUCTION ENTITY FOR THAT TAXABLE YEAR, THE QUALIFIED FILM PRODUCTION ENTITY MAY CLAIM A REFUND IN THE AMOUNT OF THE EXCESS.

(C) (1) BEFORE BEGINNING A FILM PRODUCTION ACTIVITY, A FILM PRODUCTION ENTITY SHALL SUBMIT TO THE DEPARTMENT AN APPLICATION TO QUALIFY AS A FILM PRODUCTION ENTITY.

(2) THE APPLICATION SHALL DESCRIBE THE ANTICIPATED FILM PRODUCTION ACTIVITY, INCLUDING:

(I) THE PROJECTED TOTAL BUDGET;

(II) THE ESTIMATED NUMBER OF EMPLOYEES AND TOTAL WAGES TO BE PAID; AND

(III) THE ANTICIPATED DATES FOR CARRYING OUT THE MAJOR ELEMENTS OF THE FILM PRODUCTION ACTIVITY.

(3) TO QUALIFY AS A FILM PRODUCTION ENTITY, THE ESTIMATED TOTAL DIRECT COSTS INCURRED IN THE STATE MUST EXCEED $500,000.

(4) THE APPLICATION SHALL INCLUDE ANY OTHER INFORMATION REQUIRED BY THE SECRETARY.

(5) THE SECRETARY MAY REQUIRE THE INFORMATION PROVIDED IN AN APPLICATION TO BE VERIFIED BY AN INDEPENDENT AUDITOR SELECTED AND PAID FOR BY THE FILM PRODUCTION ENTITY SEEKING CERTIFICATION.

(6) THE SECRETARY SHALL:

(I) DETERMINE IF THE FILM PRODUCTION ENTITY QUALIFIES FOR THE CREDIT UNDER THIS SECTION; AND

(II) NOTIFY THE COMPTROLLER OF THE ESTIMATED AMOUNT OF TOTAL DIRECT COSTS AND THE TAXABLE YEAR THE CREDIT WILL BE CLAIMED.

(D) (1) AFTER COMPLETION OF THE FILM PRODUCTION ACTIVITY, A QUALIFIED FILM PRODUCTION ENTITY SHALL APPLY TO THE DEPARTMENT FOR A TAX CREDIT CERTIFICATE.

(2) THE APPLICATION SHALL BE ON A FORM REQUIRED BY THE SECRETARY AND SHALL INCLUDE:

(I) PROOF OF THE TOTAL DIRECT COSTS THAT QUALIFY FOR THE TAX CREDIT; AND

(II) THE NUMBER OF EMPLOYEES HIRED AND WAGES PAID.

(3) SUBJECT TO SUBSECTION (F) OF THIS SECTION, THE SECRETARY SHALL DETERMINE THE TOTAL DIRECT COSTS THAT QUALIFY FOR THE TAX CREDIT AND ISSUE A TAX CREDIT CERTIFICATE FOR:

(I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH, 25% OF THE TOTAL DIRECT COSTS THAT QUALIFY FOR THE TAX CREDIT; AND

(II) FOR A TELEVISION SERIES, 27% OF THE TOTAL DIRECT COSTS THAT QUALIFY FOR THE TAX CREDIT.

(4) THE SECRETARY SHALL NOTIFY THE COMPTROLLER OF THE AMOUNT OF A TAX CREDIT CERTIFICATE ISSUED UNDER THIS SUBSECTION.

(E) ON OR BEFORE JANUARY 1 OF EACH YEAR, THE DEPARTMENT SHALL REPORT TO THE GOVERNOR AND, SUBJECT TO § 2–1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY, ON:

(1) THE NUMBER OF FILM PRODUCTION ENTITIES SUBMITTING APPLICATIONS UNDER SUBSECTION (C) OF THIS SECTION; ~~AND~~

(2) THE NUMBER AND AMOUNT OF TAX CREDIT CERTIFICATES ISSUED UNDER SUBSECTION (D) OF THIS SECTION~~.~~;

(3) THE NUMBER OF LOCAL TECHNICIANS, ACTORS, AND EXTRAS HIRED FOR FILM PRODUCTION ACTIVITY DURING THE REPORTING PERIOD;

(4) A LIST OF COMPANIES DOING BUSINESS IN THE STATE, INCLUDING HOTELS, THAT DIRECTLY PROVIDED GOODS OR SERVICES FOR FILM PRODUCTION ACTIVITY DURING THE REPORTING PERIOD; AND

(5) ANY OTHER INFORMATION THAT INDICATES THE ECONOMIC BENEFITS TO THE STATE RESULTING FROM FILM PRODUCTION ACTIVITY DURING THE REPORTING PERIOD.

(F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, FOR ANY FISCAL YEAR, THE SECRETARY MAY NOT ISSUE TAX CREDIT CERTIFICATES FOR CREDIT AMOUNTS IN THE AGGREGATE TOTALING MORE THAN ~~$15,000,000~~ *$7,500,000*.

(2) IF THE AGGREGATE CREDIT AMOUNTS UNDER THE TAX CREDIT CERTIFICATES ISSUED BY THE SECRETARY TOTAL LESS THAN ~~$15,000,000~~ *$7,500,000* IN ANY FISCAL YEAR, ANY EXCESS AMOUNT MAY BE CARRIED FORWARD AND ISSUED UNDER TAX CREDIT CERTIFICATES IN A SUBSEQUENT FISCAL YEAR.

(G) THE DEPARTMENT AND THE COMPTROLLER JOINTLY SHALL ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION AND TO SPECIFY CRITERIA AND PROCEDURES FOR THE APPLICATION FOR, APPROVAL OF, AND MONITORING OF CONTINUING ELIGIBILITY FOR THE TAX CREDIT UNDER THIS SECTION.

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011, and shall be applicable to all taxable years beginning after December 31, 2010.~~

SECTION 2. AND BE IT FURTHER ENACTED, That § 10–729 of the Tax – General Article as enacted by this Act shall take effect July 1, 2011, and shall be applicable to all taxable years beginning after December 31, 2010. Section 10–729 of the Tax – General Article as enacted by this Act shall remain effective for a period of 3 years and, at the end of July 1, 2014, with no further action required by the General Assembly, shall be abrogated and of no further force and effect. The Secretary of Business and Economic Development may not issue credit certificates under § 10–729 of the Tax – General Article for any fiscal year beginning on or after July 1, 2014.

Approved by the Governor, May 19, 2011.

Chapter 517

(Senate Bill 687)

AN ACT concerning

Militia – Employment for Military Spouses – Teachers, Health Care Practitioners, and Individuals in Business Occupations and Professions

FOR the purpose of requiring the State Department of Education to develop a certain form relating to teacher certification and tenure and to post the form on its Web site; requiring the Adjutant General or the Adjutant General's designee to assist

certain military spouses in finding certain employment under certain circumstances; ~~requiring certain teachers to be granted tenure under certain circumstances;~~ and generally relating to employment for military spouses.

BY adding to
Article – Education
Section 6–201.1
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

~~BY repealing and reenacting, without amendments,~~
~~Article – Education~~
~~Section 6–202(b)(1)~~
~~Annotated Code of Maryland~~
~~(2008 Replacement Volume and 2010 Supplement)~~

~~BY repealing and reenacting, with amendments,~~
~~Article – Education~~
~~Section 6–202(b)(3)~~
~~Annotated Code of Maryland~~
~~(2008 Replacement Volume and 2010 Supplement)~~

BY repealing and reenacting, with amendments,
Article – Public Safety
Section 13–302
Annotated Code of Maryland
(2003 Volume and 2010 Supplement)

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

Article – Education

6–201.1.

THE DEPARTMENT SHALL:

(1) DEVELOP AN INFORMATIONAL FORM THAT LISTS AND EXPLAINS THE VARIOUS PATHS THAT CAN BE TAKEN IN ORDER TO OBTAIN CERTIFICATION AND TENURE IN THE STATE; AND

(2) POST THE FORM ON ITS WEB SITE.

~~6–202.~~

~~(b) (1) Except as provided in paragraph (3) of this subsection, the probationary period of employment of a certificated employee in a local school system shall cover a period of 3 years from the date of employment and shall consist of a 1–year employment contract that may be renewed by the county board.~~

~~(3) (i) Subject to subparagraph (ii) of this paragraph, if a certificated employee has achieved tenure in a local school system in the State and moves to another local school system in the State, **OR AN INDIVIDUAL WHO HAS ACHIEVED TENURE OR AN EQUIVALENT LEVEL OF CERTIFICATION OR LICENSURE IN AN OUT–OF–STATE JURISDICTION AND MOVES TO A JURISDICTION IN THE STATE,** that employee **OR INDIVIDUAL** shall be tenured if the employee's **OR INDIVIDUAL'S** contract is renewed after 1 year of probationary employment in the local school system to which the employee **OR INDIVIDUAL** relocated if:~~

~~1. The employee's **OR INDIVIDUAL'S** final evaluation in the local school system **OR OUT–OF–STATE JURISDICTION** from which the employee **OR INDIVIDUAL** departed is satisfactory or better; and~~

~~2. There has been no break in the employee's **OR INDIVIDUAL'S** service between the two systems of longer than 1 year.~~

~~(ii) A local school system may extend the probationary period for a certificated employee **OR INDIVIDUAL** subject to subparagraph (i) of this paragraph for a second year from the date of employment if:~~

~~1. The employee **OR INDIVIDUAL** does not qualify for tenure at the end of the first year based on established performance evaluation criteria; and~~

~~2. The employee **OR INDIVIDUAL** demonstrates a strong potential for improvement.~~

Article – Public Safety

13–302.

(a) (1) The Adjutant General may appoint:

(i) a chief of State operations;

(ii) an executive officer;

(iii) an administrative officer;

(iv) the directors of military installations, procurement, military support to civil authorities, State personnel, finance, and veterans affairs;

(v) the site managers for military reservations; and

(vi) a grants administrator.

(2) The executive officer and directors appointed under paragraph (1) of this subsection serve at the pleasure of the Adjutant General.

(b) (1) The Adjutant General shall keep all records required to be kept and filed with the Adjutant General's office.

(2) On or before each October 15, the Adjutant General shall submit to the Governor a detailed statement of all the receipts and expenditures for military purposes during the year ending the previous September 30.

(C) (1) ON REQUEST, THE ADJUTANT GENERAL OR THE ADJUTANT GENERAL'S DESIGNEE SHALL ASSIST THE SPOUSE OF A MEMBER OF THE MILITARY WHO RESIDES IN THE STATE OR IS TRANSFERRED TO THE STATE IN FINDING EMPLOYMENT IN THE STATE.

(2) THE ASSISTANCE PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY INCLUDE PROVIDING:

(I) THE INFORMATIONAL FORM DEVELOPED BY THE STATE DEPARTMENT OF EDUCATION UNDER § 6–201.1 OF THE EDUCATION ARTICLE;

(II) INFORMATION RELATING TO HEALTH OCCUPATIONS IN THE STATE THAT PERMIT *RECIPROCAL* LICENSURE ~~BY ENDORSEMENT~~; AND

(III) INFORMATION RELATING TO BUSINESS OCCUPATIONS IN THE STATE THAT PERMIT *RECIPROCAL* LICENSURE ~~BY ENDORSEMENT~~.

[(c)**] (D)** (1) The Adjutant General is responsible for:

(i) each armory that the State owns; and

(ii) each building or other property purchased, occupied, or leased by or on behalf of the State military forces.

(2) If the Adjutant General rejects an application to use an armory for nonmilitary purposes, the application is subject to review and approval by the Board of Public Works, the Adjutant General, and the commanding officer of the unit occupying that armory.

(3) The Adjutant General may adopt regulations to enforce this subsection.

[(d)**] (E)** The Adjutant General is the custodian of battle flags and war records and is responsible for their proper care and preservation.

[(e)**] (F)** The Adjutant General may employ employees as required.

[(f)**] (G)** The Adjutant General shall carry out the Governor's policies concerning matters specified in this title and Title 14, Subtitles 1, 2, and 4 of this article.

[(g)**] (H)** The seal of the Adjutant General's office shall be delivered by the Adjutant General to the Adjutant General's successor.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 518

(House Bill 998)

AN ACT concerning

Militia – Employment for Military Spouses – Teachers, Health Care Practitioners, and *Individuals in* Business Occupations and Professions

FOR the purpose of *requiring the State Department of Education to develop a certain form relating to teacher certification and tenure and to post the form on its Web site;* requiring the Adjutant General or the Adjutant General's designee to assist certain military spouses in finding certain employment under certain circumstances; ~~requiring certain teachers to be granted tenure under certain circumstances;~~ and generally relating to employment for military spouses.

BY adding to
Article – Education
Section 6–201.1
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

~~BY adding to~~
~~Article – Education~~
~~Section 6–201.1~~

~~Annotated Code of Maryland~~
~~(2008 Replacement Volume and 2010 Supplement)~~

~~BY repealing and reenacting, without amendments,~~
~~Article – Education~~
~~Section 6–202(b)(1)~~
~~Annotated Code of Maryland~~
~~(2008 Replacement Volume and 2010 Supplement)~~

~~BY repealing and reenacting, with amendments,~~
~~Article – Education~~
~~Section 6–202(b)(3)~~
~~Annotated Code of Maryland~~
~~(2008 Replacement Volume and 2010 Supplement)~~

BY repealing and reenacting, with amendments,
Article – Public Safety
Section 13–302
Annotated Code of Maryland
(2003 Volume and 2010 Supplement)

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

Article – Education

6–201.1.

THE DEPARTMENT SHALL:

(1) DEVELOP AN INFORMATIONAL FORM THAT LISTS AND EXPLAINS THE VARIOUS PATHS THAT CAN BE TAKEN IN ORDER TO OBTAIN CERTIFICATION AND TENURE IN THE STATE; AND

(2) POST THE FORM ON ITS WEB SITE.

~~**Article – Education**~~

~~**6–201.1.**~~

~~**THE DEPARTMENT SHALL:**~~

~~**(1) DEVELOP AN INFORMATIONAL FORM THAT LISTS AND EXPLAINS THE VARIOUS PATHS THAT CAN BE TAKEN IN ORDER TO OBTAIN CERTIFICATION AND TENURE IN THE STATE; AND**~~

~~**(2) POST THE FORM ON ITS WEB SITE.**~~

~~6–202.~~

~~(b) (1) Except as provided in paragraph (3) of this subsection, the probationary period of employment of a certificated employee in a local school system shall cover a period of 3 years from the date of employment and shall consist of a 1–year employment contract that may be renewed by the county board.~~

~~(3) (i) Subject to subparagraph (ii) of this paragraph, if a certificated employee has achieved tenure in a local school system in the State and moves to another local school system in the State, **OR AN INDIVIDUAL WHO HAS ACHIEVED TENURE OR AN EQUIVALENT LEVEL OF CERTIFICATION OR LICENSURE IN AN OUT–OF–STATE JURISDICTION AND MOVES TO A JURISDICTION IN THE STATE,** that employee **OR INDIVIDUAL** shall be tenured if the employee's **OR INDIVIDUAL'S** contract is renewed after 1 year of probationary employment in the local school system to which the employee **OR INDIVIDUAL** relocated if:~~

~~1. The employee's **OR INDIVIDUAL'S** final evaluation in the local school system **OR OUT–OF–STATE JURISDICTION** from which the employee **OR INDIVIDUAL** departed is satisfactory or better; and~~

~~2. There has been no break in the employee's **OR INDIVIDUAL'S** service between the two systems of longer than 1 year.~~

~~(ii) A local school system may extend the probationary period for a certificated employee **OR INDIVIDUAL** subject to subparagraph (i) of this paragraph for a second year from the date of employment if:~~

~~1. The employee **OR INDIVIDUAL** does not qualify for tenure at the end of the first year based on established performance evaluation criteria; and~~

~~2. The employee **OR INDIVIDUAL** demonstrates a strong potential for improvement.~~

Article – Public Safety

13–302.

(a) (1) The Adjutant General may appoint:

(i) a chief of State operations;

(ii) an executive officer;

(iii) an administrative officer;

(iv) the directors of military installations, procurement, military support to civil authorities, State personnel, finance, and veterans affairs;

(v) the site managers for military reservations; and

(vi) a grants administrator.

(2) The executive officer and directors appointed under paragraph (1) of this subsection serve at the pleasure of the Adjutant General.

(b) (1) The Adjutant General shall keep all records required to be kept and filed with the Adjutant General's office.

(2) On or before each October 15, the Adjutant General shall submit to the Governor a detailed statement of all the receipts and expenditures for military purposes during the year ending the previous September 30.

(C) (1) ON REQUEST, THE ADJUTANT GENERAL OR THE ADJUTANT GENERAL'S DESIGNEE SHALL ASSIST THE SPOUSE OF A MEMBER OF THE MILITARY WHO RESIDES IN THE STATE OR IS TRANSFERRED TO THE STATE IN FINDING EMPLOYMENT IN THE STATE.

(2) THE ASSISTANCE PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY INCLUDE PROVIDING:

(I) THE INFORMATIONAL FORM DEVELOPED BY THE STATE DEPARTMENT OF EDUCATION ~~UNDER § 6–201.1 OF THE EDUCATION ARTICLE THAT LISTS AND EXPLAINS THE VARIOUS PATHS THAT CAN BE TAKEN IN ORDER TO OBTAIN CERTIFICATION AND TENURE IN THE STATE~~ *UNDER § 6–201.1 OF THE EDUCATION ARTICLE*;

(II) INFORMATION RELATING TO HEALTH OCCUPATIONS IN THE STATE THAT PERMIT *RECIPROCAL* LICENSURE ~~BY ENDORSEMENT~~; AND

(III) INFORMATION RELATING TO BUSINESS OCCUPATIONS IN THE STATE THAT PERMIT *RECIPROCAL* LICENSURE ~~BY ENDORSEMENT~~.

[(c)**] (D)** (1) The Adjutant General is responsible for:

(i) each armory that the State owns; and

(ii) each building or other property purchased, occupied, or leased by or on behalf of the State military forces.

(2) If the Adjutant General rejects an application to use an armory for nonmilitary purposes, the application is subject to review and approval by the Board of Public Works, the Adjutant General, and the commanding officer of the unit occupying that armory.

(3) The Adjutant General may adopt regulations to enforce this subsection.

[(d)**] (E)** The Adjutant General is the custodian of battle flags and war records and is responsible for their proper care and preservation.

[(e)**] (F)** The Adjutant General may employ employees as required.

[(f)**] (G)** The Adjutant General shall carry out the Governor's policies concerning matters specified in this title and Title 14, Subtitles 1, 2, and 4 of this article.

[(g)**] (H)** The seal of the Adjutant General's office shall be delivered by the Adjutant General to the Adjutant General's successor.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 519

(Senate Bill 690)

AN ACT concerning

Renewable Energy Portfolio – Waste–to–Energy *and Refuse–Derived Fuel*

FOR the purpose of expanding the definition of a Tier 1 renewable source to include waste–to–energy *and refuse–derived fuel*; altering the definition of a Tier 2 renewable source to exclude waste–to–energy; providing that *a Tier 1 source using* waste–to–energy *or refuse–derived fuel* is eligible for inclusion in meeting a certain standard only if the source is connected with the distribution grid serving Maryland; and generally relating to waste–to–energy*, refuse–derived fuel,* and Tier 1 renewable sources applied to the renewable energy portfolio standard.

BY repealing and reenacting, with amendments,
Article – Public Utilities

Section 7–701(l) and (m) and 7–704(a) and (f)
Annotated Code of Maryland
(2010 Replacement Volume)

BY repealing and reenacting, without amendments,
Article – Public Utilities
Section 7–703(b)(6) through (17)
Annotated Code of Maryland
(2010 Replacement Volume)

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

Article – Public Utilities

7–701.

(l) "Tier 1 renewable source" means one or more of the following types of energy sources:

(1) solar;

(2) wind;

(3) qualifying biomass;

(4) methane from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant;

(5) geothermal;

(6) ocean, including energy from waves, tides, currents, and thermal differences;

(7) a fuel cell that produces electricity from a Tier 1 renewable source under item (3) or (4) of this subsection;

(8) a small hydroelectric power plant of less than 30 megawatts in capacity that is licensed or exempt from licensing by the Federal Energy Regulatory Commission; **[**and**]**

(9) poultry litter–to–energy**;** ~~AND~~

(10) WASTE–TO–ENERGY*; AND*

(11) REFUSE–DERIVED FUEL.

(m) "Tier 2 renewable source" means **[**one or more of the following types of energy sources:

(1)**]** hydroelectric power other than pump storage generation**[**; and

(2) waste–to–energy**]**.

7–703.

(b) The renewable energy portfolio standard shall be as follows:

(6) in 2011, 5.0% from Tier 1 renewable sources, including at least 0.05% derived from solar energy, and 2.5% from Tier 2 renewable sources;

(7) in 2012, 6.5% from Tier 1 renewable sources, including at least 0.1% derived from solar energy, and 2.5% from Tier 2 renewable sources;

(8) in 2013, 8.2% from Tier 1 renewable sources, including at least 0.2% derived from solar energy, and 2.5% from Tier 2 renewable sources;

(9) in 2014, 10.3% from Tier 1 renewable sources, including at least 0.3% derived from solar energy, and 2.5% from Tier 2 renewable sources;

(10) in 2015, 10.5% from Tier 1 renewable sources, including at least 0.4% derived from solar energy, and 2.5% from Tier 2 renewable sources;

(11) in 2016, 12.7% from Tier 1 renewable sources, including at least 0.5% derived from solar energy, and 2.5% from Tier 2 renewable sources;

(12) in 2017, 13.1% from Tier 1 renewable sources, including at least 0.55% derived from solar energy, and 2.5% from Tier 2 renewable sources;

(13) in 2018, 15.8% from Tier 1 renewable sources, including at least 0.9% derived from solar energy, and 2.5% from Tier 2 renewable sources;

(14) in 2019, 17.4% from Tier 1 renewable sources, including at least 1.2% derived from solar energy, and 0% from Tier 2 renewable sources;

(15) in 2020, 18% from Tier 1 renewable sources, including at least 1.5% derived from solar energy, and 0% from Tier 2 renewable sources;

(16) in 2021, 18.7% from Tier 1 renewable sources, including at least 1.85% derived from solar energy, and 0% from Tier 2 renewable sources; and

(17) in 2022 and later, 20% from Tier 1 renewable sources, including at least 2% derived from solar energy, and 0% from Tier 2 renewable sources.

7–704.

(a) (1) Energy from a Tier 1 renewable source:

(i) is eligible for inclusion in meeting the renewable energy portfolio standard regardless of when the generating system or facility was placed in service; and

(ii) may be applied to the percentage requirements of the standard for either Tier 1 renewable sources or Tier 2 renewable sources.

(2) (i) 1. Except as provided in subsubparagraph 2 of this subparagraph, energy from a Tier 1 renewable source under § 7–701(l)(1)**, [**or**]** (9)**,** ~~AND~~ **(10),** ***OR (11)*** of this subtitle is eligible for inclusion in meeting the renewable energy portfolio standard only if the source is connected with the electric distribution grid serving Maryland.

2. On or before December 31, 2011, energy from a Tier 1 renewable source under § 7–701(l)(1) of this subtitle that is not connected with the electric distribution grid serving Maryland is eligible for inclusion in meeting the renewable energy portfolio standard only if offers for solar credits from Maryland grid sources are not made to the electricity supplier that would satisfy requirements under the standard and only to the extent that such offers are not made.

(ii) If the owner of a solar generating system in this State chooses to sell solar renewable energy credits from that system, the owner must first offer the credits for sale to an electricity supplier or electric company that shall apply them toward compliance with the renewable energy portfolio standard under § 7–703 of this subtitle.

(3) Energy from a Tier 1 renewable source under § 7–701(l)(8) of this subtitle is eligible for inclusion in meeting the renewable energy portfolio standard if it is generated at a dam that existed as of January 1, 2004, even if a system or facility that is capable of generating electricity did not exist on that date.

(4) Energy from a Tier 2 renewable source under § 7–701(m)**[**(1) or (2)**]** of this subtitle is eligible for inclusion in meeting the renewable energy portfolio standard through 2018 if it is generated at a system or facility that existed and was operational as of January 1, 2004, even if the facility or system was not capable of generating electricity on that date.

(f) (1) In order to create a renewable energy credit, a Tier 1 renewable source or Tier 2 renewable source must substantially comply with all applicable environmental and administrative requirements, including air quality, water quality, solid waste, and right–to–know provisions, permit conditions, and administrative orders.

(2) (i) This paragraph applies to Tier **[**2**] 1** renewable sources that incinerate solid waste.

(ii) At least 80% of the solid waste incinerated at a Tier **[**2**] 1** renewable source facility shall be collected from:

1. for areas in Maryland, jurisdictions that achieve the recycling rates required under § 9–505 of the Environment Article; and

2. for other states, jurisdictions for which the electricity supplier demonstrates recycling substantially comparable to that required under § 9–505 of the Environment Article, in accordance with regulations of the Commission.

(iii) An electricity supplier may report credits received under this paragraph based on compliance by the facility with the percentage requirement of subparagraph (ii) of this paragraph during the year immediately preceding the year in which the electricity supplier receives the credit to apply to the standard.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 520

(Senate Bill 694)

AN ACT concerning

Insurance – Surplus Lines ~~Insurance Multi–State Compliance Compact~~

~~FOR the purpose of entering the State of Maryland in the Surplus Lines Insurance Multi–State Compliance Compact; specifying the purposes of the Compact; providing for the creation of the Surplus Lines Insurance Multi–State Compliance Compact Commission as a body corporate and politic and an instrumentality of the compacting states; authorizing the Commission to adopt certain mandatory rules; providing that the Commission is solely responsible for its liabilities with certain exceptions; providing for venue for judicial proceedings; specifying the powers of the Commission; specifying the membership, voting, bylaws, executive committee, personnel, and chairperson of the Commission; providing for an operations committee and legislative and advisory committees of the Commission; requiring the Commission to maintain certain records; establishing qualified immunity, defense, and indemnification provisions relating to the Commission; requiring the Commission to meet and take certain actions; establishing the rulemaking authority and procedures of~~

~~the Commission; requiring the Commission to promulgate certain rules relating to the Commission's records; requiring the Commission to monitor Compacting States for compliance with certain rules and bylaws; requiring the Commission to resolve certain disputes in a certain manner; establishing provisions regarding review of Commission decisions; requiring the Commission to pay certain expenses and certain fees; requiring the Commission to keep certain financial records; providing that the Commission is not subject to certain taxes; providing that any state is eligible to become a compacting state; specifying when the Compact and the Commission are effective; providing for the withdrawal of a compacting state from the Compact and reinstatement of a withdrawing state; requiring the Commission to take certain actions in the event of certain defaults by a compacting state; providing for the dissolution of the Compact under certain circumstances; providing for the severability and construction of the Compact; specifying the effect of the Compact on other laws of a compacting state; establishing the binding effect of this Compact on compacting states; defining certain terms; appointing the Maryland Insurance Commissioner as the State's representative to the Commission; making this Act subject to a certain contingency; and generally relating to the Surplus Lines Insurance Multi-State Compliance Compact.~~

FOR the purpose of requiring the Maryland Insurance Commissioner to participate in a certain database; altering the authority of the Commissioner to allow a commercial insured to waive certain search requirements for surplus lines coverage for certain purposes; authorizing a surplus lines broker not to perform a diligent search when placing certain coverage with an exempt commercial purchaser under certain circumstances; providing that certain persons are not required to obtain a certificate of qualification to act as a surplus lines broker in the State under certain circumstances; prohibiting the Commissioner from approving an insurer as a surplus lines insurer unless the insurer meets certain requirements or the Commissioner makes a certain finding; altering the process for an insurer to be approved by the Commissioner as a surplus lines insurer; altering certain prohibitions against a surplus lines broker placing surplus lines insurance with an unauthorized insurer; altering the calculation of the premium receipts tax on certain surplus lines insurance premiums that cover certain property, risks, and exposures that are located or to be performed entirely in the State or both in and outside the State; providing that, for policies effective on or after a certain date, only the home state of an insured may receive certain tax payments and reports for certain nonadmitted insurance; requiring the Commissioner to cooperate with other states to adopt and implement uniform requirements for nonadmitted insurance in compliance with the federal Nonadmitted and Reinsurance Reform Act of 2010; providing that, for policies effective on or after a certain date, the regulation and placement of certain nonadmitted insurance is subject to the statutory and regulatory requirements solely of certain home states; altering certain requirements for certain surplus lines brokers and insureds to file certain statements and reports and pay certain taxes at certain times; requiring the Commissioner, by regulation, to determine the content and filing deadlines for the reports; making

conforming and clarifying changes; defining certain terms; requiring the Commissioner to conduct a certain study and report the findings of the study to certain committees of the General Assembly on or before a certain date; requiring qualified surplus lines brokers to provide certain information to the Commissioner under certain circumstances; and generally relating to the Maryland Insurance Commissioner and surplus lines.

~~BY adding to~~
~~Article – Insurance~~
~~Section 31–101 and 31–102 to be under the new title "Title 31. Surplus Lines Insurance Multi–State Compliance Compact"~~
~~Annotated Code of Maryland~~
~~(2006 Replacement Volume and 2010 Supplement)~~

BY repealing and reenacting, with amendments,
Article – Insurance
Section 3–301, 3–304, 3–306, 3–306.1, 3–310, 3–318, 3–319, 3–324, 3–325, 4–209, 4–210, and 4–211
Annotated Code of Maryland
(2003 Replacement Volume and 2010 Supplement)

BY adding to
Article – Insurance
Section 4–211.1
Annotated Code of Maryland
(2003 Replacement Volume and 2010 Supplement)

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

Article – Insurance

3–301.

(A) In this subtitle**[**, "qualified**]** **THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(B) "ACT" MEANS THE FEDERAL NONADMITTED AND REINSURANCE REFORM ACT OF 2010.

(C) "ADMITTED INSURER" MEANS AN INSURER THAT IS AUTHORIZED TO ENGAGE IN THE BUSINESS OF INSURANCE IN THE STATE.

(D) "EXEMPT COMMERCIAL PURCHASER" HAS THE MEANING STATED IN § 527 OF THE ACT.

(E) "HOME STATE" HAS THE MEANING STATED IN § 527 OF THE ACT.

(F) "NONADMITTED INSURANCE" MEANS PROPERTY AND CASUALTY INSURANCE THAT MAY BE PLACED DIRECTLY OR THROUGH A SURPLUS LINES BROKER WITH A NONADMITTED INSURER THAT IS ELIGIBLE TO ACCEPT THE INSURANCE.

(G) (1) "NONADMITTED INSURER" MEANS AN INSURER THAT IS NOT AUTHORIZED TO ENGAGE IN THE BUSINESS OF INSURANCE IN THE STATE.

(2) "NONADMITTED INSURER" DOES NOT INCLUDE A RISK RETENTION GROUP.

(H) "QUALIFIED surplus lines broker" means a person that has obtained a certificate of qualification from the Commissioner to act as a surplus lines broker under this subtitle.

3–304.

The Commissioner may adopt reasonable regulations consistent with this subtitle to:

(1) carry out this subtitle;

(2) establish procedures for determining the eligibility of particular proposed coverages for placement with surplus lines insurers and maintain a list of the identified coverages;

(3) **[**permit a**] ALLOW AN EXEMPT** commercial **[**insured, as defined by the Commissioner,**] PURCHASER** to waive the diligent search requirement under § 3–306 of this subtitle for the procurement of a surplus lines insurance policy**[**:

(i) with an annual premium of not less than $5,000; and

(ii) issued by an insurer with a financial rating of "A" or better by the A.M. Best Company or an equivalent rating from an independent rating organization approved by the Commissioner**]**;

(4) provide for the content and use of the written disclosure required under § 3–308 of this subtitle; and

(5) provide for the periodic review, no less than annually, of information from surplus lines brokers, agents, and insurers and from other sources concerning the availability and affordability of insurance from authorized insurers in the State.

3–306.

(a) Surplus lines insurance may be procured from an unauthorized insurer if:

(1) for surplus lines insurance procured through a broker, the surplus lines insurance is procured through a qualified surplus lines broker;

(2) subject to the provisions of § 3–306.1 of this subtitle, a diligent search is made among the authorized insurers that are writing the particular kind and class of insurance in the State;

(3) except for insurance against liability of persons described in § 24–206(1) of this article, the amount of surplus lines insurance procured from an unauthorized insurer is only the excess over the amount that can be procured from authorized insurers;

(4) for insurance against liability of persons described in § 24–206(1) of this article, the insurance cannot be obtained from three or more authorized insurers that are writing on a broad basis that particular kind and class of insurance;

(5) except as provided in subsection (b) of this section, the surplus lines insurance is not procured:

(i) solely to obtain a lower premium rate than would be accepted by an authorized insurer;

(ii) solely to obtain more favorable terms of the insurance contract; or

(iii) to replace coverage on residential property which is insured by an authorized insurer and for which a renewal offer has been made on substantially the same terms and conditions as the current coverage; and

(6) there is compliance with other applicable provisions of this subtitle.

(b) This subtitle does not prohibit a lower premium rate or more favorable terms in the insurance contract of an unauthorized insurer if:

(1) the risk is eligible as surplus lines under subsection (a)(2), (3), and (4) of this section; or

(2) the applicant qualifies as **[**a**]** **AN EXEMPT** commercial **[**insured**]** **PURCHASER** who may waive**[**, as authorized by the Commissioner,**]** the diligent search that is otherwise required under this section.

(c) (1) This section does not prohibit a surplus lines broker from renewing a risk with a surplus lines insurer if the risk was initially written on a surplus lines basis when there were fewer than three authorized insurers actually writing on a broad basis the particular kind and class of insurance to provide coverage against liability of persons described in § 24–206(1) of this article in the State.

(2) However, even if on the date of renewal three or more authorized insurers are writing on a broad basis the particular kind and class of insurance required by the insured, a risk initially eligible for surplus lines insurance may be renewed on a surplus lines basis if the surplus lines insurer, licensed insurance producer, or surplus lines broker gives to the insured appropriate notice of the possible availability of comparable types of insurance being written by three or more authorized insurers:

(i) each year; and

(ii) sufficiently in advance of the renewal date to allow the insured to determine whether to renew the policy with the surplus lines insurer.

(D) THE COMMISSIONER SHALL PARTICIPATE IN THE NATIONAL INSURANCE PRODUCER DATABASE MAINTAINED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND SUBSIDIARIES.

3–306.1.

(a) (1) A diligent search required by § 3–306 of this subtitle shall be deemed completed if:

(i) the insured or the surplus lines broker or insurance producer obtains declinations of a risk from three authorized insurers that are writing the particular kind and class of insurance in this State; and

(ii) the declinations are included in the affidavit required under § 3–307 of this subtitle.

(2) In addition to the requirement of paragraph (1)(i) of this subsection, an insurance producer shall obtain a declination from each insurer for which the insurance producer has been appointed that the insurance producer knows, or should know, is actually writing on a broad basis the particular kind and class of insurance sought.

(b) A diligent search may not be required:

(1) for any coverage on a list of eligible surplus lines coverages compiled by the Commissioner; or

(2) if the diligent search is waived by [a] **AN EXEMPT** commercial [insured] **PURCHASER** in accordance with the [process determined by the Commissioner] **ACT**.

(c) Notwithstanding the renewal provisions of § 3–306(c) of this subtitle, a diligent search shall be required for each renewal of a personal lines insurance policy written through a surplus lines insurer.

(D) NOTWITHSTANDING SUBSECTION (B)(2) OF THIS SECTION, A SURPLUS LINES BROKER IS NOT REQUIRED TO PERFORM A DILIGENT SEARCH TO DETERMINE WHETHER THE FULL AMOUNT OR TYPE OF INSURANCE CAN BE OBTAINED FROM ADMITTED INSURERS WHEN THE SURPLUS LINES BROKER IS SEEKING TO PROCURE OR PLACE NONADMITTED INSURANCE FOR AN EXEMPT COMMERCIAL PURCHASER IF:

(1) THE SURPLUS LINES BROKER HAS DISCLOSED TO THE EXEMPT COMMERCIAL PURCHASER THAT THE INSURANCE MAY OR MAY NOT BE AVAILABLE FROM ADMITTED INSURERS THAT MAY BE SUBJECT TO GREATER PROTECTION AND REGULATORY OVERSIGHT; AND

(2) THE EXEMPT COMMERCIAL PURCHASER SUBSEQUENTLY HAS REQUESTED THE SURPLUS LINES BROKER IN WRITING TO PROCURE NONADMITTED INSURANCE FROM OR PLACE THE NONADMITTED INSURANCE WITH A NONADMITTED INSURER.

3–310.

(A) [A] **EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A** person must obtain a certificate of qualification to act as a surplus lines broker before the person acts as a surplus lines broker in the State.

(B) A PERSON IS NOT REQUIRED TO OBTAIN A CERTIFICATE OF QUALIFICATION TO ACT AS A SURPLUS LINES BROKER IN THE STATE IF:

(1) THE STATE IS NOT THE HOME STATE OF THE INSURED; AND

(2) THE SURPLUS LINES BROKER HAS OBTAINED A LICENSE OR OTHER AUTHORIZATION FROM THE HOME STATE OF THE INSURED.

3–318.

(A) THE COMMISSIONER MAY NOT APPROVE AN INSURER AS A SURPLUS LINES INSURER UNLESS THE INSURER:

(1) IS AUTHORIZED IN ITS DOMICILIARY JURISDICTION TO WRITE THE TYPE OF INSURANCE IT SEEKS TO WRITE;

(2) HAS CAPITAL AND SURPLUS, OR THEIR EQUIVALENT UNDER THE LAWS OF ITS DOMICILIARY JURISDICTION, EQUAL TO THE GREATER OF:

(I) THE MINIMUM CAPITAL AND SURPLUS REQUIRED UNDER THE LAWS OF ITS DOMICILIARY JURISDICTION; AND

(II) $15,000,000; AND

(3) FILES WITH THE COMMISSIONER THE INFORMATION REQUIRED UNDER SUBSECTION (C) OF THIS SECTION.

(B) (1) FOR A FOREIGN INSURER, THE REQUIREMENTS OF SUBSECTION (A)(2) OF THIS SECTION MAY BE SATISFIED BY THE INSURER'S POSSESSING LESS THAN THE MINIMUM CAPITAL AND SURPLUS IF THE COMMISSIONER MAKES AN AFFIRMATIVE FINDING OF ACCEPTABILITY.

(2) THE FINDING SHALL BE BASED ON THE FOLLOWING OR SIMILAR FACTORS:

(I) QUALITY OF MANAGEMENT;

(II) CAPITAL AND SURPLUS OF ANY PARENT COMPANY;

(III) COMPANY UNDERWRITING PROFIT AND INVESTMENT INCOME TRENDS;

(IV) MARKET AVAILABILITY; AND

(V) COMPANY RECORD AND REPUTATION OF THE FOREIGN INSURER IN THE INDUSTRY.

(3) THE COMMISSIONER MAY NOT MAKE AN AFFIRMATIVE FINDING OF ACCEPTABILITY IF THE FOREIGN INSURER'S CAPITAL AND SURPLUS IS LESS THAN $4,500,000.

[(a)**] (C)** An insurer **[**may not be approved as a surplus lines insurer until the insurer files**] THAT SEEKS APPROVAL UNDER SUBSECTION (A) OF THIS SECTION SHALL FILE** each year with the Commissioner:

(1) a written request for approval as a surplus lines insurer **[**for those surplus lines authorized by the Commissioner**] TO WRITE THE TYPE OF INSURANCE IT SEEKS TO WRITE**;

(2) a certified copy of its annual statement, on convention form, that shows the amount by line of surplus lines business written on risks located in the State during the period covered by the annual statement; **AND**

(3) a certificate of compliance issued by the insurance department of the insurer's state of domicile**[**; and

(4) a certificate evidencing a deposit issued by the official custodian of deposits of the insurer's state of domicile**]**.

[(b)**] (D)** An unauthorized insurer shall appoint in writing the Commissioner as agent for the acceptance of service of process.

3–319.

(a) A surplus lines broker may not place surplus lines insurance with an unauthorized insurer that:

(1) has not been approved by the Commissioner as a surplus lines insurer **IN ACCORDANCE WITH § 3–318 OF THIS SUBTITLE**;

(2) **FOR AN INSURER NOT DOMICILED IN THE STATE, HAS NOT QUALIFIED UNDER § 3–303 OF THIS SUBTITLE;**

(3) has been determined by the Commissioner to be insolvent or unsafe financially under subsection (b) of this section; or

[(3)**] (4)** has been determined by the Commissioner to have refused to pay just claims.

(b) (1) The Commissioner shall direct that surplus lines insurance may not be placed with a surplus lines insurer that has been approved by the Commissioner if the Commissioner determines that the surplus lines insurer:

(i) is not in a safe or solvent financial condition; or

(ii) has refused to pay just claims.

(2) After written notice of a determination made by the Commissioner under paragraph (1) of this subsection is mailed by the Commissioner to qualified surplus lines brokers, surplus lines insurance may not be placed with the surplus lines insurer.

(c) Notwithstanding any other provision of this subtitle, a surplus lines broker may not place surplus lines insurance with an insurer if the broker knows, or reasonably should know, that the insurer is in an unsafe or insolvent financial condition.

(d) A qualified surplus lines broker may not place a risk in an unauthorized insurer that has not previously appointed the Commissioner as agent for the acceptance of service of process.

3–324.

(a) This section does not apply to insurance of risks of the State or a political subdivision of the State.

(b) The premiums charged for surplus lines insurance are subject to a premium receipts tax of 3% on all gross premiums, less any returned premiums, charged for surplus lines insurance.

(C) FOR POLICIES EFFECTIVE BEFORE JULY 21, 2011:

(1) IF THE POLICY COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED ENTIRELY IN THE STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED ON THE ENTIRE PREMIUM AT THE RATE SPECIFIED IN SUBSECTION (B) OF THIS SECTION; AND

(2) IF THE POLICY COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED BOTH IN AND OUTSIDE THE STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED AT THE RATE SPECIFIED IN SUBSECTION (B) OF THIS SECTION ONLY ON THAT PORTION OF THE PREMIUM THAT IS PROPERLY ALLOCABLE TO THE RISKS LOCATED IN THE STATE.

(D) FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, IF THE STATE IS THE INSURED'S HOME STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED ON THE ENTIRE PREMIUM AT THE RATE SPECIFIED IN SUBSECTION (B) OF THIS SECTION.

(E) FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, ONLY THE HOME STATE OF AN INSURED MAY RECEIVE PREMIUM RECEIPTS TAX PAYMENTS AND REPORTS FOR NONADMITTED INSURANCE.

[(c)**] (F)** (1) On delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance, a surplus lines broker shall charge the insured the amount of the **PREMIUM RECEIPTS** tax in addition to the full amount of the gross premium charged by the insurer for the surplus lines insurance.

(2) The surplus lines broker shall return to the insured the **PREMIUM RECEIPTS** tax on any unearned part of the premium.

[(d)**] (G)** The surplus lines broker may not:

(1) absorb the premium receipts tax; or

(2) rebate all or part of the premium receipts tax or the surplus lines broker's commission.

[(e) If a surplus lines policy covers risks only partly in the State, the tax payable shall be computed on the part of the premium that is properly allocable to the risks located in the State.**]**

(H) THE COMMISSIONER SHALL COOPERATE WITH OTHER STATES TO ADOPT AND IMPLEMENT UNIFORM REQUIREMENTS FOR NONADMITTED INSURANCE IN COMPLIANCE WITH THE ACT.

(I) FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, THE REGULATION OF NONADMITTED INSURANCE IS SUBJECT TO THE STATUTORY AND REGULATORY REQUIREMENTS SOLELY OF THE HOME STATE OF THE INSURED.

3–325.

(a) On or before March 15 and September 15 of each year**, OR AT ANOTHER INTERVAL THAT THE COMMISSIONER DIRECTS**, each surplus lines broker shall:

(1) file with the Commissioner a **[**semiannual statement that reports**] REPORT, ON A FORM THE COMMISSIONER PRESCRIBES,** on business subject to tax during the preceding half calendar year **OR OTHER INTERVAL THAT THE COMMISSIONER DIRECTS**; and

(2) pay to the Commissioner the total amount of tax **[**imposed by § 3–324 of this subtitle and appearing on the semiannual statement filed under this section**] STATED IN THE REPORT**.

[(b) The semiannual statement shall be verified in the manner that the Commissioner requires and contain the following information:

(1) the gross amount of each kind of insurance business transacted and the total gross premiums charged;

(2) the total returned premiums and taxes paid to insureds;

(3) the total net premiums; and

(4) any additional information that the Commissioner reasonably requires.]

(B) BY REGULATION, THE COMMISSIONER SHALL DETERMINE THE REQUIRED CONTENT AND FILING DEADLINES OF THE REPORT.

(c) Each [semiannual statement] **REPORT** shall be open to public inspection.

(d) A **QUALIFIED** surplus lines broker may credit any examination expense paid or assessed under § 2–208 of this article against the premium receipts tax due **TO THE STATE**.

(e) With respect to [a penalty that has become final] **SURPLUS LINES PREMIUM RECEIPTS TAX DUE TO THE STATE**, a surplus lines broker is subject to the provisions of Title 6, Subtitle 1 of this article relating to penalties, interest, audits, assessments, limitations, appeals, and refunds.

4–209.

(a) This section does not apply to:

(1) premiums on lawfully procured surplus lines insurance;

(2) premiums on independently procured insurance on which a tax has been paid under § 4–211 of this subtitle; or

(3) wet marine and transportation insurance.

(b) (1) If an unauthorized insurer effects, continues, or renews insurance on a subject resident, located, or to be performed in the State, the unauthorized insurer shall pay to the Commissioner, before March 1 of the next calendar year, a premium receipts tax of 3% of gross premiums charged for the insurance.

(2) FOR POLICIES EFFECTIVE BEFORE JULY 21, 2011:

(I) IF THE POLICY COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED ENTIRELY IN THE STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED ON THE ENTIRE PREMIUM AT THE RATE SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION; AND

(II) IF THE POLICY COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED BOTH IN AND OUTSIDE THE STATE,

THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED AT THE RATE SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION ONLY ON THAT PORTION OF THE PREMIUM THAT IS PROPERLY ALLOCABLE TO THE RISKS LOCATED IN THE STATE.

(3) FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, IF THE STATE IS THE INSURED'S HOME STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED ON THE ENTIRE PREMIUM AT THE RATE SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION.

[(2)**] (4)** Insurance that an unauthorized insurer effects, continues, or renews on a subject resident, located, or to be performed in the State that is procured through negotiations or an application wholly or partly occurring or made in or from within or outside of the State, or for which premiums wholly or partly are remitted directly or indirectly from in or outside of the State, is deemed to be insurance procured, continued, or renewed in the State.

(c) The premium receipts tax under this section is instead of all other State taxes.

(d) If an unauthorized insurer defaults on the payment of the tax under this section, the insured shall pay the tax.

(e) If the tax is not timely paid under subsection (b) of this section, the amount of the tax due shall be increased by a penalty of:

(1) 25% of the tax due; and

(2) an amount computed at the rate of 1% per month or any part of a month after the date the payment was due to the date the payment is made.

[(f) (1) If a policy covers a risk or exposure that is partly in the State, the tax payable shall be computed on the part of the premium that is properly allocable to the risk or exposure located in the State.

(2) Except for premiums that are properly allocated or apportioned and reported as taxable premiums of another state, in determining the amount of premiums taxable in this State, all premiums written, procured, or received in this State and all premiums on policies negotiated in this State shall be deemed written on property or risks located or resident in this State.**]**

4–210.

(a) In this section, "insured" includes an industrial insured who procures insurance of a risk through a full–time employee acting as a risk manager.

(b) (1) Each insured that procures or causes to be procured insurance with an unauthorized insurer, or an insured or self–insured that procures or continues excess loss, catastrophe, or other insurance with an unauthorized insurer, on a subject of insurance resident, located, or to be performed in the State other than surplus lines insurance, shall file with the Commissioner a report under this section **[**within 60 days after the date that the insurance was procured**]**.

(2) Insurance with an unauthorized insurer on a subject of insurance resident, located, or to be performed in the State that is procured through negotiations or an application wholly or partly occurring or made in or from within or outside of the State, or for which the premiums wholly or partly are remitted directly or indirectly from in or outside of the State, is deemed to be insurance procured in the State.

[(c) The report shall:

(1) be in writing;

(2) be on the form provided by the Commissioner to the insured on request; and

(3) contain:

(i) the name and address of the insured;

(ii) the name and address of the insurer;

(iii) the subject of the insurance;

(iv) a general description of the coverage;

(v) the amount of the premium charged for the coverage; and

(vi) any other pertinent information that the Commissioner reasonably requests.**]**

(C) FOR POLICIES EFFECTIVE BEFORE JULY 21, 2011, A REPORT UNDER THIS SECTION SHALL BE FILED WITHIN 60 DAYS AFTER THE DATE THAT THE INSURANCE WAS PROCURED.

(D) FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, ON OR BEFORE MARCH 15 AND SEPTEMBER 15 OF EACH YEAR, OR AT ANOTHER INTERVAL THAT THE COMMISSIONER DIRECTS, EACH INSURED SHALL:

(1) FILE WITH THE COMMISSIONER A REPORT, ON A FORM THE COMMISSIONER PRESCRIBES, ON BUSINESS SUBJECT TO TAX DURING THE

PRECEDING HALF CALENDAR YEAR OR OTHER INTERVAL THAT THE COMMISSIONER DIRECTS; AND

(2) PAY TO THE COMMISSIONER THE TOTAL AMOUNT OF TAX STATED IN THE REPORT.

(E) BY REGULATION, THE COMMISSIONER SHALL DETERMINE THE REQUIRED CONTENT AND FILING DEADLINES OF THE ~~*REPORT*~~ *REPORTS*.

4–211.

(a) This section does not apply to wet marine and transportation insurance.

(b) (1) If an insured procures, continues, or renews insurance from an unauthorized insurer that is subject to a report under § 4–210 of this subtitle, a premium receipts tax of 3% of the gross premiums charged for the insurance is levied on the obligation, chose in action, or right represented by the premium charged for the insurance.

(2) **[**The insured shall pay the amount of the tax to the Commissioner before March 1 of the next calendar year after the insurance was procured, continued, or renewed.

(3)**]** If an insurance contract subject to the tax is canceled and rewritten, the additional premium, for purposes of the premium receipts tax, is the premium in excess of the unearned premium of the canceled insurance contract.

(c) **[**(1) If a policy covers a risk or exposure that is only partly in the State, the tax payable shall be computed on the part of the premium that is properly allocable to the risk or exposure located in the State.

(2) Except for premiums that are properly allocated or apportioned and reported as taxable premiums in another state, in determining the amount of premiums taxable in this State, all premiums written, procured, or received in this State and all premiums on policies negotiated in this State shall be deemed written on property or risks located or resident in this State.

(d)**]** If the insured fails to withhold from the premium the amount of the tax levied under this section, the insured is liable for the amount of the tax **IMPOSED UNDER SUBSECTION (B) OF THIS SECTION** and shall pay the tax to the Commissioner **[**in accordance with subsection (c) of this section**]**.

[(e)**] (D)** If the tax **[**required by**] IMPOSED UNDER** subsection **[**(d)**] (B)** of this section is not timely paid **[**under subsection (c) of this section**]**, the amount of the tax due shall be increased by a penalty of:

(1) 25% of the tax due; and

(2) an amount computed at the rate of 1% per month or part of a month after the date the payment is due until the date the payment is made.

[(f)**] (E)** If the tax is not timely paid under this section, on request of the Commissioner, the Attorney General shall proceed in a court of this State or another state or in a federal court or agency to recover the tax.

4–211.1.

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

(2) "ACT" HAS THE MEANING STATED IN § 3–301 OF THIS ARTICLE.

(3) "HOME STATE" HAS THE MEANING STATED IN § 3–301 OF THIS ARTICLE.

(4) "NONADMITTED INSURANCE" HAS THE MEANING STATED IN § 3–301 OF THIS ARTICLE.

(B) FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, THE PLACEMENT OF NONADMITTED INSURANCE IS SUBJECT TO THE STATUTORY AND REGULATORY REQUIREMENTS SOLELY OF THE INSURED'S HOME STATE.

(C) THE PREMIUMS CHARGED FOR UNAUTHORIZED INSURANCE ARE SUBJECT TO A PREMIUM RECEIPTS TAX IN THE STATE ON ALL GROSS PREMIUMS, LESS ANY RETURNED PREMIUMS, CHARGED FOR NONADMITTED INSURANCE AS SPECIFIED IN §§ 4–209 AND 4–211 OF THIS SUBTITLE.

(D) FOR POLICIES EFFECTIVE BEFORE JULY 21, 2011:

(1) IF THE POLICY COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED ENTIRELY IN THE STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED ON THE ENTIRE PREMIUM AT THE RATE SPECIFIED IN SUBSECTION (C) OF THIS SECTION; AND

(2) IF THE POLICY COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED BOTH IN AND OUTSIDE THE STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED AT THE RATE SPECIFIED IN SUBSECTION (C) OF THIS SECTION ONLY ON THAT PORTION OF THE PREMIUM THAT IS PROPERLY ALLOCABLE TO THE RISKS LOCATED IN THE STATE.

(E) FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, IF THE STATE IS THE INSURED'S HOME STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED ON THE ENTIRE PREMIUM AT THE RATE SPECIFIED IN SUBSECTION (C) OF THIS SECTION.

(F) FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, ONLY THE HOME STATE OF AN INSURED MAY RECEIVE PREMIUM RECEIPTS TAX PAYMENTS AND REPORTS FOR NONADMITTED INSURANCE.

(G) FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, THE REGULATION OF NONADMITTED INSURANCE IS SUBJECT TO THE STATUTORY AND REGULATORY REQUIREMENTS SOLELY OF THE HOME STATE OF THE INSURED.

(H) THE COMMISSIONER SHALL COOPERATE WITH OTHER STATES TO ADOPT AND IMPLEMENT UNIFORM REQUIREMENTS FOR NONADMITTED INSURANCE IN COMPLIANCE WITH THE ACT.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) On or before January 1, 2012, the Maryland Insurance Commissioner shall:

(1) study the various approaches taken by other states to implement the federal Nonadmitted and Reinsurance Reform Act of 2010, paying specific attention to the approaches taken by contiguous states; and

(2) report the findings of the study, in accordance with § 2–1246 of the State Government Article, to the Senate Finance Committee and the House Economic Matters Committee.

(b) The study required under subsection (a)(1) of this section shall include a review of:

(1) the approaches taken by other states, including:

(i) legislative enactments;

(ii) the execution of agreements or compacts, if any;

(iii) the impact on nonadmitted premium receipts tax revenue experienced by other states based on the approach taken, if known; and

(iv) future plans for implementation, if known or ascertainable;

(2) the impact of Maryland's approach on its nonadmitted premium receipts tax revenue, if any;

(3) relevant congressional guidance;

(4) guidance provided by the National Council of Insurance Legislators, the Council of State Government, the National Council of State Legislators, and the National Association of Insurance Commissioners; and

(5) industry guidance, statistics, or information.

(c) On request of the Maryland Insurance Commissioner, qualified surplus lines brokers shall provide to the Commissioner, to the extent practicable, information regarding written premium on risks located in Maryland and multistate risks so as to provide more information regarding premium receipts tax revenue.

~~**TITLE 31. SURPLUS LINES INSURANCE MULTI-STATE COMPLIANCE COMPACT.**~~

~~**31–101.**~~

~~**THE STATE OF MARYLAND HEREBY ENTERS THE SURPLUS LINES INSURANCE MULTI-STATE COMPLIANCE COMPACT AS SET FORTH IN THIS SECTION. THE COMPACT SHALL TAKE EFFECT IN ACCORDANCE WITH ARTICLE XIII OF THE COMPACT. THE TEXT OF THE COMPACT IS AS FOLLOWS:**~~

~~**PREAMBLE**~~

~~**WHEREAS, WITH REGARD TO NON–ADMITTED INSURANCE POLICIES WITH RISK EXPOSURES LOCATED IN MULTIPLE STATES, THE 111TH UNITED STATES CONGRESS, HAS STIPULATED IN TITLE V, SUBTITLE B THE NON–ADMITTED AND REINSURANCE REFORM ACT OF 2010, OF THE DODD FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT, HEREAFTER, THE NRRA, THAT:**~~

~~**(A) THE PLACEMENT OF NON–ADMITTED INSURANCE SHALL BE SUBJECT TO THE STATUTORY AND REGULATORY REQUIREMENTS SOLELY OF THE INSURED'S HOME STATE, AND**~~

~~**(B) ANY LAW, REGULATION, PROVISION, OR ACTION OF ANY STATE THAT APPLIES OR PURPORTS TO APPLY TO NON–ADMITTED INSURANCE SOLD TO, SOLICITED BY, OR NEGOTIATED WITH AN INSURED WHOSE HOME STATE IS ANOTHER STATE SHALL BE PREEMPTED WITH RESPECT TO SUCH APPLICATION; EXCEPT THAT ANY STATE LAW, RULE, OR REGULATION THAT RESTRICTS THE PLACEMENT OF WORKERS' COMPENSATION INSURANCE OR**~~

~~EXCESS INSURANCE FOR SELF–FUNDED WORKERS' COMPENSATION PLANS WITH A NON–ADMITTED INSURER SHALL NOT BE PREEMPTED.~~

~~WHEREAS, IN COMPLIANCE WITH NRRA, NO STATE OTHER THAN THE HOME STATE OF AN INSURED MAY REQUIRE ANY PREMIUM TAX PAYMENT FOR NON–ADMITTED INSURANCE; AND NO STATE OTHER THAN AN INSURED'S HOME STATE MAY REQUIRE A SURPLUS LINES BROKER TO BE LICENSED IN ORDER TO SELL, SOLICIT, OR NEGOTIATE NON–ADMITTED INSURANCE WITH RESPECT TO SUCH INSURED;~~

~~WHEREAS, THE NRRA INTENDS THAT THE STATES MAY ENTER INTO A COMPACT OR OTHERWISE ESTABLISH PROCEDURES TO ALLOCATE AMONG THE STATES THE PREMIUM TAXES PAID TO AN INSURED'S HOME STATE; AND THAT EACH STATE ADOPT NATIONWIDE UNIFORM REQUIREMENTS, FORMS, AND PROCEDURES, SUCH AS AN INTERSTATE COMPACT, THAT PROVIDE FOR THE REPORTING, PAYMENT, COLLECTION, AND ALLOCATION OF PREMIUM TAXES FOR NON–ADMITTED INSURANCE;~~

~~WHEREAS, AFTER THE EXPIRATION OF THE TWO–YEAR PERIOD BEGINNING ON THE DATE OF THE ENACTMENT OF THE NRRA, A STATE MAY NOT COLLECT ANY FEES RELATING TO LICENSING OF AN INDIVIDUAL OR ENTITY AS A SURPLUS LINES LICENSEE IN THE STATE UNLESS THE STATE HAS IN EFFECT AT SUCH TIME LAWS OR REGULATIONS THAT PROVIDE FOR PARTICIPATION BY THE STATE IN THE NATIONAL INSURANCE PRODUCER DATABASE OF THE NAIC, OR ANY OTHER EQUIVALENT UNIFORM NATIONAL DATABASE, FOR THE LICENSURE OF SURPLUS LINES LICENSEES AND THE RENEWAL OF SUCH LICENSES;~~

~~WHEREAS, IN COMPLIANCE WITH NRRA, NO STATE OTHER THAN THE HOME STATE OF AN INSURED MAY REQUIRE ANY PREMIUM TAX PAYMENT FOR NON–ADMITTED INSURANCE; AND NO STATE OTHER THAN AN INSURED'S HOME STATE MAY REQUIRE A SURPLUS LINES BROKER TO BE LICENSED IN ORDER TO SELL, SOLICIT, OR NEGOTIATE NON–ADMITTED INSURANCE WITH RESPECT TO SUCH INSURED;~~

~~WHEREAS, THE NRRA INTENDS THAT THE STATES MAY ENTER INTO A COMPACT OR OTHERWISE ESTABLISH PROCEDURES TO ALLOCATE AMONG THE STATES THE PREMIUM TAXES PAID TO AN INSURED'S HOME STATE; AND THAT EACH STATE ADOPT NATIONWIDE UNIFORM REQUIREMENTS, FORMS, AND PROCEDURES, SUCH AS AN INTERSTATE COMPACT, THAT PROVIDE FOR THE REPORTING, PAYMENT, COLLECTION, AND ALLOCATION OF PREMIUM TAXES FOR NON–ADMITTED INSURANCE;~~

~~WHEREAS, AFTER THE EXPIRATION OF THE TWO-YEAR PERIOD BEGINNING ON THE DATE OF THE ENACTMENT OF THE NRRA, A STATE MAY NOT COLLECT ANY FEES RELATING TO LICENSING OF AN INDIVIDUAL OR ENTITY AS A SURPLUS LINES LICENSEE IN THE STATE UNLESS THE STATE HAS IN EFFECT AT SUCH TIME LAWS OR REGULATIONS THAT PROVIDE FOR PARTICIPATION BY THE STATE IN THE NATIONAL INSURANCE PRODUCER DATABASE OF THE NAIC, OR ANY OTHER EQUIVALENT UNIFORM NATIONAL DATABASE, FOR THE LICENSURE OF SURPLUS LINES LICENSEES AND THE RENEWAL OF SUCH LICENSES;~~

~~WHEREAS, A NEED EXISTS FOR A SYSTEM OF REGULATION THAT WILL PROVIDE FOR SURPLUS LINES INSURANCE TO BE PLACED WITH REPUTABLE AND FINANCIALLY SOUND NON-ADMITTED INSURERS, AND THAT WILL PERMIT ORDERLY ACCESS TO SURPLUS LINES INSURANCE IN THIS STATE AND ENCOURAGE INSURERS TO MAKE NEW AND INNOVATIVE TYPES OF INSURANCE AVAILABLE TO CONSUMERS IN THIS STATE;~~

~~WHEREAS, PROTECTING THE REVENUE OF THIS STATE AND OTHER COMPACTING STATES MAY BE ACCOMPLISHED BY FACILITATING THE PAYMENT AND COLLECTION OF PREMIUM TAX ON NON-ADMITTED INSURANCE AND PROVIDING FOR ALLOCATION OF PREMIUM TAX FOR NON-ADMITTED INSURANCE OF MULTI-STATE RISKS AMONG THE STATES IN ACCORDANCE WITH UNIFORM ALLOCATION FORMULAS;~~

~~WHEREAS, THE EFFICIENCY OF THE SURPLUS LINES MARKET MAY BE IMPROVED BY ELIMINATING DUPLICATIVE AND INCONSISTENT TAX AND REGULATORY REQUIREMENTS AMONG THE STATES, AND BY PROMOTING AND PROTECTING THE INTERESTS OF SURPLUS LINES LICENSEES WHO ASSIST SUCH INSUREDS AND NON-ADMITTED INSURERS, THEREBY ENSURING THE CONTINUED AVAILABILITY OF NON-ADMITTED INSURANCE TO CONSUMERS;~~

~~WHEREAS, REGULATORY COMPLIANCE WITH RESPECT TO NON-ADMITTED INSURANCE PLACEMENTS MAY BE STREAMLINED BY PROVIDING FOR EXCLUSIVE SINGLE-STATE REGULATORY COMPLIANCE FOR NON-ADMITTED INSURANCE OF MULTI-STATE RISKS, THEREBY PROVIDING CERTAINTY REGARDING SUCH COMPLIANCE TO ALL PERSONS WHO HAVE AN INTEREST IN SUCH TRANSACTIONS, INCLUDING BUT NOT LIMITED TO INSUREDS, REGULATORS, SURPLUS LINES LICENSEES, OTHER INSURANCE PRODUCERS, AND SURPLUS LINES INSURERS;~~

~~WHEREAS, COORDINATION OF REGULATORY RESOURCES AND EXPERTISE BETWEEN STATE INSURANCE DEPARTMENTS AND OTHER STATE AGENCIES, AS WELL AS STATE SURPLUS LINES STAMPING OFFICES, WITH RESPECT TO NON-ADMITTED INSURANCE WILL BE IMPROVED;~~

~~NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE STATE OF MARYLAND AND THE VARIOUS OTHER STATES DO HEREBY SOLEMNLY COVENANT AND AGREE, EACH WITH THE OTHER AS FOLLOWS:~~

~~ARTICLE I~~

~~PURPOSE~~

~~THE PURPOSES OF THIS COMPACT ARE:~~

~~1. TO IMPLEMENT THE EXPRESS PROVISIONS OF THE NRRA.~~

~~2. TO PROTECT THE PREMIUM TAX REVENUES OF THE COMPACTING STATES THROUGH FACILITATING THE PAYMENT AND COLLECTION OF PREMIUM TAX ON NON-ADMITTED INSURANCE; AND TO PROTECT THE INTERESTS OF THE COMPACTING STATES BY SUPPORTING THE CONTINUED AVAILABILITY OF SUCH INSURANCE TO CONSUMERS; AND TO PROVIDE FOR ALLOCATION OF PREMIUM TAX FOR NON-ADMITTED INSURANCE OF MULTI-STATE RISKS AMONG THE STATES IN ACCORDANCE WITH UNIFORM ALLOCATION FORMULAS TO BE DEVELOPED, ADOPTED, AND IMPLEMENTED BY THE COMMISSION.~~

~~3. TO STREAMLINE AND IMPROVE THE EFFICIENCY OF THE SURPLUS LINES MARKET BY ELIMINATING DUPLICATIVE AND INCONSISTENT TAX AND REGULATORY REQUIREMENTS AMONG THE STATES; AND PROMOTE AND PROTECT THE INTEREST OF SURPLUS LINES LICENSEES WHO ASSIST SUCH INSUREDS AND SURPLUS LINES INSURERS, THEREBY ENSURING THE CONTINUED AVAILABILITY OF SURPLUS LINES INSURANCE TO CONSUMERS.~~

~~4. TO STREAMLINE REGULATORY COMPLIANCE WITH RESPECT TO NON-ADMITTED INSURANCE PLACEMENTS BY PROVIDING FOR EXCLUSIVE SINGLE-STATE REGULATORY COMPLIANCE FOR NON-ADMITTED INSURANCE OF MULTI-STATE RISKS, IN ACCORDANCE WITH RULES TO BE ADOPTED BY THE COMMISSION, THEREBY PROVIDING CERTAINTY REGARDING SUCH COMPLIANCE TO ALL PERSONS WHO HAVE AN INTEREST IN SUCH TRANSACTIONS, INCLUDING BUT NOT LIMITED TO INSUREDS, REGULATORS, SURPLUS LINES LICENSEES, OTHER INSURANCE PRODUCERS, AND SURPLUS LINES INSURERS.~~

~~5. TO ESTABLISH A CLEARINGHOUSE FOR RECEIPT AND DISSEMINATION OF PREMIUM TAX AND CLEARINGHOUSE TRANSACTION DATA RELATED TO NON-ADMITTED INSURANCE OF MULTI-STATE RISKS, IN ACCORDANCE WITH RULES TO BE ADOPTED BY THE COMMISSION.~~

~~6. TO IMPROVE COORDINATION OF REGULATORY RESOURCES AND EXPERTISE BETWEEN STATE INSURANCE DEPARTMENTS AND OTHER STATE AGENCIES, AS WELL AS STATE SURPLUS LINES STAMPING OFFICES, WITH RESPECT TO NON–ADMITTED INSURANCE.~~

~~7. TO ADOPT UNIFORM RULES TO PROVIDE FOR PREMIUM TAX PAYMENT, REPORTING, ALLOCATION, DATA COLLECTION AND DISSEMINATION FOR NON–ADMITTED INSURANCE OF MULTI–STATE RISKS AND SINGLE–STATE RISKS, IN ACCORDANCE WITH RULES TO BE ADOPTED BY THE COMMISSION, THEREBY PROMOTING THE OVERALL EFFICIENCY OF THE NON–ADMITTED INSURANCE MARKET.~~

~~8. TO ADOPT UNIFORM MANDATORY RULES WITH RESPECT TO REGULATORY COMPLIANCE REQUIREMENTS FOR:~~

~~(I) FOREIGN INSURER ELIGIBILITY REQUIREMENTS;~~

~~(II) SURPLUS LINES POLICYHOLDER NOTICES;~~

~~9. TO ESTABLISH THE SURPLUS LINES INSURANCE MULTI–STATE COMPLIANCE COMPACT COMMISSION.~~

~~10. TO COORDINATE REPORTING OF CLEARINGHOUSE TRANSACTION DATA ON NON–ADMITTED INSURANCE OF MULTI–STATE RISKS AMONG COMPACTING STATES AND CONTRACTING STATES.~~

~~11. TO PERFORM THESE AND SUCH OTHER RELATED FUNCTIONS AS MAY BE CONSISTENT WITH THE PURPOSES OF THE SURPLUS LINES INSURANCE MULTI–STATE COMPLIANCE COMPACT.~~

~~ARTICLE II~~

~~DEFINITIONS~~

~~FOR PURPOSES OF THIS COMPACT THE FOLLOWING DEFINITIONS SHALL APPLY:~~

~~1. "ADMITTED INSURER" MEANS AN INSURER THAT IS LICENSED, OR AUTHORIZED, TO TRANSACT THE BUSINESS OF INSURANCE UNDER THE LAW OF THE HOME STATE; FOR PURPOSES OF THIS COMPACT "ADMITTED INSURER" SHALL NOT INCLUDE A DOMESTIC SURPLUS LINES INSURER AS MAY BE DEFINED BY APPLICABLE STATE LAW.~~

~~2. "AFFILIATE" MEANS WITH RESPECT TO AN INSURED, ANY ENTITY THAT CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH THE INSURED.~~

~~3. "ALLOCATION FORMULA" MEANS THE UNIFORM METHODS PROMULGATED BY THE COMMISSION BY WHICH INSURED RISK EXPOSURES WILL BE APPORTIONED TO EACH STATE FOR THE PURPOSE OF CALCULATING PREMIUM TAXES DUE.~~

~~4. "BYLAWS" MEANS THOSE BYLAWS ESTABLISHED BY THE COMMISSION FOR ITS GOVERNANCE, OR FOR DIRECTING OR CONTROLLING THE COMMISSION'S ACTIONS OR CONDUCT.~~

~~5. "CLEARINGHOUSE" MEANS THE COMMISSION'S OPERATIONS INVOLVING THE ACCEPTANCE, PROCESSING, AND DISSEMINATION, AMONG THE COMPACTING STATES, CONTRACTING STATES, SURPLUS LINES LICENSEES, INSUREDS AND OTHER PERSONS, OF PREMIUM TAX AND CLEARINGHOUSE TRANSACTION DATA FOR NON–ADMITTED INSURANCE OF MULTI–STATE RISKS, IN ACCORDANCE WITH THIS COMPACT AND RULES TO BE ADOPTED BY THE COMMISSION.~~

~~6. "CLEARINGHOUSE TRANSACTION DATA" MEANS THE INFORMATION REGARDING NON-ADMITTED INSURANCE OF MULTI-STATE RISKS REQUIRED TO BE REPORTED, ACCEPTED, COLLECTED, PROCESSED, AND DISSEMINATED BY SURPLUS LINES LICENSEES FOR SURPLUS LINES INSURANCE AND INSUREDS FOR INDEPENDENTLY PROCURED INSURANCE UNDER THIS COMPACT AND RULES TO BE ADOPTED BY THE COMMISSION. CLEARINGHOUSE TRANSACTION DATA INCLUDES INFORMATION RELATED TO SINGLE STATE RISKS IF A STATE ELECTS TO HAVE THE CLEARINGHOUSE COLLECT TAXES ON SINGLE-STATE RISKS FOR SUCH STATE.~~

~~7. "COMPACTING STATE" MEANS ANY STATE WHICH HAS ENACTED THIS COMPACT LEGISLATION AND WHICH HAS NOT WITHDRAWN PURSUANT TO ARTICLE XIV, SECTION 1, OR BEEN TERMINATED PURSUANT TO ARTICLE XIV, SECTION 2.~~

~~8. "COMMISSION" MEANS THE "SURPLUS LINES INSURANCE MULTI-STATE COMPLIANCE COMPACT COMMISSION" ESTABLISHED BY THIS COMPACT.~~

~~9. "COMMISSIONER" MEANS THE CHIEF INSURANCE REGULATORY OFFICIAL OF A STATE INCLUDING, BUT NOT LIMITED TO COMMISSIONER, SUPERINTENDENT, DIRECTOR OR ADMINISTRATOR OR THEIR DESIGNEES.~~

~~10. "CONTRACTING STATE" MEANS ANY STATE WHICH HAS NOT ENACTED THIS COMPACT LEGISLATION BUT HAS ENTERED INTO A WRITTEN CONTRACT WITH THE COMMISSION TO UTILIZE THE SERVICES OF AND FULLY PARTICIPATE IN THE CLEARINGHOUSE.~~

~~11. "CONTROL" AN ENTITY HAS "CONTROL" OVER ANOTHER ENTITY IF:~~

~~(A) THE ENTITY DIRECTLY OR INDIRECTLY OR ACTING THROUGH 1 OR MORE OTHER PERSONS OWN, CONTROLS, OR HAS THE POWER TO VOTE 25 PERCENT OR MORE OF ANY CLASS OF VOTING SECURITIES OF THE OTHER ENTITY; OR~~

~~(B) THE ENTITY CONTROLS IN ANY MANNER THE ELECTION OF A MAJORITY OF THE DIRECTORS OR TRUSTEES OF THE OTHER ENTITY.~~

~~12. "HOME STATE"~~

~~(A) IN GENERAL. EXCEPT AS PROVIDED IN SUBPARAGRAPH (B), THE TERM "HOME STATE" MEANS, WITH RESPECT TO AN INSURED:~~

~~(I) THE STATE IN WHICH AN INSURED MAINTAINS ITS PRINCIPAL PLACE OF BUSINESS OR, IN THE CASE OF AN INDIVIDUAL, THE INDIVIDUAL'S PRINCIPAL RESIDENCE; OR~~

~~(II) IF 100 PERCENT OF THE INSURED RISK IS LOCATED OUT OF THE STATE REFERRED TO IN SUBPARAGRAPH (A)(I), THE STATE TO WHICH THE GREATEST PERCENTAGE OF THE INSURED'S TAXABLE PREMIUM FOR THAT INSURANCE CONTRACT IS ALLOCATED.~~

~~(B) AFFILIATED GROUPS. IF MORE THAN ONE INSURED FROM AN AFFILIATED GROUP ARE NAMED INSUREDS ON A SINGLE NON–ADMITTED INSURANCE CONTRACT, THE TERM "HOME STATE" MEANS THE HOME STATE, AS DETERMINED PURSUANT TO SUBPARAGRAPH (A), OF THE MEMBER OF THE AFFILIATED GROUP THAT HAS THE LARGEST PERCENTAGE OF PREMIUM ATTRIBUTED TO IT UNDER SUCH INSURANCE CONTRACT.~~

~~13. "INDEPENDENTLY PROCURED INSURANCE" MEANS INSURANCE PROCURED BY AN INSURED DIRECTLY FROM A SURPLUS LINES INSURER OR OTHER NON–ADMITTED INSURER AS PERMITTED BY THE LAWS OF THE HOME STATE.~~

~~14. "INSURER ELIGIBILITY REQUIREMENTS" MEANS THE CRITERIA, FORMS AND PROCEDURES ESTABLISHED TO QUALIFY AS A SURPLUS LINES INSURER UNDER THE LAW OF THE HOME STATE PROVIDED THAT SUCH CRITERIA, FORMS AND PROCEDURES ARE CONSISTENT WITH THE EXPRESS PROVISIONS OF THE NRRA ON AND AFTER JULY 21, 2011.~~

~~15. "MEMBER" MEANS THE PERSON OR PERSONS CHOSEN BY A COMPACTING STATE AS ITS REPRESENTATIVE OR REPRESENTATIVES TO THE COMMISSION PROVIDED THAT EACH COMPACTING STATE SHALL BE LIMITED TO ONE VOTE.~~

~~16. "MULTI-STATE RISK" MEANS A RISK WITH INSURED EXPOSURES IN MORE THAN ONE STATE.~~

~~17. "NON–COMPACTING STATE" MEANS ANY STATE WHICH HAS NOT ADOPTED THIS COMPACT.~~

~~18. "NON–ADMITTED INSURANCE" MEANS SURPLUS LINES INSURANCE AND INDEPENDENTLY PROCURED INSURANCE.~~

~~19. "NON–ADMITTED INSURER" MEANS AN INSURER THAT IS NOT AUTHORIZED OR ADMITTED TO TRANSACT THE BUSINESS OF INSURANCE UNDER THE LAW OF THE HOME STATE.~~

~~20. "NRRA" MEANS THE NON–ADMITTED AND REINSURANCE REFORM ACT WHICH IS TITLE V, SUBTITLE B OF THE DODD–FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT.~~

~~21. "POLICYHOLDER NOTICE" MEANS THE DISCLOSURE NOTICE OR STAMP THAT IS REQUIRED TO BE FURNISHED TO THE APPLICANT OR POLICYHOLDER IN CONNECTION WITH A SURPLUS LINES INSURANCE PLACEMENT.~~

~~22. "PREMIUM TAX" MEANS WITH RESPECT TO NON–ADMITTED INSURANCE, ANY TAX, FEE, ASSESSMENT, OR OTHER CHARGE IMPOSED BY A GOVERNMENT ENTITY DIRECTLY OR INDIRECTLY BASED ON ANY PAYMENT MADE AS CONSIDERATION FOR SUCH INSURANCE, INCLUDING PREMIUM DEPOSITS, ASSESSMENTS, REGISTRATION FEES, AND ANY OTHER COMPENSATION GIVEN IN CONSIDERATION FOR A CONTRACT OF INSURANCE.~~

~~23. "PRINCIPAL PLACE OF BUSINESS" MEANS WITH RESPECT TO DETERMINING THE HOME STATE OF THE INSURED, THE STATE WHERE THE INSURED MAINTAINS ITS HEADQUARTERS AND WHERE THE INSURED'S~~

~~HIGH-LEVEL OFFICERS DIRECT, CONTROL AND COORDINATE THE BUSINESS ACTIVITIES OF THE INSURED.~~

~~24. "PURCHASING GROUP" MEANS ANY GROUP FORMED PURSUANT TO THE LIABILITY RISK RETENTION ACT WHICH HAS AS ONE OF ITS PURPOSES THE PURCHASE OF LIABILITY INSURANCE ON A GROUP BASIS, PURCHASES SUCH INSURANCE ONLY FOR ITS GROUP MEMBERS AND ONLY TO COVER THEIR SIMILAR OR RELATED LIABILITY EXPOSURE AND IS COMPOSED OF MEMBERS WHOSE BUSINESSES OR ACTIVITIES ARE SIMILAR OR RELATED WITH RESPECT TO THE LIABILITY TO WHICH MEMBERS ARE EXPOSED BY VIRTUE OF ANY RELATED, SIMILAR OR COMMON BUSINESS, TRADE, PRODUCT, SERVICES, PREMISES OR OPERATIONS AND IS DOMICILED IN ANY STATE.~~

~~25. "RULE" MEANS A STATEMENT OF GENERAL OR PARTICULAR APPLICABILITY AND FUTURE EFFECT PROMULGATED BY THE COMMISSION DESIGNED TO IMPLEMENT, INTERPRET, OR PRESCRIBE LAW OR POLICY OR DESCRIBING THE ORGANIZATION, PROCEDURE OR PRACTICE REQUIREMENTS OF THE COMMISSION WHICH SHALL HAVE THE FORCE AND EFFECT OF LAW IN THE COMPACTING STATES.~~

~~26. "SINGLE STATE RISK" MEANS A RISK WITH INSURED EXPOSURES IN ONLY ONE STATE.~~

~~27. "STATE" MEANS ANY STATE, DISTRICT OR TERRITORY OF THE UNITED STATES OF AMERICA.~~

~~28. "STATE TRANSACTION DOCUMENTATION" MEANS THE INFORMATION REQUIRED UNDER THE LAWS OF THE HOME STATE TO BE FILED BY SURPLUS LINES LICENSEES IN ORDER TO REPORT SURPLUS LINES INSURANCE AND VERIFY COMPLIANCE WITH SURPLUS LINES LAWS, AND BY INSUREDS IN ORDER TO REPORT INDEPENDENTLY PROCURED INSURANCE.~~

~~29. "SURPLUS LINES INSURANCE" MEANS INSURANCE PROCURED BY A SURPLUS LINES LICENSEE FROM A SURPLUS LINES INSURER OR OTHER NON-ADMITTED INSURER AS PERMITTED UNDER THE LAW OF THE HOME STATE; FOR PURPOSES OF THIS COMPACT "SURPLUS LINES INSURANCE" SHALL ALSO MEAN EXCESS LINES INSURANCE AS MAY BE DEFINED BY APPLICABLE STATE LAW.~~

~~30. "SURPLUS LINES INSURER" MEANS A NON-ADMITTED INSURER ELIGIBLE UNDER THE LAW OF THE HOME STATE TO ACCEPT BUSINESS FROM A SURPLUS LINES LICENSEE; FOR PURPOSES OF THIS COMPACT "SURPLUS LINES INSURER" SHALL ALSO MEAN AN INSURER WHICH IS~~

~~PERMITTED TO WRITE SURPLUS LINES INSURANCE UNDER THE LAWS OF THE STATE WHERE SUCH INSURER IS DOMICILED.~~

~~31. "SURPLUS LINES LICENSEE" MEANS AN INDIVIDUAL, FIRM OR CORPORATION LICENSED UNDER THE LAW OF THE HOME STATE TO PLACE SURPLUS LINES INSURANCE.~~

~~ARTICLE III~~

~~ESTABLISHMENT OF THE COMMISSION AND VENUE~~

~~1. THE COMPACTING STATES HEREBY CREATE AND ESTABLISH A JOINT PUBLIC AGENCY KNOWN AS THE "SURPLUS LINES INSURANCE MULTI-STATE COMPLIANCE COMPACT COMMISSION."~~

~~2. PURSUANT TO ARTICLE IV, THE COMMISSION WILL HAVE THE POWER TO ADOPT MANDATORY RULES WHICH ESTABLISH EXCLUSIVE HOME STATE AUTHORITY REGARDING NON-ADMITTED INSURANCE OF MULTI-STATE RISKS, ALLOCATION FORMULAS, CLEARINGHOUSE TRANSACTION DATA, A CLEARINGHOUSE FOR RECEIPT AND DISTRIBUTION OF ALLOCATED PREMIUM TAX AND CLEARINGHOUSE TRANSACTION DATA, AND UNIFORM RULEMAKING PROCEDURES AND RULES FOR THE PURPOSE OF FINANCING, ADMINISTERING, OPERATING AND ENFORCING COMPLIANCE WITH THE PROVISIONS OF THIS COMPACT, ITS BYLAWS AND RULES.~~

~~3. PURSUANT TO ARTICLE IV, THE COMMISSION WILL HAVE THE POWER TO ADOPT MANDATORY RULES ESTABLISHING FOREIGN INSURER ELIGIBILITY REQUIREMENTS AND A CONCISE AND OBJECTIVE POLICYHOLDER NOTICE REGARDING THE NATURE OF A SURPLUS LINES PLACEMENT.~~

~~4. THE COMMISSION IS A BODY CORPORATE AND POLITIC, AND AN INSTRUMENTALITY OF THE COMPACTING STATES.~~

~~5. THE COMMISSION IS SOLELY RESPONSIBLE FOR ITS LIABILITIES EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS COMPACT.~~

~~6. VENUE IS PROPER AND JUDICIAL PROCEEDINGS BY OR AGAINST THE COMMISSION SHALL BE BROUGHT SOLELY AND EXCLUSIVELY IN A COURT OF COMPETENT JURISDICTION WHERE THE PRINCIPAL OFFICE OF THE COMMISSION IS LOCATED. THE COMMISSION MAY WAIVE VENUE AND JURISDICTIONAL DEFENSES TO THE EXTENT IT ADOPTS OR CONSENTS TO PARTICIPATE IN ALTERNATIVE DISPUTE RESOLUTION PROCEEDINGS.~~

~~ARTICLE IV~~

~~AUTHORITY TO ESTABLISH MANDATORY RULES~~

~~THE COMMISSION SHALL ADOPT MANDATORY RULES WHICH ESTABLISH:~~

~~1. ALLOCATION FORMULAS FOR EACH TYPE OF NON-ADMITTED INSURANCE COVERAGE, WHICH ALLOCATION FORMULAS MUST BE USED BY EACH COMPACTING STATE AND CONTRACTING STATE IN ACQUIRING PREMIUM TAX AND CLEARINGHOUSE TRANSACTION DATA FROM SURPLUS LINES LICENSEES AND INSUREDS FOR REPORTING TO THE CLEARINGHOUSE CREATED BY THE COMPACT COMMISSION. SUCH ALLOCATION FORMULAS WILL BE ESTABLISHED WITH INPUT FROM SURPLUS LINES LICENSEES AND BE BASED UPON READILY AVAILABLE DATA WITH SIMPLICITY AND UNIFORMITY FOR THE SURPLUS LINE LICENSEE AS A MATERIAL CONSIDERATION.~~

~~2. UNIFORM CLEARINGHOUSE TRANSACTION DATA REPORTING REQUIREMENTS FOR ALL INFORMATION REPORTED TO THE CLEARINGHOUSE.~~

~~3. METHODS BY WHICH COMPACTING STATES AND CONTRACTING STATES REQUIRE SURPLUS LINES LICENSEES AND INSUREDS TO PAY PREMIUM TAX AND TO REPORT CLEARINGHOUSE TRANSACTION DATA TO THE CLEARINGHOUSE, INCLUDING BUT NOT LIMITED TO PROCESSING CLEARINGHOUSE TRANSACTION DATA THROUGH STATE STAMPING AND SERVICE OFFICES, STATE INSURANCE DEPARTMENTS, OR OTHER STATE DESIGNATED AGENCIES OR ENTITIES.~~

~~4. THAT NON-ADMITTED INSURANCE OF MULTI-STATE RISKS SHALL BE SUBJECT TO ALL OF THE REGULATORY COMPLIANCE REQUIREMENTS OF THE HOME STATE EXCLUSIVELY. HOME STATE REGULATORY COMPLIANCE REQUIREMENTS APPLICABLE TO SURPLUS LINES INSURANCE SHALL INCLUDE BUT NOT BE LIMITED TO, (I) PERSON(S) REQUIRED TO BE LICENSED TO SELL, SOLICIT, OR NEGOTIATE SURPLUS LINES INSURANCE; (II) INSURER ELIGIBILITY REQUIREMENTS OR OTHER APPROVED NON-ADMITTED INSURER REQUIREMENTS; (III) DILIGENT SEARCH; (IV) STATE TRANSACTION DOCUMENTATION AND CLEARINGHOUSE TRANSACTION DATA REGARDING THE PAYMENT OF PREMIUM TAX AS SET FORTH IN THIS COMPACT AND RULES TO BE ADOPTED BY THE COMMISSION. HOME STATE REGULATORY COMPLIANCE REQUIREMENTS APPLICABLE TO INDEPENDENTLY PROCURED INSURANCE PLACEMENTS SHALL INCLUDE BUT NOT BE LIMITED TO PROVIDING STATE TRANSACTION DOCUMENTATION AND CLEARINGHOUSE TRANSACTION DATA REGARDING THE PAYMENT OF PREMIUM TAX AS SET FORTH IN THIS COMPACT AND RULES TO BE ADOPTED BY THE COMMISSION.~~

~~5. THAT EACH COMPACTING STATE AND CONTRACTING STATE MAY CHARGE ITS OWN RATE OF TAXATION ON THE PREMIUM ALLOCATED TO SUCH STATE BASED ON THE APPLICABLE ALLOCATION FORMULA PROVIDED THAT THE STATE ESTABLISHES ONE SINGLE RATE OF TAXATION APPLICABLE TO ALL NON–ADMITTED INSURANCE TRANSACTIONS AND NO OTHER TAX, FEE ASSESSMENT OR OTHER CHARGE BY ANY GOVERNMENTAL OR QUASI GOVERNMENTAL AGENCY BE PERMITTED. NOTWITHSTANDING THE FOREGOING, STAMPING OFFICE FEES MAY BE CHARGED AS A SEPARATE, ADDITIONAL COST UNLESS SUCH FEES ARE INCORPORATED INTO A STATE'S SINGLE RATE OF TAXATION.~~

~~6. THAT ANY CHANGE IN THE RATE OF TAXATION BY ANY COMPACTING STATE OR CONTRACTING STATE BE RESTRICTED TO CHANGES MADE PROSPECTIVELY ON NOT LESS THAN 90 DAYS ADVANCE NOTICE TO THE COMPACT COMMISSION.~~

~~7. THAT EACH COMPACTING STATE AND CONTRACTING STATE SHALL REQUIRE PREMIUM TAX PAYMENTS EITHER ANNUALLY, SEMI–ANNUALLY, OR QUARTERLY UTILIZING ONE OR MORE OF THE FOLLOWING DATES ONLY: MARCH 1, JUNE 1, SEPTEMBER 1, AND DECEMBER 1.~~

~~8. THAT EACH COMPACTING STATE AND CONTRACTING STATE PROHIBIT ANY OTHER STATE AGENCY OR POLITICAL SUBDIVISION FROM REQUIRING SURPLUS LINES LICENSEES TO PROVIDE CLEARINGHOUSE TRANSACTION DATA AND STATE TRANSACTION DOCUMENTATION OTHER THAN TO THE INSURANCE DEPARTMENT OR TAX OFFICIALS OF THE HOME STATE OR ONE SINGLE DESIGNATED AGENT THEREOF.~~

~~9. THE OBLIGATION OF THE HOME STATE BY ITSELF, THROUGH A DESIGNATED AGENT, SURPLUS LINES STAMPING OR SERVICE OFFICE, TO COLLECT CLEARINGHOUSE TRANSACTION DATA FROM SURPLUS LINE LICENSEES AND FROM INSUREDS FOR INDEPENDENTLY PROCURED INSURANCE, WHERE APPLICABLE, FOR REPORTING TO THE CLEARINGHOUSE.~~

~~10. A METHOD FOR THE CLEARINGHOUSE TO PERIODICALLY REPORT TO COMPACTING STATES, CONTRACTING STATES, SURPLUS LINES LICENSEES AND INSUREDS WHO INDEPENDENTLY PROCURE INSURANCE, ALL PREMIUM TAXES OWED TO EACH OF THE COMPACTING STATES AND CONTRACTING STATES, THE DATES UPON WHICH PAYMENT OF SUCH PREMIUM TAXES ARE DUE AND A METHOD TO PAY THEM THROUGH THE CLEARINGHOUSE.~~

~~11. THAT EACH SURPLUS LINE LICENSEE IS REQUIRED TO BE LICENSED ONLY IN THE HOME STATE OF EACH INSURED FOR WHOM SURPLUS LINES INSURANCE HAS BEEN PROCURED.~~

~~12. THAT A POLICY CONSIDERED TO BE SURPLUS LINES INSURANCE IN THE INSURED'S HOME STATE SHALL BE CONSIDERED SURPLUS LINES INSURANCE IN ALL COMPACTING STATES AND CONTRACTING STATES, AND TAXED AS A SURPLUS LINES TRANSACTION IN ALL STATES TO WHICH A PORTION OF THE RISK IS ALLOCATED. EACH COMPACTING STATE AND CONTRACTING STATE SHALL REQUIRE EACH SURPLUS LINES LICENSEE TO PAY TO EVERY OTHER COMPACTING STATE AND CONTRACTING STATE PREMIUM TAXES ON EACH MULTI-STATE RISK THROUGH THE CLEARINGHOUSE AT SUCH TAX RATE CHARGED ON SURPLUS LINES TRANSACTIONS IN SUCH OTHER COMPACTING STATES AND CONTRACTING STATES ON THE PORTION OF THE RISK IN EACH SUCH COMPACTING STATE AND CONTRACTING STATE AS DETERMINED BY THE APPLICABLE UNIFORM ALLOCATION FORMULA ADOPTED BY THE COMMISSION. A POLICY CONSIDERED TO BE INDEPENDENTLY PROCURED INSURANCE IN THE INSURED'S HOME STATE SHALL BE CONSIDERED INDEPENDENTLY PROCURED INSURANCE IN ALL COMPACTING STATES AND CONTRACTING STATES. EACH COMPACTING STATE AND CONTRACTING STATE SHALL REQUIRE THE INSURED TO PAY EVERY OTHER COMPACTING STATE AND CONTRACTING STATE THE INDEPENDENTLY PROCURED INSURANCE PREMIUM TAX ON EACH MULTI-STATE RISK THROUGH THE CLEARINGHOUSE PURSUANT TO THE UNIFORM ALLOCATION FORMULA ADOPTED BY THE COMMISSION.~~

~~13. UNIFORM FOREIGN INSURER ELIGIBILITY REQUIREMENTS AS AUTHORIZED BY THE NRRA.~~

~~14. A UNIFORM POLICYHOLDER NOTICE.~~

~~15. UNIFORM TREATMENT OF PURCHASING GROUP SURPLUS LINES INSURANCE PLACEMENTS.~~

~~ARTICLE V~~

~~POWERS OF THE COMMISSION~~

~~THE COMMISSION SHALL HAVE THE FOLLOWING POWERS:~~

~~1. TO PROMULGATE RULES AND OPERATING PROCEDURES, PURSUANT TO ARTICLE VIII OF THIS COMPACT, WHICH SHALL HAVE THE FORCE AND EFFECT OF LAW AND SHALL BE BINDING IN THE COMPACTING STATES TO THE EXTENT AND IN THE MANNER PROVIDED IN THIS COMPACT;~~

~~2. TO BRING AND PROSECUTE LEGAL PROCEEDINGS OR ACTIONS IN THE NAME OF THE COMMISSION, PROVIDED THAT THE STANDING OF ANY~~

~~STATE INSURANCE DEPARTMENT TO SUE OR BE SUED UNDER APPLICABLE LAW SHALL NOT BE AFFECTED;~~

~~3. TO ISSUE SUBPOENAS REQUIRING THE ATTENDANCE AND TESTIMONY OF WITNESSES AND THE PRODUCTION OF EVIDENCE, PROVIDED HOWEVER, THE COMMISSION IS NOT EMPOWERED TO DEMAND OR SUBPOENA RECORDS OR DATA FROM NON–ADMITTED INSURERS;~~

~~4. TO ESTABLISH AND MAINTAIN OFFICES INCLUDING THE CREATION OF A CLEARINGHOUSE FOR THE RECEIPT OF PREMIUM TAX AND CLEARINGHOUSE TRANSACTION DATA REGARDING NON–ADMITTED INSURANCE OF MULTI–STATE RISKS, SINGLE STATE RISKS FOR STATES WHICH ELECT TO REQUIRE SURPLUS LINES LICENSEES TO PAY PREMIUM TAX ON SINGLE STATE RISKS THROUGH THE CLEARINGHOUSE AND TAX REPORTING FORMS;~~

~~5. TO PURCHASE AND MAINTAIN INSURANCE AND BONDS;~~

~~6. TO BORROW, ACCEPT OR CONTRACT FOR SERVICES OF PERSONNEL, INCLUDING, BUT NOT LIMITED TO, EMPLOYEES OF A COMPACTING STATE OR STAMPING OFFICE, PURSUANT TO AN OPEN, TRANSPARENT, OBJECTIVE COMPETITIVE PROCESS AND PROCEDURE ADOPTED BY THE COMMISSION;~~

~~7. TO HIRE EMPLOYEES, PROFESSIONALS OR SPECIALISTS, AND ELECT OR APPOINT OFFICERS, AND TO FIX THEIR COMPENSATION, DEFINE THEIR DUTIES AND GIVE THEM APPROPRIATE AUTHORITY TO CARRY OUT THE PURPOSES OF THE COMPACT, AND DETERMINE THEIR QUALIFICATIONS, PURSUANT TO AN OPEN, TRANSPARENT, OBJECTIVE COMPETITIVE PROCESS AND PROCEDURE ADOPTED BY THE COMMISSION; AND TO ESTABLISH THE COMMISSION'S PERSONNEL POLICIES AND PROGRAMS RELATING TO CONFLICTS OF INTEREST, RATES OF COMPENSATION AND QUALIFICATIONS OF PERSONNEL, AND OTHER RELATED PERSONNEL MATTERS;~~

~~8. TO ACCEPT ANY AND ALL APPROPRIATE DONATIONS AND GRANTS OF MONEY, EQUIPMENT, SUPPLIES, MATERIALS AND SERVICES, AND TO RECEIVE, UTILIZE AND DISPOSE OF THE SAME; PROVIDED THAT AT ALL TIMES THE COMMISSION SHALL AVOID ANY APPEARANCE OF IMPROPRIETY AND/OR CONFLICT OF INTEREST;~~

~~9. TO LEASE, PURCHASE, ACCEPT APPROPRIATE GIFTS OR DONATIONS OF, OR OTHERWISE TO OWN, HOLD, IMPROVE OR USE, ANY PROPERTY, REAL, PERSONAL OR MIXED; PROVIDED THAT AT ALL TIMES THE~~

~~COMMISSION SHALL AVOID ANY APPEARANCE OF IMPROPRIETY AND/OR CONFLICT OF INTEREST;~~

~~10. TO SELL CONVEY, MORTGAGE, PLEDGE, LEASE, EXCHANGE, ABANDON OR OTHERWISE DISPOSE OF ANY PROPERTY REAL, PERSONAL OR MIXED;~~

~~11. TO PROVIDE FOR TAX AUDIT RULES AND PROCEDURES FOR THE COMPACTING STATES WITH RESPECT TO THE ALLOCATION OF PREMIUM TAXES INCLUDING:~~

~~A. MINIMUM AUDIT STANDARDS, INCLUDING SAMPLING METHODS,~~

~~B. REVIEW OF INTERNAL CONTROLS,~~

~~C. COOPERATION AND SHARING OF AUDIT RESPONSIBILITIES BETWEEN COMPACTING STATES,~~

~~D. HANDLING OF REFUNDS OR CREDITS DUE TO OVERPAYMENTS OR IMPROPER ALLOCATION OF PREMIUM TAXES,~~

~~E. TAXPAYER RECORDS TO BE REVIEWED INCLUDING A MINIMUM RETENTION PERIOD,~~

~~F. AUTHORITY OF COMPACTING STATES TO REVIEW, CHALLENGE, OR RE-AUDIT TAXPAYER RECORDS.~~

~~12. TO ENFORCE COMPLIANCE BY COMPACTING STATES AND CONTRACTING STATES WITH RULES, AND BYLAWS PURSUANT TO THE AUTHORITY SET FORTH IN ARTICLE XIV;~~

~~13. TO PROVIDE FOR DISPUTE RESOLUTION AMONG COMPACTING STATES AND CONTRACTING STATES;~~

~~14. TO ADVISE COMPACTING STATES AND CONTRACTING STATES ON TAX-RELATED ISSUES RELATING TO INSURERS, INSUREDS, SURPLUS LINES LICENSEES, AGENTS OR BROKERS DOMICILED OR DOING BUSINESS IN NON-COMPACTING STATES, CONSISTENT WITH THE PURPOSES OF THIS COMPACT;~~

~~15. TO MAKE AVAILABLE ADVICE AND TRAINING TO THOSE PERSONNEL IN STATE STAMPING OFFICES, STATE INSURANCE DEPARTMENTS OR OTHER STATE DEPARTMENTS FOR RECORD KEEPING, TAX COMPLIANCE,~~

~~AND TAX ALLOCATIONS; AND TO BE A RESOURCE FOR STATE INSURANCE DEPARTMENTS AND OTHER STATE DEPARTMENTS;~~

~~16. TO ESTABLISH A BUDGET AND MAKE EXPENDITURES;~~

~~17. TO BORROW MONEY;~~

~~18. TO APPOINT AND OVERSEE COMMITTEES, INCLUDING ADVISORY COMMITTEES COMPRISED OF MEMBERS, STATE INSURANCE REGULATORS, STATE LEGISLATORS OR THEIR REPRESENTATIVES, INSURANCE INDUSTRY AND CONSUMER REPRESENTATIVES, AND SUCH OTHER INTERESTED PERSONS AS MAY BE DESIGNATED IN THIS COMPACT AND THE BYLAWS;~~

~~19. TO ESTABLISH AN EXECUTIVE COMMITTEE OF NOT LESS THAN SEVEN (7) NOR MORE THAN FIFTEEN (15) REPRESENTATIVES, WHICH SHALL INCLUDE OFFICERS ELECTED BY THE COMMISSION AND SUCH OTHER REPRESENTATIVES AS PROVIDED FOR HEREIN AND DETERMINED BY THE BYLAWS. REPRESENTATIVES OF THE EXECUTIVE COMMITTEE SHALL SERVE A ONE YEAR TERM. REPRESENTATIVES OF THE EXECUTIVE COMMITTEE SHALL BE ENTITLED TO ONE VOTE EACH. THE EXECUTIVE COMMITTEE SHALL HAVE THE POWER TO ACT ON BEHALF OF THE COMMISSION, WITH THE EXCEPTION OF RULEMAKING, DURING PERIODS WHEN THE COMMISSION IS NOT IN SESSION. THE EXECUTIVE COMMITTEE SHALL OVERSEE THE DAY TO DAY ACTIVITIES OF THE ADMINISTRATION OF THE COMPACT, INCLUDING THE ACTIVITIES OF THE OPERATIONS COMMITTEE CREATED UNDER THIS ARTICLE AND COMPLIANCE AND ENFORCEMENT OF THE PROVISIONS OF THE COMPACT, ITS BYLAWS, AND RULES, AND SUCH OTHER DUTIES AS PROVIDED HEREIN AND AS DEEMED NECESSARY.~~

~~20. TO ESTABLISH AN OPERATIONS COMMITTEE OF NOT LESS THAN SEVEN (7) AND NOT MORE THAN FIFTEEN (15) REPRESENTATIVES TO PROVIDE ANALYSIS, ADVICE, DETERMINATIONS AND RECOMMENDATIONS REGARDING TECHNOLOGY, SOFTWARE, AND SYSTEMS INTEGRATION TO BE ACQUIRED BY THE COMMISSION AND TO PROVIDE ANALYSIS, ADVICE, DETERMINATIONS AND RECOMMENDATIONS REGARDING THE ESTABLISHMENT OF MANDATORY RULES TO BE ADOPTED TO BE BY THE COMMISSION.~~

~~21. TO ENTER INTO CONTRACTS WITH CONTRACTING STATES SO THAT CONTRACTING STATES CAN UTILIZE THE SERVICES OF AND FULLY PARTICIPATE IN THE CLEARINGHOUSE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SUCH CONTRACTS;~~

~~22. TO ADOPT AND USE A CORPORATE SEAL; AND~~

~~23. TO PERFORM SUCH OTHER FUNCTIONS AS MAY BE NECESSARY OR APPROPRIATE TO ACHIEVE THE PURPOSES OF THIS COMPACT CONSISTENT WITH THE STATE REGULATION OF THE BUSINESS OF INSURANCE.~~

~~ARTICLE VI~~

~~ORGANIZATION OF THE COMMISSION~~

~~1. MEMBERSHIP, VOTING AND BYLAWS~~

~~A. EACH COMPACTING STATE SHALL HAVE AND BE LIMITED TO ONE MEMBER. EACH STATE SHALL DETERMINE THE QUALIFICATIONS AND THE METHOD BY WHICH IT SELECTS A MEMBER AND SET FORTH THE SELECTION PROCESS IN THE ENABLING PROVISION OF THE LEGISLATION WHICH ENACTS THIS COMPACT. IN THE ABSENCE OF SUCH A PROVISION THE MEMBER SHALL BE APPOINTED BY THE GOVERNOR OF SUCH COMPACTING STATE. ANY MEMBER MAY BE REMOVED OR SUSPENDED FROM OFFICE AS PROVIDED BY THE LAW OF THE STATE FROM WHICH HE OR SHE SHALL BE APPOINTED. ANY VACANCY OCCURRING IN THE COMMISSION SHALL BE FILLED IN ACCORDANCE WITH THE LAWS OF THE COMPACTING STATE WHEREIN THE VACANCY EXISTS.~~

~~B. EACH MEMBER SHALL BE ENTITLED TO ONE (1) VOTE AND SHALL OTHERWISE HAVE AN OPPORTUNITY TO PARTICIPATE IN THE GOVERNANCE OF THE COMMISSION IN ACCORDANCE WITH THE BYLAWS.~~

~~C. THE COMMISSION SHALL, BY A MAJORITY VOTE OF THE MEMBERS, PRESCRIBE BYLAWS TO GOVERN ITS CONDUCT AS MAY BE NECESSARY OR APPROPRIATE TO CARRY OUT THE PURPOSES AND EXERCISE THE POWERS OF THE COMPACT INCLUDING, BUT NOT LIMITED TO:~~

~~I. ESTABLISHING THE FISCAL YEAR OF THE COMMISSION;~~

~~II. PROVIDING REASONABLE PROCEDURES FOR HOLDING MEETINGS OF THE COMMISSION, THE EXECUTIVE COMMITTEE, AND THE OPERATIONS COMMITTEE;~~

~~III. PROVIDING REASONABLE STANDARDS AND PROCEDURES: (I) FOR THE ESTABLISHMENT AND MEETINGS OF COMMITTEES, AND (II) GOVERNING ANY GENERAL OR SPECIFIC DELEGATION OF ANY AUTHORITY OR FUNCTION OF THE COMMISSION;~~

~~IV. PROVIDING REASONABLE PROCEDURES FOR CALLING AND CONDUCTING MEETINGS OF THE COMMISSION THAT CONSIST OF A MAJORITY OF COMMISSION MEMBERS, ENSURING REASONABLE ADVANCE NOTICE OF EACH SUCH MEETING AND PROVIDING FOR THE RIGHT OF CITIZENS TO ATTEND EACH SUCH MEETING WITH ENUMERATED EXCEPTIONS DESIGNED TO PROTECT THE PUBLIC'S INTEREST, THE PRIVACY OF INDIVIDUALS, AND INSURERS' AND SURPLUS LINES LICENSEES' PROPRIETARY INFORMATION, INCLUDING TRADE SECRETS. THE COMMISSION MAY MEET IN CAMERA ONLY AFTER A MAJORITY OF THE ENTIRE MEMBERSHIP VOTES TO CLOSE A MEETING IN TOTO OR IN PART. AS SOON AS PRACTICABLE, THE COMMISSION MUST MAKE PUBLIC: (I) A COPY OF THE VOTE TO CLOSE THE MEETING REVEALING THE VOTE OF EACH MEMBER WITH NO PROXY VOTES ALLOWED, AND (II) VOTES TAKEN DURING SUCH MEETING;~~

~~V. ESTABLISHING THE TITLES, DUTIES AND AUTHORITY AND REASONABLE PROCEDURES FOR THE ELECTION OF THE OFFICERS OF THE COMMISSION;~~

~~VI. PROVIDING REASONABLE STANDARDS AND PROCEDURES FOR THE ESTABLISHMENT OF THE PERSONNEL POLICIES AND PROGRAMS OF THE COMMISSION. NOTWITHSTANDING ANY CIVIL SERVICE OR OTHER SIMILAR LAWS OF ANY COMPACTING STATE, THE BYLAWS SHALL EXCLUSIVELY GOVERN THE PERSONNEL POLICIES AND PROGRAMS OF THE COMMISSION;~~

~~VII. PROMULGATING A CODE OF ETHICS TO ADDRESS PERMISSIBLE AND PROHIBITED ACTIVITIES OF COMMISSION MEMBERS AND EMPLOYEES;~~

~~VIII. PROVIDING A MECHANISM FOR WINDING UP THE OPERATIONS OF THE COMMISSION AND THE EQUITABLE DISPOSITION OF ANY SURPLUS FUNDS THAT MAY EXIST AFTER THE TERMINATION OF THE COMPACT AFTER THE PAYMENT AND/OR RESERVING OF ALL OF ITS DEBTS AND OBLIGATIONS;~~

~~D. THE COMMISSION SHALL PUBLISH ITS BYLAWS IN A CONVENIENT FORM AND FILE A COPY THEREOF AND A COPY OF ANY AMENDMENT THERETO, WITH THE APPROPRIATE AGENCY OR OFFICER IN EACH OF THE COMPACTING STATES.~~

~~2. EXECUTIVE COMMITTEE, PERSONNEL AND CHAIRPERSON~~

~~A. AN EXECUTIVE COMMITTEE OF THE COMMISSION ("EXECUTIVE COMMITTEE") SHALL BE ESTABLISHED. ALL ACTIONS, OF THE~~

~~EXECUTIVE COMMITTEE, INCLUDING COMPLIANCE AND ENFORCEMENT ARE SUBJECT TO THE REVIEW AND RATIFICATION OF THE COMMISSION AS PROVIDED IN THE BYLAWS.~~

~~THE EXECUTIVE COMMITTEE SHALL HAVE NO MORE THAN FIFTEEN (15) REPRESENTATIVES, OR ONE FOR EACH STATE IF THERE ARE LESS THAN FIFTEEN (15) COMPACTING STATES, WHO SHALL SERVE FOR A TERM AND BE ESTABLISHED IN ACCORDANCE WITH THE BYLAWS.~~

~~B. THE EXECUTIVE COMMITTEE SHALL HAVE SUCH AUTHORITY AND DUTIES AS MAY BE SET FORTH IN THE BYLAWS, INCLUDING BUT NOT LIMITED TO:~~

~~I. MANAGING THE AFFAIRS OF THE COMMISSION IN A MANNER CONSISTENT WITH THE BYLAWS AND PURPOSES OF THE COMMISSION;~~

~~II. ESTABLISHING AND OVERSEEING AN ORGANIZATIONAL STRUCTURE WITHIN, AND APPROPRIATE PROCEDURES FOR THE COMMISSION TO PROVIDE FOR THE CREATION OF RULES AND OPERATING PROCEDURES.~~

~~III. OVERSEEING THE OFFICES OF THE COMMISSION; AND~~

~~IV. PLANNING, IMPLEMENTING, AND COORDINATING COMMUNICATIONS AND ACTIVITIES WITH OTHER STATE, FEDERAL AND LOCAL GOVERNMENT ORGANIZATIONS IN ORDER TO ADVANCE THE GOALS OF THE COMMISSION.~~

~~C. THE COMMISSION SHALL ANNUALLY ELECT OFFICERS FROM THE EXECUTIVE COMMITTEE, WITH EACH HAVING SUCH AUTHORITY AND DUTIES, AS MAY BE SPECIFIED IN THE BYLAWS.~~

~~D. THE EXECUTIVE COMMITTEE MAY, SUBJECT TO THE APPROVAL OF THE COMMISSION, APPOINT OR RETAIN AN EXECUTIVE DIRECTOR FOR SUCH PERIOD, UPON SUCH TERMS AND CONDITIONS AND FOR SUCH COMPENSATION AS THE COMMISSION MAY DEEM APPROPRIATE. THE EXECUTIVE DIRECTOR SHALL SERVE AS SECRETARY TO THE COMMISSION, BUT SHALL NOT BE A MEMBER OF THE COMMISSION. THE EXECUTIVE DIRECTOR SHALL HIRE AND SUPERVISE SUCH OTHER PERSONS AS MAY BE AUTHORIZED BY THE COMMISSION.~~

~~3. OPERATIONS COMMITTEE~~

~~A. AN OPERATIONS COMMITTEE SHALL BE ESTABLISHED. ALL ACTIONS OF THE OPERATIONS COMMITTEE ARE SUBJECT TO THE REVIEW AND OVERSIGHT OF THE COMMISSION AND THE EXECUTIVE COMMITTEE AND MUST BE APPROVED BY THE COMMISSION. THE EXECUTIVE COMMITTEE WILL ACCEPT THE DETERMINATIONS AND RECOMMENDATIONS OF THE OPERATIONS COMMITTEE UNLESS GOOD CAUSE IS SHOWN WHY SUCH DETERMINATIONS AND RECOMMENDATIONS SHOULD NOT BE APPROVED. ANY DISPUTES AS TO WHETHER GOOD CAUSE EXISTS TO REJECT ANY DETERMINATION OR RECOMMENDATION OF THE OPERATIONS COMMITTEE SHALL BE RESOLVED BY THE MAJORITY VOTE OF THE COMMISSION.~~

~~THE OPERATIONS COMMITTEE SHALL HAVE NO MORE THAN FIFTEEN (15) REPRESENTATIVES OR ONE FOR EACH STATE IF THERE ARE LESS THAN FIFTEEN (15) COMPACTING STATES, WHO SHALL SERVE FOR A TERM AND SHALL BE ESTABLISHED AS SET FORTH IN THE BYLAWS.~~

~~THE OPERATIONS COMMITTEE SHALL HAVE RESPONSIBILITY FOR:~~

~~I. EVALUATING TECHNOLOGY REQUIREMENTS FOR THE CLEARINGHOUSE, ASSESSING EXISTING SYSTEMS USED BY STATE REGULATORY AGENCIES AND STATE STAMPING OFFICES TO MAXIMIZE THE EFFICIENCY AND SUCCESSFUL INTEGRATION OF THE CLEARINGHOUSE TECHNOLOGY SYSTEMS WITH STATE AND STATE STAMPING OFFICE TECHNOLOGY PLATFORMS AND TO MINIMIZE COSTS TO THE STATES, STATE STAMPING OFFICES AND THE CLEARINGHOUSE.~~

~~II. MAKING RECOMMENDATIONS TO THE EXECUTIVE COMMITTEE BASED ON ITS ANALYSIS AND DETERMINATION OF THE CLEARINGHOUSE TECHNOLOGY REQUIREMENTS AND COMPATIBILITY WITH EXISTING STATE AND STATE STAMPING OFFICE SYSTEMS,~~

~~III. EVALUATING THE MOST SUITABLE PROPOSALS FOR ADOPTION AS MANDATORY RULES, ASSESSING SUCH PROPOSALS FOR EASE OF INTEGRATION BY STATES, AND LIKELIHOOD OF SUCCESSFUL IMPLEMENTATION AND TO REPORT TO THE EXECUTIVE COMMITTEE ITS DETERMINATIONS AND RECOMMENDATIONS.~~

~~IV. SUCH OTHER DUTIES AND RESPONSIBILITIES AS ARE DELEGATED TO IT BY THE BYLAWS, THE EXECUTIVE COMMITTEE OR THE COMMISSION.~~

~~B. ALL REPRESENTATIVES OF THE OPERATIONS COMMITTEE SHALL BE INDIVIDUALS WHO HAVE EXTENSIVE EXPERIENCE AND/OR EMPLOYMENT IN THE SURPLUS LINES INSURANCE BUSINESS INCLUDING BUT NOT LIMITED TO EXECUTIVES AND ATTORNEYS EMPLOYED BY SURPLUS LINE INSURERS, SURPLUS LINE LICENSEES, LAW FIRMS, STATE INSURANCE DEPARTMENTS AND/OR STATE STAMPING OFFICES. OPERATIONS COMMITTEE REPRESENTATIVES FROM COMPACTING STATES WHICH UTILIZE THE SERVICES OF A STATE STAMPING OFFICE MUST APPOINT THE CHIEF OPERATING OFFICER OR A SENIOR MANAGER OF THE STATE STAMPING OFFICE TO THE OPERATIONS COMMITTEE.~~

~~4. LEGISLATIVE AND ADVISORY COMMITTEES~~

~~A. A LEGISLATIVE COMMITTEE COMPRISED OF STATE LEGISLATORS OR THEIR DESIGNEES SHALL BE ESTABLISHED TO MONITOR THE OPERATIONS OF AND MAKE RECOMMENDATIONS TO, THE COMMISSION, INCLUDING THE EXECUTIVE COMMITTEE; PROVIDED THAT THE MANNER OF SELECTION AND TERM OF ANY LEGISLATIVE COMMITTEE MEMBER SHALL BE AS SET FORTH IN THE BYLAWS. PRIOR TO THE ADOPTION BY THE COMMISSION OF ANY UNIFORM STANDARD, REVISION TO THE BYLAWS, ANNUAL BUDGET OR OTHER SIGNIFICANT MATTER AS MAY BE PROVIDED IN THE BYLAWS, THE EXECUTIVE COMMITTEE SHALL CONSULT WITH AND REPORT TO THE LEGISLATIVE COMMITTEE.~~

~~B. THE COMMISSION MAY ESTABLISH ADDITIONAL ADVISORY COMMITTEES AS ITS BYLAWS MAY PROVIDE FOR THE CARRYING OUT OF ITS FUNCTIONS.~~

~~5. CORPORATE RECORDS OF THE COMMISSION~~

~~THE COMMISSION SHALL MAINTAIN ITS CORPORATE BOOKS AND RECORDS IN ACCORDANCE WITH THE BYLAWS.~~

~~6. QUALIFIED IMMUNITY, DEFENSE AND INDEMNIFICATION~~

~~A. THE MEMBERS, OFFICERS, EXECUTIVE DIRECTOR, EMPLOYEES AND REPRESENTATIVES OF THE COMMISSION, THE EXECUTIVE COMMITTEE AND ANY OTHER COMMITTEE OF THE COMMISSION SHALL BE IMMUNE FROM SUIT AND LIABILITY, EITHER PERSONALLY OR IN THEIR OFFICIAL CAPACITY, FOR ANY CLAIM FOR DAMAGE TO OR LOSS OF PROPERTY OR PERSONAL INJURY OR OTHER CIVIL LIABILITY CAUSED BY OR ARISING OUT OF ANY ACTUAL OR ALLEGED ACT, ERROR OR OMISSION THAT OCCURRED, OR THAT THE PERSON AGAINST WHOM THE CLAIM IS MADE HAD A REASONABLE BASIS FOR BELIEVING OCCURRED WITHIN THE SCOPE OF COMMISSION~~

~~EMPLOYMENT, DUTIES OR RESPONSIBILITIES; PROVIDED THAT NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO PROTECT ANY SUCH PERSON FROM SUIT AND/OR LIABILITY FOR ANY DAMAGE, LOSS, INJURY OR LIABILITY CAUSED BY THE INTENTIONAL OR WILLFUL OR WANTON MISCONDUCT OF THAT PERSON.~~

~~B. THE COMMISSION SHALL DEFEND ANY MEMBER, OFFICER, EXECUTIVE DIRECTOR, EMPLOYEE OR REPRESENTATIVE OF THE COMMISSION, THE EXECUTIVE COMMITTEE OR ANY OTHER COMMITTEE OF THE COMMISSION IN ANY CIVIL ACTION SEEKING TO IMPOSE LIABILITY ARISING OUT OF ANY ACTUAL OR ALLEGED ACT, ERROR OR OMISSION THAT OCCURRED WITHIN THE SCOPE OF COMMISSION EMPLOYMENT, DUTIES OR RESPONSIBILITIES, OR THAT THE PERSON AGAINST WHOM THE CLAIM IS MADE HAD A REASONABLE BASIS FOR BELIEVING OCCURRED WITHIN THE SCOPE OF COMMISSION EMPLOYMENT, DUTIES OR RESPONSIBILITIES; PROVIDED THAT NOTHING HEREIN SHALL BE CONSTRUED TO PROHIBIT THAT PERSON FROM RETAINING HIS OR HER OWN COUNSEL; AND PROVIDED FURTHER, THAT THE ACTUAL OR ALLEGED ACT ERROR OR OMISSION DID NOT RESULT FROM THAT PERSON'S INTENTIONAL OR WILLFUL OR WANTON MISCONDUCT.~~

~~C. THE COMMISSION SHALL INDEMNIFY AND HOLD HARMLESS ANY MEMBER, OFFICER, EXECUTIVE DIRECTOR, EMPLOYEE OR REPRESENTATIVE OF THE COMMISSION, EXECUTIVE COMMITTEE OR ANY OTHER COMMITTEE OF THE COMMISSION FOR THE AMOUNT OF ANY SETTLEMENT OR JUDGMENT OBTAINED AGAINST THAT PERSON ARISING OUT OF ANY ACTUAL OR ALLEGED ACT, ERROR OR OMISSION THAT OCCURRED WITHIN THE SCOPE OF COMMISSION EMPLOYMENT, DUTIES OR RESPONSIBILITIES, OR THAT SUCH PERSON HAD A REASONABLE BASIS FOR BELIEVING OCCURRED WITHIN THE SCOPE OF COMMISSION EMPLOYMENT, DUTIES OR RESPONSIBILITIES, PROVIDED THAT THE ACTUAL OR ALLEGED ACT, ERROR OR OMISSION DID NOT RESULT FROM THE INTENTIONAL OR WILLFUL OR WANTON MISCONDUCT OF THAT PERSON.~~

~~ARTICLE VII~~

~~MEETINGS AND ACTS OF THE COMMISSION~~

~~1. THE COMMISSION SHALL MEET AND TAKE SUCH ACTIONS AS ARE CONSISTENT WITH THE PROVISIONS OF THIS COMPACT AND THE BYLAWS.~~

~~2. EACH MEMBER OF THE COMMISSION SHALL HAVE THE RIGHT AND POWER TO CAST A VOTE TO WHICH THAT COMPACTING STATE IS ENTITLED AND TO PARTICIPATE IN THE BUSINESS AND AFFAIRS OF THE COMMISSION. A MEMBER SHALL VOTE IN PERSON OR BY SUCH OTHER MEANS AS PROVIDED IN~~

~~THE BYLAWS. THE BYLAWS MAY PROVIDE FOR MEMBERS' PARTICIPATION IN MEETINGS BY TELEPHONE OR OTHER MEANS OF COMMUNICATION.~~

~~3. THE COMMISSION SHALL MEET AT LEAST ONCE DURING EACH CALENDAR YEAR. ADDITIONAL MEETINGS SHALL BE HELD AS SET FORTH IN THE BYLAWS.~~

~~4. PUBLIC NOTICE SHALL BE GIVEN OF ALL MEETINGS AND ALL MEETINGS SHALL BE OPEN TO THE PUBLIC, EXCEPT AS SET FORTH IN THE RULES OR OTHERWISE PROVIDED IN THE COMPACT.~~

~~5. THE COMMISSION SHALL PROMULGATE RULES CONCERNING ITS MEETINGS CONSISTENT WITH THE PRINCIPLES CONTAINED IN THE "GOVERNMENT IN THE SUNSHINE ACT," 5 U.S.C., SECTION 552B, AS MAY BE AMENDED.~~

~~6. THE COMMISSION AND ITS COMMITTEES MAY CLOSE A MEETING, OR PORTION THEREOF, WHERE IT DETERMINES BY MAJORITY VOTE THAT AN OPEN MEETING WOULD BE LIKELY TO:~~

~~A. RELATE SOLELY TO THE COMMISSION'S INTERNAL PERSONNEL PRACTICES AND PROCEDURES;~~

~~B. DISCLOSE MATTERS SPECIFICALLY EXEMPTED FROM DISCLOSURE BY FEDERAL AND STATE STATUTE;~~

~~C. DISCLOSE TRADE SECRETS OR COMMERCIAL OR FINANCIAL INFORMATION WHICH IS PRIVILEGED OR CONFIDENTIAL;~~

~~D. INVOLVE ACCUSING A PERSON OF A CRIME, OR FORMALLY CENSURING A PERSON;~~

~~E. DISCLOSE INFORMATION OF A PERSONAL NATURE WHERE DISCLOSURE WOULD CONSTITUTE A CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY;~~

~~F. DISCLOSE INVESTIGATIVE RECORDS COMPILED FOR LAW ENFORCEMENT PURPOSES;~~

~~G. SPECIFICALLY RELATE TO THE COMMISSION'S ISSUANCE OF A SUBPOENA, OR ITS PARTICIPATION IN A CIVIL ACTION OR OTHER LEGAL PROCEEDING.~~

~~7. FOR A MEETING, OR PORTION OF A MEETING, CLOSED PURSUANT TO THIS PROVISION, THE COMMISSION'S LEGAL COUNSEL OR DESIGNEE SHALL CERTIFY THAT THE MEETING MAY BE CLOSED AND SHALL REFERENCE EACH RELEVANT EXEMPTIVE PROVISION. THE COMMISSION SHALL KEEP MINUTES WHICH SHALL FULLY AND CLEARLY DESCRIBE ALL MATTERS DISCUSSED IN A MEETING AND SHALL PROVIDE A FULL AND ACCURATE SUMMARY OF ACTIONS TAKEN, AND THE REASONS THEREFORE, INCLUDING A DESCRIPTION OF THE VIEWS EXPRESSED AND THE RECORD OF A ROLL CALL VOTE. ALL DOCUMENTS CONSIDERED IN CONNECTION WITH AN ACTION SHALL BE IDENTIFIED IN SUCH MINUTES. ALL MINUTES AND DOCUMENTS OF A CLOSED MEETING SHALL REMAIN UNDER SEAL, SUBJECT TO RELEASE BY A MAJORITY VOTE OF THE COMMISSION.~~

~~ARTICLE VIII~~

~~RULES AND OPERATING PROCEDURES: RULEMAKING FUNCTIONS OF THE COMMISSION~~

~~RULEMAKING FUNCTIONS OF THE COMMISSION:~~

~~1. RULEMAKING AUTHORITY.—THE COMMISSION SHALL PROMULGATE REASONABLE RULES IN ORDER TO EFFECTIVELY AND EFFICIENTLY ACHIEVE THE PURPOSES OF THIS COMPACT. NOTWITHSTANDING THE FOREGOING, IN THE EVENT THE COMMISSION EXERCISES ITS RULEMAKING AUTHORITY IN A MANNER THAT IS BEYOND THE SCOPE OF THE PURPOSES OF THIS ACT, OR THE POWERS GRANTED HEREUNDER, THEN SUCH AN ACTION BY THE COMMISSION SHALL BE INVALID AND HAVE NO FORCE OR EFFECT.~~

~~2. RULEMAKING PROCEDURE.—RULES SHALL BE MADE PURSUANT TO A RULEMAKING PROCESS THAT SUBSTANTIALLY CONFORMS TO THE "MODEL STATE ADMINISTRATIVE PROCEDURE ACT," OF 1981 ACT, UNIFORM LAWS ANNOTATED, VOL. 15, P.1 (2000) AS AMENDED, AS MAY BE APPROPRIATE TO THE OPERATIONS OF THE COMMISSION.~~

~~3. EFFECTIVE DATE – ALL RULES AND AMENDMENTS, THERETO, SHALL BECOME EFFECTIVE AS OF THE DATE SPECIFIED IN EACH RULE, OPERATING PROCEDURE OR AMENDMENT.~~

~~4. NOT LATER THAN THIRTY (30) DAYS AFTER A RULE IS PROMULGATED, ANY PERSON MAY FILE A PETITION FOR JUDICIAL REVIEW OF THE RULE; PROVIDED THAT THE FILING OF SUCH A PETITION SHALL NOT STAY OR OTHERWISE PREVENT THE RULE FROM BECOMING EFFECTIVE UNLESS THE COURT FINDS THAT THE PETITIONER HAS A SUBSTANTIAL LIKELIHOOD OF SUCCESS. THE COURT SHALL GIVE DEFERENCE TO THE ACTIONS OF THE~~

~~COMMISSION CONSISTENT WITH APPLICABLE LAW AND SHALL NOT FIND THE RULE TO BE UNLAWFUL IF THE RULE REPRESENTS A REASONABLE EXERCISE OF THE COMMISSION'S AUTHORITY.~~

~~ARTICLE IX~~

~~COMMISSION RECORDS AND ENFORCEMENT~~

~~1. THE COMMISSION SHALL PROMULGATE RULES ESTABLISHING CONDITIONS AND PROCEDURES FOR PUBLIC INSPECTION AND COPYING OF ITS INFORMATION AND OFFICIAL RECORDS, EXCEPT SUCH INFORMATION AND RECORDS INVOLVING THE PRIVACY OF INDIVIDUALS, INSURERS, INSUREDS OR SURPLUS LINES LICENSEE TRADE SECRETS. STATE TRANSACTION DOCUMENTATION AND CLEARINGHOUSE TRANSACTION DATA COLLECTED BY THE CLEARINGHOUSE SHALL BE USED FOR ONLY THOSE PURPOSES EXPRESSED IN OR REASONABLY IMPLIED UNDER THE PROVISIONS OF THIS COMPACT AND THE COMMISSION SHALL AFFORD THIS DATA THE BROADEST PROTECTIONS AS PERMITTED BY ANY APPLICABLE LAW FOR PROPRIETARY INFORMATION, TRADE SECRETS OR PERSONAL DATA. THE COMMISSION MAY PROMULGATE ADDITIONAL RULES UNDER WHICH IT MAY MAKE AVAILABLE TO FEDERAL AND STATE AGENCIES, INCLUDING LAW ENFORCEMENT AGENCIES, RECORDS AND INFORMATION OTHERWISE EXEMPT FROM DISCLOSURE, AND MAY ENTER INTO AGREEMENTS WITH SUCH AGENCIES TO RECEIVE OR EXCHANGE INFORMATION OR RECORDS SUBJECT TO NONDISCLOSURE AND CONFIDENTIALITY PROVISIONS.~~

~~2. EXCEPT AS TO PRIVILEGED RECORDS, DATA AND INFORMATION, THE LAWS OF ANY COMPACTING STATE PERTAINING TO CONFIDENTIALITY OR NONDISCLOSURE SHALL NOT RELIEVE ANY COMPACTING STATE MEMBER OF THE DUTY TO DISCLOSE ANY RELEVANT RECORDS, DATA OR INFORMATION TO THE COMMISSION; PROVIDED THAT DISCLOSURE TO THE COMMISSION SHALL NOT BE DEEMED TO WAIVE OR OTHERWISE AFFECT ANY CONFIDENTIALITY REQUIREMENT, AND FURTHER PROVIDED THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS ACT, THE COMMISSION SHALL NOT BE SUBJECT TO THE COMPACTING STATE'S LAWS PERTAINING TO CONFIDENTIALITY AND NONDISCLOSURE WITH RESPECT TO RECORDS, DATA AND INFORMATION IN ITS POSSESSION. CONFIDENTIAL INFORMATION OF THE COMMISSION SHALL REMAIN CONFIDENTIAL AFTER SUCH INFORMATION IS PROVIDED TO ANY MEMBER, AND THE COMMISSION SHALL MAINTAIN THE CONFIDENTIALITY OF ANY INFORMATION PROVIDED BY A MEMBER THAT IS CONFIDENTIAL UNDER THAT MEMBER'S STATE LAW.~~

~~3. THE COMMISSION SHALL MONITOR COMPACTING STATES FOR COMPLIANCE WITH DULY ADOPTED BYLAWS AND RULES. THE~~

~~COMMISSION SHALL NOTIFY ANY NON–COMPLYING COMPACTING STATE IN WRITING OF ITS NONCOMPLIANCE WITH COMMISSION BYLAWS OR RULES. IF A NON–COMPLYING COMPACTING STATE FAILS TO REMEDY ITS NONCOMPLIANCE WITHIN THE TIME SPECIFIED IN THE NOTICE OF NONCOMPLIANCE, THE COMPACTING STATE SHALL BE DEEMED TO BE IN DEFAULT AS SET FORTH IN ARTICLE XIV.~~

~~ARTICLE X~~

~~DISPUTE RESOLUTION~~

~~1. BEFORE A MEMBER MAY BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION FOR VIOLATION OF ANY PROVISION, STANDARD OR REQUIREMENT OF THE COMPACT, THE COMMISSION SHALL ATTEMPT, UPON THE REQUEST OF A MEMBER, TO RESOLVE ANY DISPUTES OR OTHER ISSUES THAT ARE SUBJECT TO THIS COMPACT AND WHICH MAY ARISE BETWEEN TWO OR MORE COMPACTING STATES, CONTRACTING STATES OR NON–COMPACTING STATES, AND THE COMMISSION SHALL PROMULGATE A RULE PROVIDING ALTERNATIVE DISPUTE RESOLUTION PROCEDURES FOR SUCH DISPUTES.~~

~~2. THE COMMISSION SHALL ALSO PROVIDE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES TO RESOLVE ANY DISPUTES BETWEEN INSUREDS OR SURPLUS LINES LICENSEES CONCERNING A TAX CALCULATION OR ALLOCATION OR RELATED ISSUES WHICH ARE THE SUBJECT OF THIS COMPACT.~~

~~3. ANY ALTERNATIVE DISPUTE RESOLUTION PROCEDURES SHALL BE UTILIZED IN CIRCUMSTANCES WHERE A DISPUTE ARISES AS TO WHICH STATE CONSTITUTES THE HOME STATE.~~

~~ARTICLE XI~~

~~REVIEW OF COMMISSION DECISIONS~~

~~REGARDING COMMISSION DECISIONS:~~

~~1. EXCEPT AS NECESSARY FOR PROMULGATING RULES TO FULFILL THE PURPOSES OF THIS COMPACT, THE COMMISSION SHALL NOT HAVE AUTHORITY TO OTHERWISE REGULATE INSURANCE IN THE COMPACTING STATES.~~

~~2. NOT LATER THAN THIRTY (30) DAYS AFTER THE COMMISSION HAS GIVEN NOTICE OF ANY RULE OR ALLOCATION FORMULA, ANY THIRD PARTY FILER OR COMPACTING STATE MAY APPEAL THE DETERMINATION TO A REVIEW~~

~~PANEL APPOINTED BY THE COMMISSION. THE COMMISSION SHALL PROMULGATE RULES TO ESTABLISH PROCEDURES FOR APPOINTING SUCH REVIEW PANELS AND PROVIDE FOR NOTICE AND HEARING. AN ALLEGATION THAT THE COMMISSION, IN MAKING COMPLIANCE OR TAX DETERMINATIONS ACTED ARBITRARILY, CAPRICIOUSLY, OR IN A MANNER THAT IS AN ABUSE OF DISCRETION OR OTHERWISE NOT IN ACCORDANCE WITH THE LAW, IS SUBJECT TO JUDICIAL REVIEW IN ACCORDANCE WITH ARTICLE III, SECTION 6.~~

~~3. THE COMMISSION SHALL HAVE AUTHORITY TO MONITOR, REVIEW AND RECONSIDER COMMISSION DECISIONS UPON A FINDING THAT THE DETERMINATIONS OR ALLOCATIONS DO NOT MEET THE RELEVANT RULE. WHERE APPROPRIATE, THE COMMISSION MAY WITHDRAW OR MODIFY ITS DETERMINATION OR ALLOCATION AFTER PROPER NOTICE AND HEARING, SUBJECT TO THE APPEAL PROCESS IN SECTION 2 ABOVE.~~

~~ARTICLE XII~~

~~FINANCE~~

~~1. THE COMMISSION SHALL PAY OR PROVIDE FOR THE PAYMENT OF THE REASONABLE EXPENSES OF ITS ESTABLISHMENT AND ORGANIZATION. TO FUND THE COST OF ITS INITIAL OPERATIONS THE COMMISSION MAY ACCEPT CONTRIBUTIONS, GRANTS, AND OTHER FORMS OF FUNDING FROM THE STATE STAMPING OFFICES, COMPACTING STATES AND OTHER SOURCES.~~

~~2. THE COMMISSION SHALL COLLECT A FEE PAYABLE BY THE INSURED DIRECTLY OR THROUGH A SURPLUS LINES LICENSEE ON EACH TRANSACTION PROCESSED THROUGH THE COMPACT CLEARINGHOUSE, TO COVER THE COST OF THE OPERATIONS AND ACTIVITIES OF THE COMMISSION AND ITS STAFF IN A TOTAL AMOUNT SUFFICIENT TO COVER THE COMMISSION'S ANNUAL BUDGET.~~

~~3. THE COMMISSION'S BUDGET FOR A FISCAL YEAR SHALL NOT BE APPROVED UNTIL IT HAS BEEN SUBJECT TO NOTICE AND COMMENT AS SET FORTH IN ARTICLE VIII OF THIS COMPACT.~~

~~4. THE COMMISSION SHALL BE REGARDED AS PERFORMING ESSENTIAL GOVERNMENTAL FUNCTIONS IN EXERCISING SUCH POWERS AND FUNCTIONS AND IN CARRYING OUT THE PROVISIONS OF THIS COMPACT AND OF ANY LAW RELATING THERETO, AND SHALL NOT BE REQUIRED TO PAY ANY TAXES OR ASSESSMENTS OF ANY CHARACTER, LEVIED BY ANY STATE OR POLITICAL SUBDIVISION THEREOF, UPON ANY OF THE PROPERTY USED BY IT FOR SUCH PURPOSES, OR ANY INCOME OR REVENUE THEREFROM, INCLUDING ANY PROFIT FROM A SALE OR EXCHANGE.~~

~~5. THE COMMISSION SHALL KEEP COMPLETE AND ACCURATE ACCOUNTS OF ALL ITS INTERNAL RECEIPTS, INCLUDING GRANTS AND DONATIONS, AND DISBURSEMENTS FOR ALL FUNDS UNDER ITS CONTROL. THE INTERNAL FINANCIAL ACCOUNTS OF THE COMMISSION SHALL BE SUBJECT TO THE ACCOUNTING PROCEDURES ESTABLISHED UNDER ITS BYLAWS. THE FINANCIAL ACCOUNTS AND REPORTS INCLUDING THE SYSTEM OF INTERNAL CONTROLS AND PROCEDURES OF THE COMMISSION SHALL BE AUDITED ANNUALLY BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT. UPON THE DETERMINATION OF THE COMMISSION, BUT NOT LESS FREQUENTLY THAN EVERY THREE (3) YEARS, THE REVIEW OF THE INDEPENDENT AUDITOR SHALL INCLUDE A MANAGEMENT AND PERFORMANCE AUDIT OF THE COMMISSION. THE COMMISSION SHALL MAKE AN ANNUAL REPORT TO THE GOVERNOR AND LEGISLATURE OF THE COMPACTING STATES, WHICH SHALL INCLUDE A REPORT OF THE INDEPENDENT AUDIT. THE COMMISSION'S INTERNAL ACCOUNTS SHALL NOT BE CONFIDENTIAL AND SUCH MATERIALS MAY BE SHARED WITH THE COMMISSIONER, THE CONTROLLER, OR THE STAMPING OFFICE OF ANY COMPACTING STATE UPON REQUEST PROVIDED, HOWEVER, THAT ANY WORK PAPERS RELATED TO ANY INTERNAL OR INDEPENDENT AUDIT AND ANY INFORMATION REGARDING THE PRIVACY OF INDIVIDUALS, AND LICENSEES' AND INSURERS' PROPRIETARY INFORMATION, INCLUDING TRADE SECRETS, SHALL REMAIN CONFIDENTIAL.~~

~~6. NO COMPACTING STATE SHALL HAVE ANY CLAIM TO OR OWNERSHIP OF ANY PROPERTY HELD BY OR VESTED IN THE COMMISSION OR TO ANY COMMISSION FUNDS HELD PURSUANT TO THE PROVISIONS OF THIS COMPACT.~~

~~7. THE COMMISSION SHALL NOT MAKE ANY POLITICAL CONTRIBUTIONS TO CANDIDATES FOR ELECTED OFFICE, ELECTED OFFICIALS, POLITICAL PARTIES NOR POLITICAL ACTION COMMITTEES. THE COMMISSION SHALL NOT ENGAGE IN LOBBYING EXCEPT WITH RESPECT TO CHANGES TO THIS COMPACT.~~

~~ARTICLE XIII~~

~~COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT~~

~~1. ANY STATE IS ELIGIBLE TO BECOME A COMPACTING STATE.~~

~~2. THE COMPACT SHALL BECOME EFFECTIVE AND BINDING UPON LEGISLATIVE ENACTMENT OF THE COMPACT INTO LAW BY TWO (2) COMPACTING STATES, PROVIDED THE COMMISSION SHALL BECOME EFFECTIVE FOR PURPOSES OF ADOPTING RULES, AND CREATING THE CLEARINGHOUSE~~

~~WHEN THERE ARE A TOTAL OF TEN (10) COMPACTING STATES AND CONTRACTING STATES OR, ALTERNATIVELY, WHEN THERE ARE COMPACTING STATES AND CONTRACTING STATES REPRESENTING GREATER THAN FORTY PERCENT (40%) OF THE SURPLUS LINES INSURANCE PREMIUM VOLUME BASED ON RECORDS OF THE PERCENTAGE OF SURPLUS LINES INSURANCE PREMIUM SET FORTH IN APPENDIX A HERETO. THEREAFTER, IT SHALL BECOME EFFECTIVE AND BINDING AS TO ANY OTHER COMPACTING STATE UPON ENACTMENT OF THE COMPACT INTO LAW BY THAT STATE. NOTWITHSTANDING THE FOREGOING, THE CLEARINGHOUSE OPERATIONS AND THE DUTY TO REPORT CLEARINGHOUSE TRANSACTION DATA SHALL BEGIN ON THE FIRST JANUARY 1ST OR JULY 1ST FOLLOWING THE FIRST ANNIVERSARY OF THE COMMISSION EFFECTIVE DATE. FOR STATES WHICH JOIN THE COMPACT SUBSEQUENT TO THE EFFECTIVE DATE, A START DATE FOR REPORTING CLEARINGHOUSE TRANSACTION DATA SHALL BE SET BY THE COMMISSION PROVIDED SURPLUS LINES LICENSEES AND ALL OTHER INTERESTED PARTIES RECEIVE NOT LESS THAN 90 DAYS ADVANCE NOTICE.~~

~~3. AMENDMENTS TO THE COMPACT MAY BE PROPOSED BY THE COMMISSION FOR ENACTMENT BY THE COMPACTING STATES. NO AMENDMENT SHALL BECOME EFFECTIVE AND BINDING UPON THE COMMISSION AND THE COMPACTING STATES UNLESS AND UNTIL ALL COMPACTING STATES ENACT THE AMENDMENT INTO LAW.~~

~~ARTICLE XIV~~

~~WITHDRAWAL, DEFAULT AND TERMINATION~~

~~1. WITHDRAWAL~~

~~A. ONCE EFFECTIVE, THE COMPACT SHALL CONTINUE IN FORCE AND REMAIN BINDING UPON EACH AND EVERY COMPACTING STATE, PROVIDED THAT A COMPACTING STATE MAY WITHDRAW FROM THE COMPACT ("WITHDRAWING STATE") BY ENACTING A STATUTE SPECIFICALLY REPEALING THE STATUTE WHICH ENACTED THE COMPACT INTO LAW.~~

~~B. THE EFFECTIVE DATE OF WITHDRAWAL IS THE EFFECTIVE DATE OF THE REPEALING STATUTE. HOWEVER, THE WITHDRAWAL SHALL NOT APPLY TO ANY TAX OR COMPLIANCE DETERMINATIONS APPROVED ON THE DATE THE REPEALING STATUTE BECOMES EFFECTIVE, EXCEPT BY MUTUAL AGREEMENT OF THE COMMISSION AND THE WITHDRAWING STATE UNLESS THE APPROVAL IS RESCINDED BY THE COMMISSION.~~

~~C. THE MEMBER OF THE WITHDRAWING STATE SHALL IMMEDIATELY NOTIFY THE EXECUTIVE COMMITTEE OF THE COMMISSION IN~~

~~WRITING UPON THE INTRODUCTION OF LEGISLATION REPEALING THIS COMPACT IN THE WITHDRAWING STATE.~~

~~D. THE COMMISSION SHALL NOTIFY THE OTHER COMPACTING STATES OF THE INTRODUCTION OF SUCH LEGISLATION WITHIN TEN (10) DAYS AFTER ITS RECEIPT OF NOTICE THEREOF.~~

~~E. THE WITHDRAWING STATE IS RESPONSIBLE FOR ALL OBLIGATIONS, DUTIES AND LIABILITIES INCURRED THROUGH THE EFFECTIVE DATE OF WITHDRAWAL, INCLUDING ANY OBLIGATIONS, THE PERFORMANCE OF WHICH EXTEND BEYOND THE EFFECTIVE DATE OF WITHDRAWAL. TO THE EXTENT THOSE OBLIGATIONS MAY HAVE BEEN RELEASED OR RELINQUISHED BY MUTUAL AGREEMENT OF THE COMMISSION AND THE WITHDRAWING STATE, THE COMMISSION'S DETERMINATIONS PRIOR TO THE EFFECTIVE DATE OF WITHDRAWAL SHALL CONTINUE TO BE EFFECTIVE AND BE GIVEN FULL FORCE AND EFFECT IN THE WITHDRAWING STATE, UNLESS FORMALLY RESCINDED BY THE COMMISSION.~~

~~F. REINSTATEMENT FOLLOWING WITHDRAWAL OF ANY COMPACTING STATE SHALL OCCUR UPON THE EFFECTIVE DATE OF THE WITHDRAWING STATE REENACTING THE COMPACT.~~

~~2. DEFAULT~~

~~A. IF THE COMMISSION DETERMINES THAT ANY COMPACTING STATE HAS AT ANY TIME DEFAULTED ("DEFAULTING STATE") IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS OR RESPONSIBILITIES UNDER THIS COMPACT, THE BYLAWS OR DULY PROMULGATED RULES THEN AFTER NOTICE AND HEARING AS SET FORTH IN THE BYLAWS, ALL RIGHTS, PRIVILEGES AND BENEFITS CONFERRED BY THIS COMPACT ON THE DEFAULTING STATE SHALL BE SUSPENDED FROM THE EFFECTIVE DATE OF DEFAULT AS FIXED BY THE COMMISSION. THE GROUNDS FOR DEFAULT INCLUDE, BUT ARE NOT LIMITED TO, FAILURE OF A COMPACTING STATE TO PERFORM ITS OBLIGATIONS OR RESPONSIBILITIES, AND ANY OTHER GROUNDS DESIGNATED IN COMMISSION RULES. THE COMMISSION SHALL IMMEDIATELY NOTIFY THE DEFAULTING STATE IN WRITING OF THE DEFAULTING STATE'S SUSPENSION PENDING A CURE OF THE DEFAULT. THE COMMISSION SHALL STIPULATE THE CONDITIONS AND THE TIME PERIOD WITHIN WHICH THE DEFAULTING STATE MUST CURE ITS DEFAULT. IF THE DEFAULTING STATE FAILS TO CURE THE DEFAULT WITHIN THE TIME PERIOD SPECIFIED BY THE COMMISSION, THE DEFAULTING STATE SHALL BE TERMINATED FROM THE COMPACT AND ALL RIGHTS, PRIVILEGES AND BENEFITS CONFERRED BY THIS COMPACT SHALL BE TERMINATED FROM THE EFFECTIVE DATE OF TERMINATION.~~

~~B. DECISIONS OF THE COMMISSION THAT ARE ISSUED ON THE EFFECTIVE DATE OF TERMINATION SHALL REMAIN IN FORCE IN THE DEFAULTING STATE IN THE SAME MANNER AS IF THE DEFAULTING STATE HAD WITHDRAWN VOLUNTARILY PURSUANT TO SECTION 1 OF THIS ARTICLE.~~

~~C. REINSTATEMENT FOLLOWING TERMINATION OF ANY COMPACTING STATE REQUIRES A REENACTMENT OF THE COMPACT.~~

~~3. DISSOLUTION OF COMPACT~~

~~A. THE COMPACT DISSOLVES EFFECTIVE UPON THE DATE OF THE WITHDRAWAL OR DEFAULT OF THE COMPACTING STATE WHICH REDUCES MEMBERSHIP IN THE COMPACT TO ONE COMPACTING STATE.~~

~~B. UPON THE DISSOLUTION OF THIS COMPACT, THE COMPACT BECOMES NULL AND VOID AND SHALL HAVE NO FURTHER FORCE OR EFFECT, AND THE BUSINESS AND AFFAIRS OF THE COMMISSION SHALL BE WOUND UP AND ANY SURPLUS FUNDS SHALL BE DISTRIBUTED IN ACCORDANCE WITH THE RULES AND BYLAWS.~~

~~ARTICLE XV~~

~~SEVERABILITY AND CONSTRUCTION~~

~~1. THE PROVISIONS OF THIS COMPACT SHALL BE SEVERABLE AND IF ANY PHRASE, CLAUSE, SENTENCE OR PROVISION IS DEEMED UNENFORCEABLE, THE REMAINING PROVISIONS OF THE COMPACT SHALL BE ENFORCEABLE.~~

~~2. THE PROVISIONS OF THIS COMPACT SHALL BE LIBERALLY CONSTRUED TO EFFECTUATE ITS PURPOSES.~~

~~3. THROUGHOUT THIS COMPACT THE USE OF THE SINGULAR SHALL INCLUDE THE PLURAL AND VICE-VERSA.~~

~~4. THE HEADINGS AND CAPTIONS OF ARTICLES, SECTIONS AND SUB-SECTIONS USED IN THIS COMPACT ARE FOR CONVENIENCE ONLY AND SHALL BE IGNORED IN CONSTRUING THE SUBSTANTIVE PROVISIONS OF THIS COMPACT.~~

~~ARTICLE XVI~~

~~BINDING EFFECT OF COMPACT AND OTHER LAWS~~

~~1. OTHER LAWS~~

~~A. NOTHING HEREIN PREVENTS THE ENFORCEMENT OF ANY OTHER LAW OF A COMPACTING STATE EXCEPT AS PROVIDED IN PARAGRAPH B. OF THIS SECTION.~~

~~B. DECISIONS OF THE COMMISSION, AND ANY RULES, AND ANY OTHER REQUIREMENTS OF THE COMMISSION SHALL CONSTITUTE THE EXCLUSIVE RULE, OR DETERMINATION APPLICABLE TO THE COMPACTING STATES. ANY LAW OR REGULATION REGARDING NON-ADMITTED INSURANCE OF MULTI-STATE RISKS THAT IS CONTRARY TO RULES OF THE COMMISSION IS PREEMPTED WITH RESPECT TO THE FOLLOWING:~~

~~(I) CLEARINGHOUSE TRANSACTION DATA REPORTING REQUIREMENTS;~~

~~(II) ALLOCATION FORMULA;~~

~~(III) CLEARINGHOUSE TRANSACTION DATA COLLECTION REQUIREMENTS;~~

~~(IV) PREMIUM TAX PAYMENT TIME FRAMES AND RULES CONCERNING DISSEMINATION OF DATA AMONG THE COMPACTING STATES FOR NON–ADMITTED INSURANCE OF MULTI–STATE RISKS AND SINGLE–STATE RISKS;~~

~~(V) EXCLUSIVE COMPLIANCE WITH SURPLUS LINES LAW OF THE HOME STATE OF THE INSURED;~~

~~(VI) RULES FOR REPORTING TO A CLEARINGHOUSE FOR RECEIPT AND DISTRIBUTION OF CLEARINGHOUSE TRANSACTION DATA RELATED TO NON– ADMITTED INSURANCE OF MULTI-STATE RISKS;~~

~~(VII) UNIFORM FOREIGN INSURERS ELIGIBILITY REQUIREMENTS;~~

~~(VIII) UNIFORM POLICYHOLDER NOTICE; AND~~

~~(IX) UNIFORM TREATMENT OF PURCHASING GROUPS PROCURING NON– ADMITTED INSURANCE.~~

~~C. EXCEPT AS STATED IN PARAGRAPH B, ANY RULE, UNIFORM STANDARD OR OTHER REQUIREMENT OF THE COMMISSION SHALL CONSTITUTE THE EXCLUSIVE PROVISION THAT A COMMISSIONER MAY APPLY TO~~

~~COMPLIANCE OR TAX DETERMINATIONS. NOTWITHSTANDING THE FOREGOING, NO ACTION TAKEN BY THE COMMISSION SHALL ABROGATE OR RESTRICT: (I) THE ACCESS OF ANY PERSON TO STATE COURTS; (II) THE AVAILABILITY OF ALTERNATIVE DISPUTE RESOLUTION UNDER ARTICLE X OF THIS COMPACT (III) REMEDIES AVAILABLE UNDER STATE LAW RELATED TO BREACH OF CONTRACT, TORT, OR OTHER LAWS NOT SPECIFICALLY DIRECTED TO COMPLIANCE OR TAX DETERMINATIONS; (IV) STATE LAW RELATING TO THE CONSTRUCTION OF INSURANCE CONTRACTS; OR (V) THE AUTHORITY OF THE ATTORNEY GENERAL OF THE STATE, INCLUDING BUT NOT LIMITED TO MAINTAINING ANY ACTIONS OR PROCEEDINGS, AS AUTHORIZED BY LAW.~~

~~2. BINDING EFFECT OF THIS COMPACT~~

~~A. ALL LAWFUL ACTIONS OF THE COMMISSION, INCLUDING ALL RULES PROMULGATED BY THE COMMISSION, ARE BINDING UPON THE COMPACTING STATES, EXCEPT AS PROVIDED HEREIN.~~

~~B. ALL AGREEMENTS BETWEEN THE COMMISSION AND THE COMPACTING STATES ARE BINDING IN ACCORDANCE WITH THEIR TERMS.~~

~~C. UPON THE REQUEST OF A PARTY TO A CONFLICT OVER THE MEANING OR INTERPRETATION OF COMMISSION ACTIONS, AND UPON A MAJORITY VOTE OF THE COMPACTING STATES, THE COMMISSION MAY ISSUE ADVISORY OPINIONS REGARDING THE MEANING OR INTERPRETATION IN DISPUTE. THIS PROVISION MAY BE IMPLEMENTED BY RULE AT THE DISCRETION OF THE COMMISSION.~~

~~D. IN THE EVENT ANY PROVISION OF THIS COMPACT EXCEEDS THE CONSTITUTIONAL LIMITS IMPOSED ON THE LEGISLATURE OF ANY COMPACTING STATE, THE OBLIGATIONS, DUTIES, POWERS OR JURISDICTION SOUGHT TO BE CONFERRED BY THAT PROVISION UPON THE COMMISSION SHALL BE INEFFECTIVE AS TO THAT STATE AND THOSE OBLIGATIONS DUTIES, POWERS OR JURISDICTION SHALL REMAIN IN THE COMPACTING STATE AND SHALL BE EXERCISED BY THE AGENCY THEREOF TO WHICH THOSE OBLIGATIONS, DUTIES, POWERS OR JURISDICTION ARE DELEGATED BY LAW IN EFFECT AT THE TIME THIS COMPACT BECOMES EFFECTIVE.~~

~~SURPLUS LINE INSURANCE PREMIUMS BY STATE APPENDIX A~~

~~STATE~~	~~PREMIUMS BASED ON TAXES PAID~~	~~SHARE OF TOTAL PREMIUMS~~
~~ALABAMA~~	~~445,746,000~~	~~1.47%~~
~~ALASKA~~	~~89,453,519~~	~~0.29%~~

~~Arizona~~	~~663,703,267~~	~~2.18%~~
~~Arkansas~~	~~201,859,750~~	~~0.66%~~
~~California~~	~~5,622,450,467~~	~~18.49%~~
~~Colorado~~	~~543,781,333~~	~~1.79%~~
~~Connecticut~~	~~329,358,800~~	~~1.08%~~
~~Delaware~~	~~92,835,950~~	~~0.31%~~
~~Florida~~	~~2,660,908,760~~	~~8.75%~~
~~Georgia~~	~~895,643,150~~	~~2.95%~~
~~Hawaii~~	~~232,951,489~~	~~0.77%~~
~~Idaho~~	~~74,202,255~~	~~0.24%~~
~~Illinois~~	~~1,016,504,629~~	~~3.34%~~
~~Indiana~~	~~412,265,320~~	~~1.36%~~
~~Iowa~~	~~135,130,933~~	~~0.44%~~
~~Kansas~~	~~160,279,300~~	~~0.53%~~
~~Kentucky~~	~~167,996,133~~	~~0.55%~~
~~Louisiana~~	~~853,173,280~~	~~2.81%~~
~~Maine~~	~~60,111,200~~	~~0.20%~~
~~Maryland~~	~~434,887,600~~	~~1.43%~~
~~Massachusetts~~	~~708,640,225~~	~~2.33%~~
~~Michigan~~	~~703,357,040~~	~~2.31%~~
~~Minnesota~~	~~393,128,400~~	~~1.29%~~
~~Mississippi~~	~~263,313,175~~	~~0.87%~~
~~Missouri~~	~~404,489,860~~	~~1.33%~~
~~Montana~~	~~64,692,873~~	~~0.21%~~
~~Nebraska~~	~~92,141,167~~	~~0.30%~~
~~Nevada~~	~~354,271,514~~	~~1.17%~~
~~New Hampshire~~	~~102,946,250~~	~~0.34%~~
~~New Jersey~~	~~1,087,994,033~~	~~3.58%~~
~~New Mexico~~	~~67,608,458~~	~~0.22%~~
~~New York~~	~~2,768,618,083~~	~~9.11%~~
~~North Carolina~~	~~514,965,060~~	~~1.69%~~
~~North Dakota~~	~~36,223,943~~	~~0.12%~~
~~Ohio~~	~~342,000,000~~	~~1.12%~~
~~Oklahoma~~	~~319,526,400~~	~~1.05%~~
~~Oregon~~	~~312,702,150~~	~~1.03%~~
~~Pennsylvania~~	~~780,666,667~~	~~2.57%~~
~~Rhode Island~~	~~71,794,067~~	~~0.24%~~
~~South Carolina~~	~~412,489,825~~	~~1.36%~~
~~South Dakota~~	~~38,702,120~~	~~0.13%~~
~~Tennessee~~	~~451,775,240~~	~~1.49%~~
~~Texas~~	~~3,059,170,454~~	~~10.06%~~
~~Utah~~	~~142,593,412~~	~~0.47%~~
~~Vermont~~	~~41,919,433~~	~~0.14%~~

~~VIRGINIA~~	~~611,530,667~~	~~2.01%~~
~~WASHINGTON~~	~~739,932,050~~	~~2.43%~~
~~WEST VIRGINIA~~	~~130,476,250~~	~~0.43%~~
~~WISCONSIN~~	~~248,758,333~~	~~0.82%~~
~~WYOMING~~	~~40,526,967~~	~~0.13%~~
~~TOTAL~~	~~30,400,197,251~~	~~100.00%~~

~~THIS DATA IS 2005 CALENDAR YEAR DATA EXCERPTED FROM A STUDY DATED FEBRUARY 27, 2007 BY MACKIN & COMPANY.~~

~~31–102.~~

~~THE MARYLAND INSURANCE COMMISSIONER OF THE MARYLAND INSURANCE ADMINISTRATION IS HEREBY APPOINTED AS THE STATE OF MARYLAND'S REPRESENTATIVE TO THE SURPLUS LINES INSURANCE MULTI-STATE COMPLIANCE COMPACT COMMISSION.~~

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not take effect until a similar Act is enacted by at least one other state; that at least one other state is requested to concur in this Act of the General Assembly of Maryland by the enactment of a similar Act; that the Department of Legislative Services shall notify the appropriate officials of the other states of the enactment of this Act; and that upon the concurrence in this Act by at least one other state, the Governor of the State of Maryland shall issue a proclamation declaring this Act valid and effective and shall forward a copy of the proclamation to the Director of the Department of Legislative Services.~~

SECTION 3. AND BE IT FURTHER ENACTED, That~~, subject to Section 2 of this Act,~~ this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 521

(House Bill 959)

AN ACT concerning

Insurance – Surplus Lines

FOR the purpose of ~~authorizing a surplus lines broker to place certain surplus lines insurance with certain insurers under certain circumstances; authorizing a surplus lines broker to place coverage with certain nonadmitted insurers that~~

~~meet certain qualifications; authorizing the Maryland Insurance Commissioner to make a certain finding concerning certain nonadmitted insurers based on certain criteria; authorizing~~ requiring the Maryland Insurance Commissioner to participate in a certain database; altering the authority of the Commissioner to allow a commercial insured to waive certain search requirements for surplus lines coverage for certain purposes; authorizing a surplus lines broker not to perform a diligent search when placing certain coverage with an exempt commercial purchaser under certain circumstances; providing that certain persons are not required to obtain a certificate of qualification to act as a surplus lines broker in the State under certain circumstances; prohibiting the Commissioner from approving an insurer as a surplus lines insurer unless the insurer meets certain requirements or the Commissioner makes a certain finding; altering the process for an insurer to be approved by the Commissioner as a surplus lines insurer; altering certain prohibitions against a surplus lines broker placing surplus lines insurance with an unauthorized insurer; altering the calculation ~~and amount~~ of the premium receipts tax on certain surplus lines insurance premiums that cover certain property, risks, and exposures that are ~~wholly or partly~~ located or to be performed entirely in the State or both in and outside the State; ~~providing for the receipt and distribution of certain premium taxes in and for certain states;~~ providing that, for policies effective on or after a certain date, only the home state of an insured ~~shall~~ may receive certain tax payments and reports for certain nonadmitted insurance; requiring the Commissioner to cooperate with ~~certain~~ other states to adopt and implement ~~certain multistate~~ uniform requirements for nonadmitted insurance in compliance with the federal Nonadmitted and Reinsurance Reform Act of 2010; providing that, for policies effective on or after a certain date, the regulation and placement of certain nonadmitted insurance is subject to the statutory and regulatory requirements solely of certain home states; ~~providing for the allocation, collection, and distribution of certain premium taxes and reports concerning certain insurance under certain circumstances; authorizing the Commissioner to enter into a certain agreement or compact or to establish certain procedures to implement a certain multistate system for certain purposes; authorizing the Commissioner to enter into an agreement with a certain clearinghouse or other entity for certain purposes; authorizing the Commissioner to establish certain fees for certain purposes;~~ altering certain requirements for certain ~~insurers~~ surplus lines brokers and insureds to file certain statements and reports and pay certain taxes at certain times; ~~authorizing the Commissioner to prescribe certain forms for certain tax allocation reports;~~ requiring the Commissioner, by regulation, to determine the content and filing deadlines for the reports; making conforming and clarifying changes; defining certain terms; requiring the Commissioner to conduct a certain study and report the findings of the study to certain committees of the General Assembly on or before a certain date; requiring qualified surplus lines brokers to provide certain information to the Commissioner under certain circumstances; and generally relating to the Maryland Insurance Commissioner and surplus lines.

BY repealing and reenacting, with amendments,
Article – Insurance
Section 3–301, 3–304, 3–306, 3–306.1, 3–310, 3–318, 3–319, 3–324, 3–325, ~~and 4–210~~ 4–209, 4–210, and 4–211
Annotated Code of Maryland
(2003 Replacement Volume and 2010 Supplement)

BY adding to
Article – Insurance
Section ~~3–324.1 and~~ 4–211.1
Annotated Code of Maryland
(2003 Replacement Volume and 2010 Supplement)

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

Article – Insurance

3–301.

(A) In this subtitle**[**, "qualified**]** **THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(B) "ACT" MEANS THE FEDERAL NONADMITTED AND REINSURANCE REFORM ACT OF 2010.

(C) "ADMITTED INSURER" MEANS AN INSURER THAT IS AUTHORIZED TO ENGAGE IN THE BUSINESS OF INSURANCE IN THE STATE.

(D) "EXEMPT COMMERCIAL PURCHASER" HAS THE MEANING STATED IN § 527 OF THE ACT.

(E) "HOME STATE" HAS THE MEANING STATED IN § 527 OF THE ACT.

(F) "NONADMITTED INSURANCE" MEANS PROPERTY AND CASUALTY INSURANCE THAT MAY BE PLACED DIRECTLY OR THROUGH A SURPLUS LINES BROKER WITH A NONADMITTED INSURER THAT IS ELIGIBLE TO ACCEPT THE INSURANCE.

(G) (1) "NONADMITTED INSURER" MEANS AN INSURER THAT IS NOT AUTHORIZED TO ENGAGE IN THE BUSINESS OF INSURANCE IN THE STATE.

(2) "NONADMITTED INSURER" DOES NOT INCLUDE A RISK RETENTION GROUP.

(H) "QUALIFIED surplus lines broker" means a person that has obtained a certificate of qualification from the Commissioner to act as a surplus lines broker under this subtitle.

3–304.

The Commissioner may adopt reasonable regulations consistent with this subtitle to:

(1) carry out this subtitle;

(2) establish procedures for determining the eligibility of particular proposed coverages for placement with surplus lines insurers and maintain a list of the identified coverages;

(3) **[**permit a**] ALLOW AN EXEMPT** commercial **[**insured, as defined by the Commissioner,**] PURCHASER** to waive the diligent search requirement under § 3–306 of this subtitle for the procurement of a surplus lines insurance policy**[**:

(i) with an annual premium of not less than $5,000; and

(ii) issued by an insurer with a financial rating of "A" or better by the A.M. Best Company or an equivalent rating from an independent rating organization approved by the Commissioner**]**;

(4) provide for the content and use of the written disclosure required under § 3–308 of this subtitle; and

(5) provide for the periodic review, no less than annually, of information from surplus lines brokers, agents, and insurers and from other sources concerning the availability and affordability of insurance from authorized insurers in the State.

3–306.

(a) Surplus lines insurance may be procured from an unauthorized insurer if:

(1) for surplus lines insurance procured through a broker, the surplus lines insurance is procured through a qualified surplus lines broker;

(2) subject to the provisions of § 3–306.1 of this subtitle, a diligent search is made among the authorized insurers that are writing the particular kind and class of insurance in the State;

(3) except for insurance against liability of persons described in § 24–206(1) of this article, the amount of surplus lines insurance procured from an

unauthorized insurer is only the excess over the amount that can be procured from authorized insurers;

(4) for insurance against liability of persons described in § 24–206(1) of this article, the insurance cannot be obtained from three or more authorized insurers that are writing on a broad basis that particular kind and class of insurance;

(5) except as provided in subsection (b) of this section, the surplus lines insurance is not procured:

(i) solely to obtain a lower premium rate than would be accepted by an authorized insurer;

(ii) solely to obtain more favorable terms of the insurance contract; or

(iii) to replace coverage on residential property which is insured by an authorized insurer and for which a renewal offer has been made on substantially the same terms and conditions as the current coverage; and

(6) there is compliance with other applicable provisions of this subtitle.

(b) This subtitle does not prohibit a lower premium rate or more favorable terms in the insurance contract of an unauthorized insurer if:

(1) the risk is eligible as surplus lines under subsection (a)(2), (3), and (4) of this section; or

(2) the applicant qualifies as **[**a**]** **AN EXEMPT** commercial **[**insured**]** **PURCHASER** who may waive~~, as authorized by the Commissioner,~~ the diligent search that is otherwise required under this section.

(c) (1) This section does not prohibit a surplus lines broker from renewing a risk with a surplus lines insurer if the risk was initially written on a surplus lines basis when there were fewer than three authorized insurers actually writing on a broad basis the particular kind and class of insurance to provide coverage against liability of persons described in § 24–206(1) of this article in the State.

(2) However, even if on the date of renewal three or more authorized insurers are writing on a broad basis the particular kind and class of insurance required by the insured, a risk initially eligible for surplus lines insurance may be renewed on a surplus lines basis if the surplus lines insurer, licensed insurance producer, or surplus lines broker gives to the insured appropriate notice of the possible availability of comparable types of insurance being written by three or more authorized insurers:

(i) each year; and

(ii) sufficiently in advance of the renewal date to allow the insured to determine whether to renew the policy with the surplus lines insurer.

~~**(D) A SURPLUS LINES BROKER MAY PLACE SURPLUS LINES INSURANCE IF EACH INSURER IS AUTHORIZED TO WRITE THE TYPE OF INSURANCE IN ITS DOMICILIARY JURISDICTION.**~~

~~**(E) (1) A SURPLUS LINES BROKER MAY NOT PLACE COVERAGE WITH A NONADMITTED INSURER UNLESS, AT THE TIME OF PLACEMENT, THE SURPLUS LINES BROKER DETERMINES THAT THE NONADMITTED INSURER:**~~

~~**(I) HAS ESTABLISHED SATISFACTORY EVIDENCE OF GOOD REPUTE AND FINANCIAL INTEGRITY;**~~

~~**(II) 1. HAS CAPITAL AND SURPLUS, OR THEIR EQUIVALENT UNDER THE LAWS OF ITS DOMICILIARY JURISDICTION, EQUAL TO THE GREATER OF:**~~

~~**A. THE MINIMUM CAPITAL AND SURPLUS REQUIRED UNDER THE LAWS OF THE STATE; OR**~~

~~**B. $15,000,000; OR**~~

~~**2. IS FOUND ACCEPTABLE BY THE COMMISSIONER UNDER PARAGRAPH (2) OF THIS SUBSECTION; AND**~~

~~**(III) FOR AN INSURER NOT DOMICILED IN A STATE, HAS QUALIFIED IN ACCORDANCE WITH § 3–303 OF THIS SUBTITLE.**~~

~~**(2) (I) THE COMMISSIONER MAY AFFIRMATIVELY FIND THAT A NONADMITTED INSURER IS ACCEPTABLE UNDER THIS SUBSECTION.**~~

~~**(II) THE COMMISSIONER SHALL MAKE THE FINDING BASED ON FACTORS INCLUDING QUALITY OF MANAGEMENT, CAPITAL AND SURPLUS OF THE PARENT COMPANY, UNDERWRITING PROFIT AND INVESTMENT INCOME TRENDS OF THE NONADMITTED INSURER, MARKET AVAILABILITY, AND THE RECORD AND REPUTATION OF THE NONADMITTED INSURER IN THE INDUSTRY.**~~

~~**(III) THE COMMISSIONER MAY NOT FIND ACCEPTABLE A NONADMITTED INSURER THAT HAS CAPITAL AND SURPLUS OF LESS THAN $4,500,000.**~~

~~(F)~~ (D) **THE COMMISSIONER** ~~MAY~~ SHALL **PARTICIPATE IN THE NATIONAL INSURANCE PRODUCER DATABASE MAINTAINED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND SUBSIDIARIES.**

3–306.1.

(a) (1) A diligent search required by § 3–306 of this subtitle shall be deemed completed if:

(i) the insured or the surplus lines broker or insurance producer obtains declinations of a risk from three authorized insurers that are writing the particular kind and class of insurance in this State; and

(ii) the declinations are included in the affidavit required under § 3–307 of this subtitle.

(2) In addition to the requirement of paragraph (1)(i) of this subsection, an insurance producer shall obtain a declination from each insurer for which the insurance producer has been appointed that the insurance producer knows, or should know, is actually writing on a broad basis the particular kind and class of insurance sought.

(b) A diligent search may not be required:

(1) for any coverage on a list of eligible surplus lines coverages compiled by the Commissioner; or

(2) if the diligent search is waived by **[**a**]** **AN EXEMPT** commercial **[**insured**]** **PURCHASER** in accordance with the ~~process determined by the Commissioner~~ **ACT**.

(c) Notwithstanding the renewal provisions of § 3–306(c) of this subtitle, a diligent search shall be required for each renewal of a personal lines insurance policy written through a surplus lines insurer.

(D) NOTWITHSTANDING SUBSECTION (B)(2) OF THIS SECTION, A SURPLUS LINES BROKER IS NOT REQUIRED TO PERFORM A DILIGENT SEARCH TO DETERMINE WHETHER THE FULL AMOUNT OR TYPE OF INSURANCE CAN BE OBTAINED FROM ADMITTED INSURERS WHEN THE SURPLUS LINES BROKER IS SEEKING TO PROCURE OR PLACE NONADMITTED INSURANCE FOR AN EXEMPT COMMERCIAL PURCHASER IF:

(1) THE SURPLUS LINES BROKER HAS DISCLOSED TO THE EXEMPT COMMERCIAL PURCHASER THAT THE INSURANCE MAY OR MAY NOT BE

AVAILABLE FROM ADMITTED INSURERS THAT MAY BE SUBJECT TO GREATER PROTECTION AND REGULATORY OVERSIGHT; AND

(2) THE EXEMPT COMMERCIAL PURCHASER SUBSEQUENTLY HAS REQUESTED THE SURPLUS LINES BROKER IN WRITING TO PROCURE NONADMITTED INSURANCE FROM OR PLACE THE NONADMITTED INSURANCE WITH A NONADMITTED INSURER.

3–310.

(A) [A**] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A** person must obtain a certificate of qualification to act as a surplus lines broker before the person acts as a surplus lines broker in the State.

(B) A PERSON IS NOT REQUIRED TO OBTAIN A CERTIFICATE OF QUALIFICATION TO ACT AS A SURPLUS LINES BROKER IN THE STATE IF:

(1) THE STATE IS NOT THE HOME STATE OF THE INSURED; AND

(2) THE SURPLUS LINES BROKER HAS OBTAINED A LICENSE OR OTHER AUTHORIZATION FROM THE HOME STATE OF THE INSURED.

3–318.

(A) THE COMMISSIONER MAY NOT APPROVE AN INSURER AS A SURPLUS LINES INSURER UNLESS THE INSURER:

(1) IS AUTHORIZED IN ITS DOMICILIARY JURISDICTION TO WRITE THE TYPE OF INSURANCE IT SEEKS TO WRITE;

(2) HAS CAPITAL AND SURPLUS, OR THEIR EQUIVALENT UNDER THE LAWS OF ITS DOMICILIARY JURISDICTION, EQUAL TO THE GREATER OF:

(I) THE MINIMUM CAPITAL AND SURPLUS REQUIRED UNDER THE LAWS OF ITS DOMICILIARY JURISDICTION; AND

(II) $15,000,000; AND

(3) FILES WITH THE COMMISSIONER THE INFORMATION REQUIRED UNDER SUBSECTION (C) OF THIS SECTION.

(B) (1) FOR A FOREIGN INSURER, THE REQUIREMENTS OF SUBSECTION (A)(2) OF THIS SECTION MAY BE SATISFIED BY THE INSURER'S POSSESSING LESS THAN THE MINIMUM CAPITAL AND SURPLUS IF THE COMMISSIONER MAKES AN AFFIRMATIVE FINDING OF ACCEPTABILITY.

(2) THE FINDING SHALL BE BASED ON THE FOLLOWING OR SIMILAR FACTORS:

(I) QUALITY OF MANAGEMENT;

(II) CAPITAL AND SURPLUS OF ANY PARENT COMPANY;

(III) COMPANY UNDERWRITING PROFIT AND INVESTMENT INCOME TRENDS;

(IV) MARKET AVAILABILITY; AND

(V) COMPANY RECORD AND REPUTATION OF THE FOREIGN INSURER IN THE INDUSTRY.

(3) THE COMMISSIONER MAY NOT MAKE AN AFFIRMATIVE FINDING OF ACCEPTABILITY IF THE FOREIGN INSURER'S CAPITAL AND SURPLUS IS LESS THAN $4,500,000.

[(a)**] (C)** An insurer **[**may not be approved as a surplus lines insurer until the insurer files**] THAT SEEKS APPROVAL UNDER SUBSECTION (A) OF THIS SECTION SHALL FILE** each year with the Commissioner:

(1) a written request for approval as a surplus lines insurer **[**for those surplus lines authorized by the Commissioner**] TO WRITE THE TYPE OF INSURANCE IT SEEKS TO WRITE**;

(2) a certified copy of its annual statement, on convention form, that shows the amount by line of surplus lines business written on risks located in the State during the period covered by the annual statement; **AND**

(3) a certificate of compliance issued by the insurance department of the insurer's state of domicile**[**; and

(4) a certificate evidencing a deposit issued by the official custodian of deposits of the insurer's state of domicile**]**.

[(b)**] (D)** An unauthorized insurer shall appoint in writing the Commissioner as agent for the acceptance of service of process.

3–319.

(a) A surplus lines broker may not place surplus lines insurance with an unauthorized insurer that:

(1) has not been approved by the Commissioner as a surplus lines insurer **IN ACCORDANCE WITH § 3–318 OF THIS SUBTITLE**;

(2) **FOR AN INSURER NOT DOMICILED IN THE STATE, HAS NOT QUALIFIED UNDER § 3–303 OF THIS SUBTITLE;**

(3) has been determined by the Commissioner to be insolvent or unsafe financially under subsection (b) of this section; or

[(3)**] (4)** has been determined by the Commissioner to have refused to pay just claims.

(b) (1) The Commissioner shall direct that surplus lines insurance may not be placed with a surplus lines insurer that has been approved by the Commissioner if the Commissioner determines that the surplus lines insurer:

(i) is not in a safe or solvent financial condition; or

(ii) has refused to pay just claims.

(2) After written notice of a determination made by the Commissioner under paragraph (1) of this subsection is mailed by the Commissioner to qualified surplus lines brokers, surplus lines insurance may not be placed with the surplus lines insurer.

(c) Notwithstanding any other provision of this subtitle, a surplus lines broker may not place surplus lines insurance with an insurer if the broker knows, or reasonably should know, that the insurer is in an unsafe or insolvent financial condition.

(d) A qualified surplus lines broker may not place a risk in an unauthorized insurer that has not previously appointed the Commissioner as agent for the acceptance of service of process.

3–324.

(a) This section does not apply to insurance of risks of the State or a political subdivision of the State.

(b) ~~(1)~~ The premiums charged for surplus lines insurance are subject to a premium receipts tax **[**of 3%**]** ~~IN ACCORDANCE WITH THIS SUBSECTION~~ on all gross premiums ~~ALLOCABLE TO THE STATE~~, less any returned premiums ~~ALLOCABLE TO THE STATE~~, charged for surplus lines insurance.

~~(2) THE AMOUNT OF THE PREMIUM RECEIPTS TAX IS:~~

~~(I) FOR SURPLUS LINES INSURANCE THAT COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED ONLY IN THE STATE, 3% OF THE PORTION OF GROSS PREMIUMS ALLOCABLE TO THE STATE, LESS ANY RETURNED PREMIUMS ALLOCABLE TO THE STATE; AND~~

~~(II) FOR SURPLUS LINES INSURANCE THAT COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED BOTH IN AND OUTSIDE THE STATE:~~

~~1. 3% OF THE PORTION OF GROSS PREMIUMS ALLOCABLE TO THE STATE, LESS ANY RETURNED PREMIUMS ALLOCABLE TO THE STATE; AND~~

~~2. THE AMOUNT OF TAXES AND FEES APPLICABLE TO THE PROPERTY, RISKS, AND EXPOSURES LOCATED OR TO BE PERFORMED IN EACH OTHER STATE, BASED ON THE RATES OF TAXES AND FEES IN THE OTHER STATE, CALCULATED ON THE PORTION OF GROSS PREMIUMS ALLOCABLE TO THE OTHER STATE, LESS ANY RETURNED PREMIUMS ALLOCABLE TO THE OTHER STATE.~~

~~(3) (I) IF THE STATE IS THE HOME STATE OF THE INSURED, THE COMMISSIONER SHALL RECEIVE AND DISTRIBUTE THE PREMIUM RECEIPTS TAX PAYABLE TO THE STATE AND TO OTHER APPLICABLE STATES.~~

~~(II) IF THE STATE IS NOT THE HOME STATE OF THE INSURED, THE COMMISSIONER SHALL RECEIVE THE PREMIUM RECEIPTS TAX PAYABLE TO THE STATE FROM THE HOME STATE OF THE INSURED.~~

(C) FOR POLICIES EFFECTIVE BEFORE JULY 21, 2011:

(1) IF THE POLICY COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED ENTIRELY IN THE STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED ON THE ENTIRE PREMIUM AT THE RATE SPECIFIED IN SUBSECTION (B) OF THIS SECTION; AND

(2) IF THE POLICY COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED BOTH IN AND OUTSIDE THE STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED AT THE RATE SPECIFIED IN SUBSECTION (B) OF THIS SECTION ONLY ON THAT PORTION OF THE PREMIUM THAT IS PROPERLY ALLOCABLE TO THE RISKS LOCATED IN THE STATE.

(D) FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, IF THE STATE IS THE INSURED'S HOME STATE, THE PREMIUM RECEIPTS TAX SHALL BE

COMPUTED ON THE ENTIRE PREMIUM AT THE RATE SPECIFIED IN SUBSECTION (B) OF THIS SECTION.

~~(C)~~ (E) ~~ONLY~~ FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, ONLY THE HOME STATE OF AN INSURED MAY RECEIVE PREMIUM RECEIPTS TAX PAYMENTS AND REPORTS FOR NONADMITTED INSURANCE.

[(c)**]** **~~(D)~~ (F)** (1) On delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance, a surplus lines broker shall charge the insured the amount of the **PREMIUM RECEIPTS** tax in addition to the full amount of the gross premium charged by the insurer for the surplus lines insurance.

(2) The surplus lines broker shall return to the insured the **PREMIUM RECEIPTS** tax on any unearned part of the premium.

[(d)**]** **~~(E)~~ (G)** The surplus lines broker may not:

(1) absorb the premium receipts tax; or

(2) rebate all or part of the premium receipts tax or the surplus lines broker's commission.

[(e) If a surplus lines policy covers risks only partly in the State, the tax payable shall be computed on the part of the premium that is properly allocable to the risks located in the State.**]**

~~3–324.1.~~

~~(A)~~ (H) THE COMMISSIONER SHALL COOPERATE WITH OTHER STATES TO ADOPT AND IMPLEMENT ~~MULTISTATE~~ UNIFORM REQUIREMENTS FOR NONADMITTED INSURANCE IN COMPLIANCE WITH THE ACT.

~~(B)~~ (I) ~~THE~~ FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, THE REGULATION OF NONADMITTED INSURANCE IS SUBJECT TO THE STATUTORY AND REGULATORY REQUIREMENTS SOLELY OF THE HOME STATE OF THE INSURED.

~~(C) (1) ONLY THE HOME STATE OF AN INSURED MAY RECEIVE PREMIUM RECEIPTS TAX PAYMENTS AND REPORTS FOR NONADMITTED INSURANCE.~~

~~(2) IF THE NONADMITTED INSURANCE COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED ONLY IN THE STATE, THE COMMISSIONER SHALL RECEIVE THE PREMIUM RECEIPTS TAX PAYABLE TO THE STATE.~~

~~(3) IF THE STATE IS THE HOME STATE OF AN INSURED, THE COMMISSIONER SHALL RECEIVE AND REDISTRIBUTE THE PREMIUM RECEIPTS TAX FOR NONADMITTED INSURANCE PAYABLE TO THE STATE AND TO OTHER APPLICABLE STATES.~~

~~(4) IF THE STATE IS NOT THE HOME STATE OF THE INSURED, THE COMMISSIONER SHALL RECEIVE THE PREMIUM RECEIPTS TAX PAYABLE TO THE STATE FROM THE HOME STATE OF THE INSURED.~~

~~(D) (1) TO CARRY OUT THE ACT, THE COMMISSIONER MAY ENTER INTO AN AGREEMENT OR A COMPACT OR OTHERWISE ESTABLISH PROCEDURES TO IMPLEMENT THE MULTISTATE SYSTEM FOR THE REPORTING, PAYMENT, COLLECTION, AND ALLOCATION OF PREMIUM RECEIPTS TAX FOR NONADMITTED INSURANCE.~~

~~(2) WITH RESPECT TO AN AGREEMENT, A COMPACT, OR OTHER PROCEDURES UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER MAY:~~

~~(I) ENTER INTO AN AGREEMENT WITH A CLEARINGHOUSE OR OTHER ENTITY FOR THE PURPOSE OF COLLECTING AND DISBURSING TO THE STATE AND OTHER STATES ANY FUNDS COLLECTED THAT ARE APPLICABLE TO PROPERTY, RISKS, AND EXPOSURES LOCATED OR TO BE PERFORMED WHOLLY OR PARTLY IN THE STATE; AND~~

~~(II) APPROVE AND USE AN ALLOCATION SCHEDULE TO ALLOCATE RISK AND COMPUTE PREMIUM RECEIPTS TAX DUE ON THE PORTION OF PREMIUM ATTRIBUTABLE TO EACH RISK CLASSIFICATION, TO THE STATE, AND TO EACH OTHER STATE IN WHICH PROPERTY, RISKS, OR EXPOSURES ARE LOCATED OR TO BE PERFORMED.~~

~~(E) THE COMMISSIONER MAY IMPOSE A REASONABLE FEE, TO BE PAID BY INSUREDS OR INSURERS, TO IMPLEMENT THE MULTISTATE SYSTEM FOR THE REPORTING, PAYMENT, COLLECTION, AND ALLOCATION OF PREMIUM RECEIPTS TAX FOR NONADMITTED INSURANCE.~~

3–325.

(a) **[**On or before March 15 and September 15 of each year**, OR AT ANOTHER INTERVAL THAT THE COMMISSIONER DIRECTS**, each**]** ~~EACH~~ surplus lines broker shall**[**:

(1)**]** file with the **[**Commissioner a ~~semiannual statement that reports~~ **REPORT, ON A FORM THE COMMISSIONER PRESCRIBES,** on business subject to tax

during the preceding half calendar year **OR OTHER INTERVAL THAT THE COMMISSIONER DIRECTS**; and

(2) pay to the Commissioner the total amount of tax ~~imposed by § 3–324 of this subtitle and appearing on the semiannual statement filed under this section~~**] COMMISSIONER, ON A FORM THE COMMISSIONER PRESCRIBES, A VERIFIED TAX ALLOCATION REPORT THAT DETAILS THE PORTION OF NONADMITTED INSURANCE POLICY PREMIUMS ALLOCABLE TO PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED IN EACH STATE STATED IN THE REPORT**.

[(b) The semiannual statement shall be verified in the manner that the Commissioner requires and contain the following information:

(1) the gross amount of each kind of insurance business transacted and the total gross premiums charged;

(2) the total returned premiums and taxes paid to insureds;

(3) the total net premiums; and

(4) any additional information that the Commissioner reasonably requires.**]**

(B) BY REGULATION, THE COMMISSIONER SHALL DETERMINE THE REQUIRED CONTENT AND FILING DEADLINES OF THE ~~TAX ALLOCATION~~ REPORT.

(c) Each **[**semiannual statement**]** ~~**TAX ALLOCATION**~~ **REPORT** shall be open to public inspection.

(d) A **QUALIFIED** surplus lines broker may credit any examination expense paid or assessed under § 2–208 of this article against the premium receipts tax due **TO THE STATE**.

(e) With respect to **[**a penalty that has become final**] SURPLUS LINES PREMIUM RECEIPTS TAX DUE TO THE STATE**, a surplus lines broker is subject to the provisions of Title 6, Subtitle 1 of this article relating to penalties, interest, audits, assessments, limitations, appeals, and refunds.

4–209.

(a) This section does not apply to:

(1) premiums on lawfully procured surplus lines insurance;

(2) premiums on independently procured insurance on which a tax has been paid under § 4–211 of this subtitle; or

(3) wet marine and transportation insurance.

(b) (1) If an unauthorized insurer effects, continues, or renews insurance on a subject resident, located, or to be performed in the State, the unauthorized insurer shall pay to the Commissioner, before March 1 of the next calendar year, a premium receipts tax of 3% of gross premiums charged for the insurance.

(2) FOR POLICIES EFFECTIVE BEFORE JULY 21, 2011:

(I) IF THE POLICY COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED ENTIRELY IN THE STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED ON THE ENTIRE PREMIUM AT THE RATE SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION; AND

(II) IF THE POLICY COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED BOTH IN AND OUTSIDE THE STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED AT THE RATE SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION ONLY ON THAT PORTION OF THE PREMIUM THAT IS PROPERLY ALLOCABLE TO THE RISKS LOCATED IN THE STATE.

(3) FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, IF THE STATE IS THE INSURED'S HOME STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED ON THE ENTIRE PREMIUM AT THE RATE SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION.

[(2)**] (4)** Insurance that an unauthorized insurer effects, continues, or renews on a subject resident, located, or to be performed in the State that is procured through negotiations or an application wholly or partly occurring or made in or from within or outside of the State, or for which premiums wholly or partly are remitted directly or indirectly from in or outside of the State, is deemed to be insurance procured, continued, or renewed in the State.

(c) The premium receipts tax under this section is instead of all other State taxes.

(d) If an unauthorized insurer defaults on the payment of the tax under this section, the insured shall pay the tax.

(e) If the tax is not timely paid under subsection (b) of this section, the amount of the tax due shall be increased by a penalty of:

(1) 25% of the tax due; and

(2) an amount computed at the rate of 1% per month or any part of a month after the date the payment was due to the date the payment is made.

[(f) (1) If a policy covers a risk or exposure that is partly in the State, the tax payable shall be computed on the part of the premium that is properly allocable to the risk or exposure located in the State.

(2) Except for premiums that are properly allocated or apportioned and reported as taxable premiums of another state, in determining the amount of premiums taxable in this State, all premiums written, procured, or received in this State and all premiums on policies negotiated in this State shall be deemed written on property or risks located or resident in this State.**]**

4–210.

(a) In this section, "insured" includes an industrial insured who procures insurance of a risk through a full–time employee acting as a risk manager.

(b) (1) Each insured that procures or causes to be procured insurance with an unauthorized insurer, or an insured or self–insured that procures or continues excess loss, catastrophe, or other insurance with an unauthorized insurer, on a subject of insurance resident, located, or to be performed in the State other than surplus lines insurance, shall file with the Commissioner a report under this section **[**within 60 days after the date that the insurance was procured**]**.

(2) Insurance with an unauthorized insurer on a subject of insurance resident, located, or to be performed in the State that is procured through negotiations or an application wholly or partly occurring or made in or from within or outside of the State, or for which the premiums wholly or partly are remitted directly or indirectly from in or outside of the State, is deemed to be insurance procured in the State.

[(c) The report shall:

(1) be in writing;

(2) be on the form provided by the Commissioner to the insured on request; and

(3) contain:

(i) the name and address of the insured;

(ii) the name and address of the insurer;

(iii) the subject of the insurance;

(iv) a general description of the coverage;

(v) the amount of the premium charged for the coverage; and

(vi) any other pertinent information that the Commissioner reasonably requests.]

~~(C) THE REPORT SHALL BE A VERIFIED TAX ALLOCATION REPORT, ON A FORM THE COMMISSIONER PRESCRIBES, THAT DETAILS THE PORTION OF NONADMITTED INSURANCE POLICY PREMIUMS ALLOCABLE TO PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED IN EACH STATE.~~

(C) FOR POLICIES EFFECTIVE BEFORE JULY 21, 2011, A REPORT UNDER THIS SECTION SHALL BE FILED WITHIN 60 DAYS AFTER THE DATE THAT THE INSURANCE WAS PROCURED.

(D) FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, ON OR BEFORE MARCH 15 AND SEPTEMBER 15 OF EACH YEAR, OR AT ANOTHER INTERVAL THAT THE COMMISSIONER DIRECTS, EACH INSURED SHALL:

(1) FILE WITH THE COMMISSIONER A REPORT, ON A FORM THE COMMISSIONER PRESCRIBES, ON BUSINESS SUBJECT TO TAX DURING THE PRECEDING HALF CALENDAR YEAR OR OTHER INTERVAL THAT THE COMMISSIONER DIRECTS; AND

(2) PAY TO THE COMMISSIONER THE TOTAL AMOUNT OF TAX STATED IN THE REPORT.

~~(D)~~ (E) BY REGULATION, THE COMMISSIONER SHALL DETERMINE THE REQUIRED CONTENT AND FILING DEADLINES OF THE ~~TAX ALLOCATION REPORT~~ REPORTS.

4–211.

(a) This section does not apply to wet marine and transportation insurance.

(b) (1) If an insured procures, continues, or renews insurance from an unauthorized insurer that is subject to a report under § 4–210 of this subtitle, a premium receipts tax of 3% of the gross premiums charged for the insurance is levied on the obligation, chose in action, or right represented by the premium charged for the insurance.

(2) [The insured shall pay the amount of the tax to the Commissioner before March 1 of the next calendar year after the insurance was procured, continued, or renewed.

(3)] If an insurance contract subject to the tax is canceled and rewritten, the additional premium, for purposes of the premium receipts tax, is the premium in excess of the unearned premium of the canceled insurance contract.

(c) [(1) If a policy covers a risk or exposure that is only partly in the State, the tax payable shall be computed on the part of the premium that is properly allocable to the risk or exposure located in the State.

(2) Except for premiums that are properly allocated or apportioned and reported as taxable premiums in another state, in determining the amount of premiums taxable in this State, all premiums written, procured, or received in this State and all premiums on policies negotiated in this State shall be deemed written on property or risks located or resident in this State.

(d)] If the insured fails to withhold from the premium the amount of the tax levied under this section, the insured is liable for the amount of the tax **IMPOSED UNDER SUBSECTION (B) OF THIS SECTION** and shall pay the tax to the Commissioner [in accordance with subsection (c) of this section].

[(e)] **(D)** If the tax [required by] **IMPOSED UNDER** subsection [(d)] **(B)** of this section is not timely paid [under subsection (c) of this section], the amount of the tax due shall be increased by a penalty of:

(1) 25% of the tax due; and

(2) an amount computed at the rate of 1% per month or part of a month after the date the payment is due until the date the payment is made.

[(f)] **(E)** If the tax is not timely paid under this section, on request of the Commissioner, the Attorney General shall proceed in a court of this State or another state or in a federal court or agency to recover the tax.

4–211.1.

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

(2) "ACT" HAS THE MEANING STATED IN § 3–301 OF THIS ARTICLE.

(3) "HOME STATE" HAS THE MEANING STATED IN § 3–301 OF THIS ARTICLE.

~~(3)~~ (4) "NONADMITTED INSURANCE" HAS THE MEANING STATED IN § 3–301 OF THIS ARTICLE.

(B) ~~THE~~ FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, THE PLACEMENT OF NONADMITTED INSURANCE IS SUBJECT TO THE STATUTORY AND REGULATORY REQUIREMENTS SOLELY OF THE INSURED'S HOME STATE.

(C) ~~(1)~~ THE PREMIUMS CHARGED FOR UNAUTHORIZED INSURANCE ARE SUBJECT TO A PREMIUM RECEIPTS TAX IN THE STATE ON ALL GROSS PREMIUMS ~~ALLOCABLE TO THE STATE~~, LESS ANY RETURNED PREMIUMS ~~ALLOCABLE TO THE STATE~~, CHARGED FOR ~~SURPLUS LINES~~ NONADMITTED INSURANCE AS SPECIFIED IN §§ 4–209 AND 4–211 OF THIS SUBTITLE.

~~(2) (I) FOR INSURANCE THAT COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED ONLY IN THE STATE, THE PREMIUM RECEIPTS TAX IS COMPUTED BASED ON THE PORTION OF GROSS PREMIUMS ALLOCABLE TO THE STATE, LESS ANY RETURNED PREMIUMS ALLOCABLE TO THE STATE.~~

~~(II) BY REGULATION, THE COMMISSIONER MAY REQUIRE PAYMENT OF THE PREMIUM RECEIPTS TAX EITHER DIRECTLY TO THE COMMISSIONER OR THROUGH A CLEARINGHOUSE ESTABLISHED UNDER § 3–324.1(D) OF THIS ARTICLE.~~

~~(3) FOR SURPLUS LINES INSURANCE THAT COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED BOTH IN AND OUTSIDE THE STATE, THE AMOUNT OF PREMIUM RECEIPTS TAX PAYABLE SHALL BE COMPUTED BASED ON:~~

~~(I) THE PORTION OF GROSS PREMIUMS ALLOCABLE TO THE STATE, LESS ANY RETURNED PREMIUMS ALLOCABLE TO THE STATE; AND~~

~~(II) THE AMOUNT OF TAXES AND FEES APPLICABLE TO THE PROPERTY, RISKS, AND EXPOSURES LOCATED OR TO BE PERFORMED IN EACH OTHER STATE, BASED ON THE RATES OF TAXES AND FEES IN THE OTHER STATE, CALCULATED ON THE PORTION OF GROSS PREMIUMS ALLOCABLE TO THE OTHER STATE, LESS ANY RETURNED PREMIUMS ALLOCABLE TO THE OTHER STATE.~~

~~(4) (I) 1. IF THE STATE IS THE HOME STATE OF THE INSURED, THE COMMISSIONER SHALL RECEIVE AND DISTRIBUTE THE PREMIUM RECEIPTS TAX PAYABLE TO THE STATE AND TO OTHER APPLICABLE STATES.~~

~~2. BY REGULATION, THE COMMISSIONER MAY REQUIRE PAYMENT OF THE PREMIUM RECEIPTS TAX EITHER DIRECTLY TO THE COMMISSIONER OR THROUGH A CLEARINGHOUSE ESTABLISHED UNDER § 3–324.1(D) OF THIS ARTICLE.~~

~~(II) IF THE STATE IS NOT THE HOME STATE OF THE INSURED, THE COMMISSIONER SHALL RECEIVE THE PREMIUM RECEIPTS TAX PAYABLE TO THE STATE FROM THE HOME STATE OF THE INSURED.~~

(D) FOR POLICIES EFFECTIVE BEFORE JULY 21, 2011:

(1) IF THE POLICY COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED ENTIRELY IN THE STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED ON THE ENTIRE PREMIUM AT THE RATE SPECIFIED IN SUBSECTION (C) OF THIS SECTION; AND

(2) IF THE POLICY COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED BOTH IN AND OUTSIDE THE STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED AT THE RATE SPECIFIED IN SUBSECTION (C) OF THIS SECTION ONLY ON THAT PORTION OF THE PREMIUM THAT IS PROPERLY ALLOCABLE TO THE RISKS LOCATED IN THE STATE.

(E) FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, IF THE STATE IS THE INSURED'S HOME STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED ON THE ENTIRE PREMIUM AT THE RATE SPECIFIED IN SUBSECTION (C) OF THIS SECTION.

~~(D)~~ (F) ~~ONLY~~ FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, ONLY THE HOME STATE OF AN INSURED MAY RECEIVE PREMIUM RECEIPTS TAX PAYMENTS AND REPORTS FOR NONADMITTED INSURANCE.

(G) FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, THE REGULATION OF NONADMITTED INSURANCE IS SUBJECT TO THE STATUTORY AND REGULATORY REQUIREMENTS SOLELY OF THE HOME STATE OF THE INSURED.

(H) THE COMMISSIONER SHALL COOPERATE WITH OTHER STATES TO ADOPT AND IMPLEMENT UNIFORM REQUIREMENTS FOR NONADMITTED INSURANCE IN COMPLIANCE WITH THE ACT.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) On or before January 1, 2012, the Maryland Insurance Commissioner shall:

(1) study the various approaches taken by other states to implement the federal Nonadmitted and Reinsurance Reform Act of 2010, paying specific attention to the approaches taken by contiguous states; and

(2) report the findings of the study, in accordance with § 2–1246 of the State Government Article, to the Senate Finance Committee and the House Economic Matters Committee.

(b) The study required under subsection (a)(1) of this section shall include a review of:

(1) the approaches taken by other states, including:

(i) legislative enactments;

(ii) the execution of agreements or compacts, if any;

(iii) the impact on nonadmitted premium receipts tax revenue experienced by other states based on the approach taken, if known; and

(iv) future plans for implementation, if known or ascertainable;

(2) the impact of Maryland's approach on its nonadmitted premium receipts tax revenue, if any;

(3) relevant congressional guidance;

(4) guidance provided by the National Council of Insurance Legislators, the Council of State Government, the National Council of State Legislators, and the National Association of Insurance Commissioners; and

(5) industry guidance, statistics, or information.

(c) On request of the Maryland Insurance Commissioner, qualified surplus lines brokers shall provide to the Commissioner, to the extent practicable, information regarding written premium on risks located in Maryland and multistate risks so as to provide more information regarding premium receipts tax revenue.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 522

(Senate Bill 696)

AN ACT concerning

Estates and Trusts – Tenancy by the Entirety Property – Transfer to Trustee or Trustees

FOR the purpose of expanding the application of a certain immunity from claims of creditors, relating to former tenancy by the entirety property and proceeds of that property, to include conveyances to multiple trustees or multiple trusts; limiting the application of a certain immunity from claims of creditors to an instrument of conveyance that contains a certain provision; providing that a certain immunity may be waived as to certain creditors or certain property; providing that certain provisions of law apply only to tenancy by the entirety property conveyed to a trustee or trustees on or after a certain date; clarifying language; providing for the application of this Act; and generally relating to a certain immunity from claims of creditors for certain former tenancy by the entirety property and proceeds of that property under certain circumstances.

BY repealing and reenacting, with amendments,
Article – Estates and Trusts
Section 14–113
Annotated Code of Maryland
(2001 Replacement Volume and 2010 Supplement)

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

Article – Estates and Trusts

14–113.

(a) In this section, "proceeds" means:

(1) Property acquired by the trustee upon the sale, lease, license, exchange, or other disposition of property originally conveyed by a husband and wife to a trustee or trustees;

(2) Property collected by the trustee on, or distributed on account of, property originally conveyed by a husband and wife to a trustee or trustees;

(3) Rights arising out of property originally conveyed by a husband and wife to a trustee;

(4) Claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, property originally conveyed by a husband and wife to a trustee;

(5) Insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, property originally conveyed by a husband and wife to a trustee; or

(6) Property held by the trustee that is otherwise traceable to property originally conveyed by a husband and wife to a trustee or the property proceeds described in items (1) through (5) of this subsection.

(b) Any property of a husband and wife that **[**is**]** **WAS** held by them as tenants by the entirety and subsequently conveyed to **[**a**]** **THE** trustee **OR TRUSTEES OF ONE OR MORE TRUSTS**, and the proceeds of that property, shall have the same immunity from the claims of their separate creditors as would exist if the husband and wife had continued to hold the property or its proceeds as tenants by the entirety, as long as:

(1) The husband and wife remain married;

(2) The property or its proceeds continues to be held in trust by the trustee or trustees or their successors in trust; **[**and**]**

(3) Both the husband and the wife are beneficiaries of the trust **OR TRUSTS; AND**

(4) THE TRUST INSTRUMENT, DEED, OR OTHER INSTRUMENT OF CONVEYANCE PROVIDES THAT THIS SECTION SHALL APPLY TO THE PROPERTY OR ITS PROCEEDS.

(c) (1) After the death of the first of the husband and wife to die, all property held in trust that was immune from the claims of their separate creditors under subsection (b) of this section immediately prior to the individual's death shall continue to have the same immunity from the claims of the decedent's separate creditors as would have existed if the husband and wife had continued to hold the property conveyed in trust, or its proceeds, as tenants by the entirety.

(2) To the extent that the surviving spouse remains a beneficiary of the trust, the property that **[**is**]** **WAS** immune from the claims of the separate creditors of the decedent under paragraph (1) of this subsection shall be subject to the claims of the separate creditors of the surviving spouse.

(d) The immunity from the claims of separate creditors under subsections (b) and (c) of this section may be waived as to any specific creditor or any specifically

described trust property**, INCLUDING ALL SEPARATE CREDITORS OF A HUSBAND AND WIFE OR ALL FORMER TENANCY BY THE ENTIRETY PROPERTY CONVEYED TO THE TRUSTEE OR TRUSTEES,** by:

(1) The express provisions of a trust instrument; or

(2) The written consent of both the husband and the wife.

(e) (1) Except as provided in paragraph (2) of this subsection, immunity from the claims of separate creditors under subsections (b) and (c) of this section shall be waived if a trustee executes and delivers a financial statement for the trust that fails to disclose the requested identity of property held in trust that is immune from the claims of separate creditors.

(2) Immunity is not waived under this subsection if the identity of the property that is immune from the claims of separate creditors is otherwise reasonably disclosed by:

(i) A publicly recorded deed or other instrument of conveyance by the husband and wife to the trustee;

(ii) A written memorandum by the husband and wife, or by a trustee, that is recorded among the land records or other public records in the county or other jurisdiction where the records of the trust are regularly maintained; or

(iii) The terms of the trust instrument, including any schedule or exhibit attached to the trust instrument, if a copy of the trust instrument is provided with the financial statement.

(3) A waiver under this subsection shall be effective only as to:

(i) The person to whom the financial statement is delivered by the trustee;

(ii) The particular trust property held in trust for which the immunity from the claims of separate creditors is insufficiently disclosed on the financial statement; and

(iii) The transaction for which the disclosure was sought.

(f) In any dispute relating to the immunity of trust property from the claims of a separate creditor of a husband or wife, the trustee has the burden of proving the immunity of the trust property from the creditor's claims.

(g) After a conveyance to a trustee described in subsection (b) of this section, the property transferred shall no longer be held by the husband and wife as tenants by the entirety.

(h) This section may not be construed to affect existing State law with respect to tenancies by the entirety.

(I) THIS SECTION APPLIES ONLY TO TENANCY BY THE ENTIRETY PROPERTY CONVEYED TO A TRUSTEE OR TRUSTEES ON OR AFTER OCTOBER 1, 2010.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 523

(House Bill 799)

AN ACT concerning

Estates and Trusts – Tenancy by the Entirety Property – Transfer to Trustee or Trustees

FOR the purpose of expanding the application of a certain immunity from claims of creditors, relating to former tenancy by the entirety property and proceeds of that property, to include conveyances to multiple trustees or multiple trusts; limiting the application of a certain immunity from claims of creditors to an instrument of conveyance that contains a certain provision; providing that a certain immunity may be waived as to certain creditors or certain property; providing that certain provisions of law apply only to tenancy by the entirety property conveyed to a trustee or trustees on or after a certain date; clarifying language; providing for the application of this Act; and generally relating to a certain immunity from claims of creditors for certain former tenancy by the entirety property and proceeds of that property under certain circumstances.

BY repealing and reenacting, with amendments,
Article – Estates and Trusts
Section 14–113
Annotated Code of Maryland
(2001 Replacement Volume and 2010 Supplement)

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

Article – Estates and Trusts

14–113.

(a) In this section, "proceeds" means:

(1) Property acquired by the trustee upon the sale, lease, license, exchange, or other disposition of property originally conveyed by a husband and wife to a trustee or trustees;

(2) Property collected by the trustee on, or distributed on account of, property originally conveyed by a husband and wife to a trustee or trustees;

(3) Rights arising out of property originally conveyed by a husband and wife to a trustee;

(4) Claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, property originally conveyed by a husband and wife to a trustee;

(5) Insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, property originally conveyed by a husband and wife to a trustee; or

(6) Property held by the trustee that is otherwise traceable to property originally conveyed by a husband and wife to a trustee or the property proceeds described in items (1) through (5) of this subsection.

(b) Any property of a husband and wife that **[**is**]** **WAS** held by them as tenants by the entirety and subsequently conveyed to **[**a**]** **THE** trustee **OR TRUSTEES OF ONE OR MORE TRUSTS**, and the proceeds of that property, shall have the same immunity from the claims of their separate creditors as would exist if the husband and wife had continued to hold the property or its proceeds as tenants by the entirety, as long as:

(1) The husband and wife remain married;

(2) The property or its proceeds continues to be held in trust by the trustee or trustees or their successors in trust; **[**and**]**

(3) Both the husband and the wife are beneficiaries of the trust **OR TRUSTS; AND**

(4) THE TRUST INSTRUMENT, DEED, OR OTHER INSTRUMENT OF CONVEYANCE PROVIDES THAT THIS SECTION SHALL APPLY TO THE PROPERTY OR ITS PROCEEDS.

(c) (1) After the death of the first of the husband and wife to die, all property held in trust that was immune from the claims of their separate creditors under subsection (b) of this section immediately prior to the individual's death shall continue to have the same immunity from the claims of the decedent's separate creditors as would have existed if the husband and wife had continued to hold the property conveyed in trust, or its proceeds, as tenants by the entirety.

(2) To the extent that the surviving spouse remains a beneficiary of the trust, the property that **[**is**]** **WAS** immune from the claims of the separate creditors of the decedent under paragraph (1) of this subsection shall be subject to the claims of the separate creditors of the surviving spouse.

(d) The immunity from the claims of separate creditors under subsections (b) and (c) of this section may be waived as to any specific creditor or any specifically described trust property**, INCLUDING ALL SEPARATE CREDITORS OF A HUSBAND AND WIFE OR ALL FORMER TENANCY BY THE ENTIRETY PROPERTY CONVEYED TO THE TRUSTEE OR TRUSTEES,** by:

(1) The express provisions of a trust instrument; or

(2) The written consent of both the husband and the wife.

(e) (1) Except as provided in paragraph (2) of this subsection, immunity from the claims of separate creditors under subsections (b) and (c) of this section shall be waived if a trustee executes and delivers a financial statement for the trust that fails to disclose the requested identity of property held in trust that is immune from the claims of separate creditors.

(2) Immunity is not waived under this subsection if the identity of the property that is immune from the claims of separate creditors is otherwise reasonably disclosed by:

(i) A publicly recorded deed or other instrument of conveyance by the husband and wife to the trustee;

(ii) A written memorandum by the husband and wife, or by a trustee, that is recorded among the land records or other public records in the county or other jurisdiction where the records of the trust are regularly maintained; or

(iii) The terms of the trust instrument, including any schedule or exhibit attached to the trust instrument, if a copy of the trust instrument is provided with the financial statement.

(3) A waiver under this subsection shall be effective only as to:

(i) The person to whom the financial statement is delivered by the trustee;

(ii) The particular trust property held in trust for which the immunity from the claims of separate creditors is insufficiently disclosed on the financial statement; and

(iii) The transaction for which the disclosure was sought.

(f) In any dispute relating to the immunity of trust property from the claims of a separate creditor of a husband or wife, the trustee has the burden of proving the immunity of the trust property from the creditor's claims.

(g) After a conveyance to a trustee described in subsection (b) of this section, the property transferred shall no longer be held by the husband and wife as tenants by the entirety.

(h) This section may not be construed to affect existing State law with respect to tenancies by the entirety.

(I) THIS SECTION APPLIES ONLY TO TENANCY BY THE ENTIRETY PROPERTY CONVEYED TO A TRUSTEE OR TRUSTEES ON OR AFTER OCTOBER 1, 2010.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 524

(Senate Bill 701)

AN ACT concerning

Health Insurance – Prescription Eye Drops – Refills

FOR the purpose of requiring certain insurers, nonprofit health service plans, and health maintenance organizations to provide coverage for a refill of prescription eye drops under certain circumstances; making the provisions of this Act applicable to health maintenance organizations; providing for the application of this Act; and generally relating to health insurance coverage of prescription eye drops.

BY adding to
Article – Health – General
Section 19–706(kkkk)

Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – Insurance
Section 15–845
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

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

Article – Health – General

19–706.

(KKKK) THE PROVISIONS OF § 15–845 OF THE INSURANCE ARTICLE APPLY TO HEALTH MAINTENANCE ORGANIZATIONS.

Article – Insurance

15–845.

(A) THIS SECTION APPLIES TO:

(1) INSURERS AND NONPROFIT HEALTH SERVICE PLANS THAT PROVIDE COVERAGE FOR PRESCRIPTION EYE DROPS UNDER HEALTH INSURANCE POLICIES OR CONTRACTS THAT ARE ISSUED OR DELIVERED IN THE STATE; AND

(2) HEALTH MAINTENANCE ORGANIZATIONS THAT PROVIDE COVERAGE FOR PRESCRIPTION EYE DROPS UNDER CONTRACTS THAT ARE ISSUED OR DELIVERED IN THE STATE.

(B) AN ENTITY SUBJECT TO THIS SECTION SHALL PROVIDE COVERAGE FOR A REFILL OF PRESCRIPTION EYE DROPS ~~WHEN~~:

~~**(1) THE REFILL IS REQUESTED BY AN INSURED LESS THAN 30 DAYS AFTER THE LATER OF:**~~

~~**(I) THE DATE THE ORIGINAL PRESCRIPTION WAS DISPENSED TO THE INSURED; OR**~~

~~**(II) THE DATE THE LAST REFILL OF THE PRESCRIPTION WAS DISPENSED TO THE INSURED;**~~

(1) IN ACCORDANCE WITH GUIDANCE FOR EARLY REFILLS OF TOPICAL OPHTHALMIC PRODUCTS PROVIDED TO MEDICARE PART D PLAN SPONSORS BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES; AND

(2) IF:

~~(2)~~ (I) THE PRESCRIBING HEALTH CARE PRACTITIONER INDICATES ON THE ORIGINAL PRESCRIPTION THAT ADDITIONAL QUANTITIES OF THE PRESCRIPTION EYE DROPS ARE NEEDED;

~~(3)~~ (II) THE REFILL REQUESTED BY THE INSURED DOES NOT EXCEED THE NUMBER OF ADDITIONAL QUANTITIES INDICATED ON THE ORIGINAL PRESCRIPTION BY THE PRESCRIBING HEALTH CARE PRACTITIONER; AND

~~(4)~~ (III) THE PRESCRIPTION EYE DROPS PRESCRIBED BY THE HEALTH CARE PRACTITIONER ARE A COVERED BENEFIT UNDER THE POLICY OR CONTRACT OF THE INSURED.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after October 1, 2011.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 525

(House Bill 888)

AN ACT concerning

Health Insurance – Prescription Eye Drops – Refills

FOR the purpose of requiring certain insurers, nonprofit health service plans, and health maintenance organizations to provide coverage for a refill of prescription eye drops under certain circumstances; making the provisions of this Act applicable to health maintenance organizations; providing for the application of this Act; and generally relating to health insurance coverage of prescription eye drops.

BY adding to
Article – Health – General
Section 19–706(kkkk)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – Insurance
Section 15–845
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

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

Article – Health – General

19–706.

(KKKK) THE PROVISIONS OF § 15–845 OF THE INSURANCE ARTICLE APPLY TO HEALTH MAINTENANCE ORGANIZATIONS.

Article – Insurance

15–845.

(A) THIS SECTION APPLIES TO:

(1) INSURERS AND NONPROFIT HEALTH SERVICE PLANS THAT PROVIDE COVERAGE FOR PRESCRIPTION EYE DROPS UNDER HEALTH INSURANCE POLICIES OR CONTRACTS THAT ARE ISSUED OR DELIVERED IN THE STATE; AND

(2) HEALTH MAINTENANCE ORGANIZATIONS THAT PROVIDE COVERAGE FOR PRESCRIPTION EYE DROPS UNDER CONTRACTS THAT ARE ISSUED OR DELIVERED IN THE STATE.

(B) AN ENTITY SUBJECT TO THIS SECTION SHALL PROVIDE COVERAGE FOR A REFILL OF PRESCRIPTION EYE DROPS ~~WHEN~~:

~~**(1) THE REFILL IS REQUESTED BY AN INSURED LESS THAN 30 DAYS AFTER THE LATER OF:**~~

~~**(I) THE DATE THE ORIGINAL PRESCRIPTION WAS DISPENSED TO THE INSURED; OR**~~

~~(II) THE DATE THE LAST REFILL OF THE PRESCRIPTION WAS DISPENSED TO THE INSURED;~~

(1) IN ACCORDANCE WITH GUIDANCE FOR EARLY REFILLS OF TOPICAL OPHTHALMIC PRODUCTS PROVIDED TO MEDICARE PART D PLAN SPONSORS BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES; AND

(2) IF:

~~(2)~~ (I) THE PRESCRIBING HEALTH CARE PRACTITIONER INDICATES ON THE ORIGINAL PRESCRIPTION THAT ADDITIONAL QUANTITIES OF THE PRESCRIPTION EYE DROPS ARE NEEDED;

~~(3)~~ (II) THE REFILL REQUESTED BY THE INSURED DOES NOT EXCEED THE NUMBER OF ADDITIONAL QUANTITIES INDICATED ON THE ORIGINAL PRESCRIPTION BY THE PRESCRIBING HEALTH CARE PRACTITIONER; AND

~~(4)~~ (III) THE PRESCRIPTION EYE DROPS PRESCRIBED BY THE HEALTH CARE PRACTITIONER ARE A COVERED BENEFIT UNDER THE POLICY OR CONTRACT OF THE INSURED.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after October 1, 2011.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 526

(Senate Bill 702)

AN ACT concerning

Health Insurance – Coverage of Hearing Aids

FOR the purpose of requiring an insurer, nonprofit health service plan, or health maintenance organization that provides coverage for hearing aids to an insured or enrolled individual who is not a minor child and that places a dollar limit on the hearing aid benefit to allow the individual to choose a hearing aid that is

priced higher than the benefit payable under the policy or contract and pay the difference between the price of the hearing aid and the dollar limit on the benefit; ~~altering the definition of "hearing aid" to remove a requirement that a hearing aid be nondisposable~~ making certain conforming changes; and generally relating to coverage of hearing aids under health insurance.

BY repealing and reenacting, with amendments,
Article – Insurance
Section 15–838
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

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

Article – Insurance

15–838.

~~(a) In this section, "hearing aid" means a device that[:~~

~~(1)]~~ ~~is of a design and circuitry to optimize audibility and listening skills in the environment commonly experienced by children[; and~~

~~(2) is nondisposable].~~

~~(b)~~ **(A)** This section applies to:

(1) insurers and nonprofit health service plans that provide hospital, medical, or surgical benefits to individuals or groups on an expense–incurred basis under health insurance policies or contracts that are issued or delivered in the State; and

(2) health maintenance organizations that provide hospital, medical, or surgical benefits to individuals or groups under contracts that are issued or delivered in the State.

~~(c)~~ **(B)** (1) **IN THIS SUBSECTION, "HEARING AID" MEANS A DEVICE THAT:**

(I) IS OF A DESIGN AND CIRCUITRY TO OPTIMIZE AUDIBILITY AND LISTENING SKILLS IN THE ENVIRONMENT COMMONLY EXPERIENCED BY CHILDREN; AND

(II) IS NONDISPOSABLE.

(2) An entity subject to this section shall provide coverage for hearing aids for a minor child who is covered under a policy or contract if the hearing aids are prescribed, fitted, and dispensed by a licensed audiologist.

~~(2)~~ **(3)** (i) An entity subject to this section may limit the benefit payable under paragraph ~~(1)~~ **(2)** of this subsection to $1,400 per hearing aid for each hearing–impaired ear every 36 months.

(ii) An insured or enrolled individual may choose a hearing aid that is priced higher than the benefit payable under this subsection and may pay the difference between the price of the hearing aid and the benefit payable under this subsection, without financial or contractual penalty to the provider of the hearing aid.

~~(d)~~ **(C)** This section does not prohibit an entity subject to this section from providing coverage that is greater or more favorable to an insured or enrolled individual than the coverage required under this section.

~~(E)~~ **(D)** **IF AN ENTITY SUBJECT TO THIS SECTION PROVIDES COVERAGE FOR HEARING AIDS TO AN INSURED OR ENROLLED INDIVIDUAL WHO IS NOT A MINOR CHILD, AND IF THE POLICY OR CONTRACT OF THE INSURED OR ENROLLED INDIVIDUAL HAS A DOLLAR LIMIT ON THE HEARING AID BENEFIT, THE ENTITY SHALL ALLOW THE INDIVIDUAL TO:**

(1) CHOOSE A HEARING AID THAT IS PRICED HIGHER THAN THE BENEFIT PAYABLE UNDER THE POLICY OR CONTRACT; AND

(2) PAY THE DIFFERENCE BETWEEN THE PRICE OF THE HEARING AID AND THE DOLLAR LIMIT ON THE HEARING AID BENEFIT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after October 1, 2011.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 527

(House Bill 452)

AN ACT concerning

Health Insurance – Coverage of Hearing Aids

FOR the purpose of requiring an insurer, nonprofit health service plan, or health maintenance organization that provides coverage for hearing aids to an insured or enrolled individual who is not a minor child and that places a dollar limit on the hearing aid benefit to allow the individual to choose a hearing aid that is priced higher than the benefit payable under the policy or contract and pay the difference between the price of the hearing aid and the dollar limit on the benefit; ~~altering the definition of "hearing aid" to remove a requirement that a hearing aid be nondisposable~~ making certain conforming changes; and generally relating to coverage of hearing aids under health insurance.

BY repealing and reenacting, with amendments,
Article – Insurance
Section 15–838
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

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

Article – Insurance

15–838.

~~(a) In this section, "hearing aid" means a device that[:~~

~~(1)] is of a design and circuitry to optimize audibility and listening skills in the environment commonly experienced by children[; and~~

~~(2) is nondisposable].~~

~~(b)~~ **(A)** This section applies to:

(1) insurers and nonprofit health service plans that provide hospital, medical, or surgical benefits to individuals or groups on an expense–incurred basis under health insurance policies or contracts that are issued or delivered in the State; and

(2) health maintenance organizations that provide hospital, medical, or surgical benefits to individuals or groups under contracts that are issued or delivered in the State.

~~(c)~~ **(B)** (1) **IN THIS SUBSECTION, "HEARING AID" MEANS A DEVICE THAT:**

(I) IS OF A DESIGN AND CIRCUITRY TO OPTIMIZE AUDIBILITY AND LISTENING SKILLS IN THE ENVIRONMENT COMMONLY EXPERIENCED BY CHILDREN; AND

(II) IS NONDISPOSABLE.

(2) An entity subject to this section shall provide coverage for hearing aids for a minor child who is covered under a policy or contract if the hearing aids are prescribed, fitted, and dispensed by a licensed audiologist.

~~(2)~~ **(3)**(i) An entity subject to this section may limit the benefit payable under paragraph ~~(1)~~ **(2)** of this subsection to $1,400 per hearing aid for each hearing–impaired ear every 36 months.

(ii) An insured or enrolled individual may choose a hearing aid that is priced higher than the benefit payable under this subsection and may pay the difference between the price of the hearing aid and the benefit payable under this subsection, without financial or contractual penalty to the provider of the hearing aid.

~~(d)~~ **(C)** This section does not prohibit an entity subject to this section from providing coverage that is greater or more favorable to an insured or enrolled individual than the coverage required under this section.

~~(E)~~ **(D)** **IF AN ENTITY SUBJECT TO THIS SECTION PROVIDES COVERAGE FOR HEARING AIDS TO AN INSURED OR ENROLLED INDIVIDUAL WHO IS NOT A MINOR CHILD, AND IF THE POLICY OR CONTRACT OF THE INSURED OR ENROLLED INDIVIDUAL HAS A DOLLAR LIMIT ON THE HEARING AID BENEFIT, THE ENTITY SHALL ALLOW THE INDIVIDUAL TO:**

(1) CHOOSE A HEARING AID THAT IS PRICED HIGHER THAN THE BENEFIT PAYABLE UNDER THE POLICY OR CONTRACT; AND

(2) PAY THE DIFFERENCE BETWEEN THE PRICE OF THE HEARING AID AND THE DOLLAR LIMIT ON THE HEARING AID BENEFIT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after October 1, 2011.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 528

(Senate Bill 710)

AN ACT concerning

Health Insurance – Provider Panels – Notice of Receipt of Application

FOR the purpose of requiring certain health insurance carriers that receive a complete application from a health care provider that seeks to participate on a provider panel of a carrier to notify the health care provider that the application is complete; requiring, under certain circumstances, notice to be given to a health care provider at a certain address and within a certain period of time; requiring, under certain circumstances, that the notice from a certain credentialing system be considered notice that an application is complete; providing that certain provisions of this Act do not apply to a certain carrier until the Maryland Insurance Commissioner makes a certain certification; defining a certain term; clarifying certain language; and generally relating to participation of health care providers on provider panels of health insurance carriers.

BY repealing and reenacting, without amendments,
Article – Insurance
Section 15–112(a)(1)~~, (4), (9), and (10)~~ and (4)
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Insurance
Section ~~15–112(d)~~ 15–112(a)(9) and (10) and (d)
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

BY adding to
Article – Insurance
Section 15–112(a)(9)
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

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

Article – Insurance

15–112.

(a) (1) In this section the following words have the meanings indicated.

(4) (i) "Carrier" means:

1. an insurer;

2. a nonprofit health service plan;

3. a health maintenance organization;

4. a dental plan organization; or

5. any other person that provides health benefit plans subject to regulation by the State.

(ii) "Carrier" includes an entity that arranges a provider panel for a carrier.

(9) "ONLINE CREDENTIALING SYSTEM" MEANS THE SYSTEM THROUGH WHICH A PROVIDER MAY ACCESS AN ONLINE PROVIDER CREDENTIALING APPLICATION THAT THE COMMISSIONER HAS DESIGNATED AS THE UNIFORM CREDENTIALING FORM UNDER § 15–112.1(E) OF THIS SUBTITLE.

~~(9)~~ **(10)** "Provider" means a health care practitioner or group of health care practitioners licensed, certified, or otherwise authorized by law to provide health care services.

~~(10)~~ **(11)** (i) "Provider panel" means the providers that contract either directly or through a subcontracting entity with a carrier to provide health care services to the carrier's enrollees under the carrier's health benefit plan.

(ii) "Provider panel" does not include an arrangement in which any provider may participate solely by contracting with the carrier to provide health care services at a discounted fee–for–service rate.

(d) (1) A provider that seeks to participate on a provider panel of a carrier shall submit an application to the carrier.

(2) (i) Subject to paragraph (3) of this subsection, the carrier, after reviewing the application, shall accept or reject the provider for participation on the carrier's provider panel.

(ii) If the carrier rejects the provider for participation on the carrier's provider panel, the carrier shall send to the provider at the address listed in the application written notice of the rejection.

(3) (i) **[**Except as provided in**]** **SUBJECT TO** paragraph (4) of this subsection, within 30 days after the date a carrier receives a completed application, the carrier shall send to the provider at the address listed in the application written notice of:

1. the carrier's intent to continue to process the provider's application to obtain necessary credentialing information; or

2. the carrier's rejection of the provider for participation on the carrier's provider panel.

(ii) The failure of a carrier to provide the notice required under subparagraph (i) of this paragraph is a violation of this article and the carrier is subject to the penalties provided by § 4–113(d) of this article.

(iii) Except as provided in subsection (o) of this section, if, under subparagraph (i)1 of this paragraph, a carrier provides notice to the provider of its intent to continue to process the provider's application to obtain necessary credentialing information, the carrier, within 120 days after the date the notice is provided, shall:

1. accept or reject the provider for participation on the carrier's provider panel; and

2. send written notice of the acceptance or rejection to the provider at the address listed in the application.

(iv) The failure of a carrier to provide the notice required under subparagraph (iii)2 of this paragraph is a violation of this article and the carrier is subject to the provisions of and penalties provided by §§ 4–113 and 4–114 of this article.

(4) **(I) 1. ~~A~~ EXCEPT AS PROVIDED IN SUBSUBPARAGRAPH 4 OF THIS SUBPARAGRAPH, A CARRIER THAT RECEIVES A COMPLETE APPLICATION SHALL NOTIFY THE PROVIDER THAT THE APPLICATION IS COMPLETE.**

2. ~~NOTICE~~ IF A CARRIER DOES NOT ACCEPT APPLICATIONS THROUGH THE ONLINE CREDENTIALING SYSTEM, NOTICE SHALL BE GIVEN TO THE PROVIDER AT THE ADDRESS LISTED IN THE APPLICATION WITHIN 10 DAYS AFTER THE DATE THE APPLICATION IS RECEIVED.

3. IF A CARRIER ACCEPTS APPLICATIONS THROUGH THE ONLINE CREDENTIALING SYSTEM, THE NOTICE FROM THE ONLINE CREDENTIALING SYSTEM TO THE PROVIDER THAT THE CARRIER HAS RECEIVED

THE PROVIDER'S APPLICATION SHALL BE CONSIDERED NOTICE THAT THE APPLICATION IS COMPLETE.

4. THIS SUBPARAGRAPH DOES NOT APPLY TO A CARRIER THAT ARRANGES A DENTAL PROVIDER PANEL UNTIL THE COMMISSIONER CERTIFIES THAT THE ONLINE CREDENTIALING SYSTEM IS CAPABLE OF ACCEPTING THE UNIFORM CREDENTIALING FORM DESIGNATED BY THE COMMISSIONER FOR DENTAL PROVIDER PANELS.

[(i)**] (II) 1.** A carrier that receives an incomplete application shall return the application to the provider at the address listed in the application within 10 days after the date the application is received.

[(ii)**] 2.** The carrier shall indicate to the provider what information is needed to make the application complete.

[(iii)**] 3.** The provider may return the completed application to the carrier.

[(iv)**] 4.** After the carrier receives the completed application, the carrier is subject to the time periods established in paragraph (3) of this subsection.

(5) A carrier may charge a reasonable fee for an application submitted to the carrier under this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 529

(House Bill 444)

AN ACT concerning

Health Insurance – Provider Panels – Notice of Receipt of Application

FOR the purpose of requiring certain health insurance carriers that receive a complete application from a health care provider that seeks to participate on a provider panel of a carrier to notify the health care provider that the application is complete; requiring, under certain circumstances, notice to be given to a health care provider at a certain address and within a certain period of time; requiring,

under certain circumstances, that the notice from a certain credentialing system be considered notice that an application is complete; providing that certain provisions of this Act do not apply to a certain carrier until the Maryland Insurance Commissioner makes a certain certification; defining a certain term; clarifying certain language; and generally relating to participation of health care providers on provider panels of health insurance carriers.

BY repealing and reenacting, without amendments,
Article – Insurance
Section 15–112(a)(1)~~, (4), (9), and (10)~~ *and (4)*
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Insurance
Section ~~15–112(d)~~ *15–112(a)(9) and (10) and (d)*
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

BY adding to
Article – Insurance
Section 15–112(a)(9)
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

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

Article – Insurance

15–112.

(a) (1) In this section the following words have the meanings indicated.

(4) (i) "Carrier" means:

1. an insurer;

2. a nonprofit health service plan;

3. a health maintenance organization;

4. a dental plan organization; or

5. any other person that provides health benefit plans subject to regulation by the State.

(ii) "Carrier" includes an entity that arranges a provider panel for a carrier.

(9) "ONLINE CREDENTIALING SYSTEM" MEANS THE SYSTEM THROUGH WHICH A PROVIDER MAY ACCESS AN ONLINE PROVIDER CREDENTIALING APPLICATION THAT THE COMMISSIONER HAS DESIGNATED AS THE UNIFORM CREDENTIALING FORM UNDER § 15–112.1(E) OF THIS SUBTITLE.

~~(9)~~ **(10)** "Provider" means a health care practitioner or group of health care practitioners licensed, certified, or otherwise authorized by law to provide health care services.

~~(10)~~ **(11)** (i) "Provider panel" means the providers that contract either directly or through a subcontracting entity with a carrier to provide health care services to the carrier's enrollees under the carrier's health benefit plan.

(ii) "Provider panel" does not include an arrangement in which any provider may participate solely by contracting with the carrier to provide health care services at a discounted fee–for–service rate.

(d) (1) A provider that seeks to participate on a provider panel of a carrier shall submit an application to the carrier.

(2) (i) Subject to paragraph (3) of this subsection, the carrier, after reviewing the application, shall accept or reject the provider for participation on the carrier's provider panel.

(ii) If the carrier rejects the provider for participation on the carrier's provider panel, the carrier shall send to the provider at the address listed in the application written notice of the rejection.

(3) (i) **[**Except as provided in**]** **SUBJECT TO** paragraph (4) of this subsection, within 30 days after the date a carrier receives a completed application, the carrier shall send to the provider at the address listed in the application written notice of:

1. the carrier's intent to continue to process the provider's application to obtain necessary credentialing information; or

2. the carrier's rejection of the provider for participation on the carrier's provider panel.

(ii) The failure of a carrier to provide the notice required under subparagraph (i) of this paragraph is a violation of this article and the carrier is subject to the penalties provided by § 4–113(d) of this article.

(iii) Except as provided in subsection (o) of this section, if, under subparagraph (i)1 of this paragraph, a carrier provides notice to the provider of its intent to continue to process the provider's application to obtain necessary credentialing information, the carrier, within 120 days after the date the notice is provided, shall:

1. accept or reject the provider for participation on the carrier's provider panel; and

2. send written notice of the acceptance or rejection to the provider at the address listed in the application.

(iv) The failure of a carrier to provide the notice required under subparagraph (iii)2 of this paragraph is a violation of this article and the carrier is subject to the provisions of and penalties provided by §§ 4–113 and 4–114 of this article.

(4) **(I) 1. ~~A~~ EXCEPT AS PROVIDED IN SUBSUBPARAGRAPH 4 OF THIS SUBPARAGRAPH, A CARRIER THAT RECEIVES A COMPLETE APPLICATION SHALL NOTIFY THE PROVIDER THAT THE APPLICATION IS COMPLETE.**

2. ~~NOTICE~~ IF A CARRIER DOES NOT ACCEPT APPLICATIONS THROUGH THE ONLINE CREDENTIALING SYSTEM, NOTICE SHALL BE GIVEN TO THE PROVIDER AT THE ADDRESS LISTED IN THE APPLICATION WITHIN 10 DAYS AFTER THE DATE THE APPLICATION IS RECEIVED.

3. IF A CARRIER ACCEPTS APPLICATIONS THROUGH THE ONLINE CREDENTIALING SYSTEM, THE NOTICE FROM THE ONLINE CREDENTIALING SYSTEM TO THE PROVIDER THAT THE CARRIER HAS RECEIVED THE PROVIDER'S APPLICATION SHALL BE CONSIDERED NOTICE THAT THE APPLICATION IS COMPLETE.

4. THIS SUBPARAGRAPH DOES NOT APPLY TO A CARRIER THAT ARRANGES A DENTAL PROVIDER PANEL UNTIL THE COMMISSIONER CERTIFIES THAT THE ONLINE CREDENTIALING SYSTEM IS CAPABLE OF ACCEPTING THE UNIFORM CREDENTIALING FORM DESIGNATED BY THE COMMISSIONER FOR DENTAL PROVIDER PANELS.

[(i)**] (II) 1.** A carrier that receives an incomplete application shall return the application to the provider at the address listed in the application within 10 days after the date the application is received.

[(ii)**] 2.** The carrier shall indicate to the provider what information is needed to make the application complete.

[(iii)**] 3.** The provider may return the completed application to the carrier.

[(iv)**] 4.** After the carrier receives the completed application, the carrier is subject to the time periods established in paragraph (3) of this subsection.

(5) A carrier may charge a reasonable fee for an application submitted to the carrier under this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 530

(Senate Bill 718)

AN ACT concerning

Telephone Companies – Distribution of Telephone Directories ~~to Residential Customers~~

FOR the purpose of providing that a telephone company may not be required to distribute a certain telephone directory to an address in the State unless the property owner or an occupant requests the directory; requiring a telephone company to provide certain notice to a customer if the telephone company elects not to deliver a print telephone directory to the customer at an address in the State; requiring a telephone company to deliver a print telephone directory to a customer at no cost to the customer under certain circumstances; requiring the Public Service Commission to review certain complaints, make certain determinations, and report certain findings and recommendations to certain committees of the General Assembly on or before a certain date; and generally relating to telephone companies and the distribution of telephone directories.

BY adding to
Article – Public Utilities
Section 8–206
Annotated Code of Maryland
(2010 Replacement Volume)

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

Article – Public Utilities

8–206.

(A) THIS SECTION APPLIES TO TELEPHONE DIRECTORIES DISTRIBUTED BY, OR ON BEHALF OF, A TELEPHONE COMPANY OTHER THAN ADVERTISEMENT–BASED BUSINESS DIRECTORIES.

(B) A TELEPHONE COMPANY MAY NOT BE REQUIRED TO DISTRIBUTE A TELEPHONE DIRECTORY TO AN ADDRESS IN THE STATE UNLESS THE PROPERTY OWNER OR AN OCCUPANT REQUESTS THE TELEPHONE DIRECTORY.

(C) (1) IF A TELEPHONE COMPANY ELECTS NOT TO DISTRIBUTE A PRINT TELEPHONE DIRECTORY TO A CUSTOMER AT AN ADDRESS IN THE STATE, THE TELEPHONE COMPANY SHALL PROVIDE NOTICE AS TO HOW THE CUSTOMER MAY REQUEST A PRINT TELEPHONE DIRECTORY.

(2) THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL:

(I) INCLUDE A TOLL–FREE TELEPHONE NUMBER A CUSTOMER MAY CALL TO REQUEST A PRINT TELEPHONE DIRECTORY; AND

(II) BE INCLUDED:

1. IN EACH CUSTOMER'S BILL AT LEAST ONCE EACH YEAR;

2. ON THE TELEPHONE COMPANY'S WEB SITE; AND

3. IN BOLD RED PRINT, ON THE FRONT COVER AND THE TABLE OF CONTENTS PAGE OF ANY PRINT ADVERTISEMENT–BASED BUSINESS DIRECTORY DISTRIBUTED ON BEHALF OF THE TELEPHONE COMPANY THROUGH SEPTEMBER 30, 2016.

(3) IF A CUSTOMER REQUESTS A PRINT TELEPHONE DIRECTORY, THE TELEPHONE COMPANY SHALL DELIVER THE PRINT TELEPHONE DIRECTORY TO THE CUSTOMER AT NO COST TO THE CUSTOMER.

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1, 2013, the Public Service Commission shall:

(1) (i) review complaints received from residential customers who have indicated that they have not received a print telephone directory; and

(ii) based on the complaints, determine whether the notification requirement under § 8–206 of the Public Utilities Article as enacted by Section 1 of this Act is an adequate way to notify various customer groups, including the elderly and low–income individuals, as to how to request a print telephone directory; and

(2) report its findings and recommendations to the Senate Finance Committee and the House Economic Matters Committee, in accordance with § 2–1246 of the State Government Article.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 531

(House Bill 529)

AN ACT concerning

Telephone Companies – Distribution of Telephone Directories ~~to Residential Customers~~

FOR the purpose of providing that a telephone company may not be required to distribute a certain telephone directory to an address in the State unless the property owner or an occupant requests the directory; requiring a telephone company to provide certain notice to ~~customers~~ *a customer* if the telephone company elects not to deliver a *print* telephone directory to ~~each~~ *the* customer *at an address in the State*; requiring a telephone company to deliver a print telephone directory to a customer at no cost to the customer under certain circumstances; *requiring the Public Service Commission to review certain complaints, make certain determinations, and report certain findings and recommendations to certain committees of the General Assembly on or before a certain date;* and generally relating to telephone companies and the distribution of telephone directories.

BY adding to
Article – Public Utilities
Section 8–206
Annotated Code of Maryland
(2010 Replacement Volume)

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

Article – Public Utilities

8–206.

(A) THIS SECTION APPLIES TO TELEPHONE DIRECTORIES DISTRIBUTED BY, OR ON BEHALF OF, A TELEPHONE COMPANY OTHER THAN ADVERTISEMENT–BASED BUSINESS DIRECTORIES.

(B) A TELEPHONE COMPANY MAY NOT BE REQUIRED TO DISTRIBUTE A TELEPHONE DIRECTORY TO AN ADDRESS IN THE STATE UNLESS THE PROPERTY OWNER OR AN OCCUPANT REQUESTS THE TELEPHONE DIRECTORY.

(C) (1) IF A TELEPHONE COMPANY ELECTS NOT TO DISTRIBUTE A *PRINT* TELEPHONE DIRECTORY TO ~~EACH~~ *A* CUSTOMER *AT AN ADDRESS IN THE STATE*, THE TELEPHONE COMPANY SHALL PROVIDE NOTICE AS TO HOW ~~A~~ *THE* CUSTOMER MAY REQUEST A PRINT TELEPHONE DIRECTORY.

(2) THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL:

(I) INCLUDE A TOLL–FREE TELEPHONE NUMBER A CUSTOMER MAY CALL TO REQUEST A PRINT TELEPHONE DIRECTORY; AND

(II) BE INCLUDED:

1. ~~WITH CUSTOMER BILLS~~ IN EACH CUSTOMER'S BILL AT LEAST ONCE EACH YEAR; ~~AND~~

2. ON THE *TELEPHONE* COMPANY'S WEB SITE *; AND*

3. IN BOLD RED PRINT, ON THE FRONT COVER AND THE TABLE OF CONTENTS PAGE OF ANY PRINT ADVERTISEMENT–BASED BUSINESS DIRECTORY DISTRIBUTED ON BEHALF OF THE TELEPHONE COMPANY THROUGH SEPTEMBER 30, 2016.

(3) IF A CUSTOMER REQUESTS A PRINT TELEPHONE DIRECTORY, THE TELEPHONE COMPANY SHALL DELIVER THE *PRINT TELEPHONE* DIRECTORY TO THE CUSTOMER AT NO COST TO THE CUSTOMER.

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1, 2013, the Public Service Commission shall:

(1) (i) review complaints received from residential customers who have indicated that they have not received a print telephone directory; and

(ii) based on the complaints, determine whether the notification requirement under § 8–206 of the Public Utilities Article as enacted by Section 1 of this Act is an adequate way to notify various customer groups, including the elderly and low–income individuals, as to how to request a print telephone directory; and

(2) report its findings and recommendations to the Senate Finance Committee and the House Economic Matters Committee, in accordance with § 2–1246 of the State Government Article.

SECTION ~~2.~~ *3.* AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 532

(Senate Bill 722)

AN ACT concerning

Electronic Health Records – Incentives for Health Care Providers – Regulations

FOR the purpose of ~~exempting a certain group model health maintenance organization from the definition of "carrier" for purposes of certain regulations relating to electronic health records; requiring certain regulations relating to electronic health records to require incentives for the adoption and use of electronic health records for each of certain types of health care providers; requiring certain regulations to permit certain health care providers to specify to a State–regulated payor the form of incentive the health care provider will receive; requiring certain regulations to include an option for the health care provider to specify that the incentive shall be limited to a certain monetary payment~~ requiring certain incentives for the adoption and use of electronic health records to be paid in cash, unless a certain payor and health care provider agree on an incentive of equivalent value; prohibiting certain regulations from requiring a group model health maintenance organization from providing a certain incentive to a certain health care provider; *requiring the regulations to allow a State–regulated payor to request certain information and, under certain circumstances, reduce an incentive amount; authorizing the Maryland Health Care Commission to audit a State–regulated payor and a health care provider and, under certain circumstances, request corrective action;* requiring the ~~Maryland Health Care~~ Commission to conduct a certain study and report on its findings to certain committees of the General Assembly on or before a certain date; and generally relating to electronic health records.

BY repealing and reenacting, without amendments,
Article – Health – General
Section 19–142(a), (b), (c), (d), (e), and (h)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section ~~19–142(b) and~~ 19–143(d)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

19–142.

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

(b) "Carrier" means:

(1) An insurer;

(2) A nonprofit health service plan;

(3) A health maintenance organization~~, OTHER THAN A GROUP MODEL HEALTH MAINTENANCE ORGANIZATION AS DEFINED IN § 19–713.6 OF THIS TITLE~~; or

(4) Any other person that provides health benefit plans subject to regulation by the State.

(c) "Electronic health record" means an electronic record of health–related information on an individual that:

(1) Includes patient demographic and clinical health information; and

(2) Has the capacity to:

(i) Provide clinical decision support;

(ii) Support physician order entry;

(iii) Capture and query information relevant to health care quality; and

(iv) Exchange electronic health information with and integrate the information from other sources.

(d) (1) "Health benefit plan" means a hospital or medical policy, contract, or certificate issued by a carrier.

(2) "Health benefit plan" does not include:

(i) Coverage for accident or disability income 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 or property medical payment insurance;

(vi) Credit–only insurance;

(vii) Coverage for on–site medical clinics;

(viii) Dental or vision insurance;

(ix) Long–term care insurance or benefits for nursing home care, home health care, community–based care, or any combination of these;

(x) Coverage only for a specified disease or illness;

(xi) Hospital indemnity or other fixed indemnity insurance; or

(xii) The following benefits if offered as a separate insurance policy:

1. Medicare supplemental health insurance, as defined in § 1882(g)(1) of the Social Security Act;

2. Coverage supplemental to the coverage provided under Chapter 55 of Title 10, U.S.C.; or

3. Similar supplemental coverage provided to coverage under an employer–sponsored plan.

(e) (1) "Health care provider" means:

(i) A person who is licensed, certified, or otherwise authorized under the Health Occupations Article to provide health care in the ordinary course of business or practice of a profession or in an approved education or training program; or

(ii) A facility where health care is provided to patients or recipients, including:

1. A facility, as defined in § 10–101(e) of this article;

2. A hospital, as defined in § 19–301 of this title;

3. A related institution, as defined in § 19–301 of this title;

4. An outpatient clinic;

5. A freestanding medical facility, as defined in § 19–3A–01 of this title;

6. An ambulatory surgical facility, as defined in § 19–3B–01 of this title; and

7. A nursing home, as defined in § 19–1401 of this title.

(2) "Health care provider" does not include a health maintenance organization as defined in § 19–701 of this title.

(h) (1) "State–regulated payor" means:

(i) The State Employee and Retiree Health and Welfare Benefits Program; and

(ii) A carrier issuing or delivering health benefit plans in the State.

(2) "State–regulated payor" does not include a managed care organization as defined in Title 15, Subtitle 1 of this article.

19–143.

(d) (1) On or before September 1, 2011, the Commission, in consultation with the Department, payors, and health care providers, shall adopt regulations that require State–regulated payors to provide incentives to health care providers to promote the adoption and meaningful use of electronic health records.

(2) Incentives required under the regulations:

(i) Shall have monetary value;

(ii) Shall facilitate the use of electronic health records by health care providers in the State;

(iii) To the extent feasible, shall recognize and be consistent with existing payor incentives that promote the adoption and meaningful use of electronic health records;

(iv) Shall take into account:

1. Incentives provided to health care providers under Medicare and Medicaid; and

2. Any grants or loans that are available to health care providers from the federal government; ~~and~~

(v) May include:

1. Increased reimbursement for specific services;

2. Lump sum payments;

3. Gain–sharing arrangements;

4. Rewards for quality and efficiency;

5. In–kind payments; and

6. Other items or services to which a specific monetary value can be assigned**; AND**

(VI) SHALL BE PAID IN CASH, UNLESS THE STATE–REGULATED PAYOR AND THE HEALTH CARE PROVIDER AGREE ON AN INCENTIVE OF EQUIVALENT VALUE.

(3) The regulations **[**need not**]** ~~SHALL:~~

~~(I)~~ require incentives for the adoption and meaningful use of electronic health records, for each type of health care provider listed in § 19–142(e) of this subtitle~~;~~

~~(II) PERMIT THE HEALTH CARE PROVIDER TO SPECIFY TO A STATE–REGULATED PAYOR THE FORM OF INCENTIVE THE HEALTH CARE PROVIDER WILL RECEIVE; AND~~

~~(III) INCLUDE AN OPTION FOR THE HEALTH CARE PROVIDER TO SPECIFY THAT THE INCENTIVE SHALL BE LIMITED SOLELY TO A DIRECT MONETARY PAYMENT~~.

(4) If federal law is amended to allow the State to regulate payments made by entities that self–insure their health benefit plans, regulations adopted under this section shall apply to those entities to the same extent to which they apply to State–regulated payors.

(5) REGULATIONS ADOPTED UNDER THIS SUBSECTION ~~MAY~~*:*

(I) MAY* NOT REQUIRE A GROUP MODEL HEALTH MAINTENANCE ORGANIZATION, AS DEFINED IN § 19–713.6 OF THIS TITLE, TO PROVIDE AN INCENTIVE TO A HEALTH CARE PROVIDER WHO IS EMPLOYED BY THE MULTISPECIALTY GROUP OF PHYSICIANS UNDER CONTRACT WITH THE GROUP MODEL HEALTH MAINTENANCE ORGANIZATION*; AND

(II) SHALL ALLOW A STATE–REGULATED PAYOR TO:

1. REQUEST INFORMATION FROM A HEALTH CARE PROVIDER TO VALIDATE THE HEALTH CARE PROVIDER'S INCENTIVE CLAIM; AND

2. IF THE STATE–REGULATED PAYOR DETERMINES THAT A DUPLICATE INCENTIVE PAYMENT OR AN OVERPAYMENT HAS BEEN MADE, REDUCE THE INCENTIVE AMOUNT.

(6) THE COMMISSION MAY:

(I) AUDIT THE STATE–REGULATED PAYOR OR THE HEALTH CARE PROVIDER FOR COMPLIANCE WITH THE REGULATIONS ADOPTED UNDER THIS SUBSECTION; AND

(II) IF IT FINDS NONCOMPLIANCE, REQUEST CORRECTIVE ACTION.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Health Care Commission, in consultation with the Department of Health and Mental Hygiene, payors, and health care providers, shall study whether the scope of health care providers that may receive incentives for the

adoption and use of electronic health records from State–regulated payors should be expanded beyond primary care providers.

(b) On or before January 1, 2013, the Maryland Health Care Commission shall report on its findings under subsection (a) of this section to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2–1246 of the State Government Article.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 533

(House Bill 736)

AN ACT concerning

Electronic Health Records – Incentives for Health Care Providers – Regulations

FOR the purpose of ~~exempting a certain group model health maintenance organization from the definition of "carrier" for purposes of certain regulations relating to electronic health records; requiring certain regulations relating to electronic health records to require incentives for the adoption and use of electronic health records for each of certain types of health care providers; requiring certain regulations to permit certain health care providers to specify to a State–regulated payor the form of incentive the health care provider will receive; requiring certain regulations to include an option for the health care provider to specify that the incentive shall be limited to a certain monetary payment~~ requiring certain incentives for the adoption and use of electronic health records to be paid in cash, unless a certain payor and health care provider agree on an incentive of equivalent value; prohibiting certain regulations from requiring a group model health maintenance organization from providing a certain incentive to a certain health care provider; requiring the regulations to allow a State–regulated payor to request certain information and, under certain circumstances, reduce an incentive amount; authorizing the Maryland Health Care Commission to audit a State–regulated payor and a health care provider and, under certain circumstances, request corrective action; requiring the Commission to conduct a certain study and report on its findings to certain committees of the General Assembly on or before a certain date; and generally relating to electronic health records.

BY repealing and reenacting, without amendments,

Article – Health – General
Section 19–142(a), (b), (c), (d), (e), and (h)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section ~~19–142(b) and~~ 19–143(d)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

19–142.

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

(b) "Carrier" means:

(1) An insurer;

(2) A nonprofit health service plan;

(3) A health maintenance organization~~, OTHER THAN A GROUP MODEL HEALTH MAINTENANCE ORGANIZATION AS DEFINED IN § 19–713.6 OF THIS TITLE~~; or

(4) Any other person that provides health benefit plans subject to regulation by the State.

(c) "Electronic health record" means an electronic record of health–related information on an individual that:

(1) Includes patient demographic and clinical health information; and

(2) Has the capacity to:

(i) Provide clinical decision support;

(ii) Support physician order entry;

(iii) Capture and query information relevant to health care quality; and

(iv) Exchange electronic health information with and integrate the information from other sources.

(d) (1) "Health benefit plan" means a hospital or medical policy, contract, or certificate issued by a carrier.

(2) "Health benefit plan" does not include:

(i) Coverage for accident or disability income 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 or property medical payment insurance;

(vi) Credit–only insurance;

(vii) Coverage for on–site medical clinics;

(viii) Dental or vision insurance;

(ix) Long–term care insurance or benefits for nursing home care, home health care, community–based care, or any combination of these;

(x) Coverage only for a specified disease or illness;

(xi) Hospital indemnity or other fixed indemnity insurance; or

(xii) The following benefits if offered as a separate insurance policy:

1. Medicare supplemental health insurance, as defined in § 1882(g)(1) of the Social Security Act;

2. Coverage supplemental to the coverage provided under Chapter 55 of Title 10, U.S.C.; or

3. Similar supplemental coverage provided to coverage under an employer–sponsored plan.

(e) (1) "Health care provider" means:

(i) A person who is licensed, certified, or otherwise authorized under the Health Occupations Article to provide health care in the ordinary course of business or practice of a profession or in an approved education or training program; or

(ii) A facility where health care is provided to patients or recipients, including:

1. A facility, as defined in § 10–101(e) of this article;

2. A hospital, as defined in § 19–301 of this title;

3. A related institution, as defined in § 19–301 of this title;

4. An outpatient clinic;

5. A freestanding medical facility, as defined in § 19–3A–01 of this title;

6. An ambulatory surgical facility, as defined in § 19–3B–01 of this title; and

7. A nursing home, as defined in § 19–1401 of this title.

(2) "Health care provider" does not include a health maintenance organization as defined in § 19–701 of this title.

(h) (1) "State–regulated payor" means:

(i) The State Employee and Retiree Health and Welfare Benefits Program; and

(ii) A carrier issuing or delivering health benefit plans in the State.

(2) "State–regulated payor" does not include a managed care organization as defined in Title 15, Subtitle 1 of this article.

19–143.

(d) (1) On or before September 1, 2011, the Commission, in consultation with the Department, payors, and health care providers, shall adopt regulations that require State–regulated payors to provide incentives to health care providers to promote the adoption and meaningful use of electronic health records.

(2) Incentives required under the regulations:

(i) Shall have monetary value;

(ii) Shall facilitate the use of electronic health records by health care providers in the State;

(iii) To the extent feasible, shall recognize and be consistent with existing payor incentives that promote the adoption and meaningful use of electronic health records;

(iv) Shall take into account:

1. Incentives provided to health care providers under Medicare and Medicaid; and

2. Any grants or loans that are available to health care providers from the federal government; ~~and~~

(v) May include:

1. Increased reimbursement for specific services;

2. Lump sum payments;

3. Gain–sharing arrangements;

4. Rewards for quality and efficiency;

5. In–kind payments; and

6. Other items or services to which a specific monetary value can be assigned**; AND**

(VI) SHALL BE PAID IN CASH, UNLESS THE STATE–REGULATED PAYOR AND THE HEALTH CARE PROVIDER AGREE ON AN INCENTIVE OF EQUIVALENT VALUE.

(3) The regulations ~~[~~need not~~]~~ ~~SHALL:~~

~~(I)~~ require incentives for the adoption and meaningful use of electronic health records, for each type of health care provider listed in § 19–142(e) of this subtitle~~;~~

~~(II) PERMIT THE HEALTH CARE PROVIDER TO SPECIFY TO A STATE–REGULATED PAYOR THE FORM OF INCENTIVE THE HEALTH CARE PROVIDER WILL RECEIVE; AND~~

~~(III) INCLUDE AN OPTION FOR THE HEALTH CARE PROVIDER TO SPECIFY THAT THE INCENTIVE SHALL BE LIMITED SOLELY TO A DIRECT MONETARY PAYMENT~~.

(4) If federal law is amended to allow the State to regulate payments made by entities that self–insure their health benefit plans, regulations adopted under this section shall apply to those entities to the same extent to which they apply to State–regulated payors.

(5) REGULATIONS ADOPTED UNDER THIS SUBSECTION:

(I) MAY NOT REQUIRE A GROUP MODEL HEALTH MAINTENANCE ORGANIZATION, AS DEFINED IN § 19–713.6 OF THIS TITLE, TO PROVIDE AN INCENTIVE TO A HEALTH CARE PROVIDER WHO IS EMPLOYED BY THE MULTISPECIALTY GROUP OF PHYSICIANS UNDER CONTRACT WITH THE GROUP MODEL HEALTH MAINTENANCE ORGANIZATION; AND

(II) SHALL ALLOW A STATE–REGULATED PAYOR TO:

1. REQUEST INFORMATION FROM A HEALTH CARE PROVIDER TO VALIDATE THE HEALTH CARE PROVIDER'S INCENTIVE CLAIM; AND

2. IF THE STATE–REGULATED PAYOR DETERMINES THAT A DUPLICATE INCENTIVE PAYMENT OR AN OVERPAYMENT HAS BEEN MADE, REDUCE THE INCENTIVE AMOUNT.

(6) THE COMMISSION MAY:

(I) AUDIT THE STATE–REGULATED PAYOR OR THE HEALTH CARE PROVIDER FOR COMPLIANCE WITH THE REGULATIONS ADOPTED UNDER THIS SUBSECTION; AND

(II) IF IT FINDS NONCOMPLIANCE, REQUEST CORRECTIVE ACTION.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Health Care Commission, in consultation with the Department of Health and Mental Hygiene, payors, and health care providers, shall study whether the scope of health care providers that may receive incentives for the adoption and use of electronic health records from State–regulated payors should be expanded beyond primary care providers.

(b) On or before January 1, 2013, the Maryland Health Care Commission shall report on its findings under subsection (a) of this section to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2–1246 of the State Government Article.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 534

(Senate Bill 723)

AN ACT concerning

Medical Records – Health Information Exchanges

FOR the purpose of ~~authorizing~~ requiring the Maryland Health Care Commission to adopt regulations for the privacy and security of protected health information obtained or released through a health information exchange by certain persons; requiring the regulations to include protections for the secondary use of certain protected information; providing that the regulations may not apply to protected health information exchanged between and among certain persons; requiring the Commission to consult with certain persons before adopting the regulations; establishing certain limitations on the sale of data obtained or released through a health information exchange; requiring certain ~~payors that release protected health information through a health information exchange to certain health care providers to connect and provide the protected health information electronically to the health information exchange designated by the Commission and the Health Services Cost Review Commission under a certain provision of law~~ entities to connect to the State designated exchange and respond to certain requests for clinical information transmitted through the exchange in a certain manner; providing that a certain consent applies to information transmitted through the State designated exchange or by other means; authorizing the Commission to adopt certain regulations relating to the State designated exchange; providing for the effect of certain provisions of this Act; providing that the existence of a health information exchange does not, in itself, ~~change a certain standard of care for obtaining or releasing protected health information; providing that, in certain actions, a health information exchange or a health care provider may not be held liable based solely on certain actions relating to a health information exchange, except under certain circumstances; providing that certain provisions of this Act do not~~ create a new cause of action against a health information exchange or a health care provider; defining certain terms;

and generally relating to obtaining and releasing protected health information through a health information exchange.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 4–301
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – Health – General
Section 4–302.2, 4–302.3, and 4–302.4
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

4–301.

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

(b) (1) "Directory information" means information concerning the presence and general health condition of a patient who has been admitted to a health care facility or who is currently receiving emergency health care in a health care facility.

(2) "Directory information" does not include health care information developed primarily in connection with mental health services.

(c) "Disclose or disclosure" means the transmission or communication of information in a medical record, including an acknowledgment that a medical record on a particular patient or recipient exists.

(d) "Emergency" means a situation when, in the professional opinion of the health care provider, a clear and significant risk of death or imminent serious injury or harm to a patient or recipient exists.

(e) "General health condition" means the health status of a patient described in terms of "critical", "poor", "fair", "good", "excellent", or terms denoting similar conditions.

(f) "Health care" means any care, treatment, or procedure by a health care provider:

(1) To diagnose, evaluate, rehabilitate, manage, treat, or maintain the physical or mental condition of a patient or recipient; or

(2) That affects the structure or any function of the human body.

(g) (1) "Health care provider" means:

(i) A person who is licensed, certified, or otherwise authorized under the Health Occupations Article or § 13–516 of the Education Article to provide health care in the ordinary course of business or practice of a profession or in an approved education or training program; or

(ii) A facility where health care is provided to patients or recipients, including a facility as defined in § 10–101(e) of this article, a hospital as defined in § 19–301 of this article, a related institution as defined in § 19–301 of this article, a health maintenance organization as defined in § 19–701(g) of this article, an outpatient clinic, and a medical laboratory.

(2) "Health care provider" includes the agents, employees, officers, and directors of a facility and the agents and employees of a health care provider.

(H) "HEALTH INFORMATION EXCHANGE" MEANS AN INFRASTRUCTURE THAT PROVIDES ORGANIZATIONAL AND TECHNICAL CAPABILITIES FOR THE EXCHANGE OF PROTECTED HEALTH INFORMATION ELECTRONICALLY AMONG ENTITIES NOT UNDER COMMON OWNERSHIP.

[(h)**] (I)** (1) "Medical record" means any oral, written, or other transmission in any form or medium of information that:

(i) Is entered in the record of a patient or recipient;

(ii) Identifies or can readily be associated with the identity of a patient or recipient; and

(iii) Relates to the health care of the patient or recipient.

(2) "Medical record" includes any:

(i) Documentation of disclosures of a medical record to any person who is not an employee, agent, or consultant of the health care provider;

(ii) File or record maintained under § 12–403(b)(13) of the Health Occupations Article by a pharmacy of a prescription order for drugs, medicines, or devices that identifies or may be readily associated with the identity of a patient;

(iii) Documentation of an examination of a patient regardless of who:

1. Requested the examination; or

2. Is making payment for the examination; and

(iv) File or record received from another health care provider that:

1. Relates to the health care of a patient or recipient received from that health care provider; and

2. Identifies or can readily be associated with the identity of the patient or recipient.

[(i)**] (J)** (1) "Mental health services" means health care rendered to a recipient primarily in connection with the diagnosis, evaluation, treatment, case management, or rehabilitation of any mental disorder.

(2) For acute general hospital services, mental health services are considered to be the primarily rendered service only if service is provided pursuant to Title 10, Subtitle 6 or Title 12 of this article.

[(j)**] (K)** "Patient" means a person who receives health care and on whom a medical record is maintained.

[(k)**] (L)** "Person in interest" means:

(1) An adult on whom a health care provider maintains a medical record;

(2) A person authorized to consent to health care for an adult consistent with the authority granted;

(3) A duly appointed personal representative of a deceased person;

(4) (i) A minor, if the medical record concerns treatment to which the minor has the right to consent and has consented under Title 20, Subtitle 1 of this article; or

(ii) A parent, guardian, custodian, or a representative of the minor designated by a court, in the discretion of the attending physician who provided the treatment to the minor, as provided in § 20–102 or § 20–104 of this article;

(5) If item (4) of this subsection does not apply to a minor:

(i) A parent of the minor, except if the parent's authority to consent to health care for the minor has been specifically limited by a court order or a valid separation agreement entered into by the parents of the minor; or

(ii) A person authorized to consent to health care for the minor consistent with the authority granted; or

(6) An attorney appointed in writing by a person listed in item (1), (2), (3), (4), or (5) of this subsection.

[(l)**] (M)** "Primary provider of mental health services" means the designated mental health services provider who:

(1) Has primary responsibility for the development of the mental health treatment plan for the recipient; and

(2) Is actively involved in providing that treatment.

(N) "PROTECTED HEALTH INFORMATION" MEANS ALL INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION HELD OR TRANSMITTED BY A COVERED ENTITY OR ITS BUSINESS ASSOCIATE PROTECTED UNDER THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES PRIVACY RULE.

[(m)**] (O)** "Recipient" means a person who has applied for, for whom an application has been submitted, or who has received mental health services.

4–302.2.

(A) THE MARYLAND HEALTH CARE COMMISSION ~~MAY~~ SHALL ADOPT REGULATIONS FOR THE PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION OBTAINED OR RELEASED THROUGH A HEALTH INFORMATION EXCHANGE BY:

(1) A HEALTH CARE PROVIDER; ~~OR~~

(2) A PAYOR THAT HOLDS A VALID CERTIFICATE OF AUTHORITY ISSUED BY THE MARYLAND INSURANCE COMMISSIONER;

(3) A HEALTH CARE CONSUMER; OR

(4) ANY PERSON AUTHORIZED BY A HEALTH CARE CONSUMER TO ACT ON BEHALF OF THE HEALTH CARE CONSUMER.

(B) THE REGULATIONS ADOPTED UNDER SUBSECTION (A) OF THIS SECTION SHALL INCLUDE PROTECTIONS FOR THE SECONDARY USE OF

PROTECTED HEALTH INFORMATION OBTAINED OR RELEASED THROUGH A HEALTH INFORMATION EXCHANGE.

(C) DATA OBTAINED OR RELEASED THROUGH A HEALTH INFORMATION EXCHANGE:

(1) MAY NOT BE SOLD FOR FINANCIAL REMUNERATION UNTIL THE REGULATIONS REQUIRED UNDER SUBSECTIONS (A) AND (B) OF THIS SECTION ARE ADOPTED; AND

(2) MAY BE SOLD FOR FINANCIAL REMUNERATION ONLY IN ACCORDANCE WITH THE REGULATIONS ADOPTED UNDER SUBSECTIONS (A) AND (B) OF THIS SECTION.

~~(B)~~ (D) ~~ANY REGULATIONS~~ REGULATIONS ADOPTED UNDER ~~SUBSECTION (A)~~ SUBSECTIONS (A) AND (B) OF THIS SECTION MAY NOT APPLY TO PROTECTED HEALTH INFORMATION EXCHANGED:

(1) BETWEEN A HOSPITAL AND CREDENTIALED MEMBERS OF THE HOSPITAL'S MEDICAL STAFF; ~~OR~~

(2) AMONG CREDENTIALED MEMBERS OF A HOSPITAL'S MEDICAL STAFF; OR

(3) BETWEEN A HOSPITAL AND ANCILLARY CLINICAL SERVICE PROVIDERS THAT ARE AFFILIATED WITH THE HOSPITAL AND HAVE SIGNED A BUSINESS ASSOCIATE AGREEMENT.

~~(C)~~ (E) THE MARYLAND HEALTH CARE COMMISSION SHALL CONSULT WITH HEALTH CARE PROVIDERS, PAYORS, STATE HEALTH AGENCIES, CONSUMER ADVOCATES, AND EMPLOYERS BEFORE ADOPTING ~~ANY~~ REGULATIONS UNDER ~~SUBSECTION (A)~~ SUBSECTIONS (A) AND (B) OF THIS SECTION.

4–302.3.

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

(2) "STATE DESIGNATED EXCHANGE" MEANS THE HEALTH INFORMATION EXCHANGE DESIGNATED BY THE MARYLAND HEALTH CARE COMMISSION AND THE HEALTH SERVICES COST REVIEW COMMISSION UNDER § 19–143 OF THIS ARTICLE.

(3) "STANDARD REQUEST" MEANS A REQUEST FOR CLINICAL INFORMATION FROM A HEALTH INFORMATION EXCHANGE THAT CONFORMS TO THE MAJOR STANDARDS VERSION SPECIFIED BY THE OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY.

(B) THIS SECTION APPLIES TO:

(1) EXCEPT FOR THE STATE DESIGNATED EXCHANGE, A HEALTH INFORMATION EXCHANGE OPERATING IN THE STATE; AND

(2) A ~~A~~ PAYOR THAT:

~~(1)~~ (I) HOLDS A VALID CERTIFICATE OF AUTHORITY ISSUED BY THE MARYLAND INSURANCE COMMISSIONER; AND

~~(2)~~ (II) ACTS AS, OPERATES, OR OWNS A HEALTH INFORMATION EXCHANGE.

~~(B)~~ (C) ~~A PAYOR~~ AN ENTITY TO WHICH THIS SECTION APPLIES ~~THAT RELEASES PROTECTED HEALTH INFORMATION THROUGH A HEALTH INFORMATION EXCHANGE TO A HEALTH CARE PROVIDER THAT IS NOT THE HEALTH CARE PROVIDER THAT GENERATED THE PROTECTED HEALTH INFORMATION SHALL CONNECT AND PROVIDE THE PROTECTED HEALTH INFORMATION ELECTRONICALLY TO THE HEALTH INFORMATION EXCHANGE DESIGNATED BY THE MARYLAND HEALTH CARE COMMISSION AND THE HEALTH SERVICES COST REVIEW COMMISSION UNDER § 19–143 OF THIS ARTICLE~~ SHALL CONNECT TO THE STATE DESIGNATED EXCHANGE IN A MANNER CONSISTENT WITH APPLICABLE FEDERAL AND STATE PRIVACY LAWS.

(D) WHEN A STANDARD REQUEST FOR CLINICAL INFORMATION IS RECEIVED THROUGH THE STATE DESIGNATED EXCHANGE, AN ENTITY TO WHICH THIS SECTION APPLIES SHALL RESPOND TO THE REQUEST TO THE EXTENT AUTHORIZED UNDER FEDERAL AND STATE PRIVACY LAWS.

(E) A CONSENT FROM A PATIENT TO RELEASE CLINICAL INFORMATION TO A PROVIDER OBTAINED BY AN ENTITY TO WHICH THIS SECTION APPLIES SHALL APPLY TO INFORMATION TRANSMITTED THROUGH THE STATE DESIGNATED EXCHANGE OR BY OTHER MEANS.

(F) THE MARYLAND HEALTH CARE COMMISSION:

(1) MAY ADOPT REGULATIONS FOR IMPLEMENTING THE CONNECTIVITY TO THE STATE DESIGNATED EXCHANGE REQUIRED UNDER THIS SECTION; AND

(2) SHALL SEEK, THROUGH ANY REGULATIONS ADOPTED UNDER ITEM (1) OF THIS SUBSECTION, TO PROMOTE TECHNOLOGY STANDARDS AND FORMATS THAT CONFORM TO THOSE SPECIFIED BY THE OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY.

(G) (1) THE MARYLAND HEALTH CARE COMMISSION MAY ADOPT REGULATIONS SPECIFYING THE SCOPE OF CLINICAL INFORMATION TO BE EXCHANGED UNDER THIS SECTION.

(2) ANY REGULATIONS ADOPTED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL LIMIT THE SCOPE OF THE CLINICAL INFORMATION TO PURPOSES THAT PROMOTE:

(I) IMPROVED ACCESS TO CLINICAL RECORDS BY TREATING CLINICIANS; OR

(II) USES OF THE STATE DESIGNATED EXCHANGE IMPORTANT TO PUBLIC HEALTH AGENCIES.

(H) THIS SECTION DOES NOT:

(1) REQUIRE AN ENTITY TO WHICH THIS SECTION APPLIES TO COLLECT CLINICAL INFORMATION OR OBTAIN ANY AUTHORIZATIONS, NOT OTHERWISE REQUIRED BY FEDERAL OR STATE LAW, RELATING TO INFORMATION TO BE SENT OR RECEIVED THROUGH THE STATE DESIGNATED EXCHANGE;

(2) PROHIBIT AN ENTITY TO WHICH THIS SECTION APPLIES FROM DIRECTLY RECEIVING OR SENDING INFORMATION TO PROVIDERS OR SUBSCRIBERS OUTSIDE OF THE STATE DESIGNATED EXCHANGE; OR

(3) PROHIBIT AN ENTITY TO WHICH THIS SECTION APPLIES FROM CONNECTING AND INTEROPERATING WITH THE STATE DESIGNATED EXCHANGE IN A MANNER AND SCOPE BEYOND THAT REQUIRED UNDER THIS SECTION.

4–302.4.

~~(A)~~ THE EXISTENCE OF A HEALTH INFORMATION EXCHANGE DOES NOT, IN ITSELF, ~~CHANGE THE STANDARD OF CARE APPLICABLE TO HEALTH CARE PROVIDERS FOR OBTAINING OR RELEASING PROTECTED HEALTH INFORMATION.~~

~~(B) IN ANY ACTION AGAINST A HEALTH CARE PROVIDER OR A HEALTH INFORMATION EXCHANGE FOR DAMAGES OR OTHER RELIEF OR FOR PENALTIES OF ANY NATURE, THE HEALTH CARE PROVIDER OR HEALTH INFORMATION EXCHANGE MAY NOT BE HELD LIABLE BASED SOLELY ON OBTAINING OR FAILING TO OBTAIN, OR RELEASING OR FAILING TO RELEASE, PROTECTED HEALTH INFORMATION THROUGH A HEALTH INFORMATION EXCHANGE, UNLESS:~~

~~(1) WITH RESPECT TO A HEALTH CARE PROVIDER, THE HEALTH CARE PROVIDER VIOLATED AN APPLICABLE STANDARD OF CARE; OR~~

~~(2) WITH RESPECT TO A HEALTH INFORMATION EXCHANGE, THE HEALTH INFORMATION EXCHANGE VIOLATED AN APPLICABLE STATE OR FEDERAL LAW.~~

~~(C) THIS SECTION DOES NOT~~ **CREATE A NEW CAUSE OF ACTION AGAINST A HEALTH INFORMATION EXCHANGE OR A HEALTH CARE PROVIDER.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 535

(House Bill 784)

AN ACT concerning

Medical Records – Health Information Exchanges

FOR the purpose of ~~authorizing~~ requiring the Maryland Health Care Commission to adopt regulations for the privacy and security of protected health information obtained or released through a health information exchange by certain persons; requiring the regulations to include protections for the secondary use of certain protected information; providing that the regulations may not apply to protected health information exchanged between and among certain persons; requiring the Commission to consult with certain persons before adopting the regulations; establishing certain limitations on the sale of data obtained or released through a health information exchange; requiring certain ~~payors that release protected health information through a health information exchange to certain health care providers to connect and provide the protected health information electronically to the health information exchange designated by the Commission and the Health Services Cost Review Commission under a certain provision of law~~ entities to connect to the State designated exchange and respond to certain

requests for clinical information transmitted through the exchange in a certain manner; providing that a certain consent applies to information transmitted through the State designated exchange or by other means; authorizing the Commission to adopt certain regulations relating to the State designated exchange; providing for the effect of certain provisions of this Act; providing that the existence of a health information exchange does not, in itself, ~~change a certain standard of care for obtaining or releasing protected health information; providing that, in certain actions, a health information exchange or a health care provider may not be held liable based solely on certain actions relating to a health information exchange, except under certain circumstances; providing that certain provisions of this Act do not~~ create a new cause of action against a health information exchange or a health care provider; defining certain terms; and generally relating to obtaining and releasing protected health information through a health information exchange.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 4–301
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – Health – General
Section 4–302.2, 4–302.3, and 4–302.4
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

4–301.

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

(b) (1) "Directory information" means information concerning the presence and general health condition of a patient who has been admitted to a health care facility or who is currently receiving emergency health care in a health care facility.

(2) "Directory information" does not include health care information developed primarily in connection with mental health services.

(c) "Disclose or disclosure" means the transmission or communication of information in a medical record, including an acknowledgment that a medical record on a particular patient or recipient exists.

(d) "Emergency" means a situation when, in the professional opinion of the health care provider, a clear and significant risk of death or imminent serious injury or harm to a patient or recipient exists.

(e) "General health condition" means the health status of a patient described in terms of "critical", "poor", "fair", "good", "excellent", or terms denoting similar conditions.

(f) "Health care" means any care, treatment, or procedure by a health care provider:

(1) To diagnose, evaluate, rehabilitate, manage, treat, or maintain the physical or mental condition of a patient or recipient; or

(2) That affects the structure or any function of the human body.

(g) (1) "Health care provider" means:

(i) A person who is licensed, certified, or otherwise authorized under the Health Occupations Article or § 13–516 of the Education Article to provide health care in the ordinary course of business or practice of a profession or in an approved education or training program; or

(ii) A facility where health care is provided to patients or recipients, including a facility as defined in § 10–101(e) of this article, a hospital as defined in § 19–301 of this article, a related institution as defined in § 19–301 of this article, a health maintenance organization as defined in § 19–701(g) of this article, an outpatient clinic, and a medical laboratory.

(2) "Health care provider" includes the agents, employees, officers, and directors of a facility and the agents and employees of a health care provider.

(H) "HEALTH INFORMATION EXCHANGE" MEANS AN INFRASTRUCTURE THAT PROVIDES ORGANIZATIONAL AND TECHNICAL CAPABILITIES FOR THE EXCHANGE OF PROTECTED HEALTH INFORMATION ELECTRONICALLY AMONG ENTITIES NOT UNDER COMMON OWNERSHIP.

[(h)**] (I)** (1) "Medical record" means any oral, written, or other transmission in any form or medium of information that:

(i) Is entered in the record of a patient or recipient;

(ii) Identifies or can readily be associated with the identity of a patient or recipient; and

(iii) Relates to the health care of the patient or recipient.

(2) "Medical record" includes any:

(i) Documentation of disclosures of a medical record to any person who is not an employee, agent, or consultant of the health care provider;

(ii) File or record maintained under § 12–403(b)(13) of the Health Occupations Article by a pharmacy of a prescription order for drugs, medicines, or devices that identifies or may be readily associated with the identity of a patient;

(iii) Documentation of an examination of a patient regardless of who:

1. Requested the examination; or

2. Is making payment for the examination; and

(iv) File or record received from another health care provider that:

1. Relates to the health care of a patient or recipient received from that health care provider; and

2. Identifies or can readily be associated with the identity of the patient or recipient.

[(i)**] (J)** (1) "Mental health services" means health care rendered to a recipient primarily in connection with the diagnosis, evaluation, treatment, case management, or rehabilitation of any mental disorder.

(2) For acute general hospital services, mental health services are considered to be the primarily rendered service only if service is provided pursuant to Title 10, Subtitle 6 or Title 12 of this article.

[(j)**] (K)** "Patient" means a person who receives health care and on whom a medical record is maintained.

[(k)**] (L)** "Person in interest" means:

(1) An adult on whom a health care provider maintains a medical record;

(2) A person authorized to consent to health care for an adult consistent with the authority granted;

(3) A duly appointed personal representative of a deceased person;

(4) (i) A minor, if the medical record concerns treatment to which the minor has the right to consent and has consented under Title 20, Subtitle 1 of this article; or

(ii) A parent, guardian, custodian, or a representative of the minor designated by a court, in the discretion of the attending physician who provided the treatment to the minor, as provided in § 20–102 or § 20–104 of this article;

(5) If item (4) of this subsection does not apply to a minor:

(i) A parent of the minor, except if the parent's authority to consent to health care for the minor has been specifically limited by a court order or a valid separation agreement entered into by the parents of the minor; or

(ii) A person authorized to consent to health care for the minor consistent with the authority granted; or

(6) An attorney appointed in writing by a person listed in item (1), (2), (3), (4), or (5) of this subsection.

[(l)**] (M)** "Primary provider of mental health services" means the designated mental health services provider who:

(1) Has primary responsibility for the development of the mental health treatment plan for the recipient; and

(2) Is actively involved in providing that treatment.

(N) "PROTECTED HEALTH INFORMATION" MEANS ALL INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION HELD OR TRANSMITTED BY A COVERED ENTITY OR ITS BUSINESS ASSOCIATE PROTECTED UNDER THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES PRIVACY RULE.

[(m)**] (O)** "Recipient" means a person who has applied for, for whom an application has been submitted, or who has received mental health services.

4–302.2.

(A) THE MARYLAND HEALTH CARE COMMISSION ~~MAY~~ SHALL ADOPT REGULATIONS FOR THE PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION OBTAINED OR RELEASED THROUGH A HEALTH INFORMATION EXCHANGE BY:

(1) A HEALTH CARE PROVIDER; ~~OR~~

(2) A PAYOR THAT HOLDS A VALID CERTIFICATE OF AUTHORITY ISSUED BY THE MARYLAND INSURANCE COMMISSIONER;

(3) A HEALTH CARE CONSUMER; OR

(4) ANY PERSON AUTHORIZED BY A HEALTH CARE CONSUMER TO ACT ON BEHALF OF THE HEALTH CARE CONSUMER.

(B) THE REGULATIONS ADOPTED UNDER SUBSECTION (A) OF THIS SECTION SHALL INCLUDE PROTECTIONS FOR THE SECONDARY USE OF PROTECTED HEALTH INFORMATION OBTAINED OR RELEASED THROUGH A HEALTH INFORMATION EXCHANGE.

(C) DATA OBTAINED OR RELEASED THROUGH A HEALTH INFORMATION EXCHANGE:

(1) MAY NOT BE SOLD FOR FINANCIAL REMUNERATION UNTIL THE REGULATIONS REQUIRED UNDER SUBSECTIONS (A) AND (B) OF THIS SECTION ARE ADOPTED; AND

(2) MAY BE SOLD FOR FINANCIAL REMUNERATION ONLY IN ACCORDANCE WITH THE REGULATIONS ADOPTED UNDER SUBSECTIONS (A) AND (B) OF THIS SECTION.

~~(B)~~ (D) ~~ANY REGULATIONS~~ REGULATIONS ADOPTED UNDER ~~SUBSECTION (A)~~ SUBSECTIONS (A) AND (B) OF THIS SECTION MAY NOT APPLY TO PROTECTED HEALTH INFORMATION EXCHANGED:

(1) BETWEEN A HOSPITAL AND CREDENTIALED MEMBERS OF THE HOSPITAL'S MEDICAL STAFF; ~~OR~~

(2) AMONG CREDENTIALED MEMBERS OF A HOSPITAL'S MEDICAL STAFF; OR

(3) BETWEEN A HOSPITAL AND ANCILLARY CLINICAL SERVICE PROVIDERS THAT ARE AFFILIATED WITH THE HOSPITAL AND HAVE SIGNED A BUSINESS ASSOCIATE AGREEMENT.

~~(C)~~ (E) THE MARYLAND HEALTH CARE COMMISSION SHALL CONSULT WITH HEALTH CARE PROVIDERS, PAYORS, STATE HEALTH AGENCIES, CONSUMER ADVOCATES, AND EMPLOYERS BEFORE ADOPTING ~~ANY~~ REGULATIONS UNDER ~~SUBSECTION (A)~~ SUBSECTIONS (A) AND (B) OF THIS SECTION.

4–302.3.

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

(2) "STATE DESIGNATED EXCHANGE" MEANS THE HEALTH INFORMATION EXCHANGE DESIGNATED BY THE MARYLAND HEALTH CARE COMMISSION AND THE HEALTH SERVICES COST REVIEW COMMISSION UNDER § 19–143 OF THIS ARTICLE.

(3) "STANDARD REQUEST" MEANS A REQUEST FOR CLINICAL INFORMATION FROM A HEALTH INFORMATION EXCHANGE THAT CONFORMS TO THE MAJOR STANDARDS VERSION SPECIFIED BY THE OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY.

(B) THIS SECTION APPLIES TO:

(1) EXCEPT FOR THE STATE DESIGNATED EXCHANGE, A HEALTH INFORMATION EXCHANGE OPERATING IN THE STATE; AND

(2) A ~~A~~ PAYOR THAT:

~~(1)~~ (I) HOLDS A VALID CERTIFICATE OF AUTHORITY ISSUED BY THE MARYLAND INSURANCE COMMISSIONER; AND

~~(2)~~ (II) ACTS AS, OPERATES, OR OWNS A HEALTH INFORMATION EXCHANGE.

~~(B)~~ (C) ~~A PAYOR~~ AN ENTITY TO WHICH THIS SECTION APPLIES ~~THAT RELEASES PROTECTED HEALTH INFORMATION THROUGH A HEALTH INFORMATION EXCHANGE TO A HEALTH CARE PROVIDER THAT IS NOT THE HEALTH CARE PROVIDER THAT GENERATED THE PROTECTED HEALTH INFORMATION SHALL CONNECT AND PROVIDE THE PROTECTED HEALTH INFORMATION ELECTRONICALLY TO THE HEALTH INFORMATION EXCHANGE DESIGNATED BY THE MARYLAND HEALTH CARE COMMISSION AND THE HEALTH SERVICES COST REVIEW COMMISSION UNDER § 19–143 OF THIS ARTICLE~~ SHALL CONNECT TO THE STATE DESIGNATED EXCHANGE IN A MANNER CONSISTENT WITH APPLICABLE FEDERAL AND STATE PRIVACY LAWS.

(D) WHEN A STANDARD REQUEST FOR CLINICAL INFORMATION IS RECEIVED THROUGH THE STATE DESIGNATED EXCHANGE, AN ENTITY TO WHICH THIS SECTION APPLIES SHALL RESPOND TO THE REQUEST TO THE EXTENT AUTHORIZED UNDER FEDERAL AND STATE PRIVACY LAWS.

(E) A CONSENT FROM A PATIENT TO RELEASE CLINICAL INFORMATION TO A PROVIDER OBTAINED BY AN ENTITY TO WHICH THIS SECTION APPLIES SHALL APPLY TO INFORMATION TRANSMITTED THROUGH THE STATE DESIGNATED EXCHANGE OR BY OTHER MEANS.

(F) THE MARYLAND HEALTH CARE COMMISSION:

(1) MAY ADOPT REGULATIONS FOR IMPLEMENTING THE CONNECTIVITY TO THE STATE DESIGNATED EXCHANGE REQUIRED UNDER THIS SECTION; AND

(2) SHALL SEEK, THROUGH ANY REGULATIONS ADOPTED UNDER ITEM (1) OF THIS SUBSECTION, TO PROMOTE TECHNOLOGY STANDARDS AND FORMATS THAT CONFORM TO THOSE SPECIFIED BY THE OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY.

(G) (1) THE MARYLAND HEALTH CARE COMMISSION MAY ADOPT REGULATIONS SPECIFYING THE SCOPE OF CLINICAL INFORMATION TO BE EXCHANGED UNDER THIS SECTION.

(2) ANY REGULATIONS ADOPTED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL LIMIT THE SCOPE OF THE CLINICAL INFORMATION TO PURPOSES THAT PROMOTE:

(I) IMPROVED ACCESS TO CLINICAL RECORDS BY TREATING CLINICIANS; OR

(II) USES OF THE STATE DESIGNATED EXCHANGE IMPORTANT TO PUBLIC HEALTH AGENCIES.

(H) THIS SECTION DOES NOT:

(1) REQUIRE AN ENTITY TO WHICH THIS SECTION APPLIES TO COLLECT CLINICAL INFORMATION OR OBTAIN ANY AUTHORIZATIONS, NOT OTHERWISE REQUIRED BY FEDERAL OR STATE LAW, RELATING TO INFORMATION TO BE SENT OR RECEIVED THROUGH THE STATE DESIGNATED EXCHANGE;

(2) PROHIBIT AN ENTITY TO WHICH THIS SECTION APPLIES FROM DIRECTLY RECEIVING OR SENDING INFORMATION TO PROVIDERS OR SUBSCRIBERS OUTSIDE OF THE STATE DESIGNATED EXCHANGE; OR

(3) PROHIBIT AN ENTITY TO WHICH THIS SECTION APPLIES FROM CONNECTING AND INTEROPERATING WITH THE STATE DESIGNATED EXCHANGE IN A MANNER AND SCOPE BEYOND THAT REQUIRED UNDER THIS SECTION.

4–302.4.

~~(A)~~ **THE EXISTENCE OF A HEALTH INFORMATION EXCHANGE DOES NOT, IN ITSELF,** ~~CHANGE THE STANDARD OF CARE APPLICABLE TO HEALTH CARE PROVIDERS FOR OBTAINING OR RELEASING PROTECTED HEALTH INFORMATION.~~

~~(B) IN ANY ACTION AGAINST A HEALTH CARE PROVIDER OR A HEALTH INFORMATION EXCHANGE FOR DAMAGES OR OTHER RELIEF OR FOR PENALTIES OF ANY NATURE, THE HEALTH CARE PROVIDER OR HEALTH INFORMATION EXCHANGE MAY NOT BE HELD LIABLE BASED SOLELY ON OBTAINING OR FAILING TO OBTAIN, OR RELEASING OR FAILING TO RELEASE, PROTECTED HEALTH INFORMATION THROUGH A HEALTH INFORMATION EXCHANGE, UNLESS:~~

~~(1) WITH RESPECT TO A HEALTH CARE PROVIDER, THE HEALTH CARE PROVIDER VIOLATED AN APPLICABLE STANDARD OF CARE; OR~~

~~(2) WITH RESPECT TO A HEALTH INFORMATION EXCHANGE, THE HEALTH INFORMATION EXCHANGE VIOLATED AN APPLICABLE STATE OR FEDERAL LAW.~~

~~(C) THIS SECTION DOES NOT~~ **CREATE A NEW CAUSE OF ACTION AGAINST A HEALTH INFORMATION EXCHANGE OR A HEALTH CARE PROVIDER.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 536

(Senate Bill 740)

AN ACT concerning

State Government – Access to Public Records – Electronic Documents

FOR the purpose of requiring a custodian of a public record to provide certain applicants with a copy of the public record in a certain electronic format under

certain circumstances; establishing a certain exception; authorizing a custodian to remove certain metadata from certain documents; providing for the construction of certain provisions of this Act; clarifying that a certain act does not constitute creating~~, compiling, or programming~~ a new public record; authorizing a custodian to charge an applicant a certain fee for producing a copy of a public record in an electronic format under certain circumstances; defining a certain term; providing for the termination of this Act; and generally relating to access to public records.

BY repealing and reenacting, with amendments,
Article – State Government
Section 10–611, 10–620, and 10–621
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – State Government

10–611.

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

(b) "Applicant" means a person or governmental unit that asks to inspect a public record.

(c) "Custodian" means:

(1) the official custodian; or

(2) any other authorized individual who has physical custody and control of a public record.

(D) (1) "METADATA" MEANS INFORMATION, GENERALLY NOT VISIBLE WHEN AN ELECTRONIC DOCUMENT IS PRINTED, DESCRIBING THE HISTORY, TRACKING, OR MANAGEMENT OF THE ELECTRONIC DOCUMENT, INCLUDING INFORMATION ABOUT DATA IN THE ELECTRONIC DOCUMENT THAT DESCRIBES HOW, WHEN, AND BY WHOM THE DATA IS COLLECTED, CREATED, ACCESSED, OR MODIFIED AND HOW IT IS FORMATTED.

(2) "METADATA" DOES NOT INCLUDE:

(I) A SPREADSHEET FORMULA;

(II) A DATABASE FIELD;

(III) AN EXTERNALLY OR INTERNALLY LINKED FILE; OR

(IV) A REFERENCE TO AN EXTERNAL FILE OR HYPERLINK.

[(d)**] (E)** "Official custodian" means an officer or employee of the State or of a political subdivision who, whether or not the officer or employee has physical custody and control of a public record, is responsible for keeping the public record.

[(e)**] (F)** "Person in interest" means:

(1) a person or governmental unit that is the subject of a public record or a designee of the person or governmental unit;

(2) if the person has a legal disability, the parent or legal representative of the person; or

(3) as to requests for correction of certificates of death under § 5–310(d)(2) of the Health – General Article, the spouse, adult child, parent, adult sibling, grandparent, or guardian of the person of the deceased at the time of the deceased's death.

[(f)**] (G)** (1) Except as otherwise provided in this Part III, "personal information" means information that identifies an individual including an individual's address, driver's license number or any other identification number, medical or disability information, name, photograph or computer generated image, Social Security number, or telephone number.

(2) "Personal information" does not include an individual's driver's status, driving offenses, 5–digit zip code, or information on vehicular accidents.

[(g)**] (H)** (1) "Public record" means the original or any copy of any documentary material that:

(i) is made by a unit or instrumentality of the State government or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business; and

(ii) is in any form, including:

1. a card;

2. a computerized record;

3. correspondence;

4. a drawing;

5. film or microfilm;

6. a form;

7. a map;

8. a photograph or photostat;

9. a recording; or

10. a tape.

(2) "Public record" includes a document that lists the salary of an employee of a unit or instrumentality of the State government or of a political subdivision.

(3) "Public record" does not include a digital photographic image or signature of an individual, or the actual stored data thereof, recorded by the Motor Vehicle Administration.

[(h)**] (I)** (1) "Telephone solicitation" means the initiation of a telephone call to an individual or to the residence or business of an individual for the purpose of encouraging the purchase or rental of or investment in property, goods, or services.

(2) "Telephone solicitation" does not include a telephone call or message:

(i) to an individual who has given express permission to the person making the telephone call;

(ii) to an individual with whom the person has an established business relationship; or

(iii) by a tax–exempt, nonprofit organization.

10–620.

(a) (1) Except as otherwise provided in this subsection, an applicant who is authorized to inspect a public record may have:

(i) a copy, printout, or photograph of the public record; or

(ii) if the custodian does not have facilities to reproduce the public record, access to the public record to make the copy, printout, or photograph.

(2) (I) ~~THE~~ EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE CUSTODIAN OF A PUBLIC RECORD SHALL PROVIDE AN APPLICANT WITH A COPY OF THE PUBLIC RECORD IN A SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT IF:

1. THE PUBLIC RECORD IS IN A SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT;

2. THE APPLICANT REQUESTS A COPY OF THE PUBLIC RECORD IN A SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT; AND

3. THE CUSTODIAN IS ABLE TO PROVIDE A COPY OF THE PUBLIC RECORD, IN WHOLE OR IN PART, IN A SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT THAT DOES NOT DISCLOSE:

A. CONFIDENTIAL OR PROTECTED INFORMATION FOR WHICH THE CUSTODIAN IS REQUIRED TO DENY INSPECTION IN ACCORDANCE WITH §§ 10–615 THROUGH 10–617 OF THIS SUBTITLE; OR

B. INFORMATION FOR WHICH A CUSTODIAN HAS CHOSEN TO DENY INSPECTION IN ACCORDANCE WITH § 10–618 OF THIS SUBTITLE.

(II) THE DEPARTMENT OF ASSESSMENTS AND TAXATION IS NOT REQUIRED TO PROVIDE AN APPLICANT WITH A COPY OF THE PUBLIC RECORD IN A SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT IF THE DEPARTMENT OF ASSESSMENTS AND TAXATION HAS PROVIDED THE PUBLIC RECORD TO A CONTRACTOR THAT WILL PROVIDE THE APPLICANT A COPY OF THE PUBLIC RECORD IN A SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT FOR A REASONABLE COST.

~~(II)~~ (III) A CUSTODIAN MAY REMOVE METADATA FROM AN ELECTRONIC DOCUMENT BEFORE PROVIDING THE ELECTRONIC DOCUMENT TO AN APPLICANT BY:

1. USING A SOFTWARE PROGRAM OR FUNCTION; OR

2. CONVERTING THE ELECTRONIC DOCUMENT INTO A DIFFERENT SEARCHABLE AND ANALYZABLE FORMAT.

~~(III)~~ (IV) THIS PARAGRAPH MAY NOT BE CONSTRUED TO:

1. REQUIRE THE CUSTODIAN TO RECONSTRUCT A PUBLIC RECORD IN AN ELECTRONIC FORMAT IF THE CUSTODIAN NO LONGER HAS THE PUBLIC RECORD AVAILABLE IN ELECTRONIC FORMAT;

2. ALLOW A CUSTODIAN TO MAKE A PUBLIC RECORD AVAILABLE ONLY IN AN ELECTRONIC FORMAT;

3. REQUIRE A CUSTODIAN TO CREATE, COMPILE, OR PROGRAM A NEW PUBLIC RECORD; OR

4. REQUIRE A CUSTODIAN TO RELEASE AN ELECTRONIC RECORD IN A FORMAT THAT WOULD JEOPARDIZE OR COMPROMISE THE SECURITY OR INTEGRITY OF THE ORIGINAL RECORD OR OF ANY PROPRIETARY SOFTWARE IN WHICH IT IS MAINTAINED.

~~(IV)~~ (V) ~~THE~~ IF A PUBLIC RECORD EXISTS IN A SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT, THE ACT OF ~~EXTRACTING OR EXPORTING DATA FROM A SPREADSHEET OR DATABASE OR CONVERTING DATA FROM ONE AVAILABLE FORMAT TO ANOTHER~~ A CUSTODIAN PROVIDING A PORTION OF THE PUBLIC RECORD IN A SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT DOES NOT CONSTITUTE CREATING~~,~~ ~~COMPILING, OR~~ ~~PROGRAMMING~~ A NEW PUBLIC RECORD.

[(2)**] (3)** An applicant may not have a copy of a judgment until:

(i) the time for appeal expires; or

(ii) if an appeal is noted, the appeal is dismissed or adjudicated.

(b) (1) The copy, printout, or photograph shall be made:

(i) while the public record is in the custody of the custodian; and

(ii) whenever practicable, where the public record is kept.

(2) The official custodian may set a reasonable time schedule to make copies, printouts, or photographs.

10–621.

(a) In this section, "reasonable fee" means a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit.

(b) Subject to the limitations in this section, the official custodian may charge an applicant a reasonable fee for the search for, preparation of, and reproduction of a public record.

(c) The official custodian may not charge a fee for the first 2 hours that are needed to search for a public record and prepare it for inspection.

(d) (1) If another law sets a fee for a copy, **ELECTRONIC COPY,** printout, or photograph of a public record, that law applies.

(2) The official custodian otherwise may charge any reasonable fee for making or supervising the making of a copy, **ELECTRONIC COPY,** printout, or photograph of a public record.

(3) The official custodian may charge for the cost of providing facilities for the reproduction of the public record if the custodian did not have the facilities.

(e) The official custodian may waive a fee under this section if:

(1) the applicant asks for a waiver; and

(2) after consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011. It shall remain effective for a period of 2 years and, at the end of September 30, 2013, 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 19, 2011.

Chapter 537

(Senate Bill 743)

AN ACT concerning

Family Planning Works Act

FOR the purpose of altering the eligibility requirements for family planning services under the Maryland Medical Assistance Program by requiring the Program to provide those services beginning on a certain date to all women whose family income is at or below a certain percent of the poverty level under certain circumstances; ~~making this Act subject to a certain contingency;~~ and generally

relating to eligibility for family planning services under the Maryland Medical Assistance Program.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 15–103(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

15–103.

(a) (1) The Secretary shall administer the Maryland Medical Assistance Program.

(2) The Program:

(i) Subject to the limitations of the State budget, shall provide medical and other health care services for indigent individuals or medically indigent individuals or both;

(ii) Shall provide, subject to the limitations of the State budget, comprehensive medical and other health care services for all eligible pregnant women whose family income is at or below 250 percent of the poverty level, as permitted by the federal law;

(iii) Shall provide, subject to the limitations of the State budget, comprehensive medical and other health care services for all eligible children currently under the age of 1 whose family income falls below 185 percent of the poverty level, as permitted by federal law;

(iv) ~~Shall~~ **BEGINNING ON JANUARY 1, 2012, SHALL** provide, subject to the limitations of the State budget, family planning services to **ALL** women **[**currently eligible for comprehensive medical care and other health care under item (ii) of this paragraph for 5 years after the second month following the month in which the woman delivers her child**]** **WHOSE FAMILY INCOME IS AT OR BELOW ~~250~~ 200 PERCENT OF THE POVERTY LEVEL, AS PERMITTED BY FEDERAL LAW**;

(v) Shall provide, subject to the limitations of the State budget, comprehensive medical and other health care services for all children from the age of 1 year up through and including the age of 5 years whose family income falls below 133 percent of the poverty level, as permitted by the federal law;

(vi) Shall provide, subject to the limitations of the State budget, comprehensive medical care and other health care services for all children who are at least 6 years of age but are under 19 years of age whose family income falls below 100 percent of the poverty level, as permitted by federal law;

(vii) Shall provide, subject to the limitations of the State budget, comprehensive medical care and other health care services for all legal immigrants who meet Program eligibility standards and who arrived in the United States before August 22, 1996, the effective date of the federal Personal Responsibility and Work Opportunity Reconciliation Act, as permitted by federal law;

(viii) Shall provide, subject to the limitations of the State budget and any other requirements imposed by the State, comprehensive medical care and other health care services for all legal immigrant children under the age of 18 years and pregnant women who meet Program eligibility standards and who arrived in the United States on or after August 22, 1996, the effective date of the federal Personal Responsibility and Work Opportunity Reconciliation Act;

(ix) Beginning on July 1, 2008, shall provide, subject to the limitations of the State budget, and as permitted by federal law, comprehensive medical care and other health care services for all parents and caretaker relatives:

1. Who have a dependent child living in the parents' or caretaker relatives' home; and

2. Whose annual household income is at or below 116 percent of the poverty level;

(x) Beginning on July 1, 2008, shall provide, subject to the limitations of the State budget, and as permitted by federal law, medical care and other health care services for adults:

1. Who do not meet requirements, such as age, disability, or parent or caretaker relative of a dependent child, for a federal category of eligibility for Medicaid;

2. Whose annual household income is at or below 116 percent of the poverty level; and

3. Who are not enrolled in the federal Medicare program, as enacted by Title XVIII of the Social Security Act;

(xi) Shall provide, subject to the limitations of the State budget, and as permitted by federal law, comprehensive medical care and other health care services for independent foster care adolescents:

1. Who are not otherwise eligible for Program benefits; and

2. Whose annual household income is at or below 300 percent of the poverty level;

(xii) May include bedside nursing care for eligible Program recipients; and

(xiii) Shall provide services in accordance with funding restrictions included in the annual State budget bill.

(3) Subject to restrictions in federal law or waivers, the Department may:

(i) Impose cost–sharing on Program recipients; and

(ii) For adults who do not meet requirements for a federal category of eligibility for Medicaid:

1. Cap enrollment; and

2. Limit the benefit package, except that substance abuse services shall be provided that are at least equivalent to the substance abuse services provided to adults under paragraph (2)(ix) of this subsection.

(4) In fiscal year 2011 and each fiscal year thereafter, the Governor shall include in the State budget funding sufficient to provide the substance abuse benefits required under paragraph (3)(ii)2 of this subsection.

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act is contingent on an appropriation for FY 2012 in the amount necessary to cover the costs of the implementation of this Act, or receipt on or before October 1, 2011, of a private grant of at least the same amount. If a grant is received to cover the costs of the implementation of this Act, the Department of Health and Mental Hygiene shall notify the Department of Legislative Services within 5 days after the grant is received. If an appropriation is not made and notice of receipt of a grant is not received by the Department of Legislative Services in accordance with this section, this Act shall be null and void without the necessity of further action by the General Assembly.~~

SECTION ~~3.~~ 2. AND BE FURTHER ENACTED, That~~, subject to Section 2 of this Act,~~ this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 538

(House Bill 778)

AN ACT concerning

Family Planning Works Act

FOR the purpose of altering the eligibility requirements for family planning services under the Maryland Medical Assistance Program by requiring the Program to provide those services beginning on a certain date to all women whose family income is at or below a certain percent of the poverty level under certain circumstances; ~~making this Act subject to a certain contingency;~~ and generally relating to eligibility for family planning services under the Maryland Medical Assistance Program.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 15–103(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

15–103.

(a) (1) The Secretary shall administer the Maryland Medical Assistance Program.

(2) The Program:

(i) Subject to the limitations of the State budget, shall provide medical and other health care services for indigent individuals or medically indigent individuals or both;

(ii) Shall provide, subject to the limitations of the State budget, comprehensive medical and other health care services for all eligible pregnant women whose family income is at or below 250 percent of the poverty level, as permitted by the federal law;

(iii) Shall provide, subject to the limitations of the State budget, comprehensive medical and other health care services for all eligible children currently under the age of 1 whose family income falls below 185 percent of the poverty level, as permitted by federal law;

(iv) ~~Shall~~ **BEGINNING ON JANUARY 1, 2012, SHALL** provide, subject to the limitations of the State budget, family planning services to **ALL** women **[**currently eligible for comprehensive medical care and other health care under item (ii) of this paragraph for 5 years after the second month following the month in which the woman delivers her child**]** **WHOSE FAMILY INCOME IS AT OR BELOW ~~250~~ 200 PERCENT OF THE POVERTY LEVEL, AS PERMITTED BY FEDERAL LAW**;

(v) Shall provide, subject to the limitations of the State budget, comprehensive medical and other health care services for all children from the age of 1 year up through and including the age of 5 years whose family income falls below 133 percent of the poverty level, as permitted by the federal law;

(vi) Shall provide, subject to the limitations of the State budget, comprehensive medical care and other health care services for all children who are at least 6 years of age but are under 19 years of age whose family income falls below 100 percent of the poverty level, as permitted by federal law;

(vii) Shall provide, subject to the limitations of the State budget, comprehensive medical care and other health care services for all legal immigrants who meet Program eligibility standards and who arrived in the United States before August 22, 1996, the effective date of the federal Personal Responsibility and Work Opportunity Reconciliation Act, as permitted by federal law;

(viii) Shall provide, subject to the limitations of the State budget and any other requirements imposed by the State, comprehensive medical care and other health care services for all legal immigrant children under the age of 18 years and pregnant women who meet Program eligibility standards and who arrived in the United States on or after August 22, 1996, the effective date of the federal Personal Responsibility and Work Opportunity Reconciliation Act;

(ix) Beginning on July 1, 2008, shall provide, subject to the limitations of the State budget, and as permitted by federal law, comprehensive medical care and other health care services for all parents and caretaker relatives:

1. Who have a dependent child living in the parents' or caretaker relatives' home; and

2. Whose annual household income is at or below 116 percent of the poverty level;

(x) Beginning on July 1, 2008, shall provide, subject to the limitations of the State budget, and as permitted by federal law, medical care and other health care services for adults:

1. Who do not meet requirements, such as age, disability, or parent or caretaker relative of a dependent child, for a federal category of eligibility for Medicaid;

2. Whose annual household income is at or below 116 percent of the poverty level; and

3. Who are not enrolled in the federal Medicare program, as enacted by Title XVIII of the Social Security Act;

(xi) Shall provide, subject to the limitations of the State budget, and as permitted by federal law, comprehensive medical care and other health care services for independent foster care adolescents:

1. Who are not otherwise eligible for Program benefits; and

2. Whose annual household income is at or below 300 percent of the poverty level;

(xii) May include bedside nursing care for eligible Program recipients; and

(xiii) Shall provide services in accordance with funding restrictions included in the annual State budget bill.

(3) Subject to restrictions in federal law or waivers, the Department may:

(i) Impose cost–sharing on Program recipients; and

(ii) For adults who do not meet requirements for a federal category of eligibility for Medicaid:

1. Cap enrollment; and

2. Limit the benefit package, except that substance abuse services shall be provided that are at least equivalent to the substance abuse services provided to adults under paragraph (2)(ix) of this subsection.

(4) In fiscal year 2011 and each fiscal year thereafter, the Governor shall include in the State budget funding sufficient to provide the substance abuse benefits required under paragraph (3)(ii)2 of this subsection.

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act is contingent on an appropriation for FY 2012 in the amount necessary to cover the costs of the implementation of this Act, or receipt on or before October 1, 2011, of a private grant~~

~~of at least the same amount. If a grant is received to cover the costs of the implementation of this Act, the Department of Health and Mental Hygiene shall notify the Department of Legislative Services within 5 days after the grant is received. If an appropriation is not made and notice of receipt of a grant is not received by the Department of Legislative Services in accordance with this section, this Act shall be null and void without the necessity of further action by the General Assembly.~~

SECTION ~~3.~~ 2. AND BE IT FURTHER ENACTED, That~~, subject to Section 2 of this Act,~~ this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 539

(Senate Bill 754)

AN ACT concerning

State Department of Education – Permanent Hearing Aid Loan Bank Program – Establishment and Operation

FOR the purpose of establishing a permanent Hearing Aid Loan Bank Program in the State Department of Education; providing for the staffing of the Program; establishing the purpose of the Program; requiring the Program to establish a Hearing Aid Loan Bank; establishing certain criteria for the maintenance of the Hearing Aid Loan Bank; specifying certain criteria for eligibility under the Program; specifying certain conditions for borrowing a hearing aid under the Program; requiring the State Board of Education to adopt certain regulations; requiring that certain instructions be provided to a parent or legal guardian of an eligible child; requiring the State Superintendent to submit a certain annual report to the Governor and General Assembly; defining certain terms; providing for the effective date of this Act; and generally relating to the Hearing Aid Loan Bank Program for eligible children.

BY adding to
Article – Education
Section 8–601 through 8–606 to be under the new subtitle "Subtitle 6. Hearing Aid Loan Bank Program"
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

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

Article – Education

SUBTITLE 6. HEARING AID LOAN BANK PROGRAM.

8–601.

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

(B) "ELIGIBLE CHILD" MEANS A CHILD WHO:

(1) IS A RESIDENT OF THE STATE;

(2) IS IDENTIFIED BY AN OTOLARYNGOLOGIST OR A LICENSED AUDIOLOGIST AS HAVING A HEARING LOSS;

(3) HAS NO IMMEDIATE ACCESS TO A HEARING AID; AND

(4) IS UNDER THE AGE OF 3 YEARS.

(C) "LICENSED AUDIOLOGIST" MEANS AN INDIVIDUAL WHO IS LICENSED TO PRACTICE AUDIOLOGY UNDER TITLE 2 OF THE HEALTH OCCUPATIONS ARTICLE.

(D) "LOAN BANK" MEANS THE HEARING AID LOAN BANK.

(E) "OTOLARYNGOLOGIST" MEANS AN INDIVIDUAL WHO:

(1) IS LICENSED TO PRACTICE MEDICINE UNDER TITLE 14 OF THE HEALTH OCCUPATIONS ARTICLE; AND

(2) SPECIALIZES IN OTOLARYNGOLOGY.

~~(E)~~ (F) "PROGRAM" MEANS THE HEARING AID LOAN BANK PROGRAM.

8–602.

(A) THERE IS A HEARING AID LOAN BANK PROGRAM IN THE DEPARTMENT.

(B) THE PROGRAM IS ESTABLISHED FOR THE PURPOSE OF LENDING HEARING AIDS ON A TEMPORARY BASIS TO A PARENT OR LEGAL GUARDIAN OF AN ELIGIBLE CHILD TO ENSURE THAT CHILDREN UNDER THE AGE OF 3 YEARS WILL HAVE MAXIMUM AUDITORY INPUT DURING THE CRITICAL PERIOD OF LANGUAGE LEARNING.

(C) THE PROGRAM SHALL EMPLOY AN OTOLARYNGOLOGIST OR A LICENSED AUDIOLOGIST.

8–603.

(A) THERE IS A PERMANENT HEARING AID LOAN BANK IN THE DEPARTMENT.

(B) THE PROGRAM SHALL PROVIDE AND MAINTAIN:

(1) A POOL OF HEARING AIDS IN THE LOAN BANK TO LEND TO A PARENT OR LEGAL GUARDIAN OF AN ELIGIBLE CHILD;

(2) TESTING AND PROGRAMMING EQUIPMENT FOR HEARING AIDS IN THE LOAN BANK; AND

(3) SUPPLIES FOR REPAIR AND RECONDITIONING OF HEARING AIDS IN THE LOAN BANK.

8–604.

(A) THE PROGRAM SHALL LEND A SUITABLE HEARING AID TO A PARENT OR LEGAL GUARDIAN OF AN ELIGIBLE CHILD ON RECEIPT OF:

(1) A PRESCRIPTION FROM AN OTOLARYNGOLOGIST OR A LICENSED AUDIOLOGIST; AND

(2) ANY DOCUMENTS REQUIRED BY THE PROGRAM TO PROVE THAT THE CHILD IS AN ELIGIBLE CHILD.

(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE LOAN PERIOD SHALL BE FOR NOT MORE THAN 6 MONTHS.

(2) THE PROGRAM MAY EXTEND THE ORIGINAL LOAN PERIOD FOR ADDITIONAL 3–MONTH PERIODS IF, PRIOR TO EACH EXTENSION, THE PROGRAM DETERMINES THAT:

(I) THE CHILD DOES NOT HAVE IMMEDIATE ACCESS TO ANOTHER HEARING AID UNDER MEDICAID, THE MARYLAND CHILDREN'S HEALTH PROGRAM, OR PRIVATE HEALTH INSURANCE;

(II) THE CHILD'S PARENT OR LEGAL GUARDIAN CURRENTLY DOES NOT HAVE THE FINANCIAL MEANS TO OBTAIN IMMEDIATE ACCESS TO ANOTHER HEARING AID; AND

(III) THE CHILD'S PARENT OR LEGAL GUARDIAN IS MAKING REASONABLE EFFORTS TO OBTAIN ACCESS TO ANOTHER HEARING AID.

(C) A PARENT OR LEGAL GUARDIAN WHO BORROWS A HEARING AID FOR AN ELIGIBLE CHILD SHALL:

(1) BE THE CUSTODIAN OF THE HEARING AID;

(2) RETURN THE HEARING AID IMMEDIATELY TO THE LOAN BANK ON THE EXPIRATION OF THE LOAN PERIOD OR RECEIPT OF A SUITABLE PERMANENT HEARING AID, WHICHEVER OCCURS FIRST;

(3) BE RESPONSIBLE FOR THE PROPER CARE AND USE OF THE HEARING AID;

(4) BE RESPONSIBLE FOR ANY DAMAGE TO OR LOSS OF THE HEARING AID; AND

(5) SIGN A WRITTEN AGREEMENT PROVIDED BY THE STATE SUPERINTENDENT THAT STATES THE TERM AND CONDITIONS OF THE LOAN.

(D) THE PROGRAM SHALL ENSURE THAT THE ELIGIBLE CHILD'S OTOLARYNGOLOGIST OR LICENSED AUDIOLOGIST INSTRUCTS THE PARENT OR LEGAL GUARDIAN ABOUT THE PROPER CARE AND USE OF A HEARING AID PROVIDED UNDER THE PROGRAM.

8–605.

THE STATE BOARD SHALL ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SUBTITLE, INCLUDING REGULATIONS THAT:

(1) FOR THE PURPOSE OF IMPLEMENTING § 8–604(A) OF THIS SUBTITLE, IDENTIFY THE TYPES OF DOCUMENTS THAT THE PROGRAM MAY REQUIRE A PARENT OR LEGAL GUARDIAN TO SUBMIT TO PROVE THAT A CHILD IS AN ELIGIBLE CHILD; AND

(2) FOR THE PURPOSE OF IMPLEMENTING § 8–604(B)(2) OF THIS SUBTITLE, ESTABLISH FACTORS THAT THE PROGRAM SHALL CONSIDER WHEN EVALUATING WHETHER A PARENT OR LEGAL GUARDIAN:

(I) HAS THE FINANCIAL MEANS TO OBTAIN IMMEDIATE ACCESS TO ANOTHER HEARING AID; OR

(II) IS MAKING REASONABLE EFFORTS TO OBTAIN IMMEDIATE ACCESS TO ANOTHER HEARING AID.

8–606.

(A) BEGINNING IN 2011, NO LATER THAN DECEMBER 31 EACH YEAR, THE STATE SUPERINTENDENT SHALL SUBMIT A REPORT TO THE GOVERNOR AND, SUBJECT TO § 2–1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY REGARDING THE IMPLEMENTATION OF THIS SUBTITLE.

(B) THE ANNUAL REPORT SHALL INCLUDE THE FOLLOWING INFORMATION:

(1) THE NUMBER AND AGES OF CHILDREN WHO RECEIVED HEARING AIDS THROUGH THE PROGRAM THAT YEAR;

(2) THE NUMBER OF CHILDREN WHO RECEIVED HEARING AIDS THROUGH THE PROGRAM THAT YEAR AND SUBSEQUENTLY RECEIVED HEARING AIDS THROUGH MEDICAID, THE MARYLAND CHILDREN'S HEALTH PROGRAM, OR PRIVATE INSURANCE;

(3) THE LENGTH OF EACH ORIGINAL LOAN;

(4) THE NUMBER OF TIMES THAT EACH ORIGINAL LOAN WAS EXTENDED AND THE LENGTH OF EACH EXTENSION;

(5) THE NUMBER OF TIMES THAT HEARING AIDS WERE NOT PROPERLY RETURNED TO THE LOAN BANK; AND

(6) ANY OTHER INFORMATION THAT THE STATE SUPERINTENDENT BELIEVES IS RELEVANT TO EVALUATING THE COSTS AND BENEFITS OF THE PROGRAM.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 30, 2011.

Approved by the Governor, May 19, 2011.

Chapter 540

(House Bill 1013)

AN ACT concerning

State Department of Education – Permanent Hearing Aid Loan Bank Program – Establishment and Operation

FOR the purpose of establishing a permanent Hearing Aid Loan Bank Program in the State Department of Education; providing for the staffing of the Program; establishing the purpose of the Program; requiring the Program to establish a Hearing Aid Loan Bank; establishing certain criteria for the maintenance of the Hearing Aid Loan Bank; specifying certain criteria for eligibility under the Program; specifying certain conditions for borrowing a hearing aid under the Program; requiring the State Board of Education to adopt certain regulations; requiring that certain instructions be provided to a parent or legal guardian of an eligible child; requiring the State Superintendent to submit a certain annual report to the Governor and General Assembly; defining certain terms; providing for the effective date of this Act; and generally relating to the Hearing Aid Loan Bank Program for eligible children.

BY adding to
Article – Education
Section 8–601 through 8–606 to be under the new subtitle "Subtitle 6. Hearing Aid Loan Bank Program"
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

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

Article – Education

SUBTITLE 6. HEARING AID LOAN BANK PROGRAM.

8–601.

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

(B) "ELIGIBLE CHILD" MEANS A CHILD WHO:

(1) IS A RESIDENT OF THE STATE;

(2) IS IDENTIFIED BY AN OTOLARYNGOLOGIST OR A LICENSED AUDIOLOGIST AS HAVING A HEARING LOSS;

(3) HAS NO IMMEDIATE ACCESS TO A HEARING AID; AND

(4) IS UNDER THE AGE OF 3 YEARS.

(C) "LICENSED AUDIOLOGIST" MEANS AN INDIVIDUAL WHO IS LICENSED TO PRACTICE AUDIOLOGY UNDER TITLE 2 OF THE HEALTH OCCUPATIONS ARTICLE.

(D) "LOAN BANK" MEANS THE HEARING AID LOAN BANK.

(E) "OTOLARYNGOLOGIST" MEANS AN INDIVIDUAL WHO:

(1) IS LICENSED TO PRACTICE MEDICINE UNDER TITLE 14 OF THE HEALTH OCCUPATIONS ARTICLE; AND

(2) SPECIALIZES IN OTOLARYNGOLOGY.

~~(E)~~ (F) "PROGRAM" MEANS THE HEARING AID LOAN BANK PROGRAM.

8–602.

(A) THERE IS A HEARING AID LOAN BANK PROGRAM IN THE DEPARTMENT.

(B) THE PROGRAM IS ESTABLISHED FOR THE PURPOSE OF LENDING HEARING AIDS ON A TEMPORARY BASIS TO A PARENT OR LEGAL GUARDIAN OF AN ELIGIBLE CHILD TO ENSURE THAT CHILDREN UNDER THE AGE OF 3 YEARS WILL HAVE MAXIMUM AUDITORY INPUT DURING THE CRITICAL PERIOD OF LANGUAGE LEARNING.

(C) THE PROGRAM SHALL EMPLOY AN OTOLARYNGOLOGIST OR A LICENSED AUDIOLOGIST.

8–603.

(A) THERE IS A PERMANENT HEARING AID LOAN BANK IN THE DEPARTMENT.

(B) THE PROGRAM SHALL PROVIDE AND MAINTAIN:

(1) A POOL OF HEARING AIDS IN THE LOAN BANK TO LEND TO A PARENT OR LEGAL GUARDIAN OF AN ELIGIBLE CHILD;

(2) TESTING AND PROGRAMMING EQUIPMENT FOR HEARING AIDS IN THE LOAN BANK; AND

(3) SUPPLIES FOR REPAIR AND RECONDITIONING OF HEARING AIDS IN THE LOAN BANK.

8–604.

(A) THE PROGRAM SHALL LEND A SUITABLE HEARING AID TO A PARENT OR LEGAL GUARDIAN OF AN ELIGIBLE CHILD ON RECEIPT OF:

(1) A PRESCRIPTION FROM <u>AN OTOLARYNGOLOGIST OR</u> A LICENSED AUDIOLOGIST; AND

(2) ANY DOCUMENTS REQUIRED BY THE PROGRAM TO PROVE THAT THE CHILD IS AN ELIGIBLE CHILD.

(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE LOAN PERIOD SHALL BE FOR NOT MORE THAN 6 MONTHS.

(2) THE PROGRAM MAY EXTEND THE ORIGINAL LOAN PERIOD FOR ADDITIONAL 3–MONTH PERIODS IF, PRIOR TO EACH EXTENSION, THE PROGRAM DETERMINES THAT:

(I) THE CHILD DOES NOT HAVE IMMEDIATE ACCESS TO ANOTHER HEARING AID UNDER MEDICAID, THE MARYLAND CHILDREN'S HEALTH PROGRAM, OR PRIVATE HEALTH INSURANCE;

(II) THE CHILD'S PARENT OR LEGAL GUARDIAN CURRENTLY DOES NOT HAVE THE FINANCIAL MEANS TO OBTAIN IMMEDIATE ACCESS TO ANOTHER HEARING AID; AND

(III) THE CHILD'S PARENT OR LEGAL GUARDIAN IS MAKING REASONABLE EFFORTS TO OBTAIN ACCESS TO ANOTHER HEARING AID.

(C) A PARENT OR LEGAL GUARDIAN WHO BORROWS A HEARING AID FOR AN ELIGIBLE CHILD SHALL:

(1) BE THE CUSTODIAN OF THE HEARING AID;

(2) RETURN THE HEARING AID IMMEDIATELY TO THE LOAN BANK ON THE EXPIRATION OF THE LOAN PERIOD OR RECEIPT OF A SUITABLE PERMANENT HEARING AID, WHICHEVER OCCURS FIRST;

(3) BE RESPONSIBLE FOR THE PROPER CARE AND USE OF THE HEARING AID;

(4) BE RESPONSIBLE FOR ANY DAMAGE TO OR LOSS OF THE HEARING AID; AND

(5) SIGN A WRITTEN AGREEMENT PROVIDED BY THE STATE SUPERINTENDENT THAT STATES THE TERM AND CONDITIONS OF THE LOAN.

(D) THE PROGRAM SHALL ENSURE THAT THE ELIGIBLE CHILD'S OTOLARYNGOLOGIST OR LICENSED AUDIOLOGIST INSTRUCTS THE PARENT OR LEGAL GUARDIAN ABOUT THE PROPER CARE AND USE OF A HEARING AID PROVIDED UNDER THE PROGRAM.

8–605.

THE STATE BOARD SHALL ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SUBTITLE, INCLUDING REGULATIONS THAT:

(1) FOR THE PURPOSE OF IMPLEMENTING § 8–604(A) OF THIS SUBTITLE, IDENTIFY THE TYPES OF DOCUMENTS THAT THE PROGRAM MAY REQUIRE A PARENT OR LEGAL GUARDIAN TO SUBMIT TO PROVE THAT A CHILD IS AN ELIGIBLE CHILD; AND

(2) FOR THE PURPOSE OF IMPLEMENTING § 8–604(B)(2) OF THIS SUBTITLE, ESTABLISH FACTORS THAT THE PROGRAM SHALL CONSIDER WHEN EVALUATING WHETHER A PARENT OR LEGAL GUARDIAN:

(I) HAS THE FINANCIAL MEANS TO OBTAIN IMMEDIATE ACCESS TO ANOTHER HEARING AID; OR

(II) IS MAKING REASONABLE EFFORTS TO OBTAIN IMMEDIATE ACCESS TO ANOTHER HEARING AID.

8–606.

(A) BEGINNING IN 2011, NO LATER THAN DECEMBER 31 EACH YEAR, THE STATE SUPERINTENDENT SHALL SUBMIT A REPORT TO THE GOVERNOR AND, SUBJECT TO § 2–1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY REGARDING THE IMPLEMENTATION OF THIS SUBTITLE.

(B) THE ANNUAL REPORT SHALL INCLUDE THE FOLLOWING INFORMATION:

(1) THE NUMBER AND AGES OF CHILDREN WHO RECEIVED HEARING AIDS THROUGH THE PROGRAM THAT YEAR;

(2) THE NUMBER OF CHILDREN WHO RECEIVED HEARING AIDS THROUGH THE PROGRAM THAT YEAR AND SUBSEQUENTLY RECEIVED HEARING AIDS THROUGH MEDICAID, THE MARYLAND CHILDREN'S HEALTH PROGRAM, OR PRIVATE INSURANCE;

(3) THE LENGTH OF EACH ORIGINAL LOAN;

(4) THE NUMBER OF TIMES THAT EACH ORIGINAL LOAN WAS EXTENDED AND THE LENGTH OF EACH EXTENSION;

(5) THE NUMBER OF TIMES THAT HEARING AIDS WERE NOT PROPERLY RETURNED TO THE LOAN BANK; AND

(6) ANY OTHER INFORMATION THAT THE STATE SUPERINTENDENT BELIEVES IS RELEVANT TO EVALUATING THE COSTS AND BENEFITS OF THE PROGRAM.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 30, 2011.

Approved by the Governor, May 19, 2011.

Chapter 541

(Senate Bill 756)

AN ACT concerning

Maryland Revised Uniform Anatomical Gift Act

FOR the purpose of repealing the Maryland Anatomical Gift Act and enacting the Maryland Revised Uniform Anatomical Gift Act; authorizing certain individuals to make, amend, or revoke anatomical gifts; providing the methods by which anatomical gifts may be made; authorizing certain individuals to refuse to make certain anatomical gifts; establishing certain circumstances under which an anatomical gift is prohibited; establishing the persons to which certain anatomical gifts may be made; establishing a certain priority if more than one

person in a certain class makes a gift; establishing certain purposes for which certain anatomical gifts can be made; establishing a certain priority for certain anatomical gifts if more than one purpose is given for the anatomical gift; requiring certain persons to search certain individuals for a document of gift or other information identifying the individual as a donor under certain circumstances; requiring certain individuals to allow certain examination and copying of certain anatomical gifts or refusals; ~~requiring that certain procurement organizations be allowed certain access to certain records of the Motor Vehicle Administration;~~ authorizing certain procurement organizations to make certain examinations to ensure the medical suitability of certain anatomical gifts; providing for the acceptance and removal of certain anatomical gifts; establishing certain acts as felonies and establishing certain penalties; providing that certain persons are guilty of a felony and subject to a certain penalty for purchasing or selling certain parts under certain circumstances; authorizing a person to charge a certain amount for providing certain services; establishing that certain donors may make certain gifts by authorizing that certain statements or symbols be included on a certain registry; providing that certain persons that act in good faith are not liable in certain civil actions; requiring the Secretary of Health and Mental Hygiene to contract with and provide compensation to a certain nonprofit entity for the establishment, maintenance, and operation of a donor registry; requiring that the Organ and Tissue Donation Awareness Fund provide funds for the establishment, operation, and maintenance of a certain donor registry; requiring the Motor Vehicle Administration to cooperate in the transfer of certain information to the donor registry; establishing certain administrative terms for the donor registry; providing for the resolution of conflicts between certain anatomical gifts and certain advance directives; requiring that certain procurement organizations and the Office of the Chief Medical Examiner (OCME) cooperate to maximize the opportunity to recover certain anatomical gifts and to facilitate certain OCME examinations; providing for the terms of the recoveries between certain procurement organizations and OCME; providing for the resolution of conflicts between certain anatomical gift designations and certain investigations by OCME; providing that this Act supersedes a certain federal statute; requiring that certain directions to make, amend, revoke, or refuse to make an anatomical gift be recorded in certain medical records; altering the circumstances under which the consent of certain representatives is not necessary; requiring the custodian of certain motor vehicle records containing personal information to disclose certain personal information for use by certain procurement organizations under certain circumstances; repealing a certain provision prohibiting that certain donor designations appear on certain minors' drivers' licenses; making certain technical changes; defining certain terms; and generally relating to the Maryland Revised Uniform Anatomical Gift Act.

BY repealing
Article – Estates and Trusts
Section 4–501 through 4–513 and the subtitle "Subtitle 5. Maryland Anatomical Gift Act"

Annotated Code of Maryland
(2001 Replacement Volume and 2010 Supplement)

BY adding to
Article – Estates and Trusts
Section 4–501 through 4–522 to be under the new subtitle "Subtitle 5. Maryland Revised Uniform Anatomical Gift Act"
Annotated Code of Maryland
(2001 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 5–408, 5–604.1, 13–901, and 19–310(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Transportation
Section 12–303
Annotated Code of Maryland
(2009 Replacement Volume and 2009 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 4–501 through 4–513 and the subtitle "Subtitle 5. Maryland Anatomical Gift Act" of Article – Estates and Trusts of the Annotated Code of Maryland be repealed.

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

Article – Estates and Trusts

SUBTITLE 5. MARYLAND REVISED UNIFORM ANATOMICAL GIFT ACT.

4–501.

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

(B) "AGENT" MEANS AN INDIVIDUAL:

(1) AUTHORIZED TO MAKE HEALTH CARE DECISIONS ON BEHALF OF A PRINCIPAL BY A POWER OF ATTORNEY FOR HEALTH CARE; OR

(2) EXPRESSLY AUTHORIZED TO MAKE AN ANATOMICAL GIFT ON BEHALF OF A PRINCIPAL BY A RECORD SIGNED BY THE PRINCIPAL.

(C) "ANATOMICAL GIFT" MEANS A DONATION OF ALL OR PART OF A HUMAN BODY TO TAKE EFFECT AFTER THE DONOR'S DEATH FOR THE PURPOSE OF TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION.

(D) (1) "DECEDENT" MEANS A DECEASED INDIVIDUAL WHOSE BODY OR PART IS OR MAY BE THE SOURCE OF AN ANATOMICAL GIFT.

(2) "DECEDENT" INCLUDES:

(I) A STILLBORN INFANT; AND

(II) SUBJECT TO RESTRICTIONS IMPOSED BY LAW OTHER THAN THIS SUBTITLE, A FETUS.

(3) "DECEDENT" DOES NOT INCLUDE A BLASTOCYST, EMBRYO, OR FETUS THAT IS THE SUBJECT OF AN INDUCED ABORTION.

(E) (1) "DISINTERESTED WITNESS" MEANS A WITNESS OTHER THAN:

(I) A SPOUSE, CHILD, PARENT, SIBLING, GRANDCHILD, GRANDPARENT, OR GUARDIAN OF AN INDIVIDUAL WHO MAKES, AMENDS, REVOKES, OR REFUSES TO MAKE AN ANATOMICAL GIFT; OR

(II) ANOTHER ADULT WHO EXHIBITS SPECIAL CARE AND CONCERN FOR AN INDIVIDUAL WHO MAKES, AMENDS, REVOKES, OR REFUSES TO MAKE AN ANATOMICAL GIFT.

(2) "DISINTERESTED WITNESS" DOES NOT INCLUDE A PERSON TO WHICH AN ANATOMICAL GIFT MAY PASS UNDER § 4–509 OF THIS SUBTITLE.

(F) (1) "DOCUMENT OF GIFT" MEANS A DONOR CARD OR ANY OTHER RECORD USED TO MAKE AN ANATOMICAL GIFT.

(2) "DOCUMENT OF GIFT" INCLUDES A STATEMENT OR SYMBOL ON A DRIVER'S LICENSE, AN IDENTIFICATION CARD, OR A DONOR REGISTRY.

(G) "DONOR" MEANS AN INDIVIDUAL WHOSE BODY OR PART IS THE SUBJECT OF AN ANATOMICAL GIFT.

(H) "DONOR REGISTRY" MEANS A DATABASE THAT CONTAINS RECORDS OF ANATOMICAL GIFTS AND AMENDMENTS TO OR REVOCATIONS OF ANATOMICAL GIFTS AS PROVIDED IN § 4–516 OF THIS SUBTITLE.

(I) (1) "DRIVER'S LICENSE" MEANS A LICENSE OR PERMIT ISSUED BY THE MOTOR VEHICLE ADMINISTRATION TO OPERATE A VEHICLE, WHETHER OR NOT CONDITIONS ARE ATTACHED TO THE LICENSE OR PERMIT.

(2) "DRIVER'S LICENSE" INCLUDES A LEARNER'S PERMIT.

(J) "EMANCIPATED MINOR" MEANS A PERSON UNDER THE AGE OF 18 YEARS WHO IS:

(1) MARRIED;

(2) A PARENT;

(3) SERVING IN THE MILITARY;

(4) EMANCIPATED BY COURT ORDER;

(5) LIVING SEPARATELY FROM THE PARENTS OF THE PERSON AND IS SELF–SUPPORTING; OR

(6) EMANCIPATED FOR ANOTHER PURPOSE RECOGNIZED BY LAW.

~~(J)~~ (K) "EYE BANK" MEANS A PERSON THAT:

(1) IS LICENSED, ACCREDITED, OR REGULATED UNDER FEDERAL OR STATE LAW TO ENGAGE IN THE RECOVERY, SCREENING, TESTING, PROCESSING, STORAGE, OR DISTRIBUTION OF HUMAN EYES OR PORTIONS OF HUMAN EYES;

(2) IS ACCREDITED BY THE EYE BANK ASSOCIATION OF AMERICA OR THE AMERICAN ASSOCIATION OF TISSUE BANKS; AND

(3) HAS A PERMIT ISSUED IN ACCORDANCE WITH TITLE 17, SUBTITLE 3 OF THE HEALTH – GENERAL ARTICLE.

~~(K)~~ (L) (1) "GUARDIAN" MEANS A PERSON APPOINTED BY A COURT TO MAKE DECISIONS REGARDING THE SUPPORT, CARE, EDUCATION, HEALTH, OR WELFARE OF AN INDIVIDUAL.

(2) "GUARDIAN" DOES NOT INCLUDE A GUARDIAN AD LITEM, UNLESS THE GUARDIAN AD LITEM IS AUTHORIZED BY A COURT TO CONSENT TO DONATION.

~~(L)~~ (M) "HOSPITAL" MEANS A FACILITY LICENSED AS A HOSPITAL UNDER THE LAW OF ANY STATE OR A FACILITY OPERATED AS A HOSPITAL BY THE UNITED STATES, A STATE, OR A SUBDIVISION OF A STATE.

~~(M)~~ (N) "IDENTIFICATION CARD" MEANS AN IDENTIFICATION CARD ISSUED BY THE MOTOR VEHICLE ADMINISTRATION.

~~(N)~~ (O) "KNOW" MEANS TO HAVE ACTUAL KNOWLEDGE.

(P) (1) "NONTRANSPLANT TISSUE BANK" MEANS A PERSON THAT RECOVERS, SCREENS, PROCURES, TRANSPORTS, STORES, OR ARRANGES FOR THE STORAGE AND DISTRIBUTION OF A BODY OR PART SOLELY FOR THE PURPOSE OF RESEARCH, TRAINING, OR EDUCATION.

(2) "NONTRANSPLANT TISSUE BANK" INCLUDES:

(I) THE STATE ANATOMY BOARD;

(II) A PROGRAM FOR A PURPOSE DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION OPERATED BY OFFICERS OR EMPLOYEES OF THE UNITED STATES; OR

(III) A NONPROFIT ORGANIZATION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION PERMITTED TO OPERATE UNDER § 5–409 OF THE HEALTH – GENERAL ARTICLE.

(3) "NONTRANSPLANT TISSUE BANK" DOES NOT INCLUDE:

(I) AN EYE BANK;

(II) AN ORGAN PROCUREMENT ORGANIZATION; OR

(III) A TRANSPLANT TISSUE BANK.

~~(O)~~ (Q) "OCME" MEANS THE OFFICE OF THE CHIEF MEDICAL EXAMINER.

~~(P)~~ (R) "ORGAN PROCUREMENT ORGANIZATION" MEANS A PERSON DESIGNATED BY THE SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES AS AN ORGAN PROCUREMENT ORGANIZATION.

~~(Q)~~ (S) "PARENT" MEANS A PARENT WHOSE PARENTAL RIGHTS HAVE NOT BEEN TERMINATED.

~~(R)~~ (T) (1) "PART" MEANS AN ORGAN, AN EYE, OR TISSUE OF A HUMAN BEING.

(2) "PART" DOES NOT INCLUDE THE WHOLE BODY.

~~(S)~~ (U) "PHYSICIAN" MEANS AN INDIVIDUAL AUTHORIZED TO PRACTICE MEDICINE OR OSTEOPATHY UNDER THE LAW OF ANY STATE.

~~(T)~~ (V) "PROCUREMENT ORGANIZATION" MEANS AN EYE BANK, AN ORGAN PROCUREMENT ORGANIZATION, OR A TISSUE BANK.

~~(U)~~ (W) (1) "PROSPECTIVE DONOR" MEANS AN INDIVIDUAL WHO IS DEAD OR WHOSE DEATH IS IMMINENT AND HAS BEEN DETERMINED BY A PROCUREMENT ORGANIZATION TO HAVE A PART THAT COULD BE MEDICALLY SUITABLE FOR TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION.

(2) "PROSPECTIVE DONOR" DOES NOT INCLUDE AN INDIVIDUAL WHO HAS MADE A REFUSAL.

~~(V)~~ (X) "REASONABLY AVAILABLE" MEANS ABLE TO BE CONTACTED BY A PROCUREMENT ORGANIZATION WITHOUT UNDUE EFFORT AND WILLING AND ABLE TO ACT IN A TIMELY MANNER CONSISTENT WITH EXISTING MEDICAL CRITERIA NECESSARY FOR THE MAKING OF AN ANATOMICAL GIFT.

~~(W)~~ (Y) "RECIPIENT" MEANS AN INDIVIDUAL INTO WHOSE BODY A DECEDENT'S PART HAS BEEN OR IS INTENDED TO BE TRANSPLANTED.

~~(X)~~ (Z) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR IS STORED IN AN ELECTRONIC OR ANY OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

~~(Y)~~ (AA) "REFUSAL" MEANS A RECORD CREATED UNDER § 4–505 OF THIS SUBTITLE THAT EXPRESSLY STATES AN INTENT TO BAR OTHER PERSONS FROM MAKING AN ANATOMICAL GIFT OF AN INDIVIDUAL'S BODY OR PART.

~~(Z)~~ (BB) "SIGN" MEANS TO:

(1) HAVE PRESENT INTENT TO AUTHENTICATE OR ADOPT A RECORD; AND

(2) (I) EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

(II) ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD AN ELECTRONIC SYMBOL, SOUND, OR PROCESS.

~~(AA)~~ (CC) (1) "TECHNICIAN" MEANS AN INDIVIDUAL DETERMINED TO BE QUALIFIED TO REMOVE OR PROCESS PARTS BY AN APPROPRIATE ORGANIZATION THAT IS LICENSED, ACCREDITED, OR REGULATED UNDER FEDERAL OR STATE LAW.

(2) "TECHNICIAN" INCLUDES AN ENUCLEATOR.

~~(BB)~~ (DD) (1) "TISSUE" MEANS A PORTION OF THE HUMAN BODY OTHER THAN AN ORGAN OR EYE.

(2) "TISSUE" DOES NOT INCLUDE:

(I) BLOOD UNLESS THE BLOOD IS DONATED FOR THE PURPOSE OF RESEARCH OR EDUCATION; OR

(II) AN OVUM OR SPERM FOR THE PURPOSE OF CREATING AN EMBRYO TO USE IN THERAPY, RESEARCH, OR EDUCATION, UNLESS THE ANATOMICAL GIFT IS MADE BY THE DONOR TO THE SPOUSE OF THE DONOR.

~~(CC)~~ (EE) "TISSUE BANK" MEANS A ~~PERSON THAT:~~

~~(1) IS LICENSED, ACCREDITED, OR REGULATED UNDER FEDERAL OR STATE LAW TO ENGAGE IN THE RECOVERY, SCREENING, TESTING, PROCESSING, STORAGE, OR DISTRIBUTION OF TISSUE;~~

~~(2) IS ACCREDITED BY THE AMERICAN ASSOCIATION OF TISSUE BANKS; AND~~

~~(3) HAS A PERMIT ISSUED IN ACCORDANCE WITH TITLE 17, SUBTITLE 3 OF THE HEALTH – GENERAL ARTICLE~~ TRANSPLANT TISSUE BANK OR NONTRANSPLANT TISSUE BANK.

~~(DD)~~ (FF) "TRANSPLANT HOSPITAL" MEANS A HOSPITAL THAT FURNISHES ORGAN TRANSPLANTS AND OTHER MEDICAL AND SURGICAL SPECIALTY SERVICES REQUIRED FOR THE CARE OF TRANSPLANT PATIENTS.

(GG) "TRANSPLANT TISSUE BANK" MEANS A PERSON THAT IS LICENSED, ACCREDITED, OR REGULATED UNDER FEDERAL OR STATE LAW TO ENGAGE IN THE RECOVERY, SCREENING, TESTING, PROCESSING, STORAGE, OR DISTRIBUTION OF TISSUE IN ACCORDANCE WITH TITLE 17, SUBTITLE 3 OF THE HEALTH – GENERAL ARTICLE.

4–502.

THIS SUBTITLE APPLIES TO AN ANATOMICAL GIFT OR AN AMENDMENT TO, A REVOCATION OF, OR A REFUSAL TO MAKE AN ANATOMICAL GIFT WHENEVER MADE.

4–503.

(A) SUBJECT TO § 4–506 OF THIS SUBTITLE, AN ANATOMICAL GIFT MAY BE MADE DURING THE LIFE OF A DONOR FOR THE PURPOSE OF TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION BY:

(1) (I) A DONOR WHO IS AN ADULT; OR

(II) A DONOR WHO IS A MINOR, IF THE MINOR IS:

1. EMANCIPATED; OR

2. AUTHORIZED UNDER STATE LAW TO APPLY FOR A DRIVER'S LICENSE BECAUSE THE DONOR IS AT LEAST 15 YEARS AND 9 MONTHS OLD;

(2) AN AGENT OF A DONOR, UNLESS A POWER OF ATTORNEY FOR HEALTH CARE OR OTHER RECORD PROHIBITS THE AGENT FROM MAKING AN ANATOMICAL GIFT;

(3) A PARENT OF A DONOR, IF THE DONOR IS AN UNEMANCIPATED MINOR; OR

(4) A GUARDIAN OF A DONOR.

(B) A DONOR MAY MAKE AN ANATOMICAL GIFT:

(1) BY AUTHORIZING A STATEMENT OR SYMBOL INDICATING THAT THE DONOR HAS MADE AN ANATOMICAL GIFT TO BE IMPRINTED ON THE DONOR'S DRIVER'S LICENSE OR IDENTIFICATION CARD;

(2) BY WILL;

(3) DURING A TERMINAL ILLNESS OR AN INJURY OF THE DONOR, BY ANY FORM OF COMMUNICATION ADDRESSED TO AT LEAST TWO ADULTS, AT LEAST ONE OF WHOM IS A DISINTERESTED WITNESS; OR

(4) AS PROVIDED IN SUBSECTION (C) OF THIS SECTION.

(C) (1) A DONOR OR OTHER PERSON AUTHORIZED TO MAKE AN ANATOMICAL GIFT UNDER THIS SECTION MAY MAKE A GIFT BY:

(I) A DONOR CARD OR OTHER RECORD SIGNED BY THE DONOR OR OTHER PERSON MAKING THE GIFT; OR

(II) AUTHORIZING THAT A STATEMENT OR SYMBOL INDICATING THAT THE DONOR HAS MADE AN ANATOMICAL GIFT BE INCLUDED ON A DONOR REGISTRY.

(2) IF A DONOR OR OTHER PERSON AUTHORIZED TO MAKE AN ANATOMICAL GIFT UNDER THIS SECTION IS PHYSICALLY UNABLE TO SIGN A RECORD, THE RECORD MAY BE SIGNED BY ANOTHER INDIVIDUAL AT THE DIRECTION OF THE DONOR OR OTHER PERSON AND SHALL:

(I) BE WITNESSED BY AT LEAST TWO ADULTS, AT LEAST ONE OF WHOM IS A DISINTERESTED WITNESS, WHO HAVE SIGNED AT THE REQUEST OF THE DONOR OR OTHER PERSON; AND

(II) STATE THAT THE RECORD HAS BEEN SIGNED AND WITNESSED AS PROVIDED IN ITEM (I) OF THIS PARAGRAPH.

(D) REVOCATION, SUSPENSION, EXPIRATION, OR CANCELLATION OF A DRIVER'S LICENSE OR AN IDENTIFICATION CARD THAT INDICATES AN ANATOMICAL GIFT DOES NOT INVALIDATE THE GIFT.

(E) (1) AN ANATOMICAL GIFT MADE BY WILL TAKES EFFECT ON THE DONOR'S DEATH WHETHER OR NOT THE WILL IS PROBATED.

(2) IF A WILL THAT MAKES AN ANATOMICAL GIFT IS INVALIDATED AFTER THE DONOR'S DEATH, THE ANATOMICAL GIFT DOES NOT BECOME INVALID.

4–504.

(A) SUBJECT TO § 4–506 OF THIS SUBTITLE, A DONOR OR ANY OTHER PERSON AUTHORIZED TO MAKE AN ANATOMICAL GIFT UNDER § 4–503 OF THIS SUBTITLE MAY AMEND OR REVOKE AN ANATOMICAL GIFT BY:

(1) A RECORD SIGNED BY:

(I) THE DONOR;

(II) THE OTHER PERSON; OR

(III) SUBJECT TO SUBSECTION (B) OF THIS SECTION, IF THE DONOR OR OTHER PERSON IS PHYSICALLY UNABLE TO SIGN, ANOTHER INDIVIDUAL ACTING AT THE DIRECTION OF THE DONOR OR THE OTHER PERSON; OR

(2) A LATER–EXECUTED DOCUMENT OF GIFT THAT EXPRESSLY OR BY INCONSISTENCY AMENDS OR REVOKES THE PREVIOUS ANATOMICAL GIFT OR PORTION OF THE ANATOMICAL GIFT.

(B) A RECORD SIGNED IN ACCORDANCE WITH SUBSECTION (A)(1)(III) OF THIS SECTION SHALL:

(1) BE WITNESSED BY AT LEAST TWO ADULTS, AT LEAST ONE OF WHOM IS A DISINTERESTED WITNESS, WHO HAVE SIGNED AT THE REQUEST OF THE DONOR OR THE OTHER PERSON; AND

(2) STATE THAT THE RECORD HAS BEEN SIGNED AND WITNESSED AS PROVIDED IN ITEM (1) OF THIS SUBSECTION.

(C) SUBJECT TO § 4–506 OF THIS SUBTITLE, A DONOR OR ANY OTHER PERSON AUTHORIZED TO MAKE AN ANATOMICAL GIFT UNDER § 4–503 OF THIS SUBTITLE MAY REVOKE THE ANATOMICAL GIFT BY THE DESTRUCTION OR CANCELLATION OF THE DOCUMENT OF GIFT, OR THE PORTION OF THE DOCUMENT OF GIFT USED TO MAKE THE GIFT, WITH THE INTENT TO REVOKE THE GIFT.

(D) DURING A TERMINAL ILLNESS OF A DONOR, OR WHILE A DONOR IS INJURED, THE DONOR MAY AMEND OR REVOKE AN ANATOMICAL GIFT THAT WAS NOT MADE BY WILL BY ANY FORM OF COMMUNICATION ADDRESSED TO AT LEAST TWO ADULTS, AT LEAST ONE OF WHOM IS A DISINTERESTED WITNESS.

(E) A DONOR WHO MAKES AN ANATOMICAL GIFT BY WILL MAY AMEND OR REVOKE THE GIFT IN THE MANNER PROVIDED FOR AMENDMENT OR REVOCATION OF WILLS OR AS PROVIDED IN SUBSECTION (A) OF THIS SECTION.

(F) (1) AN ANATOMICAL GIFT MADE BY A DONOR DESIGNATION ON A DRIVER'S LICENSE OR AN IDENTIFICATION CARD MAY BE REVOKED BY GIVING WRITTEN NOTICE TO THE MOTOR VEHICLE ADMINISTRATION IN ACCORDANCE WITH § 12–303 OF THE TRANSPORTATION ARTICLE.

(2) A DONOR MAY MAKE A GIFT BY AUTHORIZING THAT A STATEMENT OR SYMBOL INDICATING THAT THE DONOR HAS MADE A GIFT BE INCLUDED ON A DONOR REGISTRY.

4–505.

(A) AN INDIVIDUAL MAY REFUSE TO MAKE AN ANATOMICAL GIFT OF THE INDIVIDUAL'S BODY OR PART BY:

(1) A RECORD SIGNED BY:

(I) THE INDIVIDUAL; OR

(II) SUBJECT TO SUBSECTION (B) OF THIS SECTION, IF THE INDIVIDUAL IS PHYSICALLY UNABLE TO SIGN, ANOTHER INDIVIDUAL ACTING AT THE DIRECTION OF THE INDIVIDUAL;

(2) THE INDIVIDUAL'S WILL, WHETHER OR NOT THE WILL IS ADMITTED TO PROBATE OR INVALIDATED AFTER THE INDIVIDUAL'S DEATH; OR

(3) DURING A TERMINAL ILLNESS OF THE INDIVIDUAL OR WHILE THE INDIVIDUAL IS INJURED, ANY FORM OF COMMUNICATION ADDRESSED TO AT LEAST TWO ADULTS, AT LEAST ONE OF WHOM IS A DISINTERESTED WITNESS.

(B) A RECORD SIGNED IN ACCORDANCE WITH SUBSECTION (A)(1)(II) OF THIS SECTION SHALL:

(1) BE WITNESSED BY AT LEAST TWO ADULTS, AT LEAST ONE OF WHOM IS A DISINTERESTED WITNESS, WHO HAVE SIGNED AT THE REQUEST OF THE INDIVIDUAL; AND

(2) STATE THAT THE RECORD HAS BEEN SIGNED AND WITNESSED AS PROVIDED IN ITEM (1) OF THIS SUBSECTION.

(C) AN INDIVIDUAL WHO HAS MADE A REFUSAL MAY AMEND OR REVOKE THE REFUSAL:

(1) IN A MANNER FOR MAKING A REFUSAL PROVIDED IN SUBSECTION (A) OF THIS SECTION;

(2) BY SUBSEQUENTLY MAKING AN ANATOMICAL GIFT IN ACCORDANCE WITH § 4–503 OF THIS SUBTITLE THAT IS INCONSISTENT WITH THE REFUSAL; OR

(3) BY DESTROYING OR CANCELING THE RECORD EVIDENCING THE REFUSAL, OR THE PORTION OF THE RECORD USED TO MAKE THE REFUSAL, WITH THE INTENT TO REVOKE THE REFUSAL.

(D) EXCEPT AS OTHERWISE PROVIDED IN § 4–506(H) OF THIS SUBTITLE, IN THE ABSENCE OF AN EXPRESS, CONTRARY INDICATION BY THE INDIVIDUAL SET FORTH IN THE REFUSAL, AN INDIVIDUAL'S UNREVOKED REFUSAL TO MAKE AN ANATOMICAL GIFT OF THE INDIVIDUAL'S BODY OR PART BARS ALL OTHER PERSONS FROM MAKING AN ANATOMICAL GIFT OF THE INDIVIDUAL'S BODY OR PART.

4–506.

(A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (G) OF THIS SECTION AND SUBJECT TO SUBSECTION (F) OF THIS SECTION, IN THE ABSENCE OF AN EXPRESS, CONTRARY INDICATION BY THE DONOR, A PERSON OTHER THAN THE DONOR IS BARRED FROM MAKING, AMENDING, OR REVOKING AN ANATOMICAL GIFT OF A DONOR'S BODY OR PART IF THE DONOR MADE:

(1) AN ANATOMICAL GIFT OF THE DONOR'S BODY OR PART UNDER § 4–503 OF THIS SUBTITLE; OR

(2) AN AMENDMENT TO AN ANATOMICAL GIFT OF THE DONOR'S BODY OR PART UNDER § 4–504 OF THIS SUBTITLE.

(B) A DONOR'S REVOCATION OF AN ANATOMICAL GIFT OF THE DONOR'S BODY OR PART UNDER § 4–504 OF THIS SUBTITLE IS NOT A REFUSAL AND DOES NOT BAR ANOTHER PERSON SPECIFIED IN § 4–501 OR § 4–507 OF THIS SUBTITLE FROM MAKING AN ANATOMICAL GIFT OF THE DONOR'S BODY OR PART UNDER § 4–503 OR § 4–508 OF THIS SUBTITLE.

(C) IF A PERSON OTHER THAN A DONOR MAKES AN UNREVOKED ANATOMICAL GIFT OF THE DONOR'S BODY OR PART UNDER § 4–503 OF THIS SUBTITLE, OR AN AMENDMENT TO AN ANATOMICAL GIFT OF THE DONOR'S BODY OR PART UNDER § 4–504 OF THIS SUBTITLE, ANOTHER PERSON MAY NOT MAKE, AMEND, OR REVOKE THE GIFT OF THE DONOR'S BODY OR PART UNDER § 4–508 OF THIS SUBTITLE.

(D) A REVOCATION OF AN ANATOMICAL GIFT OF A DONOR'S BODY OR PART UNDER § 4–504 OF THIS SUBTITLE BY A PERSON OTHER THAN THE DONOR DOES NOT BAR ANOTHER PERSON FROM MAKING AN ANATOMICAL GIFT OF THE BODY OR PART UNDER § 4–503 OR § 4–508 OF THIS SUBTITLE.

(E) IN THE ABSENCE OF AN EXPRESS, CONTRARY INDICATION BY THE DONOR OR OTHER PERSON AUTHORIZED TO MAKE AN ANATOMICAL GIFT UNDER § 4–503 OF THIS SUBTITLE, AN ANATOMICAL GIFT OF A PART IS NOT A REFUSAL

TO GIVE ANOTHER PART OR A LIMITATION ON THE MAKING OF AN ANATOMICAL GIFT OF ANOTHER PART AT A LATER TIME BY THE DONOR OR ANOTHER PERSON.

(F) IN THE ABSENCE OF AN EXPRESS, CONTRARY INDICATION BY THE DONOR OR OTHER PERSON AUTHORIZED TO MAKE AN ANATOMICAL GIFT UNDER § 4–503 OF THIS SUBTITLE, AN ANATOMICAL GIFT OF A PART FOR ONE OR MORE OF THE PURPOSES SET FORTH IN § 4–503 OF THIS SUBTITLE IS NOT A LIMITATION ON THE MAKING OF AN ANATOMICAL GIFT OF THE PART FOR ANY OTHER PURPOSE BY THE DONOR OR OTHER PERSON UNDER § 4–503 OR § 4–508 OF THIS SUBTITLE.

(G) IF A DONOR WHO IS AN UNEMANCIPATED MINOR DIES, A REASONABLY AVAILABLE PARENT OR GUARDIAN OF THE DONOR MAY REVOKE OR AMEND AN ANATOMICAL GIFT OF THE DONOR'S BODY OR PART.

(H) IF AN UNEMANCIPATED MINOR WHO SIGNED A REFUSAL DIES, A REASONABLY AVAILABLE PARENT OR GUARDIAN OF THE MINOR MAY REVOKE THE MINOR'S REFUSAL.

4–507.

(A) SUBJECT TO SUBSECTIONS (B) AND (C) OF THIS SECTION AND EXCEPT AS PROHIBITED UNDER §§ 4–505 AND 4–506 OF THIS SUBTITLE, IN ACCORDANCE WITH THE ORDER OF PRIORITY LISTED, A MEMBER OF ONE OF THE FOLLOWING CLASSES OF INDIVIDUALS WHO IS REASONABLY AVAILABLE MAY MAKE AN ANATOMICAL GIFT OF A DECEDENT'S BODY OR PART FOR THE PURPOSE OF TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION:

(1) AN AGENT OF THE DECEDENT AT THE TIME OF DEATH WHO COULD HAVE MADE AN ANATOMICAL GIFT UNDER § 4–503(B) OF THIS SUBTITLE IMMEDIATELY BEFORE THE DECEDENT'S DEATH;

(2) THE PERSONS WHO WERE ACTING AS THE GUARDIANS OF THE DECEDENT AT THE TIME OF THE DEATH OF THE DECEDENT;

(3) THE SPOUSE OR DOMESTIC PARTNER OF THE DECEDENT;

(4) THE ADULT CHILDREN OF THE DECEDENT;

(5) THE PARENTS OF THE DECEDENT;

(6) THE ADULT SIBLINGS OF THE DECEDENT;

(7) THE ADULT GRANDCHILDREN OF THE DECEDENT;

(8) THE GRANDPARENTS OF THE DECEDENT;

(9) AN ADULT WHO EXHIBITED SPECIAL CARE AND CONCERN FOR THE DECEDENT; OR

(10) ANOTHER PERSON HAVING THE AUTHORITY TO DISPOSE OF THE BODY OF THE DECEDENT.

(B) (1) IF THERE IS MORE THAN ONE MEMBER OF A CLASS LISTED IN SUBSECTION (A)(1), (3), (4), (5), (6), (7), OR (9) OF THIS SECTION ENTITLED TO MAKE AN ANATOMICAL GIFT, AN ANATOMICAL GIFT MAY BE MADE BY A MEMBER OF THE CLASS UNLESS THAT MEMBER OR A PERSON TO WHICH THE GIFT MAY PASS UNDER § 4–509 OF THIS SUBTITLE KNOWS OF AN OBJECTION BY ANOTHER MEMBER OF THE CLASS.

(2) IF AN OBJECTION TO AN ANATOMICAL GIFT IS KNOWN, THE GIFT MAY BE MADE ONLY BY A MAJORITY OF THE MEMBERS OF THE CLASS WHO ARE REASONABLY AVAILABLE.

(C) A PERSON MAY NOT MAKE AN ANATOMICAL GIFT IF, AT THE TIME OF THE DECEDENT'S DEATH, A PERSON IN A PRIOR CLASS UNDER SUBSECTION (A) OF THIS SECTION IS REASONABLY AVAILABLE TO MAKE OR TO OBJECT TO THE MAKING OF AN ANATOMICAL GIFT.

4–508.

(A) A PERSON AUTHORIZED TO MAKE AN ANATOMICAL GIFT UNDER § 4–507 OF THIS SUBTITLE MAY MAKE AN ANATOMICAL GIFT:

(1) BY A DOCUMENT OF GIFT SIGNED BY THE PERSON MAKING THE GIFT; OR

(2) BY AN ORAL COMMUNICATION THAT IS ELECTRONICALLY RECORDED OR IS CONTEMPORANEOUSLY REDUCED TO A RECORD AND SIGNED BY THE INDIVIDUAL RECEIVING THE ORAL COMMUNICATION.

(B) (1) SUBJECT TO SUBSECTION (C) OF THIS SECTION, AN ANATOMICAL GIFT BY A PERSON AUTHORIZED UNDER § 4–507 OF THIS SUBTITLE MAY BE AMENDED OR REVOKED ORALLY OR IN A RECORD BY A REASONABLY AVAILABLE MEMBER OF A PRIOR CLASS.

(2) IF MORE THAN ONE MEMBER OF A PRIOR CLASS IS REASONABLY AVAILABLE, THE GIFT MADE BY A PERSON AUTHORIZED UNDER § 4–507 OF THIS SUBTITLE MAY BE:

(I) AMENDED ONLY IF A MAJORITY OF THE REASONABLY AVAILABLE MEMBERS AGREE TO THE AMENDMENT; OR

(II) REVOKED ONLY IF:

1. A MAJORITY OF THE REASONABLY AVAILABLE MEMBERS AGREE TO THE REVOCATION; OR

2. THE REASONABLY AVAILABLE MEMBERS ARE EQUALLY DIVIDED AS TO WHETHER TO REVOKE THE GIFT.

(C) A REVOCATION UNDER SUBSECTION (B) OF THIS SECTION IS EFFECTIVE ONLY IF, BEFORE AN INCISION HAS BEEN MADE TO REMOVE A PART FROM THE DONOR'S BODY OR BEFORE INVASIVE PROCEDURES HAVE BEGUN TO PREPARE THE RECIPIENT, THE PROCUREMENT ORGANIZATION, TRANSPLANT HOSPITAL, OR PHYSICIAN OR TECHNICIAN KNOWS OF THE REVOCATION.

4–509.

(A) AN ANATOMICAL GIFT MAY BE MADE TO THE FOLLOWING PERSONS NAMED IN A DOCUMENT OF GIFT:

(1) A HOSPITAL, AN ACCREDITED MEDICAL SCHOOL, A DENTAL SCHOOL, A COLLEGE OR UNIVERSITY, AN ORGAN PROCUREMENT ORGANIZATION, ~~OR~~ THE ~~MARYLAND~~ STATE ANATOMY BOARD, OR A NONTRANSPLANT TISSUE BANK FOR RESEARCH, TRAINING, OR EDUCATION;

(2) SUBJECT TO SUBSECTION (B) OF THIS SECTION, IF THE INDIVIDUAL IS THE RECIPIENT OF THE PART, AN INDIVIDUAL DESIGNATED BY THE PERSON MAKING THE ANATOMICAL GIFT; OR

(3) AN EYE BANK OR A TRANSPLANT TISSUE BANK.

(B) IF AN ANATOMICAL GIFT TO AN INDIVIDUAL UNDER SUBSECTION (A)(2) OF THIS SECTION CANNOT BE TRANSPLANTED INTO THE INDIVIDUAL, THE PART PASSES IN ACCORDANCE WITH SUBSECTION (G) OF THIS SECTION IN THE ABSENCE OF AN EXPRESS, CONTRARY INDICATION BY THE PERSON MAKING THE ANATOMICAL GIFT.

(C) IF AN ANATOMICAL GIFT OF ONE OR MORE SPECIFIC PARTS OR OF ALL PARTS IS MADE IN A DOCUMENT OF GIFT THAT DOES NOT NAME A PERSON DESCRIBED IN SUBSECTION (A) OF THIS SECTION BUT IDENTIFIES THE PURPOSE FOR WHICH AN ANATOMICAL GIFT MAY BE USED, THE FOLLOWING PROVISIONS APPLY:

(1) IF THE PART IS AN EYE AND THE GIFT IS FOR THE PURPOSE OF TRANSPLANTATION OR THERAPY, THE GIFT PASSES TO THE APPROPRIATE EYE BANK;

(2) IF THE PART IS TISSUE AND THE GIFT IS FOR THE PURPOSE OF TRANSPLANTATION OR THERAPY, THE GIFT PASSES TO THE APPROPRIATE TISSUE BANK;

(3) IF THE PART IS AN ORGAN AND THE GIFT IS FOR THE PURPOSE OF TRANSPLANTATION OR THERAPY, THE GIFT PASSES TO THE APPROPRIATE ORGAN PROCUREMENT ORGANIZATION AS CUSTODIAN OF THE ORGAN; OR

(4) IF THE PART IS AN ORGAN, AN EYE, OR TISSUE AND THE GIFT IS FOR THE PURPOSE OF RESEARCH OR EDUCATION, THE GIFT PASSES TO THE APPROPRIATE PROCUREMENT ORGANIZATION.

(D) FOR THE PURPOSE OF SUBSECTION (C) OF THIS SECTION, IF THERE IS MORE THAN ONE PURPOSE OF AN ANATOMICAL GIFT SET FORTH IN THE DOCUMENT OF GIFT BUT THE PURPOSES ARE NOT SET FORTH IN ANY PRIORITY, THE GIFT SHALL BE USED:

(1) FOR TRANSPLANTATION OR THERAPY, IF SUITABLE; OR

(2) IF THE GIFT CANNOT BE USED FOR TRANSPLANTATION OR THERAPY, FOR RESEARCH OR EDUCATION.

(E) IF AN ANATOMICAL GIFT OF ONE OR MORE SPECIFIC PARTS IS MADE IN A DOCUMENT OF GIFT THAT DOES NOT NAME A PERSON DESCRIBED IN SUBSECTION (A) OF THIS SECTION AND DOES NOT IDENTIFY THE PURPOSE OF THE GIFT, THE GIFT PASSES IN ACCORDANCE WITH SUBSECTION (G) OF THIS SECTION AND MAY BE USED ONLY FOR TRANSPLANTATION OR THERAPY.

(F) IF A DOCUMENT OF GIFT SPECIFIES ONLY A GENERAL INTENT TO MAKE AN ANATOMICAL GIFT BY WORDS SUCH AS "DONOR", "ORGAN DONOR", OR "BODY DONOR", OR BY A SYMBOL OR STATEMENT OF SIMILAR IMPORT, THE GIFT PASSES IN ACCORDANCE WITH SUBSECTION (G) OF THIS SECTION AND MAY BE USED ONLY FOR TRANSPLANTATION OR THERAPY.

(G) FOR PURPOSES OF SUBSECTIONS (B), (E), AND (F) OF THIS SECTION, THE FOLLOWING PROVISIONS APPLY:

(1) IF THE PART IS AN EYE, THE GIFT PASSES TO THE APPROPRIATE EYE BANK;

(2) IF THE PART IS TISSUE, THE GIFT PASSES TO THE APPROPRIATE TISSUE BANK; AND

(3) IF THE PART IS AN ORGAN, THE GIFT PASSES TO THE APPROPRIATE ORGAN PROCUREMENT ORGANIZATION AS CUSTODIAN OF THE ORGAN.

(H) OTHER THAN AN ANATOMICAL GIFT UNDER SUBSECTION (A)(2) OF THIS SECTION, AN ANATOMICAL GIFT OF AN ORGAN FOR TRANSPLANTATION OR THERAPY, RESEARCH, OR EDUCATION PASSES TO THE ORGAN PROCUREMENT ORGANIZATION AS CUSTODIAN OF THE ORGAN.

(I) IF AN ANATOMICAL GIFT DOES NOT PASS IN ACCORDANCE WITH SUBSECTIONS (A) THROUGH (H) OF THIS SECTION, OR THE DECEDENT'S BODY OR PART IS NOT USED FOR TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION, CUSTODY OF THE BODY OR PART PASSES TO THE PERSON UNDER OBLIGATION TO DISPOSE OF THE BODY OR PART.

(J) (1) A PERSON MAY NOT ACCEPT AN ANATOMICAL GIFT IF THE PERSON KNOWS THAT:

(I) THE GIFT WAS NOT EFFECTIVELY MADE UNDER § 4–503 OR § 4–508 OF THIS SUBTITLE; OR

(II) THE DECEDENT MADE A REFUSAL UNDER § 4–505 OF THIS SUBTITLE THAT WAS NOT REVOKED.

(2) FOR PURPOSES OF THIS SUBSECTION, IF A PERSON KNOWS THAT AN ANATOMICAL GIFT WAS MADE ON A DOCUMENT OF GIFT, THE PERSON IS DEEMED TO KNOW OF ANY AMENDMENT OR REVOCATION OF THE GIFT OR ANY REFUSAL TO MAKE AN ANATOMICAL GIFT ON THE SAME DOCUMENT OF GIFT.

(K) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (A)(2) OF THIS SECTION, NOTHING IN THIS SUBTITLE AFFECTS THE ALLOCATION OF ORGANS FOR TRANSPLANTATION OR THERAPY.

4–510.

(A) THE FOLLOWING PERSONS SHALL MAKE A REASONABLE SEARCH OF AN INDIVIDUAL WHO THE PERSON REASONABLY BELIEVES IS DEAD OR WHOSE DEATH IS IMMINENT FOR A DOCUMENT OF GIFT OR ANY OTHER INFORMATION IDENTIFYING THE INDIVIDUAL AS A DONOR OR AS AN INDIVIDUAL WHO MADE A REFUSAL:

(1) A LAW ENFORCEMENT OFFICER, FIREFIGHTER, PARAMEDIC, OR ANY OTHER EMERGENCY RESCUER FINDING THE INDIVIDUAL; AND

(2) IF NO OTHER SOURCE OF THE INFORMATION IS IMMEDIATELY AVAILABLE, A HOSPITAL, AS SOON AS PRACTICAL AFTER THE INDIVIDUAL'S ARRIVAL AT THE HOSPITAL.

(B) IF A DOCUMENT OF GIFT OR A REFUSAL TO MAKE AN ANATOMICAL GIFT IS LOCATED BY THE SEARCH REQUIRED UNDER SUBSECTION (A)(1) OF THIS SECTION AND THE INDIVIDUAL OR DECEASED INDIVIDUAL TO WHOM IT RELATES IS TAKEN TO A HOSPITAL, THE PERSON RESPONSIBLE FOR CONDUCTING THE SEARCH SHALL SEND THE DOCUMENT OF GIFT OR REFUSAL TO THE HOSPITAL.

(C) A PERSON IS NOT SUBJECT TO CRIMINAL OR CIVIL LIABILITY FOR FAILING TO DISCHARGE THE DUTIES IMPOSED BY THIS SECTION BUT MAY BE SUBJECT TO ADMINISTRATIVE SANCTIONS.

4–511.

(A) A DOCUMENT OF GIFT NEED NOT BE DELIVERED DURING THE LIFETIME OF A DONOR TO BE EFFECTIVE.

(B) ON OR AFTER THE DEATH OF AN INDIVIDUAL, A PERSON IN POSSESSION OF A DOCUMENT OF GIFT OR A REFUSAL TO MAKE AN ANATOMICAL GIFT REGARDING THE INDIVIDUAL SHALL ALLOW EXAMINATION AND COPYING OF THE DOCUMENT OF GIFT OR REFUSAL BY:

(1) A PERSON AUTHORIZED TO MAKE OR OBJECT TO THE MAKING OF THE ANATOMICAL GIFT; OR

(2) A PERSON TO WHICH THE GIFT COULD PASS UNDER § 4–509 OF THIS SUBTITLE.

4–512.

(A) WHENEVER A HOSPITAL REFERS AN INDIVIDUAL WHO IS DEAD OR WHOSE DEATH IS IMMINENT TO A PROCUREMENT ORGANIZATION TO ASCERTAIN

WHETHER THE INDIVIDUAL HAS MADE AN ANATOMICAL GIFT, THE ORGANIZATION SHALL MAKE A REASONABLE SEARCH OF:

~~(1) THE RECORDS OF THE MOTOR VEHICLE ADMINISTRATION; AND~~

~~(2) ANY~~ *ANY* DONOR REGISTRY THAT THE HOSPITAL KNOWS EXISTS FOR THE GEOGRAPHICAL AREA IN WHICH THE INDIVIDUAL RESIDES.

~~(B) A PROCUREMENT ORGANIZATION SHALL BE ALLOWED REASONABLE ACCESS TO INFORMATION IN THE RECORDS OF THE MOTOR VEHICLE ADMINISTRATION TO ASCERTAIN WHETHER AN INDIVIDUAL WHO IS DEAD OR WHOSE DEATH IS IMMINENT IS A DONOR.~~

~~(C)~~ *(B)* (1) WHEN A HOSPITAL REFERS AN INDIVIDUAL WHO IS DEAD OR WHOSE DEATH IS IMMINENT TO A PROCUREMENT ORGANIZATION, THE ORGANIZATION MAY CONDUCT ANY REASONABLE EXAMINATION NECESSARY TO ENSURE THE MEDICAL SUITABILITY OF A PART THAT IS OR COULD BE THE SUBJECT OF AN ANATOMICAL GIFT FOR TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION.

(2) DURING THE EXAMINATION PERIOD, MEASURES NECESSARY TO ENSURE THE MEDICAL SUITABILITY OF A PART FROM A PROSPECTIVE DONOR:

(I) MAY NOT BE WITHDRAWN UNLESS THE HOSPITAL OR PROCUREMENT ORGANIZATION KNOWS THAT THE INDIVIDUAL EXPRESSED A CONTRARY INTENT; AND

(II) MAY BE ADMINISTERED, UNLESS IT IS DETERMINED THAT THE ADMINISTRATION OF THOSE MEASURES WOULD NOT PROVIDE THE PROSPECTIVE DONOR WITH APPROPRIATE END–OF–LIFE CARE CONSISTENT WITH REASONABLE MEDICAL JUDGMENT.

~~(D)~~ *(C)* UNLESS PROHIBITED BY LAW OTHER THAN THIS SUBTITLE, AT ANY TIME AFTER A DONOR'S DEATH, THE PERSON TO WHICH A PART PASSES UNDER § 4–509 OF THIS SUBTITLE MAY CONDUCT A REASONABLE EXAMINATION NECESSARY TO ENSURE THE MEDICAL SUITABILITY OF THE BODY OR PART FOR ITS INTENDED PURPOSE.

~~(E)~~ *(D)* UNLESS PROHIBITED BY LAW OTHER THAN THIS SUBTITLE, AN EXAMINATION UNDER SUBSECTION ~~(C) OR (D)~~ *(B) OR (C)* OF THIS SECTION MAY INCLUDE AN EXAMINATION OF ALL MEDICAL AND DENTAL RECORDS OF THE DONOR OR PROSPECTIVE DONOR.

~~(F)~~ *(E)* ON THE DEATH OF A MINOR WHO WAS A DONOR OR HAD SIGNED A REFUSAL, UNLESS A PROCUREMENT ORGANIZATION KNOWS THAT THE MINOR IS EMANCIPATED, THE PROCUREMENT ORGANIZATION SHALL CONDUCT A REASONABLE SEARCH FOR THE PARENTS OF THE MINOR AND PROVIDE THE PARENTS WITH AN OPPORTUNITY TO REVOKE OR AMEND THE ANATOMICAL GIFT OR REVOKE THE REFUSAL.

~~(G)~~ *(F)* (1) ON A REFERRAL BY A HOSPITAL UNDER SUBSECTION (A) OF THIS SECTION, A PROCUREMENT ORGANIZATION SHALL MAKE A REASONABLE SEARCH FOR A PERSON LISTED IN § 4–507 OF THIS SUBTITLE HAVING PRIORITY TO MAKE AN ANATOMICAL GIFT ON BEHALF OF A PROSPECTIVE DONOR.

(2) IF A PROCUREMENT ORGANIZATION RECEIVES INFORMATION THAT AN ANATOMICAL GIFT TO ANY OTHER PERSON WAS MADE, AMENDED, OR REVOKED, THE PROCUREMENT ORGANIZATION SHALL PROMPTLY ADVISE THE OTHER PERSON OF ALL RELEVANT INFORMATION.

~~(H)~~ *(G)* (1) SUBJECT TO §§ 4–509(I) AND 4–519 OF THIS SUBTITLE, AFTER THE DEATH OF THE DONOR, THE RIGHTS OF A PERSON TO WHICH A PART PASSES UNDER § 4–509 OF THIS SUBTITLE ARE SUPERIOR TO THE RIGHTS OF ALL OTHERS WITH RESPECT TO THE PART.

(2) THE PERSON TO WHICH A PART PASSES UNDER § 4–509 OF THIS SUBTITLE MAY ACCEPT OR REJECT AN ANATOMICAL GIFT IN WHOLE OR IN PART.

(3) SUBJECT TO THE TERMS OF A DOCUMENT OF GIFT AND THIS SUBTITLE, A PERSON THAT ACCEPTS AN ANATOMICAL GIFT OF AN ENTIRE BODY MAY ALLOW EMBALMING, BURIAL, OR CREMATION, AND THE USE OF REMAINS IN A FUNERAL SERVICE.

(4) IF AN ANATOMICAL GIFT OF A PART IS MADE UNDER § 4–509 OF THIS SUBTITLE, ON THE DEATH OF THE DONOR AND BEFORE EMBALMING, BURIAL, OR CREMATION, THE PERSON TO WHICH THE PART PASSES SHALL HAVE THE PART REMOVED WITHOUT UNNECESSARY MUTILATION.

~~(I)~~ *(H)* A PHYSICIAN WHO ATTENDS A DECEDENT AT DEATH AND A PHYSICIAN WHO DETERMINES THE TIME OF A DECEDENT'S DEATH MAY NOT PARTICIPATE IN THE PROCEDURES FOR REMOVING OR TRANSPLANTING A PART FROM THE DECEDENT.

~~(J)~~ *(I)* (1) A PHYSICIAN OR TECHNICIAN MAY REMOVE A DONATED PART FROM THE BODY OF A DONOR THAT THE PHYSICIAN OR TECHNICIAN IS QUALIFIED TO REMOVE.

(2) AN ORGAN PROCUREMENT ORGANIZATION MAY RECOVER A DONATED BODY PART FROM THE BODY OF A DONOR ON BEHALF OF AN EYE BANK OR TISSUE BANK.

~~(K)~~ *(J)* EACH HOSPITAL IN THE STATE SHALL ENTER INTO AN AGREEMENT OR AFFILIATION WITH A PROCUREMENT ORGANIZATION FOR COORDINATION OF PROCUREMENT AND USE OF ANATOMICAL GIFTS.

4–513.

(A) (1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, IF REMOVAL OF A PART FROM AN INDIVIDUAL IS INTENDED TO OCCUR AFTER THE INDIVIDUAL'S DEATH, A PERSON MAY NOT FOR VALUABLE CONSIDERATION KNOWINGLY PURCHASE OR SELL THE PART FOR TRANSPLANTATION OR THERAPY.

(2) A PERSON THAT VIOLATES PARAGRAPH (1) OF THIS SUBSECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $50,000 OR IMPRISONMENT NOT EXCEEDING 5 YEARS OR BOTH.

(B) (1) A PERSON MAY CHARGE A REASONABLE AMOUNT OF MONEY FOR THE REMOVAL, PROCESSING, PRESERVATION, QUALITY CONTROL, STORAGE, TRANSPORTATION, IMPLANTATION, OR DISPOSAL OF A PART.

(2) THE PROHIBITION IN SUBSECTION (A) OF THIS SECTION DOES NOT APPLY TO BLOOD AND PLASMA.

(C) (1) A PERSON MAY NOT, IN ORDER TO OBTAIN FINANCIAL GAIN, INTENTIONALLY FALSIFY, FORGE, CONCEAL, DEFACE, OR OBLITERATE A DOCUMENT OF GIFT, AN AMENDMENT OR REVOCATION OF A DOCUMENT OF GIFT, OR A REFUSAL.

(2) A PERSON WHO VIOLATES PARAGRAPH (1) OF THIS SUBSECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $50,000 OR IMPRISONMENT NOT EXCEEDING 5 YEARS OR BOTH.

4–514.

(A) A PERSON THAT ACTS IN ACCORDANCE WITH THIS SUBTITLE OR WITH THE APPLICABLE ANATOMICAL GIFT LAW OF ANOTHER STATE, OR ATTEMPTS IN GOOD FAITH TO DO SO, IS NOT LIABLE FOR THE ACT IN A CIVIL ACTION, A CRIMINAL PROSECUTION, OR AN ADMINISTRATIVE PROCEEDING.

(B) A PERSON MAKING AN ANATOMICAL GIFT OR THE DONOR'S ESTATE IS NOT LIABLE FOR ANY INJURY OR DAMAGE THAT RESULTS FROM THE MAKING OR USE OF THE GIFT.

(C) IN DETERMINING WHETHER AN ANATOMICAL GIFT HAS BEEN MADE, AMENDED, OR REVOKED UNDER THIS SUBTITLE, A PERSON MAY RELY ON REPRESENTATIONS OF AN INDIVIDUAL LISTED IN § 4–507(A)(2) THROUGH (9) OF THIS SUBTITLE RELATING TO THE INDIVIDUAL'S RELATIONSHIP TO THE DONOR OR PROSPECTIVE DONOR UNLESS THE PERSON KNOWS THAT THE REPRESENTATION IS UNTRUE.

4–515.

(A) A DOCUMENT OF GIFT IS VALID IF EXECUTED IN ACCORDANCE WITH:

(1) THIS SUBTITLE;

(2) THE LAWS OF THE STATE OR COUNTRY WHERE IT WAS EXECUTED; OR

(3) THE LAWS OF THE STATE OR COUNTRY WHERE THE PERSON MAKING THE ANATOMICAL GIFT WAS DOMICILED, HAS A PLACE OF RESIDENCE, OR WAS A NATIONAL AT THE TIME THE DOCUMENT OF GIFT WAS EXECUTED.

(B) IF A DOCUMENT OF GIFT IS VALID UNDER THIS SECTION, THE LAW OF THIS STATE GOVERNS THE INTERPRETATION OF THE DOCUMENT OF GIFT.

(C) A PERSON MAY PRESUME THAT A DOCUMENT OF GIFT OR AN AMENDMENT OF AN ANATOMICAL GIFT IS VALID UNLESS THAT PERSON KNOWS THAT IT WAS NOT VALIDLY EXECUTED OR WAS REVOKED.

4–516.

(A) IN THIS SECTION, "QUALIFIED NONPROFIT ENTITY" MEANS A PROCUREMENT ORGANIZATION EXEMPT FROM TAXATION UNDER § 501(C)(3) OF THE INTERNAL REVENUE CODE OR AN ENTITY EXEMPT FROM TAXATION UNDER § 501(C)(3) OF THE INTERNAL REVENUE CODE THAT ACTIVELY FUNCTIONS IN A SUPPORTING RELATIONSHIP TO ONE OR MORE PROCUREMENT ORGANIZATIONS

IF THE PROCUREMENT ORGANIZATION OR OTHER ENTITY HAS A BOARD OF DIRECTORS WHOSE MEMBERS ARE EXPERIENCED IN:

(1) ORGAN, TISSUE, AND EYE DONATION;

(2) WORKING WITH DONORS AND DONOR FAMILIES; AND

(3) EDUCATING THE PUBLIC ABOUT THE IMPORTANCE OF THE PROCESS OF ORGAN, TISSUE, AND EYE DONATION.

(B) (1) THE SECRETARY OF HEALTH AND MENTAL HYGIENE SHALL CONTRACT WITH A QUALIFIED NONPROFIT ENTITY FOR THE ESTABLISHMENT, MAINTENANCE, AND OPERATION OF A DONOR REGISTRY.

(2) THE SECRETARY OF HEALTH AND MENTAL HYGIENE SHALL USE FUNDS FROM THE ORGAN AND TISSUE DONATION AWARENESS FUND ESTABLISHED UNDER TITLE 13, SUBTITLE 9 OF THE HEALTH – GENERAL ARTICLE OR ANY OTHER FUNDS AS MAY BE APPROPRIATE TO COMPENSATE THE NONPROFIT ENTITY CONTRACTED WITH UNDER PARAGRAPH (1) OF THIS SUBSECTION FOR THE REASONABLE COST OF ESTABLISHING, MAINTAINING, AND OPERATING THE DONOR REGISTRY, INCLUDING THE REASONABLE COST OF PUBLIC EDUCATION PROGRAMS TO INCREASE PUBLIC AWARENESS ABOUT THE EXISTENCE AND PURPOSE OF THE REGISTRY AND ORGAN, TISSUE, AND EYE DONATION.

(C) THE MOTOR VEHICLE ADMINISTRATION SHALL COOPERATE WITH THE QUALIFIED NONPROFIT ENTITY CONTRACTED WITH UNDER SUBSECTION (B)(1) OF THIS SECTION FOR THE PURPOSE OF TRANSFERRING TO THE DONOR REGISTRY ALL RELEVANT INFORMATION REGARDING A DONOR'S MAKING, AMENDING OF, OR REVOKING OF AN ANATOMICAL GIFT.

(D) A DONOR REGISTRY SHALL BE ACCESSIBLE 24 HOURS A DAY AND 7 DAYS A WEEK TO ALLOW:

(1) A DONOR TO INCLUDE ON THE DONOR REGISTRY A STATEMENT OR SYMBOL THAT THE DONOR HAS MADE OR AMENDED AN ANATOMICAL GIFT;

(2) A DONOR TO REVOKE AN ANATOMICAL GIFT; OR

(3) A PROCUREMENT ORGANIZATION TO OBTAIN RELEVANT INFORMATION ON THE DONOR REGISTRY TO DETERMINE, AT THE DEATH OR IMMINENT DEATH OF A DONOR OR A PROSPECTIVE DONOR, WHETHER THE

DONOR OR PROSPECTIVE DONOR HAS MADE, AMENDED, OR REVOKED AN ANATOMICAL GIFT.

(E) PERSONALLY IDENTIFIABLE INFORMATION ON A DONOR REGISTRY ABOUT A DONOR OR PROSPECTIVE DONOR MAY NOT BE USED OR DISCLOSED WITHOUT THE EXPRESS CONSENT OF THE DONOR, PROSPECTIVE DONOR, OR PERSON THAT MADE THE ANATOMICAL GIFT FOR ANY PURPOSE OTHER THAN TO DETERMINE, AT THE DEATH OR IMMINENT DEATH OF THE DONOR OR PROSPECTIVE DONOR, WHETHER THE DONOR OR PROSPECTIVE DONOR HAS MADE OR AMENDED AN ANATOMICAL GIFT.

(F) (1) THIS SECTION DOES NOT PROHIBIT A PERSON FROM CREATING OR MAINTAINING A DONOR REGISTRY THAT IS NOT ESTABLISHED BY OR UNDER CONTRACT WITH THE STATE.

(2) A REGISTRY THAT IS NOT ESTABLISHED BY OR UNDER CONTRACT WITH THE STATE SHALL COMPLY WITH SUBSECTIONS (D) AND (E) OF THIS SECTION.

4–517.

(A) IN THIS SECTION, "ADVANCE HEALTH CARE DIRECTIVE" MEANS A POWER OF ATTORNEY FOR HEALTH CARE OR A RECORD SIGNED OR AUTHORIZED BY A PROSPECTIVE DONOR IN ACCORDANCE WITH §§ 5–601 THROUGH 5–618 OF THE HEALTH – GENERAL ARTICLE CONTAINING THE PROSPECTIVE DONOR'S DIRECTION CONCERNING A HEALTH–CARE DECISION FOR THE PROSPECTIVE DONOR.

(B) (1) (I) IF A PROSPECTIVE DONOR HAS A DECLARATION OR ADVANCE HEALTH CARE DIRECTIVE AND THE TERMS OF THE DECLARATION OR DIRECTIVE AND THE EXPRESS OR IMPLIED TERMS OF A POTENTIAL ANATOMICAL GIFT ARE IN CONFLICT WITH REGARD TO THE ADMINISTRATION OF MEASURES NECESSARY TO ENSURE THE MEDICAL SUITABILITY OF A PART FOR TRANSPLANTATION OR THERAPY:

1. THE PROSPECTIVE DONOR'S ATTENDING PHYSICIAN AND PROSPECTIVE DONOR SHALL CONFER TO RESOLVE THE CONFLICT; OR

2. IF THE PROSPECTIVE DONOR IS INCAPABLE OF RESOLVING THE CONFLICT, AN AGENT ACTING UNDER THE PROSPECTIVE DONOR'S DECLARATION OR DIRECTIVE SHALL ACT FOR THE DONOR TO RESOLVE THE CONFLICT.

(II) IF THERE IS NOT AN AGENT OR THE AGENT IS NOT REASONABLY AVAILABLE, ANOTHER PERSON AUTHORIZED BY A LAW OTHER THAN THIS SUBTITLE TO MAKE HEALTH CARE DECISIONS ON BEHALF OF THE PROSPECTIVE DONOR SHALL ACT FOR THE DONOR TO RESOLVE THE CONFLICT.

(2) INFORMATION RELEVANT TO THE RESOLUTION OF THE CONFLICT UNDER THIS SUBSECTION MAY BE OBTAINED FROM THE APPROPRIATE PROCUREMENT ORGANIZATION AND ANY OTHER PERSON AUTHORIZED TO MAKE AN ANATOMICAL GIFT FOR THE PROSPECTIVE DONOR UNDER § 4–507 OF THIS SUBTITLE.

(3) BEFORE RESOLUTION OF A CONFLICT UNDER THIS SUBSECTION, MEASURES NECESSARY TO ENSURE THE MEDICAL SUITABILITY OF A PART FROM A PROSPECTIVE DONOR MAY BE ADMINISTERED UNLESS IT IS DETERMINED THAT THE ADMINISTRATION OF THOSE MEASURES WOULD NOT PROVIDE THE PROSPECTIVE DONOR WITH APPROPRIATE END–OF–LIFE CARE, CONSISTENT WITH REASONABLE MEDICAL JUDGMENT.

(4) IF THE CONFLICT UNDER THIS SUBSECTION IS NOT RESOLVED EXPEDITIOUSLY, THE DIRECTION OF THE DECLARATION OR ADVANCE HEALTH CARE DIRECTIVE CONTROLS.

4–518.

(A) OCME AND PROCUREMENT ORGANIZATIONS SHALL COOPERATE WITH EACH OTHER TO MAXIMIZE THE OPPORTUNITY TO RECOVER ANATOMICAL GIFTS FOR THE PURPOSE OF TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION.

(B) IF OCME RECEIVES NOTICE FROM A PROCUREMENT ORGANIZATION THAT AN ANATOMICAL GIFT MIGHT BE AVAILABLE OR WAS MADE WITH RESPECT TO A DECEDENT WHOSE BODY OR PART IS UNDER THE JURISDICTION OF OCME AND A POSTMORTEM EXAMINATION IS GOING TO BE PERFORMED, UNLESS OCME DENIES RECOVERY IN ACCORDANCE WITH § 4–519 OF THIS SUBTITLE, OCME OR OCME'S DESIGNEE SHALL CONDUCT THE POSTMORTEM EXAMINATION OF THE BODY OR PART IN A MANNER AND WITHIN A PERIOD COMPATIBLE WITH ITS PRESERVATION FOR THE PURPOSES OF THE GIFT.

(C) (1) A PART MAY NOT BE REMOVED FROM THE BODY OF A DECEDENT UNDER THE JURISDICTION OF OCME FOR TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION UNLESS THE PART IS THE SUBJECT OF AN ANATOMICAL GIFT OR AN AUTHORIZATION GIVEN BY OCME IN ACCORDANCE WITH § 4–518(D) OF THIS SUBTITLE.

(2) THE BODY OF A DECEDENT UNDER THE JURISDICTION OF OCME MAY NOT BE DELIVERED TO A PERSON FOR RESEARCH OR EDUCATION UNLESS THE BODY IS THE SUBJECT OF AN ANATOMICAL GIFT OR AN AUTHORIZATION GIVEN BY OCME IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION.

(3) THIS SUBSECTION DOES NOT PRECLUDE OCME FROM PERFORMING A POSTMORTEM EXAMINATION OF THE BODY OR PART OF A DECEDENT UNDER THE JURISDICTION OF OCME FOR THE PURPOSES OF EDUCATION, TRAINING, AND RESEARCH REQUIRED BY OCME.

(D) (1) THE CHIEF MEDICAL EXAMINER, THE DEPUTY CHIEF MEDICAL EXAMINER, OR AN ASSISTANT MEDICAL EXAMINER MAY PROVIDE A PART ON THE REQUEST OF A PROCUREMENT ORGANIZATION UNDER THE FOLLOWING CONDITIONS:

(I) THE MEDICAL EXAMINER HAS CHARGE OF A DECEDENT WHO MAY PROVIDE A SUITABLE PART FOR TRANSPLANT;

(II) A REASONABLE, UNSUCCESSFUL SEARCH HAS BEEN MADE BY THE PROCUREMENT ORGANIZATION AS REQUIRED BY ~~§ 4–512(G)~~ *§ 4–512(F)* OF THIS SUBTITLE TO CONTACT THE PERSONS AUTHORIZED UNDER § 4–507 OF THIS SUBTITLE TO MAKE AN ANATOMICAL GIFT;

(III) NO OBJECTION BY THE PERSONS AUTHORIZED UNDER § 4–507 OF THIS SUBTITLE TO MAKE AN ANATOMICAL GIFT IS KNOWN BY THE MEDICAL EXAMINER; AND

(IV) THE PROVISION OF THE PART FOR TRANSPLANT WILL NOT INTERFERE WITH THE SUBSEQUENT COURSE OF AN INVESTIGATION OR AUTOPSY.

(2) (I) IF THE CHIEF MEDICAL EXAMINER HAS OBTAINED A WRITTEN OR VERBAL STATEMENT FROM THE PROCUREMENT ORGANIZATION THAT A REASONABLE, UNSUCCESSFUL SEARCH WAS CONDUCTED PRIOR TO THE REMOVAL OF A PART FOR TRANSPLANTATION, THE CHIEF MEDICAL EXAMINER, THE DEPUTY CHIEF MEDICAL EXAMINER, AN ASSISTANT CHIEF MEDICAL EXAMINER, AND THE PROCUREMENT ORGANIZATION ARE NOT CIVILLY LIABLE IF A PERSON AUTHORIZED UNDER § 4–507 OF THIS SUBTITLE TO MAKE AN ANATOMICAL GIFT IS SUBSEQUENTLY LOCATED AND CONTENDS THAT THE AUTHORIZATION OF THAT PERSON WAS REQUIRED TO MAKE THE GIFT.

(II) A VERBAL STATEMENT UNDER SUBPARAGRAPH (1) OF THIS PARAGRAPH SHALL BE DOCUMENTED IN THE MEDICAL RECORD OF THE DECEDENT.

4–519.

(A) (1) ON REQUEST OF A PROCUREMENT ORGANIZATION, OCME SHALL RELEASE TO THE PROCUREMENT ORGANIZATION THE NAME, CONTACT INFORMATION, AND AVAILABLE MEDICAL AND SOCIAL HISTORY OF A DECEDENT WHOSE BODY IS UNDER THE JURISDICTION OF OCME.

(2) IF A BODY OR PART OF A DECEDENT IS MEDICALLY SUITABLE FOR TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION, OCME SHALL RELEASE POSTMORTEM EXAMINATION RESULTS TO THE PROCUREMENT ORGANIZATION THAT MADE A REQUEST UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(3) IF RELEVANT TO TRANSPLANTATION OR THERAPY, A PROCUREMENT ORGANIZATION MAY MAKE A SUBSEQUENT DISCLOSURE OF THE POSTMORTEM EXAMINATION RESULTS OR OTHER INFORMATION RECEIVED FROM OCME.

(B) OCME MAY CONDUCT A POSTMORTEM EXAMINATION BY REVIEWING MEDICAL RECORDS, LABORATORY TEST RESULTS, X–RAYS, OTHER DIAGNOSTIC RESULTS, AND OTHER INFORMATION THAT OCME DETERMINES MAY BE RELEVANT TO THE EXAMINATION.

(C) A PERSON THAT HAS INFORMATION REQUESTED BY OCME IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION, SHALL PROVIDE THE INFORMATION AS EXPEDITIOUSLY AS POSSIBLE TO ALLOW OCME TO CONDUCT THE POSTMORTEM EXAMINATION WITHIN A PERIOD COMPATIBLE WITH THE PRESERVATION OF PARTS FOR THE PURPOSE OF TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION.

(D) OCME AND A PROCUREMENT ORGANIZATION SHALL COOPERATE IN THE TIMELY REMOVAL OF A PART FROM A DECEDENT IF:

(1) AN ANATOMICAL GIFT HAS BEEN OR MIGHT BE MADE OF A PART OF THE DECEDENT WHOSE BODY IS UNDER THE JURISDICTION OF OCME AND A POSTMORTEM EXAMINATION IS NOT REQUIRED; OR

(2) OCME DETERMINES THAT A POSTMORTEM EXAMINATION IS REQUIRED BUT THAT THE RECOVERY OF THE PART THAT IS THE SUBJECT OF THE ANATOMICAL GIFT WILL NOT INTERFERE WITH THE EXAMINATION.

(E) (1) OCME AND PROCUREMENT ORGANIZATIONS SHALL ENTER INTO AN AGREEMENT SETTING FORTH PROTOCOLS AND PROCEDURES TO GOVERN RELATIONS BETWEEN THE PARTIES WHEN AN ANATOMICAL GIFT OF A PART FROM A DECEDENT UNDER THE JURISDICTION OF OCME HAS BEEN OR MIGHT BE MADE, BUT OCME BELIEVES THAT THE RECOVERY OF THE PART COULD INTERFERE WITH THE POSTMORTEM EXAMINATION INTO THE DECEDENT'S CAUSE OR MANNER OF DEATH.

(2) DECISIONS REGARDING THE RECOVERY OF ORGANS, TISSUE, AND EYES UNDER THIS SUBSECTION SHALL BE MADE IN ACCORDANCE WITH THE AGREEMENT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

(3) IF OCME DENIES RECOVERY OF AN ANATOMICAL GIFT, THE PROCUREMENT ORGANIZATION MAY REQUEST THAT OCME RECONSIDER THE DENIAL AND ALLOW THE RECOVERY TO PROCEED.

(4) THE PARTIES SHALL EVALUATE THE EFFECTIVENESS OF THE PROTOCOLS AND PROCEDURES AGREED TO UNDER THIS SUBSECTION AT REGULAR INTERVALS, BUT NO LESS FREQUENTLY THAN EVERY 2 YEARS.

(F) IF OCME OR A DESIGNEE ALLOWS RECOVERY OF A PART UNDER SUBSECTION (D) OR (E) OF THIS SECTION, ON REQUEST, THE PROCUREMENT ORGANIZATION SHALL CAUSE THE PHYSICIAN OR TECHNICIAN WHO REMOVES THE PART TO PROVIDE OCME WITH A RECORD DESCRIBING THE CONDITION OF THE PART, A BIOPSY, A PHOTOGRAPH, AND ANY OTHER INFORMATION AND OBSERVATIONS THAT WOULD ASSIST IN THE POSTMORTEM EXAMINATION.

(G) IF OCME OR A DESIGNEE IS REQUIRED TO BE PRESENT AT A REMOVAL PROCEDURE UNDER SUBSECTION (E) OF THIS SECTION, ON REQUEST, THE PROCUREMENT ORGANIZATION REQUESTING THE RECOVERY OF THE PART SHALL REIMBURSE OCME OR A DESIGNEE FOR THE ADDITIONAL COSTS INCURRED IN COMPLYING WITH SUBSECTION (F) OF THIS SECTION.

4–520.

IN APPLYING AND CONSTRUING THIS SUBTITLE, WHICH IS A UNIFORM ACT, CONSIDERATION SHALL BE GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS SUBJECT MATTER AMONG STATES THAT ENACT THE PROVISIONS OF THIS SUBTITLE.

4–521.

THIS SUBTITLE MODIFIES, LIMITS, AND SUPERSEDES THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15 U.S.C. SECTION 7001 ET SEQ., BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE SECTION 101(A) OF THAT ACT, 15 U.S.C. SECTION 7001 ET SEQ., OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN SECTION 103(B) OF THAT ACT, 15 U.S.C. SECTION 7003(B).

4–522.

THIS SUBTITLE MAY BE CITED AS THE MARYLAND REVISED UNIFORM ANATOMICAL GIFT ACT.

Article – Health – General

5–408.

(a) (1) A person may not sell or buy any body or any part of a body that is under the exclusive control of the Board.

(2) A person other than a nonprofit organization that qualifies under § 501(c)(3) of the Internal Revenue Code, may not sell, buy, or act as a broker for a profit in the transfer of any human organ that:

(i) Is removed from a human body that is alive or dead at the time of removal; and

(ii) Is not under the exclusive control of the Board.

(3) In this section, "human organ" does not include blood and plasma.

(b) (1) Except as provided in paragraphs (2) and (3) of this subsection, a person may not send, transport, or permit or cause to be sent or transported out of the State any body or any part of a body that is under the exclusive control of the Board.

(2) The Board may authorize, by regulation, the transporting of human specimens under its exclusive control to an out–of–state medical study program, provided that:

(i) The needs of the schools of the State are met;

(ii) The requesting party demonstrates the need for a specimen;

(iii) The circumstances of the request are that:

1. No other sufficient source of specimens within the requesting state exists; or

2. A preexisting organ tissue donation was made by an individual in compliance with the **[**Uniform Donor Act**]** **MARYLAND REVISED UNIFORM ANATOMICAL GIFT ACT**;

(iv) The requesting party bears the responsibility for transporting and the specialized care of the specimen and all associated costs; and

(v) The Board retains the right of exclusive control of the specimen including the final disposition when appropriate or necessary to fulfill an obligation to return the remains of a donated specimen to the donor's family.

(3) The Board may authorize a physician, teacher, demonstrator, or investigator of advanced human biological sciences to send or transport human specimens out of the State for use by medical study programs.

5–604.1.

(a) An advance directive may contain a statement by a declarant that the declarant consents to the gift of all or any part of the declarant's body for any one or more of the purposes specified in Title 4, Subtitle 5 of the Estates and Trusts Article.

(b) Notwithstanding any other provision of law, an anatomical gift in an advance directive is valid and effective for all purposes under Title 4, Subtitle 5 of the Estates and Trusts Article, including the immunity from civil or criminal liability set forth in **[**§ 4–508(b)**]** **§ 4–514** of the Estates and Trusts Article.

13–901.

(a) (1) There is an Organ and Tissue Donation Awareness Fund.

(2) The Fund consists of moneys collected under § 16–111.2(f) of the Transportation Article.

(3) The Fund is a special, continuing, nonlapsing fund that is not subject to § 7–302 of the State Finance and Procurement Article.

(4) The Treasurer shall separately hold and the Comptroller shall account for the Fund.

(5) The Fund shall be invested and reinvested in the same manner as other State funds.

(6) Any investment earnings shall be retained to the credit of the Fund.

(b) (1) The Fund shall be managed and supervised by the Secretary or the Secretary's designee.

(2) The Fund shall be used to promote public education and awareness about organ, tissue, and eye donations and to fund the establishment, operation, and maintenance of a donor registry as provided in **[**§ 4–512**] § 4–516** of the Estates and Trusts Article.

(3) The Fund shall be subject to audit by the Office of Legislative Audits under Title 2, Subtitle 12 of the State Government Article.

19–310.

(a) (1) In this subsection, "designated requestor" means a hospital employee who has completed a course offered by an organ, tissue, or eye recovery agency on how to approach potential donor families and request organ or tissue donation.

(2) (i) On or before the occurrence of each death in a hospital, the hospital shall contact an appropriate organ, tissue, or eye recovery agency in order to determine the patient's suitability for organ, tissue, or eye donation.

(ii) The contact and its disposition shall be noted in the patient's medical record.

(3) (i) The appropriate organ, tissue, or eye recovery agency, in consultation with the patient's attending physician or the physician's designee, shall determine the patient's suitability for organ, tissue, or eye donation.

(ii) If the organ, tissue, or eye recovery agency, in consultation with the patient's attending physician or the physician's designee, determines that donation is not appropriate based on established medical criteria, this determination shall be noted by hospital personnel in the patient's medical record and no further action is necessary.

(iii) If the organ, tissue, or eye recovery agency, in consultation with the patient's attending physician or the physician's designee, determines that the patient is a suitable candidate for organ, tissue, or eye donation, a representative of the appropriate organ, tissue, or eye recovery agency or a designated requestor shall initiate a request under paragraph (4) of this subsection, if applicable.

(4) (i) Except as provided in **[**paragraph (10) of this subsection**] THE MARYLAND REVISED UNIFORM ANATOMICAL GIFT ACT**, when an individual dies in a hospital in accordance with § 5–202 of this article, a representative of the appropriate organ, tissue, or eye recovery agency or a designated requestor shall request, with **[**sensitivity, in the order of stated priority**] SENSITIVITY AND IN**

COMPLIANCE WITH § 4–507 OF THE ESTATES AND TRUSTS ARTICLE, that the individual's representative consent to the donation of all or any of the decedent's organs or tissues as an anatomical donation if suitable.

[(ii) For the purposes of subparagraph (i) of this paragraph, the representative of the deceased individual is 1 of the following individuals listed in the following order of priority:

1. A spouse or domestic partner, but, if not alive or not competent, then;

2. A son or daughter who is at least 18 years old, but, if not alive, competent, or immediately available, then;

3. A parent, but, if not alive, competent, or immediately available, then;

4. A brother or sister who is at least 18 years old, but, if not alive or not competent, then;

5. A guardian;

6. A friend or other relative of the decedent, if the individual:

A. Is a competent individual; and

B. Presents an affidavit to the attending physician stating:

I. That the individual is a relative or close friend of the decedent; and

II. Specific facts and circumstances demonstrating that the individual maintained regular contact with the decedent sufficient to be familiar with the decedent's activities, health, and personal beliefs; or

7. Any other person authorized or required to dispose of the body.

(iii) 1. This paragraph does not apply if the decedent has given contrary directions.

2. The failure of the decedent to make a gift is not a contrary direction for purposes of this paragraph.

(iv) Contrary directions given by the decedent under this paragraph shall be recorded in the decedent's medical record.**]**

(II) DIRECTIONS GIVEN BY A PERSON AUTHORIZED UNDER § 4–503 OF THE ESTATES AND TRUSTS ARTICLE TO MAKE, AMEND, REVOKE, OR REFUSE TO MAKE AN ANATOMICAL GIFT OF A DECEDENT'S BODY OR PARTS SHALL BE RECORDED IN THE DECEDENT'S MEDICAL RECORD.

[(v)**] (III)** The representative of the appropriate organ, tissue, or eye recovery agency or the designated requestor and the representative of the deceased patient are entitled to protection from civil and criminal liability as provided in **[**§ 4–508(b)**] § 4–514** of the Estates and Trusts Article.

(5) In all discussions concerning donations of organs and tissues, the representative of the appropriate organ, tissue, or eye recovery agency or the designated requestor shall show reasonable discretion and sensitivity:

(i) To the circumstances of the family of the decedent;

(ii) To the religious beliefs of the decedent; and

(iii) To the nonsuitability for organ or tissue donation of the decedent.

(6) (i) When a representative of the appropriate organ, tissue, or eye recovery agency or a designated requestor makes a request under paragraph (4)(i) of this subsection, the representative or designated requestor shall document the request and its disposition **[**by having the appropriate individual described in paragraph (4)(ii) of this subsection sign a consent form or give a witnessed telegraphic, witnessed telephonic, or recorded consent to the donation**] AS REQUIRED BY § 4–508 OF THE ESTATES AND TRUSTS ARTICLE**.

(ii) Hospital personnel shall note the request and its disposition in the decedent's medical record or death certificate.

(7) A hospital may not bill the estate of the decedent, a surviving spouse or domestic partner of the decedent, any heirs of the decedent, or an insurer of the decedent for the costs associated with the removal of all or any of the decedent's organs or tissues for the purpose of an anatomical donation.

(8) After consultation with the Maryland Hospital Association, Inc., the Medical and Chirurgical Faculty of the State of Maryland, **[**the Transplant Resource Center of Maryland, Inc.**] LIVING LEGACY FOUNDATION**, the Washington Regional Transplant **[**Consortium**] COMMUNITY**, the Medical Eye Bank of Maryland, **[**the Lions of District 22–C Eye Bank and Research Foundation, Incorporated,**]** the Health Facilities Association of Maryland, and Tissue Banks International, the

Secretary shall publish guidelines designed to implement this subsection, including guidelines:

(i) Requiring that, at or near the time of each individual death in a hospital, the hospital contact by telephone an appropriate organ, tissue, or eye recovery agency to determine the suitability of the individual for organ, tissue, and eye donation;

(ii) Requiring that each hospital designate a person to make the contact; and

(iii) Identifying the information that the person designated by the hospital shall have available before making the contact.

(9) The provisions of this subsection shall in no way interfere with the duties of the office of the Chief Medical Examiner. In sudden deaths under the jurisdiction of the office of the Chief Medical Examiner as provided in § 5–309 of this article, notification will be made to the office of the Chief Medical Examiner prior to organ removal.

(10) The consent of the decedent's representative is not necessary and the provisions of paragraph (4) of this subsection do not apply **[**if:

(i) The decedent's driver's license or identification card contains a notation that the decedent is an organ donor; or

(ii) The decedent has consented to the gift of all or any part of the decedent's body in accordance with the provisions of:

1. § 5–604.1 of this article; or

2. Title 4, Subtitle 5 of the Estates and Trusts Article**] IF § 4–506 OF THE ESTATES AND TRUSTS ARTICLE PRECLUDES THE DECEDENT'S REPRESENTATIVE FROM MAKING AN ANATOMICAL GIFT**.

(11) A person who acts in good faith to recover organs or tissues in accordance with a notation on the decedent's driver's license or identification card that the decedent is an organ donor, a gift made in accordance with § 5–604.1 of this article or Title 4, Subtitle 5 of the Estates and Trusts Article, or a gift made in accordance with the anatomical gift laws of another state or country is immune from criminal prosecution and liability for damages in any cause of action related to the recovery and donation of the decedent's organs or tissues.

(12) The Department shall conduct annual death record reviews at each hospital to determine the hospital's compliance with the provisions of this subsection. The Department may delegate its duty to conduct annual death record reviews to the

appropriate organ, tissue, or eye recovery agency serving the region in which a particular hospital is located.

Article – Transportation

12–303.

(a) The Administration shall provide for a method by which an applicant for a driver's license or identification card can designate that the applicant consents to the gift of all body organs or parts for the purposes of transplantation, therapy, or medical research and education.

(b) If an applicant designates that he is such a donor, the Administration may make a notation of this fact on the driver's license or identification card issued to the applicant.

(c) The donor designation noted on the driver's license or identification card:

(1) Is sufficient legal authority for the removal of a body organ or part on the death of the donor; and

(2) May be removed only on written notice to the Administration by the donor.

(d) Notwithstanding any other provision of law, the donor designation noted on the driver's license or identification card is valid and effective for all purposes under Title 4, Subtitle 5 of the Estates and Trusts Article, including the immunity from civil or criminal liability set forth in **[**§ 4–508(b)**] § 4–514** of the Estates and Trusts Article.

(e) At the time the donor authorizes the donor designation to appear on his driver's license or identification card, the Administration shall notify the donor that the designation can be removed only on written notice to the Administration.

[(f) (1) Except as provided in paragraph (2) of this subsection, a donor designation under this section may not be made by or noted on the driver's license or special identification card of any minor.

(2) A donor designation under this section may be made by or noted on the driver's license or special identification card of a minor who is at least 16 years old, if a parent or guardian of the minor consents in writing.**]**

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 542

(Senate Bill 760)

AN ACT concerning

Frederick County – Property Tax Setoff

FOR the purpose of requiring the governing body of Frederick County to grant a property tax setoff to a municipal corporation in certain minimum amounts for certain taxable years; and generally relating to a property tax setoff in Frederick County.

BY repealing and reenacting, without amendments,
Article – Tax – Property
Section 6–305(a)
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Tax – Property
Section 6–305(k)
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

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

Article – Tax – Property

6–305.

(a) In this section, "tax setoff" means:

(1) the difference between the general county property tax rate and the property tax rate that is set for assessments of property in a municipal corporation; or

(2) a payment to a municipal corporation to aid the municipal corporation in funding services or programs that are similar to county services or programs.

(k) In Frederick County, for the taxable **[**year**]** **YEARS** that **[**begins**]** **BEGIN** July 1, 2011**, AND JULY 1, 2012**, the governing body of Frederick County shall grant a tax setoff to a municipal corporation in an amount that:

(1) is no less than the tax setoff granted to that municipal corporation for the preceding taxable year; and

(2) increases by the same percentage by which the county property tax rate exceeds the constant yield tax rate.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 543

(Senate Bill 763)

AN ACT concerning

Hunting Licenses – Exemption for Disabled Armed Forces Members

FOR the purpose of expanding a certain exemption from the requirement to obtain a hunting license for a person who serves in the armed forces and has a service–connected disability; and generally relating to exemptions from the requirement to obtain a hunting license.

BY repealing and reenacting, without amendments,
Article – Natural Resources
Section 10–301(b)
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 10–301(c)(1)
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

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

Article – Natural Resources

10–301.

(b) To provide a fund to pay the expense of protecting and managing wildlife, and preventing unauthorized persons from hunting them, a person may not hunt or

attempt to hunt during open season and in any permitted manner any game birds and mammals in the State without first having procured either a resident or nonresident hunter's license. A person may not hunt or attempt to hunt nongame birds and mammals in Baltimore County or Frederick County without first obtaining a license. A permanent resident of a government reservation may obtain a resident hunter's license.

(c) (1) Except as provided in paragraph (2) of this subsection, the following persons are not required to obtain a hunter's license, bow and arrow stamp, black powder stamp, or bonus antlered deer stamp:

(i) With respect to hunting on farmland only:

1. The resident owner of the farmland and the owner's spouse, child, and child's spouse;

2. A tenant and the tenant's spouse, child, and child's spouse. A tenant is a person holding land under a lease, or a sharecropper who resides in a dwelling on the land, but a tenant does not include any employee of the owner or tenant; and

3. A nonresident owner of a parcel of farmland and the owner's spouse, child, and child's spouse if:

A. The parcel of farmland is located in Maryland and an adjacent state;

B. The owner's primary residence is on the parcel of farmland; and

C. The adjacent state extends similar privileges to a resident of Maryland;

(ii) Any resident serving in the armed forces of the United States while on leave in the State, during the resident's leave period, if, while hunting, the resident possesses a copy of the resident's official leave order;

(iii) **[**With respect to hunting on private property, any**]** **ANY** person serving in the armed forces of the United States who has a service–connected disability, if, while hunting, the person possesses valid military identification; and

(iv) Any unarmed person participating in an organized foxhunt.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 544

(Senate Bill 767)

AN ACT concerning

Somerset County – Private Sale of County Property

FOR the purpose of authorizing the County Commissioners of Somerset County to sell at private sale certain properties to the City of Crisfield under certain terms; requiring certain properties to revert to the County Commissioners under certain circumstances; authorizing the County Commissioners to sell certain property to the American Legion – Stanley Cochrane Post #16 at private sale under certain terms; exempting the sale of certain properties from certain requirements; and generally relating to the sale of specified property by the County Commissioners of Somerset County.

BY adding to
The Public Local Laws of Somerset County
Section 2–414 and 2–415
Article 20 – Public Local Laws of Maryland
(2003 Edition and 2009 Supplement, as amended)

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

Article 20 – Somerset County

2–414.

(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE COUNTY COMMISSIONERS MAY SELL AT PRIVATE SALE THE FOLLOWING PROPERTIES TO THE CITY OF CRISFIELD UNDER ANY TERMS THAT THE COUNTY COMMISSIONERS CONSIDERS APPROPRIATE:

(1) THE PROPERTY LOCATED AT COUNTY TAX MAP 101, GRID 8, PARCEL 335, ACCOUNT #07–113854 AND DESCRIBED AS 50 FEET IN WIDTH AND APPROXIMATES 200 FEET IN DEPTH ON THE WEST SIDE OF BRICK KILN ROAD, ALSO KNOWN AS COLLINS ROAD, LEADING TO THE SMALL BOAT HARBOR;

(2) THE PORTION OF THE ROADWAY KNOWN AS WELLINGTON ROAD LOCATED IN THE CRISFIELD ELECTION DISTRICT BEGINNING AT THE INTERSECTION OF COLLINS STREET AND WELLINGTON ROAD IN A WESTERLY

DIRECTION 317 FEET, MORE OR LESS, A UNIFORM WIDTH OF 16 FEET, MORE OR LESS; AND

(3) THE PROPERTY KNOWN AS THE COUNTY BOAT RAMP LOCATED AT THE SMALL BOAT HARBOR IN THE CITY OF CRISFIELD, DESCRIBED AS THE LAND LOCATED IN THE CRISFIELD ELECTION DISTRICT BEING KNOWN AS THE COUNTY BOAT RAMP PROPERTY FRONTING 36 FEET ON BRICK KILN ROAD EXTENDING TO THE HARBOR 53 FEET.

(B) A SALE UNDER THIS SECTION SHALL REQUIRE THAT THE PROPERTY REVERTS TO THE COUNTY COMMISSIONERS IF THE CITY OF CRISFIELD:

(1) ATTEMPTS TO RESTRICT THE PUBLIC USE OF THE PROPERTY;

(2) ASSESSES ANY FEES FOR THE USE OF THE PROPERTY; OR

(3) ATTEMPTS TO TRANSFER THE PROPERTY TO ANY OTHER PERSON.

(C) THE PROVISIONS OF ARTICLE 25, § 11A OF THE ANNOTATED CODE OF MARYLAND DO NOT APPLY TO A SALE AUTHORIZED UNDER THIS SECTION.

2–415.

(A) THE COUNTY COMMISSIONERS MAY SELL THE PROPERTY LOCATED AT COUNTY TAX MAP 101, GRID 3, PARCEL 991, AND CONSISTING OF 1.52 ACRES, TO THE AMERICAN LEGION – STANLEY COCHRANE POST #16 AT PRIVATE SALE UNDER ANY TERMS THAT THE COUNTY COMMISSIONERS CONSIDER APPROPRIATE.

(B) THE PROVISIONS OF ARTICLE 25, § 11A OF THE ANNOTATED CODE OF MARYLAND DO NOT APPLY TO A SALE AUTHORIZED UNDER THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 545

(House Bill 675)

AN ACT concerning

Somerset County – Private Sale of County Property

FOR the purpose of authorizing the County Commissioners of Somerset County to sell at private sale certain properties to the City of Crisfield under certain terms; requiring certain properties to revert to the County Commissioners under certain circumstances; authorizing the County Commissioners to sell certain property to the American Legion – Stanley Cochrane Post #16 at private sale under certain terms; exempting the sale of certain properties from certain requirements; and generally relating to the sale of specified property by the County Commissioners of Somerset County.

BY adding to
The Public Local Laws of Somerset County
Section 2–414 and 2–415
Article 20 – Public Local Laws of Maryland
(2003 Edition and 2009 Supplement, as amended)

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

Article 20 – Somerset County

2–414.

(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE COUNTY COMMISSIONERS MAY SELL AT PRIVATE SALE THE FOLLOWING PROPERTIES TO THE CITY OF CRISFIELD UNDER ANY TERMS THAT THE COUNTY COMMISSIONERS CONSIDERS APPROPRIATE:

(1) THE PROPERTY LOCATED AT COUNTY TAX MAP 101, GRID 8, PARCEL 335, ACCOUNT #07–113854 AND DESCRIBED AS 50 FEET IN WIDTH AND APPROXIMATES 200 FEET IN DEPTH ON THE WEST SIDE OF BRICK KILN ROAD, ALSO KNOWN AS COLLINS ROAD, LEADING TO THE SMALL BOAT HARBOR;

(2) THE PORTION OF THE ROADWAY KNOWN AS WELLINGTON ROAD LOCATED IN THE CRISFIELD ELECTION DISTRICT BEGINNING AT THE INTERSECTION OF COLLINS STREET AND WELLINGTON ROAD IN A WESTERLY DIRECTION 317 FEET, MORE OR LESS, A UNIFORM WIDTH OF 16 FEET, MORE OR LESS; AND

(3) THE PROPERTY KNOWN AS THE COUNTY BOAT RAMP LOCATED AT THE SMALL BOAT HARBOR IN THE CITY OF CRISFIELD, DESCRIBED AS THE LAND LOCATED IN THE CRISFIELD ELECTION DISTRICT

BEING KNOWN AS THE COUNTY BOAT RAMP PROPERTY FRONTING 36 FEET ON BRICK KILN ROAD EXTENDING TO THE HARBOR 53 FEET.

(B) A SALE UNDER THIS SECTION SHALL REQUIRE THAT THE PROPERTY REVERTS TO THE COUNTY COMMISSIONERS IF THE CITY OF CRISFIELD:

(1) ATTEMPTS TO RESTRICT THE PUBLIC USE OF THE PROPERTY;

(2) ASSESSES ANY FEES FOR THE USE OF THE PROPERTY; OR

(3) ATTEMPTS TO TRANSFER THE PROPERTY TO ANY OTHER PERSON.

(C) THE PROVISIONS OF ARTICLE 25, § 11A OF THE ANNOTATED CODE OF MARYLAND DO NOT APPLY TO A SALE AUTHORIZED UNDER THIS SECTION.

2–415.

(A) THE COUNTY COMMISSIONERS MAY SELL THE PROPERTY LOCATED AT COUNTY TAX MAP 101, GRID 3, PARCEL 991, AND CONSISTING OF 1.52 ACRES, TO THE AMERICAN LEGION – STANLEY COCHRANE POST #16 AT PRIVATE SALE UNDER ANY TERMS THAT THE COUNTY COMMISSIONERS CONSIDER APPROPRIATE.

(B) THE PROVISIONS OF ARTICLE 25, § 11A OF THE ANNOTATED CODE OF MARYLAND DO NOT APPLY TO A SALE AUTHORIZED UNDER THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 546

(Senate Bill 770)

AN ACT concerning

Prescription Drug Repository Program – Disposal of Prescription Drugs and Medical Supplies

FOR the purpose of altering the purpose of the Prescription Drug Repository Program to include disposal of certain prescription drugs and medical supplies; altering

the definition of "repository" to include a licensed pharmacy approved by the State Board of Pharmacy to dispose of certain prescription drugs and medical supplies; altering a certain requirement relating to disposal of prescription drugs and medical supplies by a repository; authorizing a pharmacy to accept prescription drugs and medical supplies taken to the pharmacy for disposal only under certain circumstances; prohibiting the Program from requiring a private entity to establish, operate, or fund a drop–off site or disposal program; expanding certain exemptions from criminal prosecution and liability to include disposal of medical supplies; altering certain requirements for Program regulations; authorizing the Board to take certain disciplinary action against a pharmacist or pharmacy that fails to dispense or dispose of prescription drugs or medical supplies in accordance with certain provisions of law; making a certain conforming change; and generally relating to the Prescription Drug Repository Program and disposal of prescription drugs and medical supplies.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 15–601, 15–602, 15–605(b), 15–607, and 15–608
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – Health – General
Section 15–605(f) and (g)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 12–313(b)(30) and (31) and 12–403(b)(19) and (20)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – Health Occupations
Section 12–313(b)(32) and 12–403(b)(21)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – Health Occupations
Section 12–403(g)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

15–601.

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

(b) "Board" means the State Board of Pharmacy.

(c) "Drop–off site" means a pharmacy or other health care facility designated by the Board that:

(1) Has voluntarily agreed to accept donated prescription drugs or medical supplies; and

(2) Does not have a final disciplinary order issued against it by a health occupations board.

(d) "Program" means the Prescription Drug Repository Program.

(e) "Repository" means a licensed pharmacy that:

(1) Does not have a final disciplinary order issued against it by the Board of Pharmacy;

(2) Has voluntarily agreed to participate in the Program; and

(3) Has been approved by the Board to:

(i) Accept donated prescription drugs or medical supplies from a designated drop–off site; **[**and**]**

(ii) Dispense the donated prescription drugs or medical supplies to needy individuals**; OR**

(III) DISPOSE OF PRESCRIPTION DRUGS OR MEDICAL SUPPLIES NOT ACCEPTED FOR DISPENSING TO NEEDY INDIVIDUALS.

15–602.

(a) There is a Prescription Drug Repository Program regulated by the Board.

(b) The purpose of the Program is to **[**accept**]:**

(1) ACCEPT prescription drugs and medical supplies donated for the purpose of dispensing to needy individuals**; AND**

(2) ACCEPT PRESCRIPTION DRUGS AND MEDICAL SUPPLIES RETURNED TO A PHARMACY FOR THE PURPOSE OF PROPER DISPOSAL.

15–605.

(b) **[**A**] CONSISTENT WITH ITS APPROVAL BY THE BOARD, A** repository shall:

(1) Accept only donated prescription drugs and medical supplies forwarded by designated drop–off sites;

(2) Inspect all donated prescription drugs and medical supplies;

(3) Accept **FOR DISPENSING TO NEEDY INDIVIDUALS** only those donated prescription drugs and medical supplies that meet the requirements of § 15–603 of this subtitle;

(4) Dispose of donated prescription drugs and medical supplies**[**, in accordance with State and federal guidelines, that do not meet the requirements of § 15–603 of this subtitle**] NOT ACCEPTED FOR DISPENSING TO NEEDY INDIVIDUALS IN ACCORDANCE WITH STATE AND FEDERAL LAW**;

(5) Maintain a separate inventory of donated prescription drugs and medical supplies;

(6) Store donated prescription drugs and medical supplies in a secure location used exclusively for the Program;

(7) Maintain separate prescription files for patients receiving donated prescription drugs and medical supplies; and

(8) Obliterate from the labels of donated prescription drugs and medical supplies any information specific to the patient for whom the donated prescription drugs and medical supplies were originally dispensed.

(F) A PHARMACY MAY ACCEPT PRESCRIPTION DRUGS AND MEDICAL SUPPLIES TAKEN TO THE PHARMACY FOR DISPOSAL ONLY IF THE PHARMACY IS APPROVED BY THE BOARD AS A REPOSITORY FOR THIS PURPOSE.

(G) THE PROGRAM MAY NOT REQUIRE A PRIVATE ENTITY TO ESTABLISH, OPERATE, OR FUND A DROP–OFF SITE OR DISPOSAL PROGRAM.

15–607.

(a) This section applies to:

(1) A person that donates prescription drugs or medical supplies to the Program;

(2) A drop–off site;

(3) A repository;

(4) The Board; and

(5) Pharmacists.

(b) For matters related to donating, accepting, **DISPOSING OF,** or dispensing **PRESCRIPTION** drugs **OR MEDICAL SUPPLIES** under the Program, a person described in subsection (a) of this section that acts in good faith may not be subject to:

(1) Criminal prosecution; or

(2) Liability in tort or other civil action for injury, death, or loss to person or property.

(c) A drug manufacturer acting in good faith may not be subject to criminal prosecution or liability in tort or other civil action for injury, death, or loss to person or property for matters related to the donation, acceptance, or dispensing of a drug manufactured by the drug manufacturer that is donated by any person under the Program, including liability for failure to transfer or communicate product or consumer information or the expiration date of the donated drug.

15–608.

(a) On or before January 1, 2007, and in consideration of the recommendations of the Task Force on the Establishment of a Prescription Drug Repository Program, the Board shall adopt regulations governing the Program.

(b) The regulations shall include:

(1) Categories of drugs that a repository will not accept, including a statement as to why the drug is ineligible for donation;

(2) A standard form each donor must sign stating that the donor is the owner of the drugs and intends to voluntarily donate them to the Program;

(3) Requirements for designation of drop–off sites to accept donated prescription drugs and medical supplies under the Program;

(4) Requirements for designation of repositories to dispense **OR DISPOSE OF** donated prescription drugs and medical supplies under the Program;

(5) Standards and procedures for accepting, safely storing, dispensing, shipping, and **[**if necessary,**]** disposing of donated prescription drugs and medical supplies;

(6) Standards and procedures for inspecting donated prescription drugs and medical supplies intended for dispensing to determine that:

(i) The original packaging is:

1. Sealed and tamper–evident; and

2. In the case of prescription drugs, in the undisturbed single unit dose packaging; and

(ii) The prescription drugs and medical supplies are unadulterated, safe, and suitable for dispensing;

(7) A standard form for health care practitioners to submit to a repository to indicate a patient's need for the Program;

(8) A standard form that an individual receiving a prescription drug or medical supply from the Program must sign before receiving the drug or supply to confirm that the individual understands that:

(i) The individual is receiving prescription drugs or medical supplies that have been donated to the Program; and

(ii) Entities involved in the Program have certain immunity from liability;

(9) Record keeping and reporting requirements for a repository; and

(10) Any other standards and procedures the Board considers appropriate.

Article – Health Occupations

12–313.

(b) Subject to the hearing provisions of § 12–315 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant for a pharmacist's license, reprimand any licensee, place any licensee on probation, or suspend or revoke a license of a pharmacist if the applicant or licensee:

(30) Delegates pharmacy acts to a registered pharmacy technician, pharmacy student, or a pharmacy technician trainee outside the scope of education, training, experience, and area of practice of a licensed pharmacist; **[**or**]**

(31) Delegates pharmacy acts that are inappropriate for a registered pharmacy technician, pharmacy student, or pharmacy technician trainee who does not have the education, training, or experience to perform the delegated pharmacy acts**; OR**

(32) FAILS TO DISPENSE OR DISPOSE OF PRESCRIPTION DRUGS OR MEDICAL SUPPLIES IN ACCORDANCE WITH TITLE 15, SUBTITLE 6 OF THE HEALTH – GENERAL ARTICLE.

12–403.

(b) Except as otherwise provided in this section, a pharmacy for which a pharmacy permit has been issued under this title:

(19) May not allow an unauthorized individual to represent that the individual is a pharmacist or registered pharmacy technician; **[**and**]**

(20) Shall provide information regarding the process for resolving incorrectly filled prescriptions in accordance with existing regulations by:

(i) Posting a sign that is conspicuously positioned and readable by consumers at the point where prescription drugs are dispensed to consumers; or

(ii) Including written information regarding the process with each prescription dispensed**; AND**

(21) SHALL DISPENSE OR DISPOSE OF PRESCRIPTION DRUGS OR MEDICAL SUPPLIES IN ACCORDANCE WITH TITLE 15, SUBTITLE 6 OF THE HEALTH – GENERAL ARTICLE.

(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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 547

(House Bill 460)

AN ACT concerning

Prescription Drug Repository Program – Disposal of Prescription Drugs and Medical Supplies

FOR the purpose of altering the purpose of the Prescription Drug Repository Program to include disposal of certain prescription drugs and medical supplies; altering the definition of "repository" to include a licensed pharmacy approved by the State Board of Pharmacy to dispose of certain prescription drugs and medical supplies; altering a certain requirement relating to disposal of prescription drugs and medical supplies by a repository; authorizing a pharmacy to accept prescription drugs and medical supplies taken to the pharmacy for disposal only under certain circumstances; *prohibiting the Program from requiring a private entity to establish, operate, or fund a drop–off site or disposal program;* expanding certain exemptions from criminal prosecution and liability to include disposal of medical supplies; altering certain requirements for Program regulations; authorizing the Board to take certain disciplinary action against a pharmacist or pharmacy that fails to dispense or dispose of prescription drugs or medical supplies in accordance with certain provisions of law; making a certain conforming change; and generally relating to the Prescription Drug Repository Program and disposal of prescription drugs and medical supplies.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 15–601, 15–602, 15–605(b), 15–607, and 15–608
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – Health – General
Section 15–605(f) *and (g)*
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 12–313(b)(30) and (31) and 12–403(b)(19) and (20)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – Health Occupations
Section 12–313(b)(32) and 12–403(b)(21)

Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – Health Occupations
Section 12–403(g)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

15–601.

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

(b) "Board" means the State Board of Pharmacy.

(c) "Drop–off site" means a pharmacy or other health care facility designated by the Board that:

(1) Has voluntarily agreed to accept donated prescription drugs or medical supplies; and

(2) Does not have a final disciplinary order issued against it by a health occupations board.

(d) "Program" means the Prescription Drug Repository Program.

(e) "Repository" means a licensed pharmacy that:

(1) Does not have a final disciplinary order issued against it by the Board of Pharmacy;

(2) Has voluntarily agreed to participate in the Program; and

(3) Has been approved by the Board to:

(i) Accept donated prescription drugs or medical supplies from a designated drop–off site; **[**and**]**

(ii) Dispense the donated prescription drugs or medical supplies to needy individuals**; OR**

(III) DISPOSE OF PRESCRIPTION DRUGS OR MEDICAL SUPPLIES NOT ACCEPTED FOR DISPENSING TO NEEDY INDIVIDUALS.

15–602.

(a) There is a Prescription Drug Repository Program regulated by the Board.

(b) The purpose of the Program is to **[**accept**]:**

(1) ACCEPT prescription drugs and medical supplies donated for the purpose of dispensing to needy individuals**; AND**

(2) ACCEPT PRESCRIPTION DRUGS AND MEDICAL SUPPLIES RETURNED TO A PHARMACY FOR THE PURPOSE OF PROPER DISPOSAL.

15–605.

(b) **[**A**] CONSISTENT WITH ITS APPROVAL BY THE BOARD, A** repository shall:

(1) Accept only donated prescription drugs and medical supplies forwarded by designated drop–off sites;

(2) Inspect all donated prescription drugs and medical supplies;

(3) Accept **FOR DISPENSING TO NEEDY INDIVIDUALS** only those donated prescription drugs and medical supplies that meet the requirements of § 15–603 of this subtitle;

(4) Dispose of donated prescription drugs and medical supplies**[**, in accordance with State and federal guidelines, that do not meet the requirements of § 15–603 of this subtitle**] NOT ACCEPTED FOR DISPENSING TO NEEDY INDIVIDUALS IN ACCORDANCE WITH STATE AND FEDERAL LAW**;

(5) Maintain a separate inventory of donated prescription drugs and medical supplies;

(6) Store donated prescription drugs and medical supplies in a secure location used exclusively for the Program;

(7) Maintain separate prescription files for patients receiving donated prescription drugs and medical supplies; and

(8) Obliterate from the labels of donated prescription drugs and medical supplies any information specific to the patient for whom the donated prescription drugs and medical supplies were originally dispensed.

(F) A PHARMACY MAY ACCEPT PRESCRIPTION DRUGS AND MEDICAL SUPPLIES TAKEN TO THE PHARMACY FOR DISPOSAL ONLY IF THE PHARMACY IS APPROVED BY THE BOARD AS A REPOSITORY FOR THIS PURPOSE.

(G) THE PROGRAM MAY NOT REQUIRE A PRIVATE ENTITY TO ESTABLISH, OPERATE, OR FUND A DROP–OFF SITE OR DISPOSAL PROGRAM.

15–607.

(a) This section applies to:

(1) A person that donates prescription drugs or medical supplies to the Program;

(2) A drop–off site;

(3) A repository;

(4) The Board; and

(5) Pharmacists.

(b) For matters related to donating, accepting, **DISPOSING OF,** or dispensing **PRESCRIPTION** drugs **OR MEDICAL SUPPLIES** under the Program, a person described in subsection (a) of this section that acts in good faith may not be subject to:

(1) Criminal prosecution; or

(2) Liability in tort or other civil action for injury, death, or loss to person or property.

(c) A drug manufacturer acting in good faith may not be subject to criminal prosecution or liability in tort or other civil action for injury, death, or loss to person or property for matters related to the donation, acceptance, or dispensing of a drug manufactured by the drug manufacturer that is donated by any person under the Program, including liability for failure to transfer or communicate product or consumer information or the expiration date of the donated drug.

15–608.

(a) On or before January 1, 2007, and in consideration of the recommendations of the Task Force on the Establishment of a Prescription Drug Repository Program, the Board shall adopt regulations governing the Program.

(b) The regulations shall include:

(1) Categories of drugs that a repository will not accept, including a statement as to why the drug is ineligible for donation;

(2) A standard form each donor must sign stating that the donor is the owner of the drugs and intends to voluntarily donate them to the Program;

(3) Requirements for designation of drop–off sites to accept donated prescription drugs and medical supplies under the Program;

(4) Requirements for designation of repositories to dispense **OR DISPOSE OF** donated prescription drugs and medical supplies under the Program;

(5) Standards and procedures for accepting, safely storing, dispensing, shipping, and **[**if necessary,**]** disposing of donated prescription drugs and medical supplies;

(6) Standards and procedures for inspecting donated prescription drugs and medical supplies intended for dispensing to determine that:

(i) The original packaging is:

1. Sealed and tamper–evident; and

2. In the case of prescription drugs, in the undisturbed single unit dose packaging; and

(ii) The prescription drugs and medical supplies are unadulterated, safe, and suitable for dispensing;

(7) A standard form for health care practitioners to submit to a repository to indicate a patient's need for the Program;

(8) A standard form that an individual receiving a prescription drug or medical supply from the Program must sign before receiving the drug or supply to confirm that the individual understands that:

(i) The individual is receiving prescription drugs or medical supplies that have been donated to the Program; and

(ii) Entities involved in the Program have certain immunity from liability;

(9) Record keeping and reporting requirements for a repository; and

(10) Any other standards and procedures the Board considers appropriate.

Article – Health Occupations

12–313.

(b) Subject to the hearing provisions of § 12–315 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant for a pharmacist's license, reprimand any licensee, place any licensee on probation, or suspend or revoke a license of a pharmacist if the applicant or licensee:

(30) Delegates pharmacy acts to a registered pharmacy technician, pharmacy student, or a pharmacy technician trainee outside the scope of education, training, experience, and area of practice of a licensed pharmacist; **[**or**]**

(31) Delegates pharmacy acts that are inappropriate for a registered pharmacy technician, pharmacy student, or pharmacy technician trainee who does not have the education, training, or experience to perform the delegated pharmacy acts**; OR**

(32) FAILS TO DISPENSE OR DISPOSE OF PRESCRIPTION DRUGS OR MEDICAL SUPPLIES IN ACCORDANCE WITH TITLE 15, SUBTITLE 6 OF THE HEALTH – GENERAL ARTICLE.

12–403.

(b) Except as otherwise provided in this section, a pharmacy for which a pharmacy permit has been issued under this title:

(19) May not allow an unauthorized individual to represent that the individual is a pharmacist or registered pharmacy technician; **[**and**]**

(20) Shall provide information regarding the process for resolving incorrectly filled prescriptions in accordance with existing regulations by:

(i) Posting a sign that is conspicuously positioned and readable by consumers at the point where prescription drugs are dispensed to consumers; or

(ii) Including written information regarding the process with each prescription dispensed**; AND**

(21) SHALL DISPENSE OR DISPOSE OF PRESCRIPTION DRUGS OR MEDICAL SUPPLIES IN ACCORDANCE WITH TITLE 15, SUBTITLE 6 OF THE HEALTH – GENERAL ARTICLE.

(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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 548

(Senate Bill 771)

AN ACT concerning

Education – ~~Student-Athletes~~ Public Schools and Youth Sports Programs – Concussions

~~FOR the purpose of requiring the State Department of Education, in collaboration with certain organizations and individuals, to develop certain policies and implement a certain program; requiring a certain program to include a certain verification process; requiring county boards of education to provide a certain information sheet to certain individuals; requiring certain individuals to sign certain statements; requiring the Department to create a certain information sheet and acknowledgement statement; requiring the removal from play of certain student-athletes; prohibiting the return to play of certain student-athletes until certain student-athletes receive certain evaluation and clearance; requiring youth sports programs to provide certain information to county boards under certain circumstances; defining certain terms; and generally relating to the development of policies and implementation of a program to provide awareness on the nature and risk of concussions.~~

FOR the purpose of requiring the State Department of Education, in collaboration with certain entities, to develop certain policies and to implement a certain program to provide awareness to certain coaches, school personnel, students, and parents or guardians of students on the risk of concussions and head injuries; requiring a county board of education to provide certain information and a certain notice to a certain student and parent or guardian; requiring a student and parent or guardian to sign a certain statement; requiring the Department to create a certain information sheet and acknowledgment statement; authorizing the Department to use certain materials; requiring the removal from play of certain students or youth athletes under certain circumstances; prohibiting the return to play of certain students or youth athletes under certain circumstances until a certain condition is met; requiring

a county board, or a third party, to provide certain information to certain individuals; requiring certain individuals to acknowledge receipt of ~~a~~ certain information ~~sheet~~ in a certain manner; requiring certain youth sports programs to provide certain statements of intent to comply to certain county boards of education or their agents; requiring a youth sports program to make certain information on concussions and head injuries available to certain coaches, youth athletes, and the parents or guardians of youth athletes; requiring a local government to provide a certain notice to a youth sports program under certain circumstances; defining certain terms; and generally relating to the development of policies and the implementation of a program on concussions and head injuries.

BY adding to
Article – Education
Section 7–432
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

BY adding to
Article – Health – General
Section 14–501 to be under the new subtitle "Subtitle 5. Youth Sports Programs"
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

Preamble

WHEREAS, A concussion is one of the most commonly reported injuries in children and adolescents who participate in sports and recreational activities; and

WHEREAS, The Centers for Disease Control and Prevention estimates that as many as 3,900,000 sports–related and recreation–related concussions occur in the United States each year; and

WHEREAS, A concussion is a type of brain injury that may range from mild to severe and can disrupt the way the brain normally works; and

WHEREAS, A concussion may occur in any organized or unorganized sport or recreational activity and may result from a fall or from players colliding with each other, the ground, or other obstacles; and

WHEREAS, A concussion may occur with or without loss of consciousness, but the vast majority of concussions occur without loss of consciousness; and

WHEREAS, Continuing to play with a concussion or symptoms of head injury leaves a young athlete especially vulnerable to greater injury and even death; now, therefore,

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

Article – Education

7–432.

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

(2) "CONCUSSION" MEANS A TRAUMATIC INJURY TO THE BRAIN CAUSING AN IMMEDIATE AND, USUALLY, SHORT–LIVED CHANGE IN MENTAL STATUS OR AN ALTERATION OF NORMAL CONSCIOUSNESS RESULTING FROM:

(I) A FALL;

(II) A VIOLENT BLOW TO THE HEAD OR BODY; OR

(III) THE SHAKING OR SPINNING OF THE HEAD OR BODY.

~~**(3) "STUDENT–ATHLETE" MEANS AN INDIVIDUAL WHO IS 17 YEARS OLD OR YOUNGER OR WHO IS A PHYSICALLY OR MENTALLY DISABLED INDIVIDUAL OF ANY AGE WHO PARTICIPATES IN AN ATHLETIC ACTIVITY IN ASSOCIATION WITH:**~~

~~**(I) AN EDUCATIONAL INSTITUTION; OR**~~

~~**(II) A NONINTERSCHOLASTIC YOUTH SPORTS PROGRAM CONDUCTED:**~~

~~**1. AT A PUBLIC SCHOOL FACILITY; OR**~~

~~**2. BY A RECREATIONAL ATHLETIC ORGANIZATION.**~~

~~**(4)**~~ **(3) "YOUTH SPORTS PROGRAM" MEANS A PROGRAM ORGANIZED FOR RECREATIONAL ATHLETIC COMPETITION OR INSTRUCTION FOR PARTICIPANTS WHO** ~~**ARE:**~~

~~**(I) UNDER THE AGE OF 18 YEARS; OR**~~

~~**(II) PHYSICALLY OR MENTALLY DISABLED REGARDLESS OF AGE.**~~ **ARE UNDER THE AGE OF 19 YEARS.**

(B) (1) THE DEPARTMENT~~, IN COLLABORATION WITH THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, EACH COUNTY BOARD, THE MARYLAND PUBLIC SECONDARY SCHOOLS ATHLETIC ASSOCIATION, THE MARYLAND ATHLETIC TRAINERS ASSOCIATION, THE BRAIN INJURY ASSOCIATION OF MARYLAND, AND REPRESENTATIVES OF LICENSED HEALTH CARE PROVIDERS WHO TREAT CONCUSSIONS,~~ SHALL DEVELOP POLICIES AND IMPLEMENT A PROGRAM TO PROVIDE AWARENESS TO COACHES, SCHOOL PERSONNEL, ~~STUDENT-ATHLETES~~ STUDENTS, AND THE PARENTS OR GUARDIANS OF ~~STUDENT-ATHLETES~~ STUDENTS, IN COLLABORATION WITH THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, EACH COUNTY BOARD, THE MARYLAND PUBLIC SECONDARY SCHOOLS ATHLETIC ASSOCIATION, THE MARYLAND ATHLETIC TRAINERS' ASSOCIATION, THE BRAIN INJURY ASSOCIATION OF MARYLAND, AND REPRESENTATIVES OF LICENSED HEALTH CARE PROVIDERS WHO TREAT CONCUSSIONS, ON:

(I) THE NATURE AND RISK OF A CONCUSSION AND HEAD INJURY;

(II) THE CRITERIA FOR REMOVAL FROM AND RETURN TO PLAY;

(III) THE RISKS OF NOT REPORTING INJURY AND CONTINUING TO PLAY; AND

(IV) ~~THE APPROPRIATE~~ APPROPRIATE ACADEMIC ACCOMMODATIONS FOR ~~STUDENT-ATHLETES WHO ARE SUSPECTED OF SUSTAINING~~ STUDENTS DIAGNOSED AS HAVING SUSTAINED A CONCUSSION OR OTHER HEAD INJURY.

(2) THE PROGRAM SHALL INCLUDE A PROCESS TO VERIFY THAT A COACH HAS RECEIVED INFORMATION ON THE PROGRAM DEVELOPED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(3) (I) BEFORE A ~~STUDENT-ATHLETE~~ STUDENT ENROLLED IN A PUBLIC SCHOOL SYSTEM IN THE STATE MAY PARTICIPATE IN AN AUTHORIZED INTERSCHOLASTIC ATHLETIC ACTIVITY, THE COUNTY BOARD SHALL PROVIDE A CONCUSSION AND HEAD INJURY INFORMATION SHEET TO THE ~~STUDENT-ATHLETE~~ STUDENT AND A PARENT OR GUARDIAN OF THE ~~STUDENT-ATHLETE~~ STUDENT.

(II) THE ~~STUDENT-ATHLETE~~ STUDENT AND THE PARENT OR GUARDIAN OF THE ~~STUDENT-ATHLETE~~ STUDENT SHALL SIGN A STATEMENT ACKNOWLEDGING RECEIPT OF THE INFORMATION SHEET.

(III) THE DEPARTMENT SHALL CREATE THE INFORMATION SHEET AND ACKNOWLEDGMENT STATEMENT REQUIRED UNDER THIS PARAGRAPH.

(4) THE DEPARTMENT MAY USE MATERIALS AVAILABLE FROM THE CENTERS FOR DISEASE CONTROL AND PREVENTION, THE BRAIN INJURY ASSOCIATION OF MARYLAND, OR ANY OTHER APPROPRIATE ~~SOURCE TO FULFILL~~ ENTITY TO CARRY OUT THE REQUIREMENTS OF THIS SUBSECTION.

(C) (1) A ~~STUDENT-ATHLETE~~ STUDENT WHO IS SUSPECTED OF SUSTAINING A CONCUSSION OR ~~ANY~~ OTHER HEAD INJURY IN A PRACTICE OR GAME SHALL BE REMOVED FROM PLAY AT THAT TIME.

(2) A ~~STUDENT-ATHLETE~~ STUDENT WHO HAS BEEN REMOVED FROM PLAY MAY NOT RETURN TO PLAY UNTIL THE ~~STUDENT-ATHLETE~~ STUDENT HAS OBTAINED WRITTEN CLEARANCE ~~BY~~ *FROM* A LICENSED HEALTH CARE PROVIDER TRAINED IN THE EVALUATION AND MANAGEMENT OF CONCUSSIONS ~~AND HEAD INJURY~~.

(D) (1) BEFORE AN INDIVIDUAL PARTICIPATES IN AN AUTHORIZED ATHLETIC ACTIVITY ON SCHOOL PROPERTY, THE COUNTY BOARD SHALL PROVIDE, OR REQUIRE THAT A THIRD PARTY PROVIDE:

(I) INFORMATION ON CONCUSSIONS AND HEAD INJURIES TO THE INDIVIDUAL AND, IF APPLICABLE, A PARENT OR GUARDIAN OF THE INDIVIDUAL; AND

(II) NOTICE THAT ACKNOWLEDGMENT OF THE RECEIPT OF THE INFORMATION BY THE INDIVIDUAL AND, IF APPLICABLE, THE PARENT OR GUARDIAN OF THE INDIVIDUAL, IS REQUIRED.

(2) THE INFORMATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE IN THE FORM OF:

(I) A SEPARATE INFORMATION SHEET; OR

(II) A NOTICE ON THE REGISTRATION FORM FOR A YOUTH SPORTS PROGRAM STATING THAT INFORMATION ON CONCUSSION AND HEAD INJURY IS AVAILABLE, INCLUDING DIRECTIONS ON HOW TO RECEIVE THE INFORMATION ELECTRONICALLY.

(3) THE INDIVIDUAL AND, IF APPLICABLE, THE PARENT OR GUARDIAN OF THE INDIVIDUAL SHALL:

(I) ACKNOWLEDGE RECEIPT OF THE INFORMATION ~~SHEET~~ BY:

1. SIGNATURE;

2. CHECKING AN ACKNOWLEDGMENT BOX ON THE REGISTRATION FORM; OR

3. ANOTHER METHOD OF WRITTEN OR ELECTRONIC ACKNOWLEDGMENT; AND

(II) RETURN THE ACKNOWLEDGMENT TO THE COUNTY BOARD OR THIRD PARTY.

~~(D)~~ (E) ~~BEFORE THE FIRST USE OF A PUBLIC SCHOOL FACILITY, A~~ A YOUTH SPORTS PROGRAM ~~SHALL PROVIDE~~ THAT USES A PUBLIC SCHOOL FACILITY SHALL PROVIDE ANNUALLY TO THE COUNTY BOARD OR THE BOARD'S AGENT A STATEMENT OF ~~COMPLIANCE~~ INTENT TO COMPLY FOR ALL OF ITS ATHLETIC ACTIVITIES WITH THE REQUIREMENTS FOR THE MANAGEMENT OF A CONCUSSION OR OTHER HEAD INJURY OF A ~~STUDENT–ATHLETE~~ PARTICIPANT UNDER ~~SUBSECTION (C) OF~~ THIS SECTION.

Article – Health – General

SUBTITLE 5. YOUTH SPORTS PROGRAMS.

14–501.

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

(2) "CONCUSSION" MEANS A TRAUMATIC INJURY TO THE BRAIN CAUSING AN IMMEDIATE AND, USUALLY, SHORT–LIVED CHANGE IN MENTAL STATUS OR AN ALTERATION OF NORMAL CONSCIOUSNESS RESULTING FROM:

(I) A FALL;

(II) A VIOLENT BLOW TO THE HEAD OR BODY; OR

(III) THE SHAKING OR SPINNING OF THE HEAD OR BODY.

(3) "YOUTH ATHLETE" MEANS AN INDIVIDUAL WHO PARTICIPATES IN AN ATHLETIC ACTIVITY IN ASSOCIATION WITH A YOUTH SPORTS PROGRAM CONDUCTED:

(I) AT A PUBLIC SCHOOL FACILITY; OR

(II) BY A RECREATIONAL ATHLETIC ORGANIZATION.

(4) "YOUTH SPORTS PROGRAM" MEANS A PROGRAM ORGANIZED FOR RECREATIONAL ATHLETIC COMPETITION OR INSTRUCTION FOR PARTICIPANTS WHO ARE UNDER THE AGE OF 19 YEARS.

(B) (1) A YOUTH SPORTS PROGRAM SHALL MAKE AVAILABLE INFORMATION ON CONCUSSIONS AND HEAD INJURIES DEVELOPED BY THE STATE DEPARTMENT OF EDUCATION UNDER § 7–432 OF THE EDUCATION ARTICLE TO COACHES, YOUTH ATHLETES, AND THE PARENTS OR GUARDIANS OF YOUTH ATHLETES.

(2) A COACH OF A YOUTH SPORTS PROGRAM SHALL REVIEW THE INFORMATION PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION.

(C) (1) A YOUTH ATHLETE WHO IS SUSPECTED OF SUSTAINING A CONCUSSION OR OTHER HEAD INJURY IN A PRACTICE OR GAME SHALL BE REMOVED FROM PLAY AT THAT TIME.

(2) A YOUTH ATHLETE WHO HAS BEEN REMOVED FROM PLAY MAY NOT RETURN TO PLAY UNTIL THE YOUTH ATHLETE HAS OBTAINED WRITTEN CLEARANCE FROM A LICENSED HEALTH CARE PROVIDER TRAINED IN THE EVALUATION AND MANAGEMENT OF CONCUSSIONS.

(D) BEFORE A YOUTH SPORTS PROGRAM MAY USE A FACILITY OWNED OR OPERATED BY A LOCAL GOVERNMENT, THE LOCAL GOVERNMENT SHALL PROVIDE NOTICE TO THE YOUTH SPORTS PROGRAM OF THE REQUIREMENTS OF THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 549

(House Bill 858)

AN ACT concerning

Education – ~~Student Athletes~~ Public Schools and Youth Sports Programs – Concussions

FOR the purpose of requiring the State Department of Education, in collaboration with certain entities, to develop certain policies and to implement a certain program to provide awareness to certain coaches, school personnel, ~~student athletes,~~ students, and parents or guardians of ~~student athletes~~ students on the risk of concussions and head injuries; requiring a county board of education to provide ~~a~~ certain information ~~sheet~~ *and a certain notice* to a certain student ~~athlete~~ and parent or guardian; requiring a student ~~athlete~~ and parent or guardian to sign a certain statement; requiring the Department to create a certain information sheet and acknowledgment statement; authorizing the Department to use certain materials; requiring the removal from play of certain students or youth athletes under certain circumstances; prohibiting the return to play of certain students or youth athletes under certain circumstances until a certain condition is met; requiring a county board, or a third party, to provide certain information to certain individuals; requiring certain individuals to acknowledge receipt of ~~a~~ certain information ~~sheet~~ in a certain manner; requiring certain youth sports programs to provide certain statements of ~~compliance~~ intent to comply to certain county boards of ~~education; granting certain immunity to volunteer health care providers under certain circumstances;~~ education or their agents; requiring a youth sports program to make certain information on concussions and head injuries available to certain coaches, youth athletes, and the parents or guardians of youth athletes; requiring a local government to provide a certain notice to a youth sports program under certain circumstances; defining certain terms; and generally relating to the development of policies and the implementation of a program on concussions and head injuries.

BY adding to
Article – Education
Section 7–432
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

BY adding to
Article – Health – General
Section 14–501 to be under the new subtitle "Subtitle 5. Youth Sports Programs"
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

Preamble

WHEREAS, A concussion is one of the most commonly reported injuries in children and adolescents who participate in sports and recreational activities; and

WHEREAS, The Centers for Disease Control and Prevention estimates that as many as 3,900,000 sports–related and recreation–related concussions occur in the United States each year; and

WHEREAS, A concussion is a type of brain injury that may range from mild to severe and can disrupt the way the brain normally works; and

WHEREAS, A concussion may occur in any organized or unorganized sport or recreational activity and may result from a fall or from players colliding with each other, the ground, or other obstacles; and

WHEREAS, A concussion may occur with or without loss of consciousness, but the vast majority occurs without loss of consciousness; and

WHEREAS, Continuing to play with a concussion or symptoms of head injury leaves a young athlete especially vulnerable to greater injury and even death; now, therefore,

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

Article – Education

7–432.

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

(2) "CONCUSSION" MEANS A TRAUMATIC INJURY TO THE BRAIN CAUSING AN IMMEDIATE AND, USUALLY, SHORT–LIVED CHANGE IN MENTAL STATUS OR AN ALTERATION OF NORMAL CONSCIOUSNESS RESULTING FROM:

(I) A FALL;

(II) A VIOLENT BLOW TO THE HEAD OR BODY; OR

(III) THE SHAKING OR SPINNING OF THE HEAD OR BODY.

~~**(3) "STUDENT ATHLETE" MEANS AN INDIVIDUAL WHO IS UNDER THE AGE OF 18 YEARS OR WHO IS A PHYSICALLY OR MENTALLY DISABLED INDIVIDUAL OF ANY AGE WHO PARTICIPATES IN AN ATHLETIC ACTIVITY IN ASSOCIATION WITH:**~~

~~**(I) AN EDUCATIONAL INSTITUTION; OR**~~

~~(II) A NONINTERSCHOLASTIC YOUTH SPORTS PROGRAM CONDUCTED:~~

~~1. AT A PUBLIC SCHOOL FACILITY; OR~~

~~2. BY A RECREATIONAL ATHLETIC ORGANIZATION.~~

~~(4) "VOLUNTEER HEALTH CARE PROVIDER" MEANS A LICENSED HEALTH CARE PROVIDER WHO EVALUATES A STUDENT ATHLETE UNDER SUBSECTION (C)(2) OF THIS SECTION WITHOUT RECEIVING A FEE OR OTHER COMPENSATION.~~

~~(5)~~ (3) "YOUTH SPORTS PROGRAM" MEANS A PROGRAM ORGANIZED FOR RECREATIONAL ATHLETIC COMPETITION OR INSTRUCTION FOR PARTICIPANTS WHO ~~ARE:~~

~~(I) UNDER THE AGE OF 18 YEARS; OR~~

~~(II) PHYSICALLY OR MENTALLY DISABLED REGARDLESS OF AGE.~~ ARE UNDER THE AGE OF 19 YEARS.

(B) (1) THE DEPARTMENT SHALL DEVELOP POLICIES AND IMPLEMENT A PROGRAM TO PROVIDE AWARENESS TO COACHES, SCHOOL PERSONNEL, ~~STUDENT ATHLETES~~ STUDENTS, AND THE PARENTS OR GUARDIANS OF ~~STUDENT ATHLETES~~ STUDENTS, IN COLLABORATION WITH THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, EACH COUNTY BOARD, THE MARYLAND PUBLIC SECONDARY SCHOOLS ATHLETIC ASSOCIATION, THE MARYLAND ATHLETIC TRAINERS' ASSOCIATION, THE BRAIN INJURY ASSOCIATION OF MARYLAND, AND REPRESENTATIVES OF LICENSED HEALTH CARE PROVIDERS WHO TREAT CONCUSSIONS, ON:

(I) THE NATURE AND RISK OF A CONCUSSION OR HEAD INJURY;

(II) THE CRITERIA FOR REMOVAL FROM AND RETURN TO PLAY;

(III) THE RISKS OF NOT REPORTING INJURY AND CONTINUING TO PLAY; AND

(IV) APPROPRIATE ACADEMIC ACCOMMODATIONS FOR ~~STUDENT ATHLETES WHO ARE SUSPECTED OF SUSTAINING~~ STUDENTS DIAGNOSED AS HAVING SUSTAINED A CONCUSSION OR HEAD INJURY.

(2) THE PROGRAM SHALL INCLUDE A PROCESS TO VERIFY THAT A COACH HAS RECEIVED INFORMATION ON THE PROGRAM DEVELOPED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(3) (I) BEFORE A STUDENT ~~ATHLETE'S PARTICIPATION~~ ENROLLED IN A PUBLIC SCHOOL SYSTEM IN THE STATE MAY PARTICIPATE IN AN AUTHORIZED INTERSCHOLASTIC ATHLETIC ACTIVITY, THE COUNTY BOARD SHALL PROVIDE A CONCUSSION AND HEAD INJURY INFORMATION SHEET TO THE STUDENT ~~ATHLETE~~ AND A PARENT OR GUARDIAN OF THE STUDENT ~~ATHLETE~~.

(II) THE STUDENT ~~ATHLETE~~ AND THE PARENT OR GUARDIAN OF THE STUDENT ~~ATHLETE~~ SHALL SIGN A STATEMENT ACKNOWLEDGING RECEIPT OF THE INFORMATION SHEET.

(III) THE DEPARTMENT SHALL CREATE THE INFORMATION SHEET AND ACKNOWLEDGMENT STATEMENT REQUIRED UNDER THIS PARAGRAPH.

(4) THE DEPARTMENT MAY USE MATERIALS AVAILABLE FROM THE CENTERS FOR DISEASE CONTROL AND PREVENTION, THE BRAIN INJURY ASSOCIATION OF MARYLAND, OR ANY OTHER APPROPRIATE ENTITY TO CARRY OUT THE REQUIREMENTS OF THIS SUBSECTION.

(C) (1) A STUDENT ~~ATHLETE~~ WHO IS SUSPECTED OF SUSTAINING A CONCUSSION OR OTHER HEAD INJURY IN A PRACTICE OR GAME SHALL BE REMOVED FROM PLAY AT THAT TIME.

(2) A STUDENT ~~ATHLETE~~ WHO HAS BEEN REMOVED FROM PLAY MAY NOT RETURN TO PLAY UNTIL THE STUDENT ~~ATHLETE~~ HAS OBTAINED WRITTEN CLEARANCE FROM A LICENSED HEALTH CARE PROVIDER TRAINED IN THE EVALUATION AND MANAGEMENT OF CONCUSSIONS.

(D) (1) BEFORE AN INDIVIDUAL PARTICIPATES IN AN AUTHORIZED ATHLETIC ACTIVITY ON SCHOOL PROPERTY, THE COUNTY BOARD SHALL PROVIDE, OR REQUIRE THAT A THIRD PARTY PROVIDE~~,~~*:*

(I) ~~INFORMATION~~ *INFORMATION* ON CONCUSSIONS AND HEAD INJURIES TO THE INDIVIDUAL AND, IF APPLICABLE, A PARENT OR GUARDIAN OF THE INDIVIDUAL*; AND*

(II) NOTICE THAT ACKNOWLEDGMENT OF THE RECEIPT OF THE INFORMATION BY THE INDIVIDUAL AND, IF APPLICABLE, THE PARENT OR GUARDIAN OF THE INDIVIDUAL, IS REQUIRED.

(2) THE INFORMATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE IN THE FORM OF:

(I) A SEPARATE INFORMATION SHEET; OR

(II) A NOTICE ON THE REGISTRATION FORM FOR A YOUTH SPORTS PROGRAM STATING THAT ~~A SEPARATE~~ INFORMATION ~~SHEET~~ ON CONCUSSION AND HEAD INJURY IS AVAILABLE, INCLUDING DIRECTIONS ON HOW TO RECEIVE THE INFORMATION ~~SHEET~~ ELECTRONICALLY.

(3) THE INDIVIDUAL AND, IF APPLICABLE, THE PARENT OR GUARDIAN OF THE INDIVIDUAL SHALL:

(I) ACKNOWLEDGE RECEIPT OF THE INFORMATION ~~SHEET~~ BY:

1. SIGNATURE;

2. CHECKING AN ACKNOWLEDGMENT BOX ON THE REGISTRATION FORM; OR

3. ANOTHER METHOD OF WRITTEN OR ELECTRONIC ACKNOWLEDGMENT; AND

(II) RETURN THE ACKNOWLEDGMENT TO THE COUNTY BOARD OR THIRD PARTY.

~~(D)~~ (E) ~~BEFORE THE FIRST USE OF A PUBLIC SCHOOL FACILITY, A~~ A YOUTH SPORTS PROGRAM ~~SHALL PROVIDE~~ THAT USES A PUBLIC SCHOOL FACILITY SHALL PROVIDE ANNUALLY TO THE COUNTY BOARD OR THE BOARD'S AGENT A STATEMENT OF ~~COMPLIANCE~~ INTENT TO COMPLY FOR ALL OF ITS ATHLETIC ACTIVITIES WITH THE REQUIREMENTS FOR THE MANAGEMENT OF A CONCUSSION OR OTHER HEAD INJURY OF A ~~STUDENT ATHLETE~~ PARTICIPANT UNDER ~~SUBSECTIONS (B) AND (C) OF~~ THIS SECTION.

~~(E) A VOLUNTEER HEALTH CARE PROVIDER WHO AUTHORIZES A STUDENT ATHLETE TO RETURN TO PLAY UNDER SUBSECTION (C)(2) OF THIS SECTION IS NOT LIABLE FOR CIVIL DAMAGES RESULTING FROM ANY ACT OR OMISSION IN THE RENDERING OF THE HEALTH CARE, OTHER THAN ACTS OR OMISSIONS CONSTITUTING GROSS NEGLIGENCE OR WILLFUL OR WANTON MISCONDUCT.~~

Article – Health – General

SUBTITLE 5. YOUTH SPORTS PROGRAMS.

14–501.

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

(2) "CONCUSSION" MEANS A TRAUMATIC INJURY TO THE BRAIN CAUSING AN IMMEDIATE AND, USUALLY, SHORT–LIVED CHANGE IN MENTAL STATUS OR AN ALTERATION OF NORMAL CONSCIOUSNESS RESULTING FROM:

(I) A FALL;

(II) A VIOLENT BLOW TO THE HEAD OR BODY; OR

(III) THE SHAKING OR SPINNING OF THE HEAD OR BODY.

(3) "YOUTH ATHLETE" MEANS AN INDIVIDUAL WHO PARTICIPATES IN AN ATHLETIC ACTIVITY IN ASSOCIATION WITH A YOUTH SPORTS PROGRAM CONDUCTED:

(I) AT A PUBLIC SCHOOL FACILITY; OR

(II) BY A RECREATIONAL ATHLETIC ORGANIZATION.

(4) "YOUTH SPORTS PROGRAM" MEANS A PROGRAM ORGANIZED FOR RECREATIONAL ATHLETIC COMPETITION OR INSTRUCTION FOR PARTICIPANTS WHO ARE UNDER THE AGE OF 19 YEARS.

(B) (1) A YOUTH SPORTS PROGRAM SHALL MAKE AVAILABLE INFORMATION ON CONCUSSIONS AND HEAD INJURIES DEVELOPED BY THE STATE DEPARTMENT OF EDUCATION UNDER § 7–432 OF THE EDUCATION ARTICLE TO COACHES, YOUTH ATHLETES, AND THE PARENTS OR GUARDIANS OF YOUTH ATHLETES.

(2) A COACH OF A YOUTH SPORTS PROGRAM SHALL REVIEW THE INFORMATION PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION.

(C) (1) A YOUTH ATHLETE WHO IS SUSPECTED OF SUSTAINING A CONCUSSION OR OTHER HEAD INJURY IN A PRACTICE OR GAME SHALL BE REMOVED FROM PLAY AT THAT TIME.

(2) A YOUTH ATHLETE WHO HAS BEEN REMOVED FROM PLAY MAY NOT RETURN TO PLAY UNTIL THE YOUTH ATHLETE HAS OBTAINED WRITTEN

CLEARANCE FROM A LICENSED HEALTH CARE PROVIDER TRAINED IN THE EVALUATION AND MANAGEMENT OF CONCUSSIONS.

(D) BEFORE A YOUTH SPORTS PROGRAM MAY USE A FACILITY OWNED OR OPERATED BY A LOCAL GOVERNMENT, THE LOCAL GOVERNMENT SHALL PROVIDE NOTICE TO THE YOUTH SPORTS PROGRAM OF THE REQUIREMENTS OF THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 550

(Senate Bill 772)

AN ACT concerning

Task Force to Study the Creation of a Maryland Center for School Safety

FOR the purpose of establishing a Task Force to Study the Creation of a Maryland Center for School Safety; providing for the membership, chair, and staffing of the Task Force; prohibiting a member of the Task Force from receiving compensation, but authorizing reimbursement of certain expenses; requiring the Task Force to study and make recommendations regarding certain matters; requiring the Task Force to report its findings and recommendations to the Governor and the General Assembly on or before a certain date; providing for the termination of this Act; and generally relating to the Task Force to Study the Creation of a Maryland Center for School Safety.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That:

(a) There is a Task Force to Study the Creation of a Maryland Center for School Safety.

(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) one member of the House of Delegates, appointed by the Speaker of the House;

(3) the State Superintendent of Schools, or the Superintendent's designee;

(4) two representatives of the Maryland Association of Boards of Education, appointed by the Association;

(5) ~~four~~ *five* public school ~~teachers~~ educators from different geographic areas of the State, ~~one of whom represents~~ *three appointed by* the Maryland State ~~Teachers~~ Education Association ~~and one of whom represents~~*, one appointed by* the American Federation of Teachers, *AFL–CIO, and one* appointed by the State Superintendent of Schools;

(6) a school ~~psychiatrist~~ psychologist or sociologist, appointed by the State Superintendent of Schools;

(7) the Secretary of State Police, or the Secretary's designee;

(8) the Attorney General, or the Attorney General's designee; ~~and~~

(9) *the Secretary of the Maryland Department of Disabilities, or the Secretary's designee; and*

(10) the following members appointed by the Governor:

(i) two parents of public school students;

(ii) two public school students;

(iii) one representative from a nonpublic school;

(iv) one representative who is knowledgeable in serving students with disabilities; and

(v) one representative of school bus drivers.

(c) The Governor shall designate the chair of the Task Force.

(d) Bowie State University shall 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 make findings and recommendations regarding the establishment of a Maryland Center for School Safety, including the following issues:

(1) establishing a clearinghouse for information and materials concerning school safety;

(2) developing a school safety training program that includes:

(i) development of a positive school environment and protective safety measures designed to address local concerns;

(ii) school safety courses for law enforcement officials with an emphasis on school police officers or school resource officers;

(iii) discussion of school safety issues with parents and community members; and

(iv) assistance in the review and updating of emergency preparedness plans;

(3) preparing and disseminating information regarding best practices in creating safe and effective schools;

(4) promoting the formation of interagency efforts to address discipline and safety issues within communities throughout the State in collaboration with postsecondary institutions and local juvenile services agencies;

(5) developing model interagency agreements between local school systems, health departments, departments of social services, mental health agencies, and juvenile courts in order to provide cooperative services and sharing of costs for services to students who are at risk of failure in school, are at risk of participation in juvenile crime, or have been expelled from a local school system;

(6) subject to the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, collaborating with the State Department of Education to establish and maintain a statewide data collection system by which local school systems report, by gender, race, and grade level:

(i) all incidents of violence and assault against school employees and students;

(ii) all incidents of possession of guns or other deadly weapons on school property or at school functions;

(iii) all incidents of possession or use of alcohol, prescription drugs, or controlled dangerous substances on school property or at school functions;

(iv) all incidents in which a student has been disciplined by the school or charged criminally for conduct occurring on school property, on school transportation, or at a school function; and

(v) the number of suspensions and expulsions;

(7) analyzing data collected under paragraph (6) of this subsection;

(8) developing security criteria that local school systems may consider in the design of new school construction;

(9) (i) developing a model safety and security audit procedure for use by local school systems that provides each school system with guidelines and a training video showing proper audit procedure;

(ii) reviewing each local school system safety and security audit and making recommendations for improvements based on the audit; and

(iii) incorporating the findings of local school system audits in a statewide report on school safety;

(10) on the request of a local school system, providing on–site technical assistance to the system for school safety and security audits; and

(11) developing and maintaining a Web site that includes:

(i) quarterly news updates related to school safety and violence prevention;

(ii) school crime data; and

(iii) schedules of school safety training.

(g) On or before July 1, 2012, the Task Force shall report its findings and recommendations to the Governor 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 June 1, 2011. It shall remain effective for a period of 2 years and 1 month and, at the end of June 30, 2013, 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 19, 2011.

Chapter 551

(House Bill 79)

AN ACT concerning

Task Force to Study the Creation of a Maryland Center for School Safety

FOR the purpose of establishing a Task Force to Study the Creation of a Maryland Center for School Safety; providing for the membership, chair, and staffing of the Task Force; prohibiting a member of the Task Force from receiving compensation, but authorizing reimbursement of certain expenses; requiring the Task Force to study and make recommendations regarding certain matters; requiring the Task Force to report its findings and recommendations to the Governor and the General Assembly on or before a certain date; providing for the termination of this Act; and generally relating to the Task Force to Study the Creation of a Maryland Center for School Safety.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That:

(a) There is a Task Force to Study the Creation of a Maryland Center for School Safety.

(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) one member of the House of Delegates, appointed by the Speaker of the House;

(3) the State Superintendent of Schools, or the Superintendent's designee;

(4) two representatives of the Maryland Association of Boards of Education, appointed by the Association;

(5) ~~four public school teachers~~ <u>five public school educators</u> from different geographic areas of the State, ~~one of whom represents the Maryland State Teachers Association,~~ <u>three</u> ~~recommended~~ <u>*appointed*</u> <u>by the Maryland State Education Association, one</u> ~~recommended~~ <u>*appointed*</u> <u>by the American Federation of Teachers, AFL–CIO, and one</u> appointed by the State Superintendent of Schools;

(6) a school ~~psychiatrist~~ <u>*psychologist*</u> or sociologist, appointed by the State Superintendent of Schools;

(7) the Secretary of State Police, or the Secretary's designee;

(8) the Attorney General, or the Attorney General's designee; ~~and~~

(9) the Secretary of the Maryland Department of Disabilities, or the Secretary's designee; and

(10) the following members appointed by the Governor:

(i) two parents of public school students;

(ii) two public school students;

(iii) one representative from a nonpublic school;

(iv) one representative who is knowledgeable in serving students with disabilities; and

(v) one representative of school bus drivers.

(c) The Governor shall designate the chair of the Task Force.

(d) Bowie State University shall 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 make findings and recommendations regarding the establishment of a Maryland Center for School Safety, including the following issues:

(1) establishing a clearinghouse for information and materials concerning school safety;

(2) developing a school safety training program that includes:

(i) development of a positive school environment and protective safety measures designed to address local concerns;

(ii) school safety courses for law enforcement officials with an emphasis on school police officers or school resource officers;

(iii) discussion of school safety issues with parents and community members; and

(iv) assistance in the review and updating of emergency preparedness plans;

(3) preparing and disseminating information regarding best practices in creating safe and effective schools;

(4) promoting the formation of interagency efforts to address discipline and safety issues within communities throughout the State in collaboration with postsecondary institutions and local juvenile services agencies;

(5) developing model interagency agreements between local school systems, health departments, departments of social services, mental health agencies, and juvenile courts in order to provide cooperative services and sharing of costs for services to students who are at risk of failure in school, are at risk of participation in juvenile crime, or have been expelled from a local school system;

(6) subject to the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, collaborating with the State Department of Education to establish and maintain a statewide data collection system by which local school systems report, by gender, race, and grade level:

(i) all incidents of violence and assault against school employees and students;

(ii) all incidents of possession of guns or other deadly weapons on school property or at school functions;

(iii) all incidents of possession or use of alcohol, prescription drugs, or controlled dangerous substances on school property or at school functions;

(iv) all incidents in which a student has been disciplined by the school or charged criminally for conduct occurring on school property, on school transportation, or at a school function; and

(v) the number of suspensions and expulsions;

(7) analyzing data collected under paragraph (6) of this subsection;

(8) developing security criteria that local school systems may consider in the design of new school construction;

(9) (i) developing a model safety and security audit procedure for use by local school systems that provides each school system with guidelines and a training video showing proper audit procedure;

(ii) reviewing each local school system safety and security audit and making recommendations for improvements based on the audit; and

(iii) incorporating the findings of local school system audits in a statewide report on school safety;

(10) on the request of a local school system, providing on–site technical assistance to the system for school safety and security audits; and

(11) developing and maintaining a Web site that includes:

(i) quarterly news updates related to school safety and violence prevention;

(ii) school crime data; and

(iii) schedules of school safety training.

(g) On or before July 1, 2012, the Task Force shall report its findings and recommendations to the Governor 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 June 1, 2011. It shall remain effective for a period of 2 years and 1 month and, at the end of June 30, 2013, 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 19, 2011.

Chapter 552

(Senate Bill 786)

AN ACT concerning

Health – Newborn Screening Program – Critical Congenital Heart Disease

FOR the purpose of requiring ~~that the Department of Health and Mental Hygiene's Newborn Screening Program include screening for critical congenital heart disease~~ the Department of Health and Mental Hygiene to adopt certain federal recommendations on critical congenital heart disease screening in newborns under certain circumstances; requiring the State Advisory Council on Hereditary and Congenital Disorders to develop certain recommendations for critical congenital heart disease screening of newborns in the State; requiring

the Advisory Council to convene certain experts to provide certain information; requiring the Advisory Council to examine the impact of implementing mandatory critical congenital heart disease screening; requiring the Advisory Council to review certain studies and literature; requiring the Advisory Council to submit a certain report to certain committees of the General Assembly on or before a certain date; and generally relating to the State Advisory Council on Hereditary and Congenital Disorders and newborn screening for critical congenital heart disease.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 13–111
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

Preamble

WHEREAS, Congenital heart disease is the most common birth defect and affects approximately eight out of every 1,000 infants each year; and

WHEREAS, More than 36,000 infants are born with congenital heart disease each year in the United States; and

WHEREAS, Congenital heart disease is the leading cause of death for infants born with a birth defect despite survival rates now approaching 96% for all affected children; and

WHEREAS, A major cause of infant mortality as a result of congenital heart disease is that a significant number of children affected are not detected as having heart disease in the newborn nursery; and

WHEREAS, An effective newborn screening mechanism for congenital heart disease before newborns leave the nursery can reduce infant mortality; and

WHEREAS, Pulse oximetry has been shown to be an effective screening test to detect congenital heart disease before infants leave the newborn nursery; and

WHEREAS, Children's National Medical Center has worked with Holy Cross Hospital to become leaders in the implementation of pulse oximetry screening in community nurseries; and

WHEREAS, The Secretary of Health and Human Services' Advisory Committee for Heritable Disorders in Newborns and Children recommended the addition of screening for critical cyanotic congenital heart disease to the core panel for universal screening of all newborns in the United States; now, therefore,

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

Article – Health – General

13–111.

(a) The Department shall establish a coordinated statewide system for screening all newborn infants in the State for certain hereditary and congenital disorders associated with severe problems of health or development, except when the parent or guardian of the newborn infant objects.

(b) Except as provided in § 13–112 of this subtitle, the Department's public health laboratory is the sole laboratory authorized to perform tests on specimens from newborn infants collected to screen for hereditary and congenital disorders as determined under subsection (d)(2) of this section.

(c) The system for newborn screening shall include:

(1) Laboratory testing and the reporting of test results; ~~[~~and~~]~~

(2) Follow–up activities to facilitate the rapid identification and treatment of an affected child~~; AND~~

~~(3) SCREENING FOR CRITICAL CONGENITAL HEART DISEASE~~.

(d) In consultation with the State Advisory Council on Hereditary and Congenital Disorders, the Department shall:

(1) Establish protocols for a health care provider to obtain and deliver test specimens to the Department's public health laboratory;

(2) Determine the screening tests that the Department's public health laboratory is required to perform;

(3) Maintain a coordinated statewide system for newborn screening that carries out the purpose described in subsection (c) of this section that includes:

(i) Communicating the results of screening tests to the health care provider of the newborn infant;

(ii) Locating newborn infants with abnormal test results;

(iii) Sharing newborn screening information between hospitals, health care providers, treatment centers, and laboratory personnel; and

(iv) Delivering needed clinical, diagnostic, and treatment information to health care providers, parents, and caregivers; and

(4) Adopt regulations that set forth the standards and requirements for newborn screening for hereditary and congenital disorders that are required under this subtitle, including:

(i) Performing newborn screening tests;

(ii) Coordinating the reporting, follow–up, and treatment activities with parents, caregivers, and health care providers; and

(iii) Establishing fees for newborn screening that do not exceed an amount sufficient to cover the administrative, laboratory, and follow–up costs associated with the performance of screening tests under this subtitle.

(E) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE SECRETARY OF HEALTH AND HUMAN SERVICES ISSUES FEDERAL RECOMMENDATIONS ON CRITICAL CONGENITAL HEART DISEASE SCREENING OF NEWBORNS, THE DEPARTMENT SHALL ADOPT THE FEDERAL SCREENING RECOMMENDATIONS.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The State Advisory Council on Hereditary and Congenital Disorders shall develop recommendations on the implementation of critical congenital heart disease screening of newborns in the State in accordance with this section.

(b) The Advisory Council shall:

(1) convene experts from the State's academic medical centers and any other hospital that the Advisory Council considers appropriate, as well as other State organizations and professional groups, to provide information for the development of recommendations for critical congenital heart disease screening of newborns in the State;

(2) examine the impact of implementing mandatory critical congenital heart disease screening, including an examination of costs, insurance reimbursement, necessary medical equipment and staff training, screening protocols and quality oversight, and risk of harm; and

(3) review medical and public health studies and literature across a broad range of newborn delivery systems with respect to critical congenital heart disease screening of newborns.

(c) On or before December 31, 2011, the Advisory Council shall submit its findings and recommendations on the implementation of critical congenital heart disease screening of newborns in a report to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2–1246 of the State Government Article.

(d) Notwithstanding any recommendation developed by the Advisory Council under this section, if the Secretary of Health and Human Services issues federal recommendations on critical congenital heart disease screening of newborns, the Department shall adopt the federal screening recommendations in accordance with § 13–111(e) of the Health – General Article as enacted by this Act.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 553

(House Bill 714)

AN ACT concerning

Health – Newborn Screening Program – Critical Congenital Heart Disease

FOR the purpose of requiring ~~that the Department of Health and Mental Hygiene's Newborn Screening Program include screening for critical congenital heart disease~~ the Department of Health and Mental Hygiene to adopt certain federal recommendations on critical congenital heart disease screening in newborns under certain circumstances; requiring the State Advisory Council on Hereditary and Congenital Disorders to develop certain recommendations for critical congenital heart disease screening of newborns in the State; requiring the Advisory Council to convene certain experts to provide certain information; requiring the Advisory Council to examine the impact of implementing mandatory critical congenital heart disease screening; requiring the Advisory Council to review certain studies and literature; requiring the Advisory Council to submit a certain report to certain committees of the General Assembly on or before a certain date; and generally relating to the State Advisory Council on Hereditary and Congenital Disorders and newborn screening for critical congenital heart disease.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 13–111
Annotated Code of Maryland

(2009 Replacement Volume and 2010 Supplement)

Preamble

WHEREAS, Congenital heart disease is the most common birth defect and affects approximately eight out of every 1,000 infants each year; and

WHEREAS, More than 36,000 infants are born with congenital heart disease each year in the United States; and

WHEREAS, Congenital heart disease is the leading cause of death for infants born with a birth defect despite survival rates now approaching 96% for all affected children; and

WHEREAS, A major cause of infant mortality as a result of congenital heart disease is that a significant number of children affected are not detected as having heart disease in the newborn nursery; and

WHEREAS, An effective newborn screening mechanism for congenital heart disease before newborns leave the nursery can reduce infant mortality; and

WHEREAS, Pulse oximetry has been shown to be an effective screening test to detect congenital heart disease before infants leave the newborn nursery; and

WHEREAS, Children's National Medical Center has worked with Holy Cross Hospital to become leaders in the implementation of pulse oximetry screening in community nurseries; and

WHEREAS, The Secretary of Health and Human Services' Advisory Committee for Heritable Disorders in Newborns and Children recommended the addition of screening for critical cyanotic congenital heart disease to the core panel for universal screening of all newborns in the United States; now, therefore,

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

Article – Health – General

13–111.

(a) The Department shall establish a coordinated statewide system for screening all newborn infants in the State for certain hereditary and congenital disorders associated with severe problems of health or development, except when the parent or guardian of the newborn infant objects.

(b) Except as provided in § 13–112 of this subtitle, the Department's public health laboratory is the sole laboratory authorized to perform tests on specimens from

newborn infants collected to screen for hereditary and congenital disorders as determined under subsection (d)(2) of this section.

(c) The system for newborn screening shall include:

(1) Laboratory testing and the reporting of test results; **[**and**]**

(2) Follow–up activities to facilitate the rapid identification and treatment of an affected child~~; AND~~

~~(3) SCREENING FOR CRITICAL CONGENITAL HEART DISEASE~~.

(d) In consultation with the State Advisory Council on Hereditary and Congenital Disorders, the Department shall:

(1) Establish protocols for a health care provider to obtain and deliver test specimens to the Department's public health laboratory;

(2) Determine the screening tests that the Department's public health laboratory is required to perform;

(3) Maintain a coordinated statewide system for newborn screening that carries out the purpose described in subsection (c) of this section that includes:

(i) Communicating the results of screening tests to the health care provider of the newborn infant;

(ii) Locating newborn infants with abnormal test results;

(iii) Sharing newborn screening information between hospitals, health care providers, treatment centers, and laboratory personnel; and

(iv) Delivering needed clinical, diagnostic, and treatment information to health care providers, parents, and caregivers; and

(4) Adopt regulations that set forth the standards and requirements for newborn screening for hereditary and congenital disorders that are required under this subtitle, including:

(i) Performing newborn screening tests;

(ii) Coordinating the reporting, follow–up, and treatment activities with parents, caregivers, and health care providers; and

(iii) Establishing fees for newborn screening that do not exceed an amount sufficient to cover the administrative, laboratory, and follow–up costs associated with the performance of screening tests under this subtitle.

(E) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE SECRETARY OF HEALTH AND HUMAN SERVICES ISSUES FEDERAL RECOMMENDATIONS ON CRITICAL CONGENITAL HEART DISEASE SCREENING OF NEWBORNS, THE DEPARTMENT SHALL ADOPT THE FEDERAL SCREENING RECOMMENDATIONS.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The State Advisory Council on Hereditary and Congenital Disorders shall develop recommendations on the implementation of critical congenital heart disease screening of newborns in the State in accordance with this section.

(b) The Advisory Council shall:

(1) convene experts from the State's academic medical centers and any other hospital that the Advisory Council considers appropriate, as well as other State organizations and professional groups, to provide information for the development of recommendations for critical congenital heart disease screening of newborns in the State;

(2) examine the impact of implementing mandatory critical congenital heart disease screening, including an examination of costs, insurance reimbursement, necessary medical equipment and staff training, screening protocols and quality oversight, and risk of harm; and

(3) review medical and public health studies and literature across a broad range of newborn delivery systems with respect to critical congenital heart disease screening of newborns.

(c) On or before December 31, 2011, the Advisory Council shall submit its findings and recommendations on the implementation of critical congenital heart disease screening of newborns in a report to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2–1246 of the State Government Article.

(d) Notwithstanding any recommendation developed by the Advisory Council under this section, if the Secretary of Health and Human Services issues federal recommendations on critical congenital heart disease screening of newborns, the Department shall adopt the federal screening recommendations in accordance with § 13–111(e) of the Health – General Article as enacted by this Act.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 554

(Senate Bill 801)

AN ACT concerning

Criminal Law – Swift and Certain Sanctions Pilot Program

FOR the purpose of ~~declaring that it is the public policy of the State that certain former inmates under community supervision shall be subject to certain revocation proceedings, possible incarceration, and certain other sanctions under certain circumstances; requiring the Division of Parole and Probation to implement a pilot program involving a system of graduated sanctions for violations of conditions of community supervision; requiring a certain system to set forth a menu of certain presumptive sanctions; requiring certain sanctions to take into account certain factors; requiring a certain system to define certain positive reinforcements; requiring the Secretary of Public Safety and Correctional Services to establish certain review processes by regulation; requiring a certain review to be conducted by a certain employee or representative; requiring a certain court to determine the conditions of community supervision for certain individuals; authorizing a certain court to impose as a condition of community supervision that the Division may impose certain graduated sanctions for certain violations; authorizing the Division to modify the conditions of community supervision for a certain purpose and place a certain supervised individual in a certain facility or center for a certain period of time under certain circumstances; requiring a certain supervision officer who intends to modify the conditions of community supervision in a certain manner to issue to a certain supervised individual a certain notice; requiring the imposition of a graduated sanction by a certain supervision officer to comport with a certain system of graduated sanctions; requiring a certain supervised individual to immediately accept or object to a certain sanction at a certain time; providing that the failure of a certain supervised individual to comply with a certain sanction shall constitute a violation of probation, parole, or mandatory supervision; providing that if a certain supervised individual objects to the imposition of a certain sanction, the individual is entitled to a certain administrative review; establishing that if the Division affirms a certain recommendation, then a certain sanction shall become effective immediately; requiring a certain confinement to be approved by a certain chief supervision officer; allowing a certain supervised individual to be taken into custody for a certain maximum period of time while certain approval is obtained; requiring a certain supervision officer to impose a certain sanction on certain days and times under certain circumstances; prohibiting a certain sanction from being imposed except by order of the court; prohibiting the issuance of a certain notice that could result in a certain felony charge, with a certain exception; prohibiting a court from revoking the term of community supervision or imposing additional~~

~~sanctions upon successful completion of a graduated sanction; requiring a certain supervision officer to take certain actions if the supervision officer modifies the conditions of community supervision in a certain manner; requiring a certain chief supervision officer periodically to review confinement sanctions recommended by supervision officers for certain purposes; defining certain terms; making the provisions of this Act severable;~~ requiring the Department of Public Safety and Correctional Services to develop by a certain date a certain pilot program in two counties that creates a system of graduated administrative sanctions for violations of conditions of parole by releasees from the Division of Correction; requiring the Department to make a certain annual report to the General Assembly on or before a certain date; providing for the termination of this Act; and generally relating to the Swift and Certain Sanctions Pilot Program.

~~BY adding to~~
~~Article – Correctional Services~~
~~Section 6–301 through 6–306 to be under the new subtitle "Subtitle 3. Swift and Certain Sanctions Pilot Program"~~
~~Annotated Code of Maryland~~
~~(2008 Replacement Volume and 2010 Supplement)~~

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

~~**Article – Correctional Services**~~

~~**SUBTITLE 3. SWIFT AND CERTAIN SANCTIONS PILOT PROGRAM.**~~

~~**6–301.**~~

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

~~**(B) "CHIEF SUPERVISION OFFICER" MEANS THE HIGHEST RANKING FIELD PAROLE AND PROBATION ADMINISTRATOR IN EACH JUDICIAL CIRCUIT.**~~

~~**(C) "COMMUNITY SUPERVISION" MEANS:**~~

~~**(1) THE PLACEMENT OF AN INDIVIDUAL UNDER THE SUPERVISION OF THE DIVISION, WITH CONDITIONS IMPOSED BY A COURT FOR A SPECIFIED PERIOD DURING WHICH:**~~

~~**(I) CRIMINAL PROCEEDINGS ARE DEFERRED WITHOUT AN ADJUDICATION OF GUILT; AND**~~

~~(II) A SENTENCE OF IMPRISONMENT OR CONFINEMENT, IMPRISONMENT AND FINE, OR CONFINEMENT AND FINE IS PROBATED AND THE IMPOSITION OF SENTENCE IS SUSPENDED IN WHOLE OR IN PART; OR~~

~~(2) THE PLACEMENT OF AN INDIVIDUAL UNDER SUPERVISION AFTER RELEASE FROM PRISON OR JAIL, WITH CONDITIONS IMPOSED BY THE DIVISION FOR A SPECIFIED PERIOD.~~

~~(D) "GRADUATED SANCTION" MEANS NONPRISON OFFENDER ACCOUNTABILITY MEASURES AND PROGRAMS, INCLUDING:~~

~~(1) ELECTRONIC SUPERVISION TOOLS;~~

~~(2) DRUG AND ALCOHOL TESTING OR MONITORING;~~

~~(3) DAY OR EVENING REPORTING CENTERS;~~

~~(4) RESTITUTION CENTERS;~~

~~(5) FORFEITURE OF EARNED COMPLIANCE CREDITS;~~

~~(6) REHABILITATIVE INTERVENTIONS SUCH AS SUBSTANCE ABUSE OR MENTAL HEALTH TREATMENT;~~

~~(7) REPORTING REQUIREMENTS TO SUPERVISION OFFICERS;~~

~~(8) COMMUNITY SERVICE OR WORK CREWS;~~

~~(9) SECURE OR UNSECURE RESIDENTIAL TREATMENT FACILITIES OR HALFWAY HOUSES; AND~~

~~(10) SHORT–TERM OR INTERMITTENT INCARCERATION.~~

~~(E) "POSITIVE REINFORCEMENT" MEANS REWARDS AND INCENTIVES, INCLUDING:~~

~~(1) AWARDING CERTIFICATES OF ACHIEVEMENT;~~

~~(2) REDUCING REPORTING REQUIREMENTS;~~

~~(3) DEFERRING A MONTHLY SUPERVISION FEE PAYMENT;~~

~~(4) AWARDING EARNED COMPLIANCE CREDITS;~~

~~(5) REMOVING SUPERVISION CONDITIONS SUCH AS HOME DETENTION OR CURFEW; OR~~

~~(6) ASSIGNING THE OFFENDER TO BE A MENTOR TO OTHERS.~~

~~(F) "SUPERVISED INDIVIDUAL" MEANS AN INDIVIDUAL UNDER COMMUNITY SUPERVISION.~~

~~(G) "SUPERVISION OFFICER" MEANS A PERSON APPOINTED OR EMPLOYED BY THE DIVISION TO SUPERVISE INDIVIDUALS PLACED ON COMMUNITY SUPERVISION.~~

~~6–302.~~

~~IT IS THE PUBLIC POLICY OF THE STATE THAT SUPERVISED INDIVIDUALS SHALL BE SUBJECT TO:~~

~~(1) PROCEEDINGS FOR THE REVOCATION OF COMMUNITY SUPERVISION AND THE POSSIBLE REINSTATEMENT OF INCARCERATION FOR FAILURE TO COMPLY WITH THE CONDITIONS OF COMMUNITY SUPERVISION WHEN THE FAILURE CONSTITUTES A SIGNIFICANT RISK TO PRIOR VICTIMS OF THE SUPERVISED INDIVIDUAL OR THE COMMUNITY AT LARGE AND CANNOT BE APPROPRIATELY MANAGED IN THE COMMUNITY; OR~~

~~(2) SANCTIONS OTHER THAN REVOCATION AND INCARCERATION AS APPROPRIATE TO:~~

~~(I) THE SEVERITY OF THE VIOLATION BEHAVIOR;~~

~~(II) THE RISK OF FUTURE CRIMINAL BEHAVIOR BY THE OFFENDER; AND~~

~~(III) THE NEED FOR, AND AVAILABILITY OF, INTERVENTIONS THAT MAY ASSIST THE OFFENDER TO REMAIN COMPLIANT AND CRIME–FREE IN THE COMMUNITY.~~

~~6–303.~~

~~(A) ON OR BEFORE JANUARY 1, 2012, THE DIVISION SHALL IMPLEMENT A PILOT PROGRAM INVOLVING A SYSTEM OF GRADUATED SANCTIONS FOR VIOLATIONS OF CONDITIONS OF COMMUNITY SUPERVISION.~~

~~(B) THE SYSTEM SHALL SET FORTH A LIST OF PRESUMPTIVE SANCTIONS FOR SUPERVISION VIOLATIONS, INCLUDING:~~

~~(1) FAILURE TO REPORT;~~

~~(2) FAILURE TO PAY FINES, FEES, AND RESTITUTION;~~

~~(3) FAILURE TO PARTICIPATE IN A REQUIRED PROGRAM OR SERVICE;~~

~~(4) FAILURE TO COMPLETE COMMUNITY SERVICE;~~

~~(5) VIOLATION OF A PROTECTIVE ORDER OR PEACE ORDER; AND~~

~~(6) FAILURE TO REFRAIN FROM THE USE OF ALCOHOL OR CONTROLLED DANGEROUS SUBSTANCES.~~

~~(C) THE TYPE OF SANCTIONS PRESCRIBED SHALL TAKE INTO ACCOUNT FACTORS SUCH AS:~~

~~(1) THE SEVERITY OF THE VIOLATION;~~

~~(2) THE SUPERVISED INDIVIDUAL'S PREVIOUS CRIMINAL RECORD;~~

~~(3) THE NUMBER AND SEVERITY OF ANY PREVIOUS SUPERVISION VIOLATIONS;~~

~~(4) THE SUPERVISED INDIVIDUAL'S ASSESSED RISK LEVEL; AND~~

~~(5) THE EXTENT TO WHICH GRADUATED SANCTIONS WERE IMPOSED FOR PREVIOUS VIOLATIONS.~~

~~(D) THE SYSTEM SHALL DEFINE POSITIVE REINFORCEMENTS THAT SUPERVISED INDIVIDUALS SHALL RECEIVE FOR COMPLIANCE WITH CONDITIONS OF SUPERVISION.~~

~~(E) THE SECRETARY SHALL ESTABLISH, BY REGULATION, AN ADMINISTRATIVE PROCESS TO REVIEW AND APPROVE OR REJECT, PRIOR TO IMPOSITION, GRADUATED SANCTIONS THAT DEVIATE FROM THOSE PRESCRIBED.~~

~~(F) (1) THE SECRETARY SHALL ESTABLISH, BY REGULATION, AN ADMINISTRATIVE PROCESS TO REVIEW GRADUATED SANCTIONS CONTESTED BY SUPERVISED INDIVIDUALS UNDER § 6–305 OF THIS SUBTITLE.~~

~~(2) THE REVIEW SHALL BE CONDUCTED BY AN IMPARTIAL DIVISION EMPLOYEE OR REPRESENTATIVE WHO HAS BEEN SELECTED, APPOINTED, AND TRAINED TO HEAR CASES REGARDING GRADUATED SANCTIONS FOR VIOLATIONS OF SUPERVISION CONDITIONS.~~

~~6–304.~~

~~FOR INDIVIDUALS PLACED ON PROBATION, THE COURT HAVING JURISDICTION OF THE CASE:~~

~~(1) SHALL DETERMINE THE CONDITIONS OF COMMUNITY SUPERVISION; AND~~

~~(2) MAY IMPOSE AS A CONDITION OF COMMUNITY SUPERVISION THAT THE DIVISION, IN ACCORDANCE WITH § 6–305 OF THIS SUBTITLE, MAY IMPOSE GRADUATED SANCTIONS ADOPTED BY THE DIVISION FOR VIOLATIONS OF THE CONDITIONS OF COMMUNITY SUPERVISION.~~

~~6–305.~~

~~(A) NOTWITHSTANDING ANY LAW OR RULE TO THE CONTRARY, THE DIVISION MAY:~~

~~(1) MODIFY THE CONDITIONS OF COMMUNITY SUPERVISION FOR THE LIMITED PURPOSE OF IMPOSING GRADUATED SANCTIONS; AND~~

~~(2) PLACE A SUPERVISED INDIVIDUAL WHO VIOLATES THE CONDITIONS OF COMMUNITY SUPERVISION IN A STATE OR LOCAL CORRECTIONAL FACILITY OR RESIDENTIAL CENTER FOR A PERIOD OF NOT MORE THAN 5 CONSECUTIVE DAYS, AND NOT MORE THAN 30 DAYS IN ANY ONE CALENDAR YEAR.~~

~~(B) A SUPERVISION OFFICER WHO INTENDS TO MODIFY THE CONDITIONS OF COMMUNITY SUPERVISION BY IMPOSING A GRADUATED SANCTION SHALL ISSUE TO THE SUPERVISED INDIVIDUAL A NOTICE OF THE INTENDED SANCTION THAT SHALL INFORM THE SUPERVISED INDIVIDUAL OF:~~

~~(1) THE TECHNICAL VIOLATION ALLEGED;~~

~~(2) THE DATE OF THE VIOLATION; AND~~

~~(3) THE GRADUATED SANCTION TO BE IMPOSED.~~

~~(C) (1) THE IMPOSITION OF A GRADUATED SANCTION BY A SUPERVISION OFFICER MUST COMPORT WITH THE SYSTEM OF GRADUATED SANCTIONS ADOPTED BY THE DIVISION UNDER § 6–303 OF THIS SUBTITLE.~~

~~(2) UPON RECEIPT OF THE NOTICE OF INTENDED SANCTION, THE SUPERVISED INDIVIDUAL SHALL IMMEDIATELY ACCEPT OR OBJECT TO THE SANCTION PROPOSED BY THE SUPERVISION OFFICER.~~

~~(3) THE FAILURE OF THE SUPERVISED INDIVIDUAL TO COMPLY WITH A SANCTION SHALL CONSTITUTE A VIOLATION OF PROBATION, PAROLE, OR MANDATORY SUPERVISION.~~

~~(4) IF THE SUPERVISED INDIVIDUAL OBJECTS TO THE IMPOSITION OF THE SANCTION, THE INDIVIDUAL IS ENTITLED TO AN ADMINISTRATIVE REVIEW TO BE CONDUCTED BY THE DIVISION WITHIN 5 DAYS OF THE ISSUANCE OF THE NOTICE.~~

~~(5) IF THE DIVISION AFFIRMS THE RECOMMENDATION CONTAINED IN THE NOTICE, THE SANCTION SHALL BECOME EFFECTIVE IMMEDIATELY.~~

~~(D) (1) IF THE GRADUATED SANCTION INVOLVES CONFINEMENT IN A CORRECTIONAL OR DETENTION FACILITY, CONFINEMENT MUST BE APPROVED BY THE CHIEF SUPERVISION OFFICER, BUT THE SUPERVISED INDIVIDUAL MAY BE TAKEN INTO CUSTODY FOR UP TO 4 HOURS WHILE THE APPROVAL IS OBTAINED.~~

~~(2) IF THE SUPERVISED INDIVIDUAL IS EMPLOYED, THE SUPERVISION OFFICER, TO THE EXTENT FEASIBLE, SHALL IMPOSE THE SANCTION UNDER PARAGRAPH (1) OF THIS SUBSECTION ON WEEKEND DAYS OR OTHER DAYS AND TIMES WHEN THE SUPERVISED INDIVIDUAL IS NOT WORKING.~~

~~(E) A SANCTION THAT CONFINES A SUPERVISED INDIVIDUAL IN A CORRECTIONAL FACILITY FOR A PERIOD OF MORE THAN 5 CONSECUTIVE DAYS, OR EXTENDS THE TERM OF COMMUNITY SUPERVISION, MAY NOT BE IMPOSED AS A GRADUATED SANCTION, EXCEPT BY ORDER OF THE COURT.~~

~~(F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A NOTICE OF A GRADUATED SANCTION MAY NOT BE ISSUED FOR ANY VIOLATION OF PROBATION, PAROLE, OR POSTRELEASE SUPERVISION THAT COULD RESULT IN AN ADDITIONAL, SEPARATE FELONY CHARGE.~~

~~(2) A NOTICE OF A GRADUATED SANCTION MAY BE ISSUED FOR A POSITIVE DRUG TEST.~~

~~(G) ON SUCCESSFUL COMPLETION OF A GRADUATED SANCTION, A COURT MAY NOT REVOKE THE TERM OF COMMUNITY SUPERVISION OR IMPOSE ADDITIONAL SANCTIONS FOR THE SAME VIOLATION.~~

~~(H) IF A SUPERVISION OFFICER MODIFIES THE CONDITIONS OF COMMUNITY SUPERVISION BY IMPOSING A GRADUATED SANCTION, THE OFFICER SHALL:~~

~~(1) DELIVER A COPY OF THE MODIFIED CONDITIONS TO THE SUPERVISED INDIVIDUAL;~~

~~(2) FILE A COPY OF THE MODIFIED CONDITIONS WITH THE SENTENCING COURT OR RELEASING AUTHORITY; AND~~

~~(3) NOTE THE DATE OF DELIVERY OF THE COPY IN THE SUPERVISED INDIVIDUAL'S FILE.~~

~~6–306.~~

~~THE CHIEF SUPERVISION OFFICER SHALL REVIEW CONFINEMENT SANCTIONS RECOMMENDED BY SUPERVISION OFFICERS ON A QUARTERLY BASIS TO:~~

~~(1) ASSESS ANY DISPARITIES THAT MAY EXIST AMONG OFFICERS;~~

~~(2) EVALUATE THE EFFECTIVENESS OF THE SANCTION AS MEASURED BY THE SUPERVISED INDIVIDUALS' SUBSEQUENT CONDUCT; AND~~

~~(3) MONITOR THE IMPACT ON THE DIVISION'S NUMBER AND TYPE OF REVOCATIONS FOR VIOLATIONS OF THE CONDITIONS OF SUPERVISION.~~

~~SECTION 2. 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 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Department of Public Safety and Correctional Services shall:

(1) develop, by October 1, 2012, a pilot program in two counties that creates a system of graduated administrative sanctions for violations of conditions of parole by releasees from the Division of Correction; and

(2) beginning in 2013, on or before October 1 of each year, report to the General Assembly, in accordance with § 2–1246 of the State Government Article, on:

(i) the status of the pilot program;

(ii) the percentage of Departmental programs that use evidence–based practices; and

(iii) the number of individuals incarcerated for technical violations in the State while on parole and the number of new offenses committed by individuals in the State while on parole.

SECTION ~~3.~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011. It shall remain effective for a period of 4 years and, at the end of September 30, 2015, 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 19, 2011.

Chapter 555

(House Bill 919)

AN ACT concerning

Criminal Law – Swift and Certain Sanctions Pilot Program

FOR the purpose of ~~declaring that it is the public policy of the State that certain former inmates under community supervision shall be subject to certain revocation proceedings, possible incarceration, and certain other sanctions under certain circumstances; requiring the Division of Parole and Probation to implement a pilot program involving a system of graduated sanctions for violations of conditions of community supervision; requiring a certain system to set forth a menu of certain presumptive sanctions; requiring certain sanctions to take into account certain factors; requiring a certain system to define certain positive reinforcements; requiring the Secretary of Public Safety and Correctional Services to establish certain review processes by regulation; requiring a certain review to be conducted by a certain employee or representative; requiring a certain court to determine the conditions of community supervision for certain individuals; authorizing a certain court to impose as a condition of community supervision that the Division may impose certain graduated sanctions for certain violations; authorizing the Division to modify the conditions of community supervision for a certain purpose and place a certain supervised individual in a certain facility or center for a certain period~~

~~of time under certain circumstances; requiring a certain supervision officer who intends to modify the conditions of community supervision in a certain manner to issue to a certain supervised individual a certain notice; requiring the imposition of a graduated sanction by a certain supervision officer to comport with a certain system of graduated sanctions; requiring a certain supervised individual to immediately accept or object to a certain sanction at a certain time; providing that the failure of a certain supervised individual to comply with a certain sanction shall constitute a violation of probation, parole, or mandatory supervision; providing that if a certain supervised individual objects to the imposition of a certain sanction, the individual is entitled to a certain administrative review; establishing that if the Division affirms a certain recommendation, then a certain sanction shall become effective immediately; requiring a certain confinement to be approved by a certain chief supervision officer; allowing a certain supervised individual to be taken into custody for a certain maximum period of time while certain approval is obtained; requiring a certain supervision officer to impose a certain sanction on certain days and times under certain circumstances; prohibiting a certain sanction from being imposed except by order of the court; prohibiting the issuance of a certain notice that could result in a certain felony charge, with a certain exception; prohibiting a court from revoking the term of community supervision or imposing additional sanctions upon successful completion of a graduated sanction; requiring a certain supervision officer to take certain actions if the supervision officer modifies the conditions of community supervision in a certain manner; requiring a certain chief supervision officer periodically to review confinement sanctions recommended by supervision officers for certain purposes; defining certain terms; making the provisions of this Act severable;~~ requiring the Department of Public Safety and Correctional Services to develop by a certain date a certain pilot program in two counties that creates a system of graduated administrative sanctions for violations of conditions of parole by releasees from the Division of Correction; requiring the Department to make a certain annual report to the General Assembly on or before a certain date; providing for the termination of this Act; and generally relating to the Swift and Certain Sanctions Pilot Program.

~~BY adding to~~

~~Article – Correctional Services~~

~~Section 6–301 through 6–306 to be under the new subtitle "Subtitle 3. Swift and Certain Sanctions Pilot Program"~~

~~Annotated Code of Maryland~~

~~(2008 Replacement Volume and 2010 Supplement)~~

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

~~**Article – Correctional Services**~~

~~**SUBTITLE 3. SWIFT AND CERTAIN SANCTIONS PILOT PROGRAM.**~~

~~6–301.~~

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

~~(B) "CHIEF SUPERVISION OFFICER" MEANS THE HIGHEST RANKING FIELD PAROLE AND PROBATION ADMINISTRATOR IN EACH JUDICIAL CIRCUIT.~~

~~(C) "COMMUNITY SUPERVISION" MEANS:~~

~~(1) THE PLACEMENT OF AN INDIVIDUAL UNDER THE SUPERVISION OF THE DIVISION, WITH CONDITIONS IMPOSED BY A COURT FOR A SPECIFIED PERIOD DURING WHICH:~~

~~(I) CRIMINAL PROCEEDINGS ARE DEFERRED WITHOUT AN ADJUDICATION OF GUILT; AND~~

~~(II) A SENTENCE OF IMPRISONMENT OR CONFINEMENT, IMPRISONMENT AND FINE, OR CONFINEMENT AND FINE IS PROBATED AND THE IMPOSITION OF SENTENCE IS SUSPENDED IN WHOLE OR IN PART; OR~~

~~(2) THE PLACEMENT OF AN INDIVIDUAL UNDER SUPERVISION AFTER RELEASE FROM PRISON OR JAIL, WITH CONDITIONS IMPOSED BY THE DIVISION FOR A SPECIFIED PERIOD.~~

~~(D) "GRADUATED SANCTION" MEANS NONPRISON OFFENDER ACCOUNTABILITY MEASURES AND PROGRAMS, INCLUDING:~~

~~(1) ELECTRONIC SUPERVISION TOOLS;~~

~~(2) DRUG AND ALCOHOL TESTING OR MONITORING;~~

~~(3) DAY OR EVENING REPORTING CENTERS;~~

~~(4) RESTITUTION CENTERS;~~

~~(5) FORFEITURE OF EARNED COMPLIANCE CREDITS;~~

~~(6) REHABILITATIVE INTERVENTIONS SUCH AS SUBSTANCE ABUSE OR MENTAL HEALTH TREATMENT;~~

~~(7) REPORTING REQUIREMENTS TO SUPERVISION OFFICERS;~~

~~(8) COMMUNITY SERVICE OR WORK CREWS;~~

~~(9) SECURE OR UNSECURE RESIDENTIAL TREATMENT FACILITIES OR HALFWAY HOUSES; AND~~

~~(10) SHORT–TERM OR INTERMITTENT INCARCERATION.~~

~~(E) "POSITIVE REINFORCEMENT" MEANS REWARDS AND INCENTIVES, INCLUDING:~~

~~(1) AWARDING CERTIFICATES OF ACHIEVEMENT;~~

~~(2) REDUCING REPORTING REQUIREMENTS;~~

~~(3) DEFERRING A MONTHLY SUPERVISION FEE PAYMENT;~~

~~(4) AWARDING EARNED COMPLIANCE CREDITS;~~

~~(5) REMOVING SUPERVISION CONDITIONS SUCH AS HOME DETENTION OR CURFEW; OR~~

~~(6) ASSIGNING THE OFFENDER TO BE A MENTOR TO OTHERS.~~

~~(F) "SUPERVISED INDIVIDUAL" MEANS AN INDIVIDUAL UNDER COMMUNITY SUPERVISION.~~

~~(G) "SUPERVISION OFFICER" MEANS A PERSON APPOINTED OR EMPLOYED BY THE DIVISION TO SUPERVISE INDIVIDUALS PLACED ON COMMUNITY SUPERVISION.~~

~~6–302.~~

~~IT IS THE PUBLIC POLICY OF THE STATE THAT SUPERVISED INDIVIDUALS SHALL BE SUBJECT TO:~~

~~(1) PROCEEDINGS FOR THE REVOCATION OF COMMUNITY SUPERVISION AND THE POSSIBLE REINSTATEMENT OF INCARCERATION FOR FAILURE TO COMPLY WITH THE CONDITIONS OF COMMUNITY SUPERVISION WHEN THE FAILURE CONSTITUTES A SIGNIFICANT RISK TO PRIOR VICTIMS OF THE SUPERVISED INDIVIDUAL OR THE COMMUNITY AT LARGE AND CANNOT BE APPROPRIATELY MANAGED IN THE COMMUNITY; OR~~

~~(2) SANCTIONS OTHER THAN REVOCATION AND INCARCERATION AS APPROPRIATE TO:~~

~~(I) THE SEVERITY OF THE VIOLATION BEHAVIOR;~~

~~(II) THE RISK OF FUTURE CRIMINAL BEHAVIOR BY THE OFFENDER; AND~~

~~(III) THE NEED FOR, AND AVAILABILITY OF, INTERVENTIONS THAT MAY ASSIST THE OFFENDER TO REMAIN COMPLIANT AND CRIME–FREE IN THE COMMUNITY.~~

~~6–303.~~

~~(A) ON OR BEFORE JANUARY 1, 2012, THE DIVISION SHALL IMPLEMENT A PILOT PROGRAM INVOLVING A SYSTEM OF GRADUATED SANCTIONS FOR VIOLATIONS OF CONDITIONS OF COMMUNITY SUPERVISION.~~

~~(B) THE SYSTEM SHALL SET FORTH A LIST OF PRESUMPTIVE SANCTIONS FOR SUPERVISION VIOLATIONS, INCLUDING:~~

~~(1) FAILURE TO REPORT;~~

~~(2) FAILURE TO PAY FINES, FEES, AND RESTITUTION;~~

~~(3) FAILURE TO PARTICIPATE IN A REQUIRED PROGRAM OR SERVICE;~~

~~(4) FAILURE TO COMPLETE COMMUNITY SERVICE;~~

~~(5) VIOLATION OF A PROTECTIVE ORDER OR PEACE ORDER; AND~~

~~(6) FAILURE TO REFRAIN FROM THE USE OF ALCOHOL OR CONTROLLED DANGEROUS SUBSTANCES.~~

~~(C) THE TYPE OF SANCTIONS PRESCRIBED SHALL TAKE INTO ACCOUNT FACTORS SUCH AS:~~

~~(1) THE SEVERITY OF THE VIOLATION;~~

~~(2) THE SUPERVISED INDIVIDUAL'S PREVIOUS CRIMINAL RECORD;~~

~~(3) THE NUMBER AND SEVERITY OF ANY PREVIOUS SUPERVISION VIOLATIONS;~~

~~(4) THE SUPERVISED INDIVIDUAL'S ASSESSED RISK LEVEL; AND~~

~~(5) THE EXTENT TO WHICH GRADUATED SANCTIONS WERE IMPOSED FOR PREVIOUS VIOLATIONS.~~

~~(D) THE SYSTEM SHALL DEFINE POSITIVE REINFORCEMENTS THAT SUPERVISED INDIVIDUALS SHALL RECEIVE FOR COMPLIANCE WITH CONDITIONS OF SUPERVISION.~~

~~(E) THE SECRETARY SHALL ESTABLISH, BY REGULATION, AN ADMINISTRATIVE PROCESS TO REVIEW AND APPROVE OR REJECT, PRIOR TO IMPOSITION, GRADUATED SANCTIONS THAT DEVIATE FROM THOSE PRESCRIBED.~~

~~(F) (1) THE SECRETARY SHALL ESTABLISH, BY REGULATION, AN ADMINISTRATIVE PROCESS TO REVIEW GRADUATED SANCTIONS CONTESTED BY SUPERVISED INDIVIDUALS UNDER § 6–305 OF THIS SUBTITLE.~~

~~(2) THE REVIEW SHALL BE CONDUCTED BY AN IMPARTIAL DIVISION EMPLOYEE OR REPRESENTATIVE WHO HAS BEEN SELECTED, APPOINTED, AND TRAINED TO HEAR CASES REGARDING GRADUATED SANCTIONS FOR VIOLATIONS OF SUPERVISION CONDITIONS.~~

~~6–304.~~

~~FOR INDIVIDUALS PLACED ON PROBATION, THE COURT HAVING JURISDICTION OF THE CASE:~~

~~(1) SHALL DETERMINE THE CONDITIONS OF COMMUNITY SUPERVISION; AND~~

~~(2) MAY IMPOSE AS A CONDITION OF COMMUNITY SUPERVISION THAT THE DIVISION, IN ACCORDANCE WITH § 6–305 OF THIS SUBTITLE, MAY IMPOSE GRADUATED SANCTIONS ADOPTED BY THE DIVISION FOR VIOLATIONS OF THE CONDITIONS OF COMMUNITY SUPERVISION.~~

~~6–305.~~

~~(A) NOTWITHSTANDING ANY LAW OR RULE TO THE CONTRARY, THE DIVISION MAY:~~

~~(1) MODIFY THE CONDITIONS OF COMMUNITY SUPERVISION FOR THE LIMITED PURPOSE OF IMPOSING GRADUATED SANCTIONS; AND~~

~~(2) PLACE A SUPERVISED INDIVIDUAL WHO VIOLATES THE CONDITIONS OF COMMUNITY SUPERVISION IN A STATE OR LOCAL~~

~~CORRECTIONAL FACILITY OR RESIDENTIAL CENTER FOR A PERIOD OF NOT MORE THAN 5 CONSECUTIVE DAYS, AND NOT MORE THAN 30 DAYS IN ANY ONE CALENDAR YEAR.~~

~~(B) A SUPERVISION OFFICER WHO INTENDS TO MODIFY THE CONDITIONS OF COMMUNITY SUPERVISION BY IMPOSING A GRADUATED SANCTION SHALL ISSUE TO THE SUPERVISED INDIVIDUAL A NOTICE OF THE INTENDED SANCTION THAT SHALL INFORM THE SUPERVISED INDIVIDUAL OF:~~

~~(1) THE TECHNICAL VIOLATION ALLEGED;~~

~~(2) THE DATE OF THE VIOLATION; AND~~

~~(3) THE GRADUATED SANCTION TO BE IMPOSED.~~

~~(C) (1) THE IMPOSITION OF A GRADUATED SANCTION BY A SUPERVISION OFFICER MUST COMPORT WITH THE SYSTEM OF GRADUATED SANCTIONS ADOPTED BY THE DIVISION UNDER § 6–303 OF THIS SUBTITLE.~~

~~(2) UPON RECEIPT OF THE NOTICE OF INTENDED SANCTION, THE SUPERVISED INDIVIDUAL SHALL IMMEDIATELY ACCEPT OR OBJECT TO THE SANCTION PROPOSED BY THE SUPERVISION OFFICER.~~

~~(3) THE FAILURE OF THE SUPERVISED INDIVIDUAL TO COMPLY WITH A SANCTION SHALL CONSTITUTE A VIOLATION OF PROBATION, PAROLE, OR MANDATORY SUPERVISION.~~

~~(4) IF THE SUPERVISED INDIVIDUAL OBJECTS TO THE IMPOSITION OF THE SANCTION, THE INDIVIDUAL IS ENTITLED TO AN ADMINISTRATIVE REVIEW TO BE CONDUCTED BY THE DIVISION WITHIN 5 DAYS OF THE ISSUANCE OF THE NOTICE.~~

~~(5) IF THE DIVISION AFFIRMS THE RECOMMENDATION CONTAINED IN THE NOTICE, THE SANCTION SHALL BECOME EFFECTIVE IMMEDIATELY.~~

~~(D) (1) IF THE GRADUATED SANCTION INVOLVES CONFINEMENT IN A CORRECTIONAL OR DETENTION FACILITY, CONFINEMENT MUST BE APPROVED BY THE CHIEF SUPERVISION OFFICER, BUT THE SUPERVISED INDIVIDUAL MAY BE TAKEN INTO CUSTODY FOR UP TO 4 HOURS WHILE THE APPROVAL IS OBTAINED.~~

~~(2) IF THE SUPERVISED INDIVIDUAL IS EMPLOYED, THE SUPERVISION OFFICER, TO THE EXTENT FEASIBLE, SHALL IMPOSE THE~~

~~SANCTION UNDER PARAGRAPH (1) OF THIS SUBSECTION ON WEEKEND DAYS OR OTHER DAYS AND TIMES WHEN THE SUPERVISED INDIVIDUAL IS NOT WORKING.~~

~~(E) A SANCTION THAT CONFINES A SUPERVISED INDIVIDUAL IN A CORRECTIONAL FACILITY FOR A PERIOD OF MORE THAN 5 CONSECUTIVE DAYS, OR EXTENDS THE TERM OF COMMUNITY SUPERVISION, MAY NOT BE IMPOSED AS A GRADUATED SANCTION, EXCEPT BY ORDER OF THE COURT.~~

~~(F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A NOTICE OF A GRADUATED SANCTION MAY NOT BE ISSUED FOR ANY VIOLATION OF PROBATION, PAROLE, OR POSTRELEASE SUPERVISION THAT COULD RESULT IN AN ADDITIONAL, SEPARATE FELONY CHARGE.~~

~~(2) A NOTICE OF A GRADUATED SANCTION MAY BE ISSUED FOR A POSITIVE DRUG TEST.~~

~~(G) ON SUCCESSFUL COMPLETION OF A GRADUATED SANCTION, A COURT MAY NOT REVOKE THE TERM OF COMMUNITY SUPERVISION OR IMPOSE ADDITIONAL SANCTIONS FOR THE SAME VIOLATION.~~

~~(H) IF A SUPERVISION OFFICER MODIFIES THE CONDITIONS OF COMMUNITY SUPERVISION BY IMPOSING A GRADUATED SANCTION, THE OFFICER SHALL:~~

~~(1) DELIVER A COPY OF THE MODIFIED CONDITIONS TO THE SUPERVISED INDIVIDUAL;~~

~~(2) FILE A COPY OF THE MODIFIED CONDITIONS WITH THE SENTENCING COURT OR RELEASING AUTHORITY; AND~~

~~(3) NOTE THE DATE OF DELIVERY OF THE COPY IN THE SUPERVISED INDIVIDUAL'S FILE.~~

~~6–306.~~

~~THE CHIEF SUPERVISION OFFICER SHALL REVIEW CONFINEMENT SANCTIONS RECOMMENDED BY SUPERVISION OFFICERS ON A QUARTERLY BASIS TO:~~

~~(1) ASSESS ANY DISPARITIES THAT MAY EXIST AMONG OFFICERS;~~

~~(2) EVALUATE THE EFFECTIVENESS OF THE SANCTION AS MEASURED BY THE SUPERVISED INDIVIDUALS' SUBSEQUENT CONDUCT; AND~~

~~(3) MONITOR THE IMPACT ON THE DIVISION'S NUMBER AND TYPE OF REVOCATIONS FOR VIOLATIONS OF THE CONDITIONS OF SUPERVISION.~~

~~SECTION 2. 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 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Department of Public Safety and Correctional Services shall:

(1) develop, by October 1, 2012, a pilot program in two counties that creates a system of graduated administrative sanctions for violations of conditions of parole by releasees from the Division of Correction; and

(2) beginning in 2013, on or before October 1 of each year, report to the General Assembly, in accordance with § 2–1246 of the State Government Article, on:

(i) the status of the pilot program;

(ii) the percentage of Departmental programs that use evidence–based practices; and

(iii) the number of individuals incarcerated for technical violations in the State while on parole and the number of new offenses committed by individuals in the State while on parole.

SECTION ~~3.~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011. It shall remain effective for a period of 4 years and, at the end of September 30, 2015, 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 19, 2011.

Chapter 556

(Senate Bill 803)

AN ACT concerning

~~Drunk Driving Elimination Act~~
Drunk Driving Reduction Act

FOR the purpose of ~~altering the Motor Vehicle Administration's authority to establish an Ignition Interlock System Program to require the Administration to establish the Program; requiring rather than authorizing the Administration to establish a protocol for the Program by certain regulations; altering the circumstances under which individuals may participate in the Program; requiring the Administration to require an individual convicted of certain alcohol–related driving offenses to participate in the Program for certain minimum amounts of time; requiring the Administration, under certain circumstances, to suspend the license of an individual who refuses to submit to a chemical test of blood or breath for a certain period of time and to require the individual to participate in the Program for a certain minimum period of time after the period of suspension; requiring the Administration to require a certain individual to successfully complete the Program; requiring the Administration to impose a certain license restriction for a certain minimum amount of time; requiring the Administration to suspend for certain amounts of time the drivers' licenses of certain individuals who fail to successfully complete the Program; requiring the Administration to establish a certain fee; requiring individuals who are in the Program to be monitored by the Administration and to pay a certain fee under certain circumstances; requiring certain service providers to demonstrate a certain ability under certain circumstances; altering the authority of the Administration to require certain individuals to participate in the Program; establishing that Program participation that is required under certain circumstances shall run concurrently to participation ordered by a court; and generally relating to participation in~~ *expanding participation in the Ignition Interlock System Program by authorizing certain individuals who have committed a certain alcohol–related administrative offense to be participants under certain circumstances; requiring the Motor Vehicle Administration to establish the Program in accordance with certain statutory provisions; requiring rather than authorizing the Administration to establish a certain protocol; expanding participation in the Program by requiring certain individuals who are convicted of a certain offense and who had a certain alcohol concentration at the time of testing to participate in the Program for certain periods of time and successfully complete the Program; expanding participation in the Program by requiring certain individuals to participate in the Program for certain periods of time and successfully complete the Program as a condition of modification of a license suspension or revocation and issuance of a restrictive license; requiring the Administration to impose a certain license restriction for certain periods of time under certain circumstances; requiring the Administration to suspend for an indefinite period, rather than revoke, licenses of certain individuals who are convicted of a certain offense and had a certain alcohol concentration at the time of testing and who fail to participate in the Program or successfully complete the Program; providing that a suspension or revocation of a license that is imposed as a result of certain circumstances shall be concurrent with any other suspension or revocation arising out of the same incident; requiring the Administration to suspend for certain periods of time the licenses of certain individuals who refuse to participate in or fail to successfully complete the Program; providing for reconsideration of entry in the Program under certain*

circumstances; requiring the Administration to establish a certain fee; requiring individuals in the Program to be monitored by the Administration and to pay a certain fee under certain circumstances; requiring certain service providers to demonstrate a certain ability under certain circumstances; providing that certain Program participation under this Act shall be concurrent with Program participation under any other provision of law; providing that an individual who is removed from the Program may reenter the Program under certain circumstances; establishing a criminal prohibition of a participant in the Program driving a vehicle without an ignition interlock system; providing for certain penalties; providing for certain administrative procedures; establishing that certain information provided to the Administration is sufficient for the Administration to exercise its authority to allow a participant in the Program to operate a motor vehicle owned or provided by the person's employer in the course of employment without an ignition interlock system under certain circumstances; requiring the Administration to provide certain warnings to certain persons; prohibiting a person from raising the absence of a warning or failure to receive the warning as a basis for limiting the authority of the Administration in a certain manner; clarifying language; and generally relating to the Ignition Interlock System Program.

~~BY repealing and reenacting, with amendments,~~
~~Article – Transportation~~
~~Section 16–404.1(b) and (f)~~
~~Annotated Code of Maryland~~
~~(2009 Replacement Volume and 2010 Supplement)~~

~~BY repealing and reenacting, without amendments,~~
~~Article – Transportation~~
~~Section 27–101(h) and 27–107(g)(2)~~
~~Annotated Code of Maryland~~
~~(2009 Replacement Volume and 2010 Supplement)~~

BY renumbering
Article – Transportation
Section 16–205.1(o)
to be Section 16–205.1(q)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – Transportation
Section 16–113(b)(1) and (4), 16–205(f)(1), 16–404(c)(3), 21–902(a)(1) and (2) and (b)(1), and 27–107(b)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing

Article – Transportation
Section 16–205.1(n)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – Transportation
Section 16–113(k) and 16–205.1(n), (o), and (p)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Transportation
Section 16–205.1(b)(3)(viii)3., 16–404(c)(2), 16–404.1, 27–101(h), and 27–107(g)(2)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

~~**Article – Transportation**~~

~~16–404.1.~~

~~(b) (1) The Administration **[**may**]** **SHALL** establish an Ignition Interlock System Program.~~

~~(2) The Administration **[**may**]** **SHALL** establish a protocol for the Program by regulations that require certain minimum standards for all service providers who service, install, monitor, calibrate, and provide information on ignition interlock systems and include requirements that:~~

~~(i) A service provider who applies to the Administration for certification as an approved service provider shall demonstrate that the service provider is able to competently service, install, monitor, calibrate, and provide information **TO THE ADMINISTRATION AT LEAST EVERY 30 DAYS** on **INDIVIDUALS REQUIRED TO USE** ignition interlock systems;~~

~~(ii) A service provider who applies to the Administration for certification as an approved service provider shall be certified by a signed affidavit from the manufacturer that the service provider has been trained by an authorized manufacturer and that the service provider is competent to service, install, monitor, calibrate, and provide information on ignition interlock systems;~~

~~(iii) Approved service providers be deemed to be authorized representatives of a manufacturer; and~~

~~(iv) Any service of notice upon an approved service provider, who has violated any laws or regulations or whose ignition interlock system has violated any laws or regulations, be deemed as service upon the manufacturer who certified the approved service provider.~~

~~(3) An individual may be a participant if:~~

~~(i) The individual's license is suspended or revoked for a violation of~~ **[**~~§ 21–902(a), (b), or (c)~~**]** ~~**§ 21–902(C)** of this article or an accumulation of points under § 16–402(a)(25) or (34) of this subtitle~~ ~~**FOR A VIOLATION OF § 21–902(C) OF THIS ARTICLE;**~~

~~(ii)~~ **[**~~The individual is ordered to participate in the Program by a court under § 27–107 of this article;~~

~~(iii)~~**]** ~~The individual's license has an alcohol restriction imposed under § 16–113(b) or (g) of this title; or~~

[~~(iv)~~**]** ~~**(III)** The Administration modifies a suspension or issues a restrictive license to the individual under § 16–205.1(b)(3)(vii) or (n)(2) or (4) of this title.~~

~~**(4) AN INDIVIDUAL SHALL BE A PARTICIPANT IF THE INDIVIDUAL IS:**~~

~~**(I) CONVICTED CONVICTED OF A VIOLATION OF § 21–902(A) OR (B) OF THIS ARTICLE; OR**~~

~~**(II) SUBJECT TO A LICENSE SUSPENSION UNDER § 16–205.1(F) OF THIS ARTICLE FOR REFUSAL TO SUBMIT TO A CHEMICAL TEST OF BLOOD OR BREATH.**~~

[~~(4)~~**]** ~~**(5)** The Administration may:~~

~~(i) Issue a restrictive license to an individual who is a participant in the Program during the suspension period as provided under § 16–404(e)(3) of this subtitle;~~

~~(ii) Reinstate the driver's license of a participant whose license has been revoked for a violation of § 21–902(a), (b), or (c) of this article or revoked for an accumulation of points under § 16–402(a)(34) of this subtitle for a violation of § 21–902(a) of this article; and~~

~~(iii) Notwithstanding any other provision of law, impose on a participant a period of suspension in accordance with § 16–404(c)(2) and (3) of this subtitle in lieu of a license revocation for:~~

~~1. A violation of § 21–902(a), (b), or (c) of this article; or~~

~~2. An accumulation of points under § 16–402(a)(34) of this subtitle for a violation of § 21–902(a) of this article.~~

~~[(5)]~~ ~~**(6)**~~ ~~A notice of suspension or revocation sent to an individual under this title shall include information about the Program and how the individual can qualify for admission to~~ ~~**OR BE REQUIRED TO PARTICIPATE IN**~~ ~~the Program.~~

~~**(7) IN THE CASE OF AN INDIVIDUAL WHO IS CONVICTED OF A VIOLATION OF § 21–902(A) OR (B) OF THIS ARTICLE, IN ADDITION TO ANY OTHER PENALTIES REQUIRED UNDER THIS ARTICLE, THE ADMINISTRATION SHALL:**~~

~~**(I) UNLESS A COURT ORDERS A LONGER PERIOD OF PROGRAM PARTICIPATION UNDER § 27–107 OF THIS ARTICLE, REQUIRE THE INDIVIDUAL TO PARTICIPATE IN THE PROGRAM FOR NOT LESS THAN:**~~

~~**1. 6 MONTHS FOR A FIRST VIOLATION;**~~

~~**2. 1 YEAR FOR A SECOND VIOLATION; AND**~~

~~**3. 3 YEARS FOR A THIRD OR SUBSEQUENT VIOLATION;**~~

~~**(II) REQUIRE THE INDIVIDUAL TO SUCCESSFULLY COMPLETE THE PROGRAM;**~~

~~**(III) SUBJECT TO § 27–107(G)(2) OF THIS ARTICLE, IMPOSE A RESTRICTION ON THE INDIVIDUAL'S LICENSE THAT PROHIBITS THE INDIVIDUAL FROM DRIVING A MOTOR VEHICLE THAT IS NOT EQUIPPED WITH AN IGNITION INTERLOCK SYSTEM FOR THE PERIOD OF TIME THAT THE INDIVIDUAL IS REQUIRED TO PARTICIPATE IN THE PROGRAM UNDER THIS PARAGRAPH; AND**~~

~~**(IV) IF THE INDIVIDUAL FAILS TO SUCCESSFULLY COMPLETE THE PROGRAM AS REQUIRED, SUSPEND THE INDIVIDUAL'S DRIVER'S LICENSE FOR A PERIOD OF:**~~

~~**1. 6 MONTHS FOR A FIRST VIOLATION OF § 21–902(A) OR (B) OF THIS ARTICLE; AND**~~

~~**2. 1 YEAR FOR A SECOND OR SUBSEQUENT VIOLATION OF § 21–902(A) OR (B) OF THIS ARTICLE.**~~

~~**(8) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN THE CASE OF AN INDIVIDUAL WHO IS SUBJECT TO A LICENSE SUSPENSION UNDER § 16–205.1(F) OF THIS TITLE FOR REFUSAL TO SUBMIT TO A CHEMICAL TEST OF BLOOD OR BREATH, THE ADMINISTRATION SHALL:**~~

~~**(I) SUSPEND THE INDIVIDUAL'S LICENSE FOR A PERIOD OF 45 DAYS;**~~

~~**(II) AFTER THE 45–DAY SUSPENSION PERIOD, REQUIRE THE INDIVIDUAL TO PARTICIPATE IN THE PROGRAM FOR NOT LESS THAN 1 YEAR;**~~

~~**(III) REQUIRE THE INDIVIDUAL TO SUCCESSFULLY COMPLETE THE PROGRAM;**~~

~~**(IV) SUBJECT TO § 27–107(G)(2) OF THIS ARTICLE, IMPOSE A RESTRICTION ON THE INDIVIDUAL'S LICENSE THAT PROHIBITS THE INDIVIDUAL FROM DRIVING A MOTOR VEHICLE THAT IS NOT EQUIPPED WITH AN IGNITION INTERLOCK SYSTEM FOR THE PERIOD OF TIME THAT THE INDIVIDUAL IS REQUIRED TO PARTICIPATE IN THE PROGRAM UNDER THIS PARAGRAPH; AND**~~

~~**(V) IF THE INDIVIDUAL FAILS TO SUCCESSFULLY COMPLETE THE PROGRAM AS REQUIRED, SUSPEND THE INDIVIDUAL'S LICENSE IN ACCORDANCE WITH § 16–205.1(F) OF THIS TITLE.**~~

~~**[**(6)**] (9) (8)** The Administration **[**may**] SHALL** establish a fee for the Program **THAT IS SUFFICIENT TO COVER THE COSTS OF THE PROGRAM.**~~

~~(f) (1) An individual required to use an ignition interlock system under a court order **OR UNDER THIS SECTION:**~~

~~(i) Shall be monitored by the Administration; and~~

~~(ii) **[**Shall**] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, SHALL** pay the fee required by the Administration under subsection **[**(b)(6)**] (B)(9) (B)(8)** of this section.~~

~~**(2) THE FEE REQUIRED UNDER THIS SUBSECTION SHALL BE WAIVED FOR AN INDIVIDUAL WHO IS INDIGENT.**~~

~~**[**(2)**] (3)** A court order that requires the use of an ignition interlock system is not affected by § 16–404(e)(3) of this subtitle.~~

~~(4) IF PROGRAM PARTICIPATION IS REQUIRED UNDER A COURT ORDER AND UNDER THIS SECTION, AS A RESULT OF THE SAME INCIDENT, THE PERIODS OF PARTICIPATION SHALL RUN CONCURRENTLY.~~

~~27–101.~~

~~(h) Any person who is convicted of a violation of any of the provisions of § 16–303(a), (b), (c), (d), (e), (f), or (g) of this article ("Driving while license is canceled, suspended, refused, or revoked"), § 17–107 of this article ("Prohibitions"), or § 17–110 of this article ("Providing false evidence of required security") is subject to:~~

~~(1) For a first offense, a fine of not more than $1,000, or imprisonment for not more than 1 year, or both; and~~

~~(2) For any subsequent offense, a fine of not more than $1,000, or imprisonment for not more than 2 years, or both.~~

~~27–107.~~

~~(g) (2) If a person is required, in the course of the person's employment, to operate a motor vehicle owned or provided by the person's employer, the person may operate that motor vehicle in the course of the person's employment without installation of an ignition interlock system if the court or the Administration has expressly permitted the person to operate in the course of the person's employment a motor vehicle that is not equipped with an ignition interlock system.~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 16–205.1(o) of Article – Transportation of the Annotated Code of Maryland be renumbered to be Section(s) 16–205.1(q).

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

Article – Transportation

16–113.

(b) (1) Notwithstanding the licensee's driving record, the Administration shall impose on each licensee under the age of 21 years an alcohol restriction that prohibits the licensee from driving or attempting to drive a motor vehicle while having alcohol in the licensee's blood.

(4) An individual under the age of 21 years who is convicted of a violation of § 21–902(a), (b), or (c) of this article may be required, for a period of not more than 3 years, to participate in the Ignition Interlock System Program in order to retain the individual's driver's license.

(K) A PARTICIPANT IN THE IGNITION INTERLOCK SYSTEM PROGRAM UNDER § 16–404.1 OF THIS TITLE MAY NOT DRIVE OR ATTEMPT TO DRIVE A VEHICLE THAT IS NOT EQUIPPED WITH AN IGNITION INTERLOCK SYSTEM IN VIOLATION OF AN IGNITION INTERLOCK SYSTEM RESTRICTION ON A LICENSE ISSUED TO THE PARTICIPANT.

16–205.

(f) (1) Subject to paragraph (2) of this subsection, the Administration may modify any suspension under this section or any suspension under § 16–205.1 of this subtitle and issue a restrictive license to a licensee who participates in the Ignition Interlock System Program established under § 16–404.1 of this title.

16–205.1.

(b) (3) If the person refuses to take the test or takes a test which results in an alcohol concentration of 0.08 or more at the time of testing, the police officer shall:

(viii) Within 72 hours after the issuance of the order of suspension, send any confiscated driver's license, copy of the suspension order, and a sworn statement to the Administration, that states:

3. The person was fully advised of the administrative sanctions that shall be imposed, including the fact that a person who refuses to take the test or takes a test that indicates an alcohol concentration of 0.15 or more at the time of testing is ineligible for modification of a suspension or issuance of a restrictive license under subsection ***[****(n)(1) or (2)****]*** ***(O)*** *of this section.*

[*(n) (1) The Administration may modify a suspension under this section or issue a restrictive license if:*

(i) The licensee did not refuse to take a test;

(ii) The licensee has not had a license suspended under this section during the past 5 years;

(iii) The licensee has not been convicted under § 21–902 of this article during the past 5 years;

(iv) The licensee has a test result indicating an alcohol concentration of less than 0.15; and

(v) 1. The licensee is required to drive a motor vehicle in the course of employment;

2. The license is required for the purpose of attending an alcoholic prevention or treatment program;

3. The Administration finds that the licensee has no alternative means of transportation available to or from the licensee's place of employment and, without the license, the licensee's ability to earn a living would be severely impaired; or

4. The Administration finds that the license is required for the purpose of obtaining health care treatment, including a prescription, that is necessary for the licensee or a member of the licensee's immediate family and the licensee and the licensee's immediate family have no alternative means of transportation available to obtain the health care treatment.

(2) In addition to the authority to modify a suspension or issue a restrictive license under paragraph (1) or (4) of this subsection, the Administration may modify a suspension under this section or issue a restrictive license, including a restriction that prohibits the licensee from driving or attempting to drive a motor vehicle unless the licensee is a participant in the Ignition Interlock System Program established under § 16–404.1 of this title, if:

(i) The licensee did not refuse to take a test;

(ii) The licensee has not been convicted under § 21–902 of this article;

(iii) The licensee has a test result indicating an alcohol concentration of less than 0.15; and

(iv) The license is required for the purpose of attending:

1. A noncollegiate educational institution as defined in § 2–206(a) of the Education Article; or

2. A regular program at an institution of postsecondary education.

(3) If the licensee refused to take a test or took a test that indicated an alcohol concentration of 0.15 or more at the time of testing, the Administration may not modify a suspension under this section or issue a restrictive license except as provided under paragraph (4) of this subsection.

(4) (i) In addition to the authority to modify a suspension or issue a restrictive license under subsection (b)(3)(vii) of this section or paragraph (1) or (2) of this subsection, the Administration may modify a suspension under this section or issue a restrictive license to a licensee as provided in this paragraph.

(ii) If the licensee refused to take a test or took a test that indicated an alcohol concentration of 0.15 or more, the Administration may modify a suspension under this section or issue a restrictive license if the licensee participates in the Ignition Interlock System Program for 1 year.

(5) (i) If the Administration modifies a suspension or issues a restrictive license under subsection (b)(3)(vii) of this section or paragraph (4) of this subsection and the licensee does not successfully complete the licensee's required participation in the Ignition Interlock System Program, the Administration shall summarily suspend the licensee's driver's license or driving privilege for the full period of suspension specified in this section for the applicable administrative offense.

(ii) The Administration shall notify a licensee of a suspension under this paragraph.

(iii) A licensee may request an administrative hearing on a suspension imposed under this paragraph.]

(N) (1) THIS SUBSECTION APPLIES ONLY TO A LICENSEE:

(I) WHO TAKES A TEST THAT INDICATES AN ALCOHOL CONCENTRATION OF AT LEAST 0.08 BUT LESS THAN 0.15;

(II) WHOSE LICENSE HAS NOT BEEN SUSPENDED UNDER THIS SECTION DURING THE PAST 5 YEARS; AND

(III) WHO HAS NOT BEEN CONVICTED UNDER § 21–902 OF THIS ARTICLE DURING THE PAST 5 YEARS.

(2) THE ADMINISTRATION MAY MODIFY A SUSPENSION UNDER THIS SECTION OR ISSUE A RESTRICTIVE LICENSE IF THE ADMINISTRATION FINDS THAT:

(I) THE LICENSEE IS REQUIRED TO DRIVE A MOTOR VEHICLE IN THE COURSE OF EMPLOYMENT;

(II) THE LICENSE IS REQUIRED FOR THE PURPOSE OF ATTENDING AN ALCOHOL PREVENTION OR TREATMENT PROGRAM;

(III) THE LICENSEE HAS NO ALTERNATIVE MEANS OF TRANSPORTATION AVAILABLE TO OR FROM THE LICENSEE'S PLACE OF EMPLOYMENT AND, WITHOUT THE LICENSE, THE LICENSEE'S ABILITY TO EARN A LIVING WOULD BE SEVERELY IMPAIRED;

(IV) THE LICENSE IS REQUIRED FOR THE PURPOSE OF OBTAINING HEALTH CARE TREATMENT, INCLUDING A PRESCRIPTION, THAT IS NECESSARY FOR THE LICENSEE OR A MEMBER OF THE LICENSEE'S IMMEDIATE FAMILY AND THE LICENSEE AND THE LICENSEE'S IMMEDIATE FAMILY HAVE NO ALTERNATIVE MEANS OF TRANSPORTATION AVAILABLE TO OBTAIN THE HEALTH CARE TREATMENT; OR

(V) THE LICENSE IS REQUIRED FOR THE PURPOSE OF ATTENDING A NONCOLLEGIATE EDUCATIONAL INSTITUTION AS DEFINED IN § 2–206(A) OF THE EDUCATION ARTICLE OR A REGULAR PROGRAM AT AN INSTITUTION OF POSTSECONDARY EDUCATION.

(O) (1) THIS SUBSECTION APPLIES ONLY TO A LICENSEE WHO:

(I) REFUSED TO TAKE A TEST;

(II) TOOK A TEST THAT INDICATED AN ALCOHOL CONCENTRATION OF 0.15 OR MORE AT THE TIME OF TESTING; OR

(III) TOOK A TEST THAT INDICATED AN ALCOHOL CONCENTRATION OF AT LEAST 0.08 BUT LESS THAN 0.15 AT THE TIME OF TESTING AND WHO IS INELIGIBLE FOR A MODIFICATION OF A SUSPENSION OR ISSUANCE OF A RESTRICTIVE LICENSE UNDER SUBSECTION (N) OF THIS SECTION.

(2) THE ADMINISTRATION MAY MODIFY A SUSPENSION UNDER THIS SECTION OR ISSUE A RESTRICTIVE LICENSE ONLY IF THE LICENSEE PARTICIPATES IN THE IGNITION INTERLOCK SYSTEM PROGRAM FOR 1 YEAR.

(P) (1) IF THE ADMINISTRATION MODIFIES A SUSPENSION UNDER THIS SECTION OR ISSUES A RESTRICTIVE LICENSE ON CONDITION THAT THE LICENSEE PARTICIPATE IN THE IGNITION INTERLOCK SYSTEM PROGRAM AND THE LICENSEE DOES NOT SUCCESSFULLY COMPLETE THE PROGRAM, THE ADMINISTRATION SHALL SUSPEND THE LICENSEE'S DRIVER'S LICENSE OR DRIVING PRIVILEGE FOR THE FULL PERIOD OF SUSPENSION SPECIFIED IN THIS SECTION FOR THE APPLICABLE VIOLATION.

(2) THE ADMINISTRATION SHALL NOTIFY A LICENSEE OF A SUSPENSION UNDER THIS SUBSECTION.

(3) A LICENSEE MAY REQUEST AN ADMINISTRATIVE HEARING ON A SUSPENSION IMPOSED UNDER THIS SUBSECTION.

(4) IF A LICENSEE REQUESTS A HEARING UNDER THIS SUBSECTION, THE SUSPENSION SHALL BE STAYED PENDING THE DECISION AT THE ADMINISTRATIVE HEARING.

16–404.

(c) (2) Subject to the provisions of paragraph (3) of this subsection, the following suspension periods may apply to a suspension for an accumulation of points under § 16–402(a)(25) of this subtitle for a violation of § 21–902(b) or (c) of this article or a suspension imposed under ***[****§ 16–404.1(b)(4)(iii)****]*** ~~***§ 16–404.1(E)(1)(III)***~~ ***§ 16–404.1(F)(1)(III)*** *of this subtitle:*

(i) For a first conviction, not more than 6 months;

(ii) For a second conviction at least 5 years after the date of the first conviction, not more than 9 months;

(iii) For a second conviction less than 5 years after the date of the first conviction or for a third conviction, not more than 12 months; and

(iv) For a fourth or subsequent conviction, not more than 24 months.

(3) The Administration may issue a restrictive license for the period of the suspension to an individual who participates in the Administration's Ignition Interlock System Program under § 16–404.1 of this subtitle.

16–404.1.

(a) (1) In this section the following words have the meanings indicated.

(2) "Approved service provider" means a person who is certified by:

(i) The Administration to service, install, monitor, calibrate, and provide information on ignition interlock systems; and

(ii) A manufacturer to be qualified to service, install, monitor, calibrate, and provide information on ignition interlock systems.

(3) "Manufacturer" means a person who manufactures ignition interlock systems and who certifies that approved service providers are qualified to service, install, monitor, calibrate, and provide information on ignition interlock systems.

(4) "Participant" means a participant in the Ignition Interlock System Program.

(5) "Program" means the Ignition Interlock System Program.

(b) (1) The Administration ***[****may****] SHALL*** *establish an Ignition Interlock System Program* ***IN ACCORDANCE WITH THIS SECTION****.*

(2) The Administration ***[****may****] SHALL*** *establish a protocol for the Program by regulations that require certain minimum standards for all service providers who service, install, monitor, calibrate, and provide information on ignition interlock systems and include requirements that:*

(i) A service provider who applies to the Administration for certification as an approved service provider shall demonstrate that the service provider is able to competently service, install, monitor, calibrate, and provide information ***TO THE ADMINISTRATION AT LEAST EVERY 30 DAYS*** *on* ***INDIVIDUALS REQUIRED TO USE*** *ignition interlock systems;*

(ii) A service provider who applies to the Administration for certification as an approved service provider shall be certified by a signed affidavit from the manufacturer that the service provider has been trained by an authorized manufacturer and that the service provider is competent to service, install, monitor, calibrate, and provide information on ignition interlock systems;

(iii) Approved service providers be deemed to be authorized representatives of a manufacturer; and

(iv) Any service of notice upon an approved service provider, who has violated any laws or regulations or whose ignition interlock system has violated any laws or regulations, be deemed as service upon the manufacturer who certified the approved service provider.

[*(3)****] (C)*** *An individual may be a participant if:*

[*(i)****] (1)*** *The individual's license is suspended or revoked* ***UNDER § 16–205 OF THIS TITLE*** *for a violation of § 21–902(a), (b), or (c) of this article or* ***§ 16–404 OF THIS SUBTITLE FOR*** *an accumulation of points under § 16–402(a)(25) or (34) of this subtitle;*

[*(ii)* *The individual is ordered to participate in the Program by a court under § 27–107 of this article;*

*(iii)****] (2)*** *The individual's license has an alcohol restriction imposed under* ***[****§ 16–113(b) or (g)****] § 16–113(G)(1)*** *of this title; or*

[(iv)] ***(3)*** *The Administration modifies a suspension or issues a restrictive license to the individual under [§ 16–205.1(b)(3)(vii) or (n)(2) or (4)]* ***§ 16–205.1*** *of this title.*

(D) (1) (I) NOTWITHSTANDING SUBSECTION (C) OF THIS SECTION, AN INDIVIDUAL SHALL BE A PARTICIPANT IF THE INDIVIDUAL IS CONVICTED OF A VIOLATION OF § 21–902(A) OF THIS ARTICLE AND HAD AN ALCOHOL CONCENTRATION AT THE TIME OF TESTING OF 0.15 OR MORE.

(II) IF AN INDIVIDUAL IS SUBJECT TO THIS PARAGRAPH AND FAILS TO PARTICIPATE IN THE PROGRAM OR SUCCESSFULLY COMPLETE THE PROGRAM, THE ADMINISTRATION SHALL SUSPEND, NOTWITHSTANDING § 16–208 OF THIS TITLE, THE INDIVIDUAL'S LICENSE UNTIL THE INDIVIDUAL SUCCESSFULLY COMPLETES THE PROGRAM.

(III) NOTHING CONTAINED IN THIS PARAGRAPH LIMITS THE AUTHORITY OF THE ADMINISTRATION TO MODIFY A SUSPENSION IMPOSED UNDER THIS PARAGRAPH TO ALLOW AN INDIVIDUAL TO BE A PARTICIPANT IN ACCORDANCE WITH SUBSECTION (E) OR (O) OF THIS SECTION.

(2) (I) NOTWITHSTANDING SUBSECTION (C) OF THIS SECTION, AN INDIVIDUAL SHALL BE A PARTICIPANT AS A CONDITION OF MODIFICATION OF A SUSPENSION OR REVOCATION OF A LICENSE OR ISSUANCE OF A RESTRICTIVE LICENSE IF THE INDIVIDUAL:

1. IS REQUIRED TO BE A PARTICIPANT BY A COURT ORDER UNDER § 27–107 OF THIS ARTICLE;

2. IS CONVICTED OF A VIOLATION OF § 21–902(A) OR (B) OF THIS ARTICLE AND WITHIN THE PRECEDING 5 YEARS THE INDIVIDUAL HAS BEEN CONVICTED OF ANY VIOLATION OF § 21–902 OF THIS ARTICLE; OR

3. WAS UNDER THE AGE OF 21 YEARS ON THE DATE OF A VIOLATION BY THE INDIVIDUAL OF:

A. AN ALCOHOL RESTRICTION IMPOSED UNDER § 16–113(B)(1) OF THIS TITLE; OR

B. § 21–902(A), (B), OR (C) OF THIS ARTICLE.

(II) IF AN INDIVIDUAL IS SUBJECT TO THIS PARAGRAPH AND THE INDIVIDUAL FAILS TO PARTICIPATE IN THE PROGRAM OR DOES NOT SUCCESSFULLY COMPLETE THE PROGRAM, THE ADMINISTRATION SHALL SUSPEND THE INDIVIDUAL'S LICENSE FOR 1 YEAR.

(III) NOTHING CONTAINED IN THIS PARAGRAPH LIMITS THE AUTHORITY OF THE ADMINISTRATION TO MODIFY A SUSPENSION IMPOSED UNDER THIS PARAGRAPH TO ALLOW AN INDIVIDUAL TO BE A PARTICIPANT IN ACCORDANCE WITH SUBSECTION (E) OR (O) OF THIS SECTION.

(3) AN INDIVIDUAL WHO IS SUBJECT TO THIS SUBSECTION SHALL PARTICIPATE IN THE PROGRAM FOR:

(I) 6 MONTHS THE FIRST TIME THE INDIVIDUAL IS REQUIRED UNDER THIS SUBSECTION TO PARTICIPATE IN THE PROGRAM;

(II) 1 YEAR THE SECOND TIME THE INDIVIDUAL IS REQUIRED UNDER THIS SUBSECTION TO PARTICIPATE IN THE PROGRAM; AND

(III) 3 YEARS THE THIRD OR ANY SUBSEQUENT TIME THE INDIVIDUAL IS REQUIRED UNDER THIS SUBSECTION TO PARTICIPATE IN THE PROGRAM.

(4) PARAGRAPH (3) OF THIS SUBSECTION DOES NOT LIMIT A LONGER PERIOD OF PROGRAM PARTICIPATION THAT IS REQUIRED BY:

(I) A COURT ORDER UNDER § 27–107 OF THIS ARTICLE; OR

(II) THE ADMINISTRATION IN ACCORDANCE WITH ANOTHER PROVISION OF THIS TITLE.

(E) IF AN INDIVIDUAL SUBJECT TO SUBSECTION (C) OR (D) OF THIS SECTION DOES NOT INITIALLY BECOME A PARTICIPANT:

(1) THE INDIVIDUAL MAY APPLY LATER TO THE ADMINISTRATION TO BE A PARTICIPANT; AND

(2) THE ADMINISTRATION MAY RECONSIDER ANY SUSPENSION OR REVOCATION OF THE DRIVER'S LICENSE OF THE INDIVIDUAL ARISING OUT OF THE SAME CIRCUMSTANCES AND ALLOW THE INDIVIDUAL TO PARTICIPATE IN THE PROGRAM.

[*(4)****] (F)*** ***(1)*** *The Administration may:*

(i) Issue a restrictive license to an individual who is a participant in the Program during the suspension period as provided under ***[****§ 16–404(c)(3)****] § 16–205 OR § 16–205.1 OF THIS TITLE OR § 16–404*** *of this subtitle;*

(ii) Reinstate the driver's license of a participant whose license has been revoked for a violation of § 21–902(a), (b), or (c) of this article or revoked for an accumulation of points under § 16–402(a)(34) of this subtitle for a violation of § 21–902(a) of this article; and

(iii) Notwithstanding any other provision of law, impose on a participant a period of suspension in accordance with § 16–404(c)(2) and (3) of this subtitle in lieu of a license revocation for:

1. A violation of § 21–902(a), (b), or (c) of this article; or

2. An accumulation of points under § 16–402(a)(34) of this subtitle for a violation of § 21–902(a) of this article.

***[**(5)**] (2)** A notice of suspension or revocation sent to an individual under this title shall include information about the Program and how **[**the individual can qualify for admission to**] INDIVIDUALS PARTICIPATE IN** the Program.*

***[**(6)**] (3)** The Administration **[**may**] SHALL** establish a fee for the Program **THAT IS SUFFICIENT TO COVER THE COSTS OF THE PROGRAM**.*

(G) SUBJECT TO § 27–107(G)(2) OF THIS ARTICLE, THE ADMINISTRATION SHALL IMPOSE A RESTRICTION ON THE INDIVIDUAL'S LICENSE THAT PROHIBITS THE INDIVIDUAL FROM DRIVING A MOTOR VEHICLE THAT IS NOT EQUIPPED WITH AN IGNITION INTERLOCK SYSTEM FOR THE PERIOD OF TIME THAT THE INDIVIDUAL IS REQUIRED TO PARTICIPATE IN THE PROGRAM UNDER THIS SECTION.

***[**(c)**] (H)** **[**For purposes of § 16–404(c)(3) of this subtitle and subsection (d) of this section, a**] A** participant is considered to begin participation in the Program when the participant provides evidence of the installation of an ignition interlock system by an approved service provider in a manner required by the Administration.*

***[**(d)**] (I)** An individual whose license is suspended under § 16–404(c)(2)(iv) of this subtitle is a habitual offender whose license may not be reinstated unless the individual participates in the Program for at least 24 months.*

***[**(e)**] (J)** (1) For purposes of an ignition interlock system used under § 16–205(f) of this title, this section, or a court order under § 27–107 of this article, the Administration shall permit only the use of an ignition interlock system that meets or exceeds the technical standards for breath alcohol ignition interlock devices published in the Federal Register from time to time.*

(2) For purposes of an ignition interlock system used under this section, the Administration shall require the Program protocol adopted by the Administration.

[(f)***] (K)*** *(1) An individual required to use an ignition interlock system under a court order* ***OR THIS SECTION:***

(i) Shall be monitored by the Administration; and

(ii) ***[****Shall****] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, SHALL*** *pay the fee required by the Administration under subsection* ***[****(b)(6)****] (F)(3)*** *of this section.*

(2) THE ADMINISTRATION SHALL WAIVE THE FEE REQUIRED UNDER THIS SUBSECTION FOR AN INDIVIDUAL WHO IS INDIGENT.

[*(2)****] (L)*** *A court order that requires the use of an ignition interlock system is not affected by § 16–404(c)(3) of this subtitle.*

(M) IF AN INDIVIDUAL PARTICIPATES IN THE PROGRAM UNDER THIS SECTION AND PARTICIPATES IN THE PROGRAM IN ACCORDANCE WITH ANY OTHER PROVISION OF LAW ARISING OUT OF THE SAME INCIDENT, THE PERIODS OF PARTICIPATION IN THE PROGRAM SHALL BE CONCURRENT.

(N) IF AN INDIVIDUAL SUCCESSFULLY COMPLETES THE PROGRAM AND THE INDIVIDUAL'S LICENSE IS NOT REFUSED, REVOKED, SUSPENDED, OR CANCELED UNDER ANOTHER PROVISION OF THIS ARTICLE, THE ADMINISTRATION SHALL IMMEDIATELY ISSUE A LICENSE TO THE LICENSEE.

(O) (1) NOTWITHSTANDING § 16–208 OF THIS TITLE, IF THE ADMINISTRATION REMOVES AN INDIVIDUAL FROM THE PROGRAM BECAUSE THE INDIVIDUAL VIOLATED REQUIREMENTS OF THE PROGRAM, THE ADMINISTRATION MAY ALLOW THE INDIVIDUAL TO REENTER THE PROGRAM AFTER A PERIOD OF 30 DAYS FROM THE DATE OF REMOVAL.

(2) IF AN INDIVIDUAL REENTERS THE PROGRAM UNDER THIS SUBSECTION, THE INDIVIDUAL SHALL PARTICIPATE IN THE PROGRAM FOR THE ENTIRE PERIOD OF TIME THAT WAS INITIALLY NECESSARY FOR SUCCESSFUL COMPLETION OF THE PROGRAM WITHOUT ANY CREDIT FOR THE PERIOD OF PARTICIPATION BEFORE THE INDIVIDUAL WAS REMOVED FROM THE PROGRAM.

(3) NOTHING CONTAINED IN PARAGRAPH (2) OF THIS SUBSECTION LIMITS A PERIOD OF PARTICIPATION IN THE PROGRAM REQUIRED UNDER ANY OTHER PROVISION OF THIS TITLE OR § 27–107 OF THIS ARTICLE.

(P) A SUSPENSION OR REVOCATION OF A LICENSE OF AN INDIVIDUAL SUBJECT TO SUBSECTION (C) OR (D) OF THIS SECTION THAT IS IMPOSED AS A RESULT OF THE FAILURE OF THE INDIVIDUAL TO PARTICIPATE IN THE PROGRAM

OR SUCCESSFULLY COMPLETE THE PROGRAM SHALL BE CONCURRENT WITH ANY OTHER SUSPENSION OR REVOCATION ARISING OUT OF THE SAME INCIDENT FOR WHICH THE INDIVIDUAL IS SUBJECT TO SUBSECTION (C) OR (D) OF THIS SECTION.

(Q) (1) IF A PERSON IS CONVICTED OF ANY VIOLATION OF § 21–902 OF THIS ARTICLE, THE ADMINISTRATION SHALL INCLUDE IN THE NOTICE OF PROPOSED SUSPENSION OR REVOCATION A WARNING IN BOLD CONSPICUOUS TYPE THAT THE PERSON SHALL PARTICIPATE IN THE PROGRAM IF THE PERSON IS SUBSEQUENTLY CONVICTED OF A VIOLATION OF § 21–902(A) OR (B) OF THIS ARTICLE AS DESCRIBED IN THIS SECTION.

(2) AT THE TIME THAT THE ADMINISTRATION ISSUES A LICENSE TO A PERSON WHO IS UNDER THE AGE OF 21 YEARS, THE ADMINISTRATION SHALL PROVIDE TO THE PERSON A WRITTEN WARNING IN BOLD CONSPICUOUS TYPE THAT THE PERSON SHALL PARTICIPATE IN THE PROGRAM IF THE ADMINISTRATION FINDS THE PERSON VIOLATED THE ALCOHOL RESTRICTION ON A DRIVER UNDER THE AGE OF 21 YEARS OR THE PERSON VIOLATED ANY PROVISION OF § 21–902 OF THIS ARTICLE.

(3) A PERSON MAY NOT RAISE THE ABSENCE OF THE WARNING DESCRIBED UNDER THIS SUBSECTION OR THE FAILURE TO RECEIVE THAT WARNING AS A BASIS FOR LIMITING THE AUTHORITY OF THE ADMINISTRATION TO REQUIRE THAT THE PERSON PARTICIPATE IN THE PROGRAM IN ACCORDANCE WITH THIS SECTION.

21–902.

(a) (1) A person may not drive or attempt to drive any vehicle while under the influence of alcohol.

(2) A person may not drive or attempt to drive any vehicle while the person is under the influence of alcohol per se.

(b) (1) A person may not drive or attempt to drive any vehicle while impaired by alcohol.

27–101.

(h) Any person who is convicted of a violation of any of the provisions of ***§ 16–113(K) OF THIS ARTICLE ("IGNITION INTERLOCK SYSTEM PROGRAM PARTICIPANT DRIVING VEHICLE WITHOUT IGNITION INTERLOCK"),*** *§ 16–303(a), (b), (c), (d), (e), (f), or (g) of this article ("Driving while license is canceled, suspended, refused, or revoked"), § 17–107 of this article ("Prohibitions"), or § 17–110 of this article ("Providing false evidence of required security") is subject to:*

(1) For a first offense, a fine of not more than $1,000, or imprisonment for not more than 1 year, or both; and

(2) For any subsequent offense, a fine of not more than $1,000, or imprisonment for not more than 2 years, or both.

27–107.

(b) In addition to any other penalties provided in this title for a violation of any of the provisions of § 21–902(a) of this article ("Driving while under the influence of alcohol or under the influence of alcohol per se"), or § 21–902(b) of this article ("Driving while impaired by alcohol"), or in addition to any other condition of probation, a court may prohibit a person who is convicted of, or granted probation under § 6–220 of the Criminal Procedure Article for, a violation of § 21–902(a) or § 21–902(b) of this article from operating for not more than 3 years a motor vehicle that is not equipped with an ignition interlock system.

(g) (2) ***(I) THIS PARAGRAPH DOES NOT LIMIT OR OTHERWISE AFFECT ANY PROVISION OF FEDERAL OR STATE LAW RELATING TO A HOLDER OF A COMMERCIAL DRIVER'S LICENSE.***

(II) *If a person is required, in the course of the person's employment, to operate a motor vehicle owned or provided by the person's employer, the person may operate that motor vehicle in the course of the person's employment without installation of an ignition interlock system if the court or the Administration has expressly permitted the person to operate in the course of the person's employment a motor vehicle that is not equipped with an ignition interlock system.*

(III) THE ADMINISTRATION MAY ALLOW A PARTICIPANT IN THE IGNITION INTERLOCK SYSTEM PROGRAM UNDER § 16–404.1 OF THIS ARTICLE TO OPERATE IN THE COURSE OF THE PERSON'S EMPLOYMENT A MOTOR VEHICLE OWNED OR PROVIDED BY THE PERSON'S EMPLOYER THAT IS NOT EQUIPPED WITH AN IGNITION INTERLOCK SYSTEM IF THE PERSON PROVIDES INFORMATION ACCEPTABLE TO THE ADMINISTRATION REGARDING THE PERSON'S CURRENT EMPLOYMENT AND THE NEED FOR THE PERSON TO OPERATE THE MOTOR VEHICLE IN THE COURSE OF EMPLOYMENT.

SECTION ~~2.~~ *3.* AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 557

(House Bill 1276)

AN ACT concerning

~~Vehicle Laws – Expansion of Ignition Interlock System Program~~
Drunk Driving Reduction Act

FOR the purpose of expanding participation in the Ignition Interlock System Program by authorizing certain individuals who have committed a certain alcohol–related administrative offense to be participants under certain circumstances; requiring the Motor Vehicle Administration to establish the Program in accordance with certain statutory provisions; requiring rather than authorizing the Administration to establish a certain protocol; *expanding participation in the Program by requiring certain individuals who are convicted of a certain offense and who had a certain alcohol concentration at the time of testing to participate in the Program for certain periods of time and successfully complete the Program;* expanding participation in the Program by requiring certain individuals to participate in the Program for certain periods of time and successfully complete the Program as a condition of modification of a license suspension or revocation and issuance of a restrictive license; requiring the Administration to impose a certain license restriction for certain periods of time under certain circumstances; *requiring the Administration to suspend for an indefinite period, rather than revoke, licenses of certain individuals who are convicted of a certain offense and had a certain alcohol concentration at the time of testing and who fail to participate in the Program or successfully complete the Program; providing that a suspension or revocation of a license that is imposed as a result of certain circumstances shall be concurrent with any other suspension or revocation arising out of the same incident;* requiring the Administration to suspend for certain periods of time ~~or revoke~~ the licenses of certain individuals who refuse to participate in or fail to successfully complete the Program; providing for reconsideration of entry in the Program under certain circumstances; requiring the Administration to establish a certain fee; requiring individuals in the Program to be monitored by the Administration and to pay a certain fee under certain circumstances; requiring certain service providers to demonstrate a certain ability under certain circumstances; providing that certain Program participation under this Act shall be concurrent with Program participation under any other provision of ~~the Maryland Vehicle Law~~ *law*; providing that an individual who is removed from the Program may reenter the Program under certain circumstances; establishing a criminal prohibition of a participant in the Program driving a vehicle without an ignition interlock system; providing for certain penalties; providing for certain administrative procedures; establishing that certain information provided to the Administration is sufficient for the Administration to exercise its authority to allow a participant in the Program to operate a motor vehicle owned or provided by the person's employer in the course of employment without an ignition

interlock system under certain circumstances; *requiring the Administration to provide certain warnings to certain persons; prohibiting a person from raising the absence of a warning or the failure to receive the warning as a basis for limiting the authority of the Administration in a certain manner;* clarifying language; ~~defining certain terms;~~ and generally relating to the Ignition Interlock System Program.

BY renumbering
Article – Transportation
Section 16–205.1(o)
to be Section 16–205.1(q)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – Transportation
Section 16–113(b)(1) and (4), 16–205(f)(1), 16–404(c)(3), 21–902(a)(1) and (2) and (b)(1), and 27–107(b)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing
Article – Transportation
Section 16–205.1(n)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – Transportation
Section 16–113(k) and 16–205.1(n), (o), and (p)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Transportation
Section 16–205.1(b)(3)(viii)3., 16–404(c)(2), 16–404.1, 27–101(h), and 27–107(g)(2)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 16–205.1(o) of Article – Transportation of the Annotated Code of Maryland be renumbered to be Section(s) 16–205.1(q).

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

Article – Transportation

16–113.

(b) (1) Notwithstanding the licensee's driving record, the Administration shall impose on each licensee under the age of 21 years an alcohol restriction that prohibits the licensee from driving or attempting to drive a motor vehicle while having alcohol in the licensee's blood.

(4) An individual under the age of 21 years who is convicted of a violation of § 21–902(a), (b), or (c) of this article may be required, for a period of not more than 3 years, to participate in the Ignition Interlock System Program in order to retain the individual's driver's license.

(K) A PARTICIPANT IN THE IGNITION INTERLOCK SYSTEM PROGRAM UNDER § 16–404.1 OF THIS TITLE MAY NOT DRIVE OR ATTEMPT TO DRIVE A VEHICLE THAT IS NOT EQUIPPED WITH AN IGNITION INTERLOCK SYSTEM IN VIOLATION OF AN IGNITION INTERLOCK SYSTEM RESTRICTION ON A LICENSE ISSUED TO THE PARTICIPANT.

16–205.

(f) (1) Subject to paragraph (2) of this subsection, the Administration may modify any suspension under this section or any suspension under § 16–205.1 of this subtitle and issue a restrictive license to a licensee who participates in the Ignition Interlock System Program established under § 16–404.1 of this title.

16–205.1.

(b) (3) If the person refuses to take the test or takes a test which results in an alcohol concentration of 0.08 or more at the time of testing, the police officer shall:

(viii) Within 72 hours after the issuance of the order of suspension, send any confiscated driver's license, copy of the suspension order, and a sworn statement to the Administration, that states:

3. The person was fully advised of the administrative sanctions that shall be imposed, including the fact that a person who refuses to take the test or takes a test that indicates an alcohol concentration of 0.15 or more at the time of testing is ineligible for modification of a suspension or issuance of a restrictive license under subsection **[**(n)(1) or (2)**] (O)** of this section.

[(n) (1) The Administration may modify a suspension under this section or issue a restrictive license if:

(i) The licensee did not refuse to take a test;

(ii) The licensee has not had a license suspended under this section during the past 5 years;

(iii) The licensee has not been convicted under § 21–902 of this article during the past 5 years;

(iv) The licensee has a test result indicating an alcohol concentration of less than 0.15; and

(v) 1. The licensee is required to drive a motor vehicle in the course of employment;

2. The license is required for the purpose of attending an alcoholic prevention or treatment program;

3. The Administration finds that the licensee has no alternative means of transportation available to or from the licensee's place of employment and, without the license, the licensee's ability to earn a living would be severely impaired; or

4. The Administration finds that the license is required for the purpose of obtaining health care treatment, including a prescription, that is necessary for the licensee or a member of the licensee's immediate family and the licensee and the licensee's immediate family have no alternative means of transportation available to obtain the health care treatment.

(2) In addition to the authority to modify a suspension or issue a restrictive license under paragraph (1) or (4) of this subsection, the Administration may modify a suspension under this section or issue a restrictive license, including a restriction that prohibits the licensee from driving or attempting to drive a motor vehicle unless the licensee is a participant in the Ignition Interlock System Program established under § 16–404.1 of this title, if:

(i) The licensee did not refuse to take a test;

(ii) The licensee has not been convicted under § 21–902 of this article;

(iii) The licensee has a test result indicating an alcohol concentration of less than 0.15; and

(iv) The license is required for the purpose of attending:

1. A noncollegiate educational institution as defined in § 2–206(a) of the Education Article; or

2. A regular program at an institution of postsecondary education.

(3) If the licensee refused to take a test or took a test that indicated an alcohol concentration of 0.15 or more at the time of testing, the Administration may not modify a suspension under this section or issue a restrictive license except as provided under paragraph (4) of this subsection.

(4) (i) In addition to the authority to modify a suspension or issue a restrictive license under subsection (b)(3)(vii) of this section or paragraph (1) or (2) of this subsection, the Administration may modify a suspension under this section or issue a restrictive license to a licensee as provided in this paragraph.

(ii) If the licensee refused to take a test or took a test that indicated an alcohol concentration of 0.15 or more, the Administration may modify a suspension under this section or issue a restrictive license if the licensee participates in the Ignition Interlock System Program for 1 year.

(5) (i) If the Administration modifies a suspension or issues a restrictive license under subsection (b)(3)(vii) of this section or paragraph (4) of this subsection and the licensee does not successfully complete the licensee's required participation in the Ignition Interlock System Program, the Administration shall summarily suspend the licensee's driver's license or driving privilege for the full period of suspension specified in this section for the applicable administrative offense.

(ii) The Administration shall notify a licensee of a suspension under this paragraph.

(iii) A licensee may request an administrative hearing on a suspension imposed under this paragraph.**]**

(N) (1) THIS SUBSECTION APPLIES ONLY TO A LICENSEE:

(I) WHO TAKES A TEST THAT INDICATES AN ALCOHOL CONCENTRATION OF AT LEAST 0.08 BUT LESS THAN 0.15;

(II) WHOSE LICENSE HAS NOT BEEN SUSPENDED UNDER THIS SECTION DURING THE PAST 5 YEARS; AND

(III) WHO HAS NOT BEEN CONVICTED UNDER § 21–902 OF THIS ARTICLE DURING THE PAST 5 YEARS.

(2) THE ADMINISTRATION MAY MODIFY A SUSPENSION UNDER THIS SECTION OR ISSUE A RESTRICTIVE LICENSE IF THE ADMINISTRATION FINDS THAT:

(I) THE LICENSEE IS REQUIRED TO DRIVE A MOTOR VEHICLE IN THE COURSE OF EMPLOYMENT;

(II) THE LICENSE IS REQUIRED FOR THE PURPOSE OF ATTENDING AN ALCOHOL PREVENTION OR TREATMENT PROGRAM;

(III) THE LICENSEE HAS NO ALTERNATIVE MEANS OF TRANSPORTATION AVAILABLE TO OR FROM THE LICENSEE'S PLACE OF EMPLOYMENT AND, WITHOUT THE LICENSE, THE LICENSEE'S ABILITY TO EARN A LIVING WOULD BE SEVERELY IMPAIRED;

(IV) THE LICENSE IS REQUIRED FOR THE PURPOSE OF OBTAINING HEALTH CARE TREATMENT, INCLUDING A PRESCRIPTION, THAT IS NECESSARY FOR THE LICENSEE OR A MEMBER OF THE LICENSEE'S IMMEDIATE FAMILY AND THE LICENSEE AND THE LICENSEE'S IMMEDIATE FAMILY HAVE NO ALTERNATIVE MEANS OF TRANSPORTATION AVAILABLE TO OBTAIN THE HEALTH CARE TREATMENT; OR

(V) THE LICENSE IS REQUIRED FOR THE PURPOSE OF ATTENDING A NONCOLLEGIATE EDUCATIONAL INSTITUTION AS DEFINED IN § 2–206(A) OF THE EDUCATION ARTICLE OR A REGULAR PROGRAM AT AN INSTITUTION OF POSTSECONDARY EDUCATION.

(O) (1) THIS SUBSECTION APPLIES ONLY TO A LICENSEE WHO:

(I) REFUSED TO TAKE A TEST;

(II) TOOK A TEST THAT INDICATED AN ALCOHOL CONCENTRATION OF 0.15 OR MORE AT THE TIME OF TESTING; OR

(III) TOOK A TEST THAT INDICATED AN ALCOHOL CONCENTRATION OF AT LEAST 0.08 BUT LESS THAN 0.15 AT THE TIME OF TESTING AND WHO IS INELIGIBLE FOR A MODIFICATION OF A SUSPENSION OR ISSUANCE OF A RESTRICTIVE LICENSE UNDER SUBSECTION (N) OF THIS SECTION.

(2) THE ADMINISTRATION MAY MODIFY A SUSPENSION UNDER THIS SECTION OR ISSUE A RESTRICTIVE LICENSE ONLY IF THE LICENSEE PARTICIPATES IN THE IGNITION INTERLOCK SYSTEM PROGRAM FOR 1 YEAR.

(P) (1) IF THE ADMINISTRATION MODIFIES A SUSPENSION UNDER THIS SECTION OR ISSUES A RESTRICTIVE LICENSE ON CONDITION THAT THE LICENSEE PARTICIPATE IN THE IGNITION INTERLOCK SYSTEM PROGRAM AND

THE LICENSEE DOES NOT SUCCESSFULLY COMPLETE THE PROGRAM, THE ADMINISTRATION SHALL ~~SUMMARILY~~ SUSPEND THE LICENSEE'S DRIVER'S LICENSE OR DRIVING PRIVILEGE FOR THE FULL PERIOD OF SUSPENSION SPECIFIED IN THIS SECTION FOR THE APPLICABLE VIOLATION.

(2) THE ADMINISTRATION SHALL NOTIFY A LICENSEE OF A SUSPENSION UNDER THIS SUBSECTION.

(3) A LICENSEE MAY REQUEST AN ADMINISTRATIVE HEARING ON A SUSPENSION IMPOSED UNDER THIS SUBSECTION.

(4) IF A LICENSEE REQUESTS A HEARING UNDER THIS ~~PARAGRAPH~~ *SUBSECTION*, THE SUSPENSION SHALL BE STAYED PENDING THE DECISION AT THE ADMINISTRATIVE HEARING.

16–404.

(c) (2) Subject to the provisions of paragraph (3) of this subsection, the following suspension periods may apply to a suspension for an accumulation of points under § 16–402(a)(25) of this subtitle for a violation of § 21–902(b) or (c) of this article or a suspension imposed under **[**§ 16–404.1(b)(4)(iii)**]** ~~§ 16–404.1(E)(1)(III)~~ ***§ 16–404.1(F)(1)(III)*** of this subtitle:

(i) For a first conviction, not more than 6 months;

(ii) For a second conviction at least 5 years after the date of the first conviction, not more than 9 months;

(iii) For a second conviction less than 5 years after the date of the first conviction or for a third conviction, not more than 12 months; and

(iv) For a fourth or subsequent conviction, not more than 24 months.

(3) The Administration may issue a restrictive license for the period of the suspension to an individual who participates in the Administration's Ignition Interlock System Program under § 16–404.1 of this subtitle.

16–404.1.

(a) (1) In this section the following words have the meanings indicated.

(2) "Approved service provider" means a person who is certified by:

(i) The Administration to service, install, monitor, calibrate, and provide information on ignition interlock systems; and

(ii) A manufacturer to be qualified to service, install, monitor, calibrate, and provide information on ignition interlock systems.

(3) "Manufacturer" means a person who manufactures ignition interlock systems and who certifies that approved service providers are qualified to service, install, monitor, calibrate, and provide information on ignition interlock systems.

(4) "Participant" means a participant in the Ignition Interlock System Program.

(5) "Program" means the Ignition Interlock System Program.

~~**(6) "TEST" HAS THE MEANING STATED IN § 16–205.1 OF THIS TITLE.**~~

~~**(7) "TEST REFUSAL" MEANS A REFUSAL TO TAKE A TEST TO DETERMINE ALCOHOL CONCENTRATION UNDER § 16–205.1 OF THIS TITLE.**~~

(b) (1) The Administration **[**may**]** **SHALL** establish an Ignition Interlock System Program **IN ACCORDANCE WITH THIS SECTION**.

(2) The Administration **[**may**]** **SHALL** establish a protocol for the Program by regulations that require certain minimum standards for all service providers who service, install, monitor, calibrate, and provide information on ignition interlock systems and include requirements that:

(i) A service provider who applies to the Administration for certification as an approved service provider shall demonstrate that the service provider is able to competently service, install, monitor, calibrate, and provide information **TO THE ADMINISTRATION AT LEAST EVERY 30 DAYS** on **INDIVIDUALS REQUIRED TO USE** ignition interlock systems;

(ii) A service provider who applies to the Administration for certification as an approved service provider shall be certified by a signed affidavit from the manufacturer that the service provider has been trained by an authorized manufacturer and that the service provider is competent to service, install, monitor, calibrate, and provide information on ignition interlock systems;

(iii) Approved service providers be deemed to be authorized representatives of a manufacturer; and

(iv) Any service of notice upon an approved service provider, who has violated any laws or regulations or whose ignition interlock system has violated

any laws or regulations, be deemed as service upon the manufacturer who certified the approved service provider.

[(3)**] (C)** An individual may be a participant if:

[(i)**] (1)** The individual's license is suspended or revoked **UNDER § 16–205 OF THIS TITLE** for a violation of § 21–902(a), (b), or (c) of this article or **§ 16–404 OF THIS SUBTITLE FOR** an accumulation of points under § 16–402(a)(25) or (34) of this subtitle;

[(ii) The individual is ordered to participate in the Program by a court under § 27–107 of this article;

(iii)**] (2)** The individual's license has an alcohol restriction imposed under ~~§ 16–113(b) or (g)~~ **§ 16–113(G)(1)** of this title; or

[(iv)**] (3)** The Administration modifies a suspension or issues a restrictive license to the individual under **[**§ 16–205.1(b)(3)(vii) or (n)(2) or (4)**] § 16–205.1** of this title.

(D) (1) ***(I) NOTWITHSTANDING SUBSECTION (C) OF THIS SECTION, AN INDIVIDUAL SHALL BE A PARTICIPANT IF THE INDIVIDUAL IS CONVICTED OF A VIOLATION OF § 21–902(A) OF THIS ARTICLE AND HAD AN ALCOHOL CONCENTRATION AT THE TIME OF TESTING OF 0.15 OR MORE.***

(II) IF AN INDIVIDUAL IS SUBJECT TO THIS PARAGRAPH AND FAILS TO PARTICIPATE IN THE PROGRAM OR SUCCESSFULLY COMPLETE THE PROGRAM, THE ADMINISTRATION SHALL SUSPEND, NOTWITHSTANDING § 16–208 OF THIS TITLE, THE INDIVIDUAL'S LICENSE UNTIL THE INDIVIDUAL SUCCESSFULLY COMPLETES THE PROGRAM.

(III) NOTHING CONTAINED IN THIS PARAGRAPH LIMITS THE AUTHORITY OF THE ADMINISTRATION TO MODIFY A SUSPENSION IMPOSED UNDER THIS PARAGRAPH TO ALLOW AN INDIVIDUAL TO BE A PARTICIPANT IN ACCORDANCE WITH SUBSECTION (E) OR (O) OF THIS SECTION.

(2) (I) **NOTWITHSTANDING SUBSECTION (C) OF THIS SECTION, AN INDIVIDUAL SHALL BE A PARTICIPANT AS A CONDITION OF MODIFICATION OF A SUSPENSION OR REVOCATION OF A LICENSE OR ISSUANCE OF A RESTRICTIVE LICENSE IF THE INDIVIDUAL:**

~~(I)~~ ***1.*** **IS REQUIRED TO BE A PARTICIPANT BY A COURT ORDER UNDER ~~§ 27–101~~ *§ 27–107* OF THIS ARTICLE;**

~~(II) IS CONVICTED OF A VIOLATION OF § 21–902(A) OF THIS ARTICLE AND HAD AN ALCOHOL CONCENTRATION AT THE TIME OF TESTING OF 0.15 OR MORE;~~

~~(III)~~ *2.* IS CONVICTED OF A VIOLATION OF § 21–902(A) OR (B) OF THIS ARTICLE AND WITHIN THE PRECEDING 5 YEARS THE INDIVIDUAL HAS BEEN CONVICTED OF ANY VIOLATION OF § 21–902 OF THIS ARTICLE; OR

~~(IV)~~ *3.* WAS UNDER THE AGE OF 21 YEARS ON THE DATE OF A VIOLATION BY THE INDIVIDUAL OF:

~~1.~~ *A.* AN ALCOHOL RESTRICTION IMPOSED UNDER § 16–113(B)(1) OF THIS TITLE; OR

~~2.~~ *B.* § 21–902(A), (B), OR (C) OF THIS ARTICLE.

(II) IF AN INDIVIDUAL IS SUBJECT TO THIS PARAGRAPH AND THE INDIVIDUAL FAILS TO PARTICIPATE IN THE PROGRAM OR DOES NOT SUCCESSFULLY COMPLETE THE PROGRAM, THE ADMINISTRATION SHALL SUSPEND THE INDIVIDUAL'S LICENSE FOR 1 YEAR.

(III) NOTHING CONTAINED IN THIS PARAGRAPH LIMITS THE AUTHORITY OF THE ADMINISTRATION TO MODIFY A SUSPENSION IMPOSED UNDER THIS PARAGRAPH TO ALLOW AN INDIVIDUAL TO BE A PARTICIPANT IN ACCORDANCE WITH SUBSECTION (E) OR (O) OF THIS SECTION.

~~(2)~~ *(3)* AN INDIVIDUAL WHO IS SUBJECT TO THIS SUBSECTION SHALL PARTICIPATE IN THE PROGRAM FOR:

(I) 6 MONTHS THE FIRST TIME THE INDIVIDUAL IS REQUIRED UNDER THIS SUBSECTION TO PARTICIPATE IN THE PROGRAM;

(II) 1 YEAR THE SECOND TIME THE INDIVIDUAL IS REQUIRED UNDER THIS SUBSECTION TO PARTICIPATE IN THE PROGRAM; AND

(III) 3 YEARS THE THIRD OR ANY SUBSEQUENT TIME THE INDIVIDUAL IS REQUIRED UNDER THIS SUBSECTION TO PARTICIPATE IN THE PROGRAM.

~~(3)~~ *(4)* PARAGRAPH ~~(2)~~ *(3)* OF THIS SUBSECTION DOES NOT LIMIT A LONGER PERIOD OF PROGRAM PARTICIPATION THAT IS REQUIRED BY:

(I) A COURT ORDER UNDER § 27–107 OF THIS ARTICLE; OR

(II) THE ADMINISTRATION IN ACCORDANCE WITH ANOTHER PROVISION OF THIS TITLE.

~~**(4) IF AN INDIVIDUAL IS SUBJECT TO THIS SUBSECTION BASED ON A PROPOSED LICENSE SUSPENSION UNDER THIS TITLE AND THE INDIVIDUAL FAILS TO PARTICIPATE IN THE PROGRAM OR DOES NOT SUCCESSFULLY COMPLETE THE PROGRAM, THE ADMINISTRATION SHALL SUSPEND THE INDIVIDUAL'S LICENSE FOR 1 YEAR.**~~

~~**(5) NOTWITHSTANDING PARAGRAPH (4) OF THIS SUBSECTION, IF AN INDIVIDUAL IS SUBJECT TO THIS SUBSECTION BASED ON A PROPOSED LICENSE REVOCATION UNDER THIS TITLE AND THE INDIVIDUAL FAILS TO PARTICIPATE IN THE PROGRAM OR DOES NOT SUCCESSFULLY COMPLETE THE PROGRAM, THE ADMINISTRATION SHALL REVOKE THE INDIVIDUAL'S LICENSE.**~~

(E) IF AN INDIVIDUAL SUBJECT TO SUBSECTION (C) OR (D) OF THIS SECTION DOES NOT INITIALLY BECOME A PARTICIPANT:

(1) THE INDIVIDUAL MAY APPLY LATER TO THE ADMINISTRATION TO BE A PARTICIPANT; AND

(2) THE ADMINISTRATION MAY RECONSIDER ANY SUSPENSION OR REVOCATION OF THE DRIVER'S LICENSE OF THE INDIVIDUAL ARISING OUT OF THE SAME CIRCUMSTANCES AND ALLOW THE INDIVIDUAL TO PARTICIPATE IN THE PROGRAM.

[(4)**]** ~~**(E)**~~ **(F) (1)** The Administration may:

(i) Issue a restrictive license to an individual who is a participant in the Program during the suspension period as provided under **[**§ 16–404(c)(3)**] § 16–205 OR § 16–205.1 OF THIS TITLE OR § 16–404** of this subtitle;

(ii) Reinstate the driver's license of a participant whose license has been revoked for a violation of § 21–902(a), (b), or (c) of this article or revoked for an accumulation of points under § 16–402(a)(34) of this subtitle for a violation of § 21–902(a) of this article; and

(iii) Notwithstanding any other provision of law, impose on a participant a period of suspension in accordance with § 16–404(c)(2) and (3) of this subtitle in lieu of a license revocation for:

1. A violation of § 21–902(a), (b), or (c) of this article; or

2. An accumulation of points under § 16–402(a)(34) of this subtitle for a violation of § 21–902(a) of this article.

[(5)**] (2)** A notice of suspension or revocation sent to an individual under this title shall include information about the Program and how **[**the individual can qualify for admission to**] INDIVIDUALS PARTICIPATE IN** the Program.

[(6)**] (3)** The Administration **[**may**] SHALL** establish a fee for the Program **THAT IS SUFFICIENT TO COVER THE COSTS OF THE PROGRAM**.

~~(F)~~ **(G) SUBJECT TO § 27–107(G)(2) OF THIS ARTICLE, THE ADMINISTRATION SHALL IMPOSE A RESTRICTION ON THE INDIVIDUAL'S LICENSE THAT PROHIBITS THE INDIVIDUAL FROM DRIVING A MOTOR VEHICLE THAT IS NOT EQUIPPED WITH AN IGNITION INTERLOCK SYSTEM FOR THE PERIOD OF TIME THAT THE INDIVIDUAL IS REQUIRED TO PARTICIPATE IN THE PROGRAM UNDER THIS SECTION.**

[(c)**]** ~~(G)~~ **(H) [**For purposes of § 16–404(c)(3) of this subtitle and subsection (d) of this section, a**] A** participant is considered to begin participation in the Program when the participant provides evidence of the installation of an ignition interlock system by an approved service provider in a manner required by the Administration.

[(d)**]** ~~(H)~~ **(I)** An individual whose license is suspended under § 16–404(c)(2)(iv) of this subtitle is a habitual offender whose license may not be reinstated unless the individual participates in the Program for at least 24 months.

[(e)**]** ~~(I)~~ **(J)** (1) For purposes of an ignition interlock system used under § 16–205(f) of this title, this section, or a court order under § 27–107 of this article, the Administration shall permit only the use of an ignition interlock system that meets or exceeds the technical standards for breath alcohol ignition interlock devices published in the Federal Register from time to time.

(2) For purposes of an ignition interlock system used under this section, the Administration shall require the Program protocol adopted by the Administration.

[(f)**]** ~~(J)~~ **(K)** (1) An individual required to use an ignition interlock system under a court order **OR THIS SECTION**:

(i) Shall be monitored by the Administration; and

(ii) **[**Shall**] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, SHALL** pay the fee required by the Administration under subsection **[**(b)(6)**]** ~~(E)(3)~~ **(F)(3)** of this section.

(2) THE ADMINISTRATION SHALL WAIVE THE FEE REQUIRED UNDER THIS SUBSECTION FOR AN INDIVIDUAL WHO IS INDIGENT.

[(2)] ~~(K)~~ (L) A court order that requires the use of an ignition interlock system is not affected by § 16–404(c)(3) of this subtitle.

~~(L)~~ (M) **IF AN INDIVIDUAL PARTICIPATES IN THE PROGRAM UNDER ~~SUBSECTION (D) OF~~ THIS SECTION AND PARTICIPATES IN THE PROGRAM IN ACCORDANCE WITH ANY OTHER PROVISION OF ~~THE MARYLAND VEHICLE LAW~~ *LAW* ARISING OUT OF THE SAME INCIDENT, THE PERIODS OF PARTICIPATION IN THE PROGRAM SHALL BE CONCURRENT.**

~~(M)~~ (N) **IF AN INDIVIDUAL SUCCESSFULLY COMPLETES THE PROGRAM AND THE INDIVIDUAL'S LICENSE IS NOT REFUSED, REVOKED, SUSPENDED, OR CANCELED UNDER ANOTHER PROVISION OF THIS ARTICLE, THE ADMINISTRATION SHALL IMMEDIATELY ~~RETURN THE~~ ISSUE A LICENSE TO THE LICENSEE.**

(O) (1) ~~IF~~ *NOTWITHSTANDING § 16–208 OF THIS TITLE, IF* THE ADMINISTRATION REMOVES AN INDIVIDUAL FROM THE PROGRAM BECAUSE THE INDIVIDUAL VIOLATED REQUIREMENTS OF THE PROGRAM, THE ADMINISTRATION MAY ALLOW THE INDIVIDUAL TO REENTER THE PROGRAM AFTER A PERIOD OF 30 DAYS FROM THE DATE OF REMOVAL.

(2) IF AN INDIVIDUAL REENTERS THE PROGRAM UNDER THIS SUBSECTION, THE INDIVIDUAL SHALL PARTICIPATE IN THE PROGRAM FOR THE ENTIRE PERIOD OF TIME THAT WAS INITIALLY NECESSARY FOR SUCCESSFUL COMPLETION OF THE PROGRAM WITHOUT ANY CREDIT FOR THE PERIOD OF PARTICIPATION BEFORE THE INDIVIDUAL WAS REMOVED FROM THE PROGRAM.

(3) NOTHING CONTAINED IN PARAGRAPH (2) OF THIS SUBSECTION LIMITS A PERIOD OF PARTICIPATION IN THE PROGRAM REQUIRED UNDER ANY OTHER PROVISION OF THIS TITLE OR § 27–107 OF THIS ARTICLE.

(P) A SUSPENSION OR REVOCATION OF A LICENSE OF AN INDIVIDUAL SUBJECT TO SUBSECTION (C) OR (D) OF THIS SECTION THAT IS IMPOSED AS A RESULT OF THE FAILURE OF THE INDIVIDUAL TO PARTICIPATE IN THE PROGRAM OR SUCCESSFULLY COMPLETE THE PROGRAM SHALL BE CONCURRENT WITH ANY OTHER SUSPENSION OR REVOCATION ARISING OUT OF THE SAME INCIDENT FOR WHICH THE INDIVIDUAL IS SUBJECT TO SUBSECTION (C) OR (D) OF THIS SECTION.

(Q) (1) IF A PERSON IS CONVICTED OF ANY VIOLATION OF § 21–902 OF THIS ARTICLE, THE ADMINISTRATION SHALL INCLUDE IN THE NOTICE OF PROPOSED SUSPENSION OR REVOCATION A WARNING IN BOLD CONSPICUOUS TYPE THAT THE PERSON SHALL PARTICIPATE IN THE PROGRAM IF THE PERSON

IS SUBSEQUENTLY CONVICTED OF A VIOLATION OF § 21–902(A) OR (B) OF THIS ARTICLE AS DESCRIBED IN THIS SECTION.

(2) AT THE TIME THAT THE ADMINISTRATION ISSUES A LICENSE TO A PERSON WHO IS UNDER THE AGE OF 21 YEARS, THE ADMINISTRATION SHALL PROVIDE TO THE PERSON A WRITTEN WARNING IN BOLD CONSPICUOUS TYPE THAT THE PERSON SHALL PARTICIPATE IN THE PROGRAM IF THE ADMINISTRATION FINDS THE PERSON VIOLATED THE ALCOHOL RESTRICTION ON A DRIVER UNDER THE AGE OF 21 YEARS OR THE PERSON VIOLATED ANY PROVISION OF § 21–902 OF THIS ARTICLE.

(3) A PERSON MAY NOT RAISE THE ABSENCE OF THE WARNING DESCRIBED UNDER THIS SUBSECTION OR THE FAILURE TO RECEIVE THAT WARNING AS A BASIS FOR LIMITING THE AUTHORITY OF THE ADMINISTRATION TO REQUIRE THAT THE PERSON PARTICIPATE IN THE PROGRAM IN ACCORDANCE WITH THIS SECTION.

21–902.

(a) (1) A person may not drive or attempt to drive any vehicle while under the influence of alcohol.

(2) A person may not drive or attempt to drive any vehicle while the person is under the influence of alcohol per se.

(b) (1) A person may not drive or attempt to drive any vehicle while impaired by alcohol.

27–101.

(h) Any person who is convicted of a violation of any of the provisions of **§ 16–113(K) OF THIS ARTICLE ("IGNITION INTERLOCK SYSTEM PROGRAM PARTICIPANT DRIVING VEHICLE WITHOUT IGNITION INTERLOCK"),** § 16–303(a), (b), (c), (d), (e), (f), or (g) of this article ("Driving while license is canceled, suspended, refused, or revoked"), § 17–107 of this article ("Prohibitions"), or § 17–110 of this article ("Providing false evidence of required security") is subject to:

(1) For a first offense, a fine of not more than $1,000, or imprisonment for not more than 1 year, or both; and

(2) For any subsequent offense, a fine of not more than $1,000, or imprisonment for not more than 2 years, or both.

27–107.

(b) In addition to any other penalties provided in this title for a violation of any of the provisions of § 21–902(a) of this article ("Driving while under the influence of alcohol or under the influence of alcohol per se"), or § 21–902(b) of this article ("Driving while impaired by alcohol"), or in addition to any other condition of probation, a court may prohibit a person who is convicted of, or granted probation under § 6–220 of the Criminal Procedure Article for, a violation of § 21–902(a) or § 21–902(b) of this article from operating for not more than 3 years a motor vehicle that is not equipped with an ignition interlock system.

(g) (2) **(I) THIS PARAGRAPH DOES NOT LIMIT OR OTHERWISE AFFECT ANY PROVISION OF FEDERAL OR STATE LAW RELATING TO A HOLDER OF A COMMERCIAL DRIVER'S LICENSE.**

(II) If a person is required, in the course of the person's employment, to operate a motor vehicle owned or provided by the person's employer, the person may operate that motor vehicle in the course of the person's employment without installation of an ignition interlock system if the court or the Administration has expressly permitted the person to operate in the course of the person's employment a motor vehicle that is not equipped with an ignition interlock system.

(III) THE ADMINISTRATION MAY ALLOW A PARTICIPANT IN THE IGNITION INTERLOCK SYSTEM PROGRAM UNDER § 16–404.1 OF THIS ARTICLE TO OPERATE IN THE COURSE OF THE PERSON'S EMPLOYMENT A MOTOR VEHICLE OWNED OR PROVIDED BY THE PERSON'S EMPLOYER THAT IS NOT EQUIPPED WITH AN IGNITION INTERLOCK SYSTEM IF THE PERSON PROVIDES INFORMATION ACCEPTABLE TO THE ADMINISTRATION REGARDING THE PERSON'S CURRENT EMPLOYMENT AND THE NEED FOR THE PERSON TO OPERATE THE MOTOR VEHICLE IN THE COURSE OF EMPLOYMENT.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 558

(Senate Bill 830)

AN ACT concerning

Tax Credits for Qualifying Employees with Disabilities – Sunset ~~Extension Repeal~~ *Extension*

FOR the purpose of ~~extending~~ ~~repealing~~ *extending* certain termination provisions and altering certain dates of applicability for certain tax credits allowed to employers that hire certain qualifying individuals with disabilities; and generally relating to certain tax credits allowed to employers that hire certain qualifying employees facing certain employment barriers.

BY repealing and reenacting, with amendments,
Chapter 112 of the Acts of the General Assembly of 1997, as amended by Chapter 614 of the Acts of the General Assembly of 1998, Chapter 448 of the Acts of the General Assembly of 2000, Chapter 454 of the Acts of the General Assembly of 2003, Chapter 394 of the Acts of the General Assembly of 2006, Chapter 370 of the Acts of the General Assembly of 2007, Chapter 658 of the Acts of the General Assembly of 2008, Chapter 290 of the Acts of the General Assembly of 2009, and Chapter 252 of the Acts of the General Assembly of 2010
Section 4 and 6

BY repealing and reenacting, with amendments,
Chapter 113 of the Acts of the General Assembly of 1997, as amended by Chapter 614 of the Acts of the General Assembly of 1998, Chapter 448 of the Acts of the General Assembly of 2000, Chapter 454 of the Acts of the General Assembly of 2003, Chapter 394 of the Acts of the General Assembly of 2006, Chapter 370 of the Acts of the General Assembly of 2007, Chapter 658 of the Acts of the General Assembly of 2008, Chapter 290 of the Acts of the General Assembly of 2009, and Chapter 252 of the Acts of the General Assembly of 2010
Section 4 and 6

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

Chapter 112 of the Acts of 1997, as amended by Chapter 614 of the Acts of 1998, Chapter 448 of the Acts of 2000, Chapter 454 of the Acts of 2003, Chapter 394 of the Acts of 2006, Chapter 370 of the Acts of 2007, Chapter 658 of the Acts of 2008, Chapter 290 of the Acts of 2009, and Chapter 252 of the Acts of 2010

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall be applicable to all taxable years beginning after December 31, 1996 *but before January 1,* ***[****2014****] 2015*** ~~but before January 1, [2014] 2015~~; provided, however, that the tax credit under § 21–309 of the Education Article, as enacted under Section 1 of this Act, shall be allowed only for employees hired on or after October 1, 1997 *but before July 1,* ***[****2011****] 2012****; and provided further that any excess credits under § 21–309 of the Education Article may be carried forward and, subject to the limitations under § 21–309 of the Education Article, may be applied as a credit for taxable years beginning on or after January 1,* ***[****2014****] 2015*** ~~but before July 1, [2011] 2012; and provided further that any excess credits under § 21–309 of the Education Article may be carried~~

~~forward and, subject to the limitations under § 21–309 of the Education Article, may be applied as a credit for taxable years beginning on or after January 1, [2014] 2015~~.

SECTION 6. AND BE IT FURTHER ENACTED, That, subject to the provisions of Section 4 of this Act, this Act shall take effect October 1, 1997. *It shall remain in effect for a period of [13] **14** years and 9 months and at the end of June 30, [2011] **2012**, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.* ~~It shall remain in effect for a period of [13] 14 years and 9 months and at the end of June 30, [2011] 2012, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.~~

Chapter 113 of the Acts of 1997, as amended by Chapter 614 of the Acts of 1998, Chapter 448 of the Acts of 2000, Chapter 454 of the Acts of 2003, Chapter 394 of the Acts of 2006, Chapter 370 of the Acts of 2007, Chapter 658 of the Acts of 2008, Chapter 290 of the Acts of 2009, and Chapter 252 of the Acts of 2010

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall be applicable to all taxable years beginning after December 31, 1996 *but before January 1, [2014] **2015*** ~~but before January 1, [2014] 2015~~; provided, however, that the tax credit under § 21–309 of the Education Article, as enacted under Section 1 of this Act, shall be allowed only for employees hired on or after October 1, 1997 *but before July 1, [2011] **2012**; and provided further that any excess credits under § 21–309 of the Education Article may be carried forward and, subject to the limitations under § 21–309 of the Education Article, may be applied as a credit for taxable years beginning on or after January 1, [2014] **2015*** ~~but before July 1, [2011] 2012; and provided further that any excess credits under § 21–309 of the Education Article may be carried forward and, subject to the limitations under § 21–309 of the Education Article, may be applied as a credit for taxable years beginning on or after January 1, [2014] 2015~~.

SECTION 6. AND BE IT FURTHER ENACTED, That, subject to the provisions of Section 4 of this Act, this Act shall take effect October 1, 1997. *It shall remain in effect for a period of [13] **14** years and 9 months and at the end of June 30, [2011] **2012**, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.* ~~It shall remain in effect for a period of [13] 14 years and 9 months and at the end of June 30, [2011] 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 June 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 559

(Senate Bill 845)

AN ACT concerning

~~Health Occupations –~~ Pharmacists – Administration of Vaccinations~~,~~ ~~Epinephrine, and Diphenhydramine~~ – Children

FOR the purpose of ~~authorizing pharmacists to~~ altering the age of an individual to whom a pharmacist may administer a certain ~~vaccinations and, under certain circumstances, epinephrine and diphenhydramine to certain individuals in accordance with certain regulations if certain requirements are met; requiring the State Board of Pharmacy to set certain fees~~ vaccination; requiring a pharmacist to report a certain vaccination to a certain registry; altering requirements for regulations relating to certain vaccinations; and generally relating to the administration of vaccinations~~, epinephrine, and diphenhydramine~~ by pharmacists to children.

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 12–508
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health Occupations

12–508.

(a) **[**(1) A**]** ~~**WITHOUT A PRESCRIPTION FROM A PHYSICIAN, A**~~ pharmacist may administer **[**an influenza**]** ~~**A**~~ vaccination to an individual~~, **AND IN THE EVENT OF A SYSTEMIC REACTION TO THE VACCINATION BY THE INDIVIDUAL, EPINEPHRINE AND DIPHENHYDRAMINE**~~ **WHO IS AT LEAST** ~~**7**~~ ***9*** **YEARS OLD,** in accordance with regulations adopted ~~under subsection (c) of this section~~ **BY THE BOARD, IN CONSULTATION WITH THE DEPARTMENT[**.

(2) A pharmacist may administer a vaccination for pneumococcal pneumonia or herpes zoster, or any vaccination that has been determined by the Board, with the agreement of the Board of Physicians and the Board of Nursing to be in the best health interests of the community, to an individual**]**, if:

[(i)**]** ~~**(1)**~~ The individual is **[**an adult**]** ~~**AT LEAST 7 YEARS OLD**~~;

[(ii) The individual has a prescription from a physician;

(iii) The pharmacist informs the prescribing physician that the vaccination has been administered;]

[(iv)] ~~(2)~~ [If the prescribing physician is not the patient's primary care physician, the] ~~THE~~ pharmacist has made a reasonable effort to inform the patient's primary care physician that the vaccination has been administered; [and

(v)] ~~(3)~~ The vaccination [is], ~~EPINEPHRINE, AND DIPHENHYDRAMINE ARE~~ administered in accordance with regulations adopted under subsection ~~(c)~~ **(C)(1)** of this section**;.**

~~(4) THE PHARMACIST MEETS THE QUALIFICATIONS AND STANDARDS SPECIFIED IN REGULATIONS ADOPTED UNDER SUBSECTION (C) OF THIS SECTION; AND~~

~~(5) THE VACCINATION IS:~~

~~(I) LISTED IN THE CENTERS FOR DISEASE CONTROL AND PREVENTION RECOMMENDED IMMUNIZATION SCHEDULE; OR~~

~~(II) RECOMMENDED IN THE CENTERS FOR DISEASE CONTROL AND PREVENTION HEALTH INFORMATION FOR INTERNATIONAL TRAVEL.~~

(3) A PHARMACIST SHALL REPORT TO THE MARYLAND IMMUNIZATION REGISTRY AN INFLUENZA VACCINATION ADMINISTERED BY THE PHARMACIST TO ~~AN INDIVIDUAL 7~~ ***INDIVIDUALS WHO ARE FROM 9*** **TO 18 YEARS OF AGE.**

(b) The Board shall set reasonable fees for the administration of vaccinations~~, EPINEPHRINE, AND DIPHENHYDRAMINE~~ in accordance with subsection (a) of this section.

(c) (1) The Board, the Board of Physicians, and the Board of Nursing shall meet at least annually to jointly develop, adopt, and review regulations to provide for patient safety and to implement **SUBSECTION (A)(2) OF** this section.

(2) The regulations adopted under **SUBSECTION (A)(1) OF THIS SECTION AND** paragraph (1) of this subsection shall require a pharmacist to submit a registration form to the Board that includes verification that the pharmacist:

(i) Has successfully completed a certification course approved by the Board that included instruction in the guidelines and recommendations of the Centers for Disease Control and Prevention regarding vaccinations; and

(ii) Is certified in basic cardiopulmonary resuscitation and obtained the certification through in–person classroom instruction.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 560

(House Bill 986)

AN ACT concerning

Pharmacists – Administration of ~~Vaccines~~ *Vaccinations* – Children

FOR the purpose of altering the age of an individual to whom a pharmacist may administer ~~certain vaccines under certain circumstances~~ a certain vaccination; requiring a pharmacist to report a certain vaccination to a certain registry; altering requirements for regulations relating to certain vaccinations; and generally relating to the administration of ~~vaccines~~ *vaccinations* by pharmacists to children.

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 12–508
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health Occupations

12–508.

(a) (1) A pharmacist may administer an influenza vaccination to an individual **WHO IS AT LEAST 9 YEARS OLD**, in accordance with regulations adopted ~~under subsection (e) of this section~~ **BY THE BOARD, IN CONSULTATION WITH THE DEPARTMENT**.

(2) A pharmacist may administer a vaccination for pneumococcal pneumonia or herpes zoster, or any vaccination that has been determined by the Board, with the agreement of the Board of Physicians and the Board of Nursing to be in the best health interests of the community, to an individual if:

(i) The individual is **[**an adult**]** ~~**AT LEAST 7 YEARS OLD**~~;

(ii) The individual has a prescription from a physician;

(iii) The pharmacist informs the prescribing physician that the vaccination has been administered;

(iv) If the prescribing physician is not the patient's primary care physician, the pharmacist has made a reasonable effort to inform the patient's primary care physician that the vaccination has been administered; and

(v) The vaccination is administered in accordance with regulations adopted under subsection ~~(c)~~ **(C)(1)** of this section.

(3) A PHARMACIST SHALL REPORT TO THE MARYLAND IMMUNIZATION REGISTRY AN INFLUENZA VACCINATION ADMINISTERED BY THE PHARMACIST TO INDIVIDUALS WHO ARE FROM 9 TO 18 YEARS OF AGE.

(b) The Board shall set reasonable fees for the administration of vaccinations in accordance with subsection (a) of this section.

(c) (1) The Board, the Board of Physicians, and the Board of Nursing shall meet at least annually to jointly develop, adopt, and review regulations to provide for patient safety and to implement **SUBSECTION (A)(2) OF** this section.

(2) The regulations adopted under **SUBSECTION (A)(1) OF THIS SECTION AND** paragraph (1) of this subsection shall require a pharmacist to submit a registration form to the Board that includes verification that the pharmacist:

(i) Has successfully completed a certification course approved by the Board that included instruction in the guidelines and recommendations of the Centers for Disease Control and Prevention regarding vaccinations; and

(ii) Is certified in basic cardiopulmonary resuscitation and obtained the certification through in–person classroom instruction.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 561

(Senate Bill 888)

AN ACT concerning

Trusts – Special Needs, Supplemental Needs, or Pooled Asset Special Needs Trusts – Public Benefits

FOR the purpose of stating that the policy of this State is to encourage the use of certain special needs trusts or supplemental needs trusts by individuals with disabilities of all ages for certain reasons; requiring certain State agencies to adopt regulations that are not more restrictive than existing federal law, regulations, or policies with regard to the treatment of special needs trusts or supplemental needs trusts; requiring the regulations to allow certain funding and use of special needs trusts; establishing that a certain determination of the Internal Revenue Service ~~or the Maryland Department of Assessments and Taxation~~ regarding the nonprofit status of organizations that operate a pooled asset special needs trust is sufficient to satisfy a certain requirement of federal law; prohibiting State agencies from imposing additional requirements on organizations that operate a pooled asset special needs trust for a certain purpose; defining certain terms; and generally relating to special needs and supplemental needs trusts.

BY adding to
Article – Estates and Trusts
Section 14–114
Annotated Code of Maryland
(2001 Replacement Volume and 2010 Supplement)

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

Article – Estates and Trusts

14–114.

(A) IN THIS SECTION, "SPECIAL NEEDS TRUST" AND "SUPPLEMENTAL NEEDS TRUST" INCLUDE A TRUST FUNDED BY A TRUST BENEFICIARY OR BY A THIRD PARTY.

(B) IT IS THE POLICY OF THE STATE TO ENCOURAGE THE USE OF A SPECIAL NEEDS TRUST OR SUPPLEMENTAL NEEDS TRUST BY AN INDIVIDUAL OF ANY AGE WITH DISABILITIES TO PRESERVE FUNDS TO PROVIDE FOR THE NEEDS

OF THE INDIVIDUAL NOT MET BY PUBLIC BENEFITS AND TO ENHANCE QUALITY OF LIFE.

(C) (1) EACH STATE AGENCY THAT PROVIDES PUBLIC BENEFITS TO INDIVIDUALS WITH DISABILITIES OF ALL AGES THROUGH MEANS–TESTED PROGRAMS, INCLUDING THE MEDICAL ASSISTANCE PROGRAM, SHALL ADOPT REGULATIONS THAT ARE NOT MORE RESTRICTIVE THAN EXISTING FEDERAL LAW, REGULATIONS, OR POLICIES WITH REGARD TO THE TREATMENT OF A SPECIAL NEEDS TRUST OR SUPPLEMENTAL NEEDS TRUST, INCLUDING A TRUST DEFINED IN 42 U.S.C. § 1396P(C)(2) AND (D)(4).

(2) THE REGULATIONS DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION SHALL ALLOW:

(I) ~~A POOLED ASSET SPECIAL NEEDS TRUST, AUTHORIZED IN 42 U.S.C. § 1396P(D)(4)(C), TO RETAIN FUNDS REMAINING IN AN INDIVIDUAL BENEFICIARY'S ACCOUNT AFTER THE DEATH OF THE BENEFICIARY, WITHOUT LIMIT;~~

~~(II)~~ AN INDIVIDUAL ACCOUNT IN A POOLED ASSET SPECIAL NEEDS TRUST TO BE FUNDED WITHOUT FINANCIAL LIMIT;

~~(III)~~ (II) A FUND IN A SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR POOLED ASSET SPECIAL NEEDS TRUST TO BE USED FOR THE SOLE BENEFIT OF THE BENEFICIARY INCLUDING, AT THE DISCRETION OF THE TRUSTEE, DISTRIBUTIONS FOR FOOD, SHELTER, UTILITIES, AND TRANSPORTATION;

~~(IV)~~ (III) AN INDIVIDUAL TO ESTABLISH OR FUND AN INDIVIDUAL ACCOUNT IN A POOLED ASSET SPECIAL NEEDS TRUST WITHOUT AN AGE LIMIT OR A TRANSFER PENALTY;

~~(V)~~ (IV) AN INDIVIDUAL TO FUND A SPECIAL NEEDS TRUST OR SUPPLEMENTAL NEEDS TRUST FOR THE INDIVIDUAL'S CHILD WITH DISABILITIES WITHOUT A TRANSFER PENALTY AND REGARDLESS OF THE CHILD'S AGE; AND

~~(VI)~~ (V) ALL LEGALLY ASSIGNABLE INCOME OR RESOURCES TO BE ASSIGNED TO A SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR POOLED ASSET SPECIAL NEEDS TRUST WITHOUT LIMIT.

(D) (1) A DETERMINATION OF THE INTERNAL REVENUE SERVICE ~~OR THE DEPARTMENT OF ASSESSMENTS AND TAXATION~~ REGARDING THE NONPROFIT STATUS OF AN ORGANIZATION OPERATING A POOLED ASSET

SPECIAL NEEDS TRUST SHALL BE SUFFICIENT TO SATISFY THE NONPROFIT REQUIREMENT OF 42 U.S.C. § 1396P(D)(4)(C).

(2) A STATE AGENCY MAY NOT IMPOSE ADDITIONAL REQUIREMENTS ON AN ORGANIZATION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION FOR THE PURPOSE OF QUALIFYING OR DISQUALIFYING THE ORGANIZATION FROM OFFERING A POOLED ASSET SPECIAL NEEDS TRUST.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 562

(House Bill 1277)

AN ACT concerning

Trusts – Special Needs, Supplemental Needs, or Pooled Asset Special Needs Trusts – Public Benefits

FOR the purpose of stating that the policy of this State is to encourage the use of certain special needs trusts or supplemental needs trusts by individuals with disabilities of all ages for certain reasons; requiring certain State agencies to adopt regulations that are not more restrictive than existing federal law, regulations, or policies with regard to the treatment of special needs trusts or supplemental needs trusts; requiring the regulations to allow certain funding and use of special needs trusts; establishing that a certain determination of the Internal Revenue Service ~~or the Maryland Department of Assessments and Taxation~~ regarding the nonprofit status of organizations that operate a pooled asset special needs trust is sufficient to satisfy a certain requirement of federal law; prohibiting State agencies from imposing additional requirements on organizations that operate a pooled asset special needs trust for a certain purpose; defining certain terms; and generally relating to special needs and supplemental needs trusts.

BY adding to
Article – Estates and Trusts
Section 14–114
Annotated Code of Maryland
(2001 Replacement Volume and 2010 Supplement)

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

Article – Estates and Trusts

14–114.

(A) IN THIS SECTION, "SPECIAL NEEDS TRUST" AND "SUPPLEMENTAL NEEDS TRUST" INCLUDE A TRUST FUNDED BY A TRUST BENEFICIARY OR BY A THIRD PARTY.

(B) IT IS THE POLICY OF THE STATE TO ENCOURAGE THE USE OF A SPECIAL NEEDS TRUST OR SUPPLEMENTAL NEEDS TRUST BY AN INDIVIDUAL OF ANY AGE WITH DISABILITIES TO PRESERVE FUNDS TO PROVIDE FOR THE NEEDS OF THE INDIVIDUAL NOT MET BY PUBLIC BENEFITS AND TO ENHANCE QUALITY OF LIFE.

(C) (1) EACH STATE AGENCY THAT PROVIDES PUBLIC BENEFITS TO INDIVIDUALS WITH DISABILITIES OF ALL AGES THROUGH MEANS–TESTED PROGRAMS, INCLUDING THE MEDICAL ASSISTANCE PROGRAM, SHALL ADOPT REGULATIONS THAT ARE NOT MORE RESTRICTIVE THAN EXISTING FEDERAL LAW, REGULATIONS, OR POLICIES WITH REGARD TO THE TREATMENT OF A SPECIAL NEEDS TRUST OR SUPPLEMENTAL NEEDS TRUST, INCLUDING A TRUST DEFINED IN 42 U.S.C. § 1396P(C)(2) AND (D)(4).

(2) THE REGULATIONS DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION SHALL ALLOW:

(I) ~~A POOLED ASSET SPECIAL NEEDS TRUST, AUTHORIZED IN 42 U.S.C. § 1396P(D)(4)(C), TO RETAIN FUNDS REMAINING IN AN INDIVIDUAL BENEFICIARY'S ACCOUNT AFTER THE DEATH OF THE BENEFICIARY, WITHOUT LIMIT;~~

~~(II)~~ AN INDIVIDUAL ACCOUNT IN A POOLED ASSET SPECIAL NEEDS TRUST TO BE FUNDED WITHOUT FINANCIAL LIMIT;

~~(III)~~ *(II)* A FUND IN A SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR POOLED ASSET SPECIAL NEEDS TRUST TO BE USED FOR THE SOLE BENEFIT OF THE BENEFICIARY INCLUDING, AT THE DISCRETION OF THE TRUSTEE, DISTRIBUTIONS FOR FOOD, SHELTER, UTILITIES, AND TRANSPORTATION;

~~(IV)~~ *(III)* AN INDIVIDUAL TO ESTABLISH OR FUND AN INDIVIDUAL ACCOUNT IN A POOLED ASSET SPECIAL NEEDS TRUST WITHOUT AN AGE LIMIT OR A TRANSFER PENALTY;

~~(V)~~ *(IV)* AN INDIVIDUAL TO FUND A SPECIAL NEEDS TRUST OR SUPPLEMENTAL NEEDS TRUST FOR THE INDIVIDUAL'S CHILD WITH DISABILITIES WITHOUT A TRANSFER PENALTY AND REGARDLESS OF THE CHILD'S AGE; AND

~~(VI)~~ *(V)* ALL LEGALLY ASSIGNABLE INCOME OR RESOURCES TO BE ASSIGNED TO A SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR POOLED ASSET SPECIAL NEEDS TRUST WITHOUT LIMIT.

(D) (1) A DETERMINATION OF THE INTERNAL REVENUE SERVICE ~~OR THE DEPARTMENT OF ASSESSMENTS AND TAXATION~~ REGARDING THE NONPROFIT STATUS OF AN ORGANIZATION OPERATING A POOLED ASSET SPECIAL NEEDS TRUST SHALL BE SUFFICIENT TO SATISFY THE NONPROFIT REQUIREMENT OF 42 U.S.C. § 1396P(D)(4)(C).

(2) A STATE AGENCY MAY NOT IMPOSE ADDITIONAL REQUIREMENTS ON AN ORGANIZATION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION FOR THE PURPOSE OF QUALIFYING OR DISQUALIFYING THE ORGANIZATION FROM OFFERING A POOLED ASSET SPECIAL NEEDS TRUST.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 563

(Senate Bill 917)

AN ACT concerning

Wicomico County – Alcoholic Beverages Licenses – Pub–Breweries and Micro–Breweries

FOR the purpose of exempting certain alcoholic beverages businesses in Wicomico County from a certain prohibition against having a financial interest in a premises where alcoholic beverages are sold at retail or in any other business conducted by an alcoholic beverages licensee; altering the number of Class B beer, wine and liquor licenses that a person may hold and still remain eligible to

be issued a pub–brewery or micro–brewery license; authorizing a holder of a certain license to be eligible to be issued a micro–brewery license and certain other licenses; and generally relating to alcoholic beverages in Wicomico County.

BY repealing and reenacting, without amendments,
Article 2B – Alcoholic Beverages
Section 12–104(a)(1) and (2) and (b)(1)
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article 2B – Alcoholic Beverages
Section 12–104~~(b)(1) and~~ (e)(5)
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

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

Article 2B – Alcoholic Beverages

12–104.

(a) (1) In this section the following words have the meanings indicated.

(2) "Business entity" means any holder of a manufacturer's or wholesaler's license, or anyone connected with the business of the holder, or any distiller, nonresident dealer, resident dealer, brewer, rectifier, blender or bottler of alcoholic beverages.

(b) (1) ~~(I) THIS PARAGRAPH DOES NOT APPLY IN WICOMICO COUNTY.~~

~~(II)~~ A business entity may not have any financial interest in the premises upon or in which any alcoholic beverage is sold at retail by any licensee or in any business conducted by any licensee.

(e) (5) (i) This paragraph applies only in Wicomico County.

(ii) Subject to subparagraph (iii) of this paragraph, the Comptroller may issue one Class 6 pub–brewery license or one Class 7 micro–brewery license, but not both, to a person that holds not more than **[**three**]** **FIVE** Class B beer, wine and liquor licenses.

(iii) A Class 6 pub–brewery license or a Class 7 micro–brewery license issued under subparagraph (ii) of this paragraph may be issued only for a location in an enterprise zone.

(IV) ~~A~~ NOTWITHSTANDING SUBSECTION (B)(1) OF THIS SECTION, A HOLDER OF A CLASS A LICENSE MAY ALSO HOLD A CLASS 7 MICRO–BREWERY LICENSE AND NOT MORE THAN FIVE CLASS B BEER, WINE AND LIQUOR LICENSES UNDER THIS PARAGRAPH.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 564

(Senate Bill 925)

AN ACT concerning

Family Law – Family Child Care – Large Family Child Care Homes

FOR the purpose of defining a ~~certain~~ *large* family child care home as a residence in which family child care is provided for a certain number of children; requiring the State Department of Education to adopt certain regulations; ~~specifying that there may not be more than a certain number of children in certain care at certain times;~~ *providing that, in a large family child care home, there may not be more than a certain number of children in certain care at certain times, and there shall be a limit on the number of children under a specified age and an adult to child ratio that comply with certain regulations; making certain requirements of law that apply to family child care homes applicable to large family child care homes;* repealing a certain provision of law that authorizes child care centers of a certain size; authorizing certain grants to certain child care homes under certain circumstances; *requiring the Department to adopt certain regulations on or before a certain date;* making certain stylistic changes; ~~defining certain terms~~ *altering certain definitions*; requiring the publisher of the Annotated Code to make certain changes to the Code; *providing for a delayed effective date for certain provisions of this Act;* and generally relating to *family child care and large* family child care homes.

BY repealing and reenacting, with amendments,
Article – Family Law
Section 4–403(b)(3), 5–501, 5–502(b)(3)~~,~~ *and* 5–505(b)~~,~~*;* 5–550(c) and (d), 5–550.1, 5–551, 5–552, 5–553, 5–554(a), 5–554.1(a), (c), and (e)(1), 5–555(a), (b)(1), and (c), 5–556(a) and (f), 5–556.1, 5–559.1, 5–559.2(b),

5–559.3(b)(2) and ~~(d), 5–559.5(b),~~ *(d), and 5–559.5(b) to be under the amended part "Part V. Family Child Care Homes and Large Family Child Care Homes"; and* 5–560(e)(2), 5–561(b)(2) and (c)(5)(i), 5–564(b)(1)(ii)2., 5–570(c)(3)(iv), 5–573(b), 5–592(b)(5) and (6) and (f)(2), 5–594(c) and (e), 5–594.3(d)(3), 5–1308(c)(3)(v), and 6–103(c)(4)~~, and 14–202(a)(3)~~
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

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

Article – Family Law

4–403.

(b) In implementing the program, the Department of Human Resources shall:

(3) to the extent possible, coordinate for families with children the delivery of **[**day**]** **CHILD** care, health, educational, mental health, employment, housing, and crisis services provided by public and private agencies.

5–501.

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

(b) "Administration" means:

(1) the Social Services Administration of the Department; or

(2) any other unit within the Department to which the Secretary of Human Resources has delegated in writing specified responsibilities of the Administration under this subtitle.

(c) **[**Repealed.

(d) "Day**]** **"CHILD** care provider" means the adult who has primary responsibility for the operation of a family **[**day**]** **CHILD** care home **OR LARGE FAMILY CHILD CARE HOME**.

[(e)**]** **(D)** "Family **[**day**]** **CHILD** care" means the care given to a child under the age of 13 years or to any developmentally disabled person under the age of 21 years, in place of parental care for less than 24 hours a day, in a residence other than the child's residence, for which the **[**day**]** **CHILD** care provider is paid.

[(f)**] (E)** "Family **[**day**] CHILD** care home" means a residence in which family **[**day**] CHILD** care is provided **FOR UP TO 8 CHILDREN**.

[(g)**] (F)** "Foster care" means continuous 24–hour care and supportive services provided for a minor child placed by a child placement agency in an approved family home.

[(h)**] (G)** "Group care" means continuous 24–hour care and supportive services provided for a minor child placed in a licensed group facility.

[(i)**] (H)** "Kinship care" means continuous 24–hour care and supportive services provided for a minor child placed by a child placement agency in the home of a relative related by blood or marriage within the 5th degree of consanguinity or affinity under the civil law rule.

(I) "LARGE FAMILY CHILD CARE HOME" MEANS A RESIDENCE IN WHICH FAMILY CHILD CARE IS PROVIDED FOR AT LEAST 9 BUT NOT MORE THAN 12 CHILDREN.

(j) (1) "License" means a license issued by the Administration under this subtitle.

(2) "License" includes:

(i) a child placement agency license;

(ii) a child care home license;

(iii) a child care institution license; and

(iv) a residential educational facility license.

(k) "Local board" means a local citizen board of review for children in out–of–home care.

(l) "Out–of–home care" means:

(1) out–of–home placement; and

(2) the monitoring of and services provided to a child in aftercare following a child's out–of–home placement.

(m) "Out–of–home placement" means placement of a child into foster care, kinship care, group care, or residential treatment care.

(n) "Residential educational facility" means:

(1) a facility that:

(i) provides special education and related services for students with disabilities;

(ii) holds a certificate of approval issued by the State Board of Education; and

(iii) provides continuous 24–hour care and supportive services to children in a residential setting; or

(2) one of the following schools:

(i) the Benedictine School;

(ii) the Linwood School;

(iii) the Maryland School for the Blind; or

(iv) the Maryland School for the Deaf.

(o) "Residential treatment care" means continuous 24–hour care and supportive services for a minor child placed in a facility that provides formal programs of basic care, social work, and health care services.

(p) "State Board" means the State Citizens Review Board for Children.

(q) "Unregistered family **[**day**]** **CHILD** care home" means a residence in which family **[**day**]** **CHILD** care is provided and in which the **[**day**]** **CHILD** care provider:

(1) has not obtained a certificate of registration from the ~~Department~~ **STATE DEPARTMENT OF EDUCATION**;

(2) is not related by blood or marriage to each child in the provider's care;

(3) is not a friend of each child's parents or legal guardian and is providing care on a regular basis; and

(4) has not received the care of the child from a child placement agency licensed by the Administration or by a local department.

(r) "Voluntary placement agreement" means a binding, written agreement voluntarily entered into between a local department and the parent or legal guardian of a minor child that specifies, at a minimum, the legal status of the child and the

rights and obligations of the parent or legal guardian, the child, and the local department while the child is in placement.

5–502.

(b) It is the policy of this State:

(3) to encourage the development of **[**day**]** **CHILD** care services for minor children in a safe, healthy, and homelike environment.

5–505.

(b) This section applies only to foster homes, family **[**day**]** **CHILD** care homes, ***LARGE FAMILY CHILD CARE HOMES,*** and child care centers in the State.

*Part V. Family **[**Day**]*** ***CHILD*** *Care Homes* ***AND LARGE FAMILY CHILD CARE HOMES.***

5–550.

(c) "Direct Grant Fund" means the Family **[**Day**]** **CHILD** Care Provider Direct Grant Fund.

(d) "Family **[**day**]** **CHILD** care provider" means an individual who cares for ~~no more than eight~~ children in a registered family ~~day~~ ***CHILD*** care home ***OR A REGISTERED LARGE FAMILY CHILD CARE HOME***.

5–550.1.

(a) The Department shall implement a system of registration for family **[**day**]** **CHILD** care homes ***AND LARGE FAMILY CHILD CARE HOMES***.

(b) The purpose of registration of family **[**day**]** **CHILD** care homes ***AND LARGE FAMILY CHILD CARE HOMES*** is to:

(1) protect the health, safety, and welfare of children while they are in family **[**day**]** **CHILD** care;

(2) identify family **[**day**]** **CHILD** care homes ***AND LARGE FAMILY CHILD CARE HOMES***;

(3) provide basic technical assistance and child care information to **[**day**]** **CHILD** care providers; and

(4) minimize the regulatory rigidity often associated with licensing.

(c) The system of registration is intended to promote a high degree of flexibility in the regulation of family **[**day**]** **CHILD** care homes ***AND LARGE FAMILY CHILD CARE HOMES*** while assuring the health and safety of children who are cared for in family **[**day**]** **CHILD** care homes ***AND LARGE FAMILY CHILD CARE HOMES***.

5–551.

(a) The Department shall adopt regulations that relate to the registration of family **[**day**]** **CHILD** care homes **AND LARGE FAMILY CHILD CARE HOMES**.

(b) So far as practicable, the regulations shall be uniform with the rules and regulations adopted by other State agencies as those rules and regulations relate to other types of **[**day**]** **CHILD** care.

(c) At a minimum, the regulations of the Department shall provide for:

(1) minimum standards of environmental health and safety, including provisions for:

(i) adequate and safe physical surroundings, including requirements for window coverings in accordance with § 5–505 of this subtitle;

(ii) the physical and mental health of **[**day**]** **CHILD** care providers; and

(iii) investigation of any criminal record of a **[**day**]** **CHILD** care provider;

(2) a thorough evaluation of each prospective family **[**day**]** **CHILD** care home***, LARGE FAMILY CHILD CARE HOME,*** and **[**day**]** **CHILD** care provider, to be completed before the Department accepts an initial registration;

(3) an initial family **[**day**]** **CHILD** care registration that expires 2 years after its effective date;

(4) a continuing family **[**day**]** **CHILD** care registration that:

(i) upon application by the **[**day**]** **CHILD** care provider that meets the requirements set by the Department, is issued to the provider before the end of the initial registration period; and

(ii) once issued, remains in effect until surrendered, suspended, revoked, or replaced by a conditional registration;

(5) reporting of any changed circumstances that relate to the requirements, by the **[**day**]** **CHILD** care provider, at the time the change occurs;

(6) an orientation to be provided to prospective **[**day**]** **CHILD** care providers by the Department before initial registration;

(7) announced inspection by the Department of each registered family **[**day**]** **CHILD** care home ***AND LARGE FAMILY CHILD CARE HOME*** prior to issuance of an initial or continuing registration to determine whether applicable requirements are being met;

(8) unannounced inspection by the Department of each registered family **[**day**]** **CHILD** care home ***AND LARGE FAMILY CHILD CARE HOME*** at least once during each 12–month period that an initial or continuing registration is in effect to determine whether safe and appropriate child care is being provided;

(9) procedures to be followed by the Department in response to a complaint about a family **[**day**]** **CHILD** care home ***OR LARGE FAMILY CHILD CARE HOME***;

(10) a requirement that a person who advertises a family **[**day**]** **CHILD** care home***, LARGE FAMILY CHILD CARE HOME,*** or family **[**day**]** **CHILD** care service shall:

(i) indicate in the advertisement that the family **[**day**]** **CHILD** care home ***OR LARGE FAMILY CHILD CARE HOME*** is registered; and

(ii) display in the advertisement the registration number issued to the family **[**day**]** **CHILD** care home***, LARGE FAMILY CHILD CARE HOME,*** or family ~~day~~ **CHILD** care service by the Department;

(11) a requirement that each registered **[**day**]** **CHILD** care provider shall hold a current certificate indicating successful completion of approved:

(i) basic first aid training through the American Red Cross or through a program with equivalent standards; and

(ii) cardiopulmonary resuscitation (CPR) training through the American Heart Association or through a program with equivalent standards appropriate for the ages of children for whom care is provided in the family **[**day**]** **CHILD** care home ***OR LARGE FAMILY CHILD CARE HOME***; and

(12) (i) a requirement that a family **[**day**]** **CHILD** care home ***OR LARGE FAMILY CHILD CARE HOME*** that receives notice of a contaminated drinking water supply from the family **[**day**]** **CHILD** care home's ***OR LARGE FAMILY CHILD CARE HOME'S*** supplier of water, in accordance with § 9–410 of the Environment Article or otherwise, send notice of the drinking water contamination to the parent or

legal guardian of each child attending the family **[**day**]** **CHILD** care home ***OR LARGE FAMILY CHILD CARE HOME***; and

(ii) a requirement that the notice sent by the family **[**day**]** **CHILD** care home ***OR LARGE FAMILY CHILD CARE HOME*** shall:

1. be sent within 10 business days after receipt of the notice of contamination from the family **[**day**]** **CHILD** care home's ***OR LARGE FAMILY CHILD CARE HOME'S*** water supplier;

2. be in writing;

3. identify the contaminants and their levels in the family **[**day**]** **CHILD** care home's ***OR LARGE FAMILY CHILD CARE HOME'S*** water supply; and

4. describe the family **[**day**]** **CHILD** care home's ***OR LARGE FAMILY CHILD CARE HOME'S*** plan for dealing with the water contamination problem until the family **[**day**]** **CHILD** care home's ***OR LARGE FAMILY CHILD CARE HOME'S*** water is determined by the appropriate authority to be safe for consumption.

(d) The Department shall adopt regulations that:

(1) require a family **[**day**]** **CHILD** care provider to have a written emergency preparedness plan for emergency situations that require evacuation, sheltering in place, or other protection of children such as in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to the children in the family **[**day**]** **CHILD** care home ***OR LARGE FAMILY CHILD CARE HOME***;

(2) require the plan under item (1) of this subsection to include:

(i) a designated relocation site and evacuation route;

(ii) procedures for notifying parents or other adults responsible for the child of the relocation;

(iii) procedures to address the needs of individual children including children with special needs;

(iv) procedures for the reassignment of staff duties during an emergency, as appropriate; and

(v) procedures for communicating with local emergency management officials or other appropriate State or local authorities; and

(3) require a family **[**day**]** **CHILD** care provider to train staff and ensure that staff are familiar with the plan.

5–552.

(a) Except as otherwise provided in this section, a family **[**day**]** **CHILD** care home ***OR LARGE FAMILY CHILD CARE HOME*** may not operate unless it is registered.

(b) A family **[**day**]** **CHILD** care home is not required to be registered if the **[**day**]** **CHILD** care provider:

(1) is related to each child by blood or marriage;

(2) is a friend of each child's parents or legal guardian and the care is provided on an occasional basis; or

(3) has received the care of the child from a child placement agency licensed by the ~~Administration~~ ~~**STATE**~~ **DEPARTMENT OF HUMAN RESOURCES** or by a local department **OF SOCIAL SERVICES**.

(c) A person may not advertise a family **[**day**]** **CHILD** care home***, LARGE FAMILY CHILD CARE HOME,*** or family **[**day**]** **CHILD** care service unless the family **[**day**]** **CHILD** care home ***OR LARGE FAMILY CHILD CARE HOME*** is registered under the provisions of this Part V of this subtitle.

(d) An employee of the Department charged with the investigation and enforcement of child care regulations may serve a civil citation to a person found in violation of this section.

5–553.

(a) For purposes of this Part V of this subtitle, a **[**day**]** **CHILD** care provider's own children under the age of 2 years shall be counted as children served.

~~(b) (1) At any given time, a **[**day**]** **CHILD** care provider:~~

~~**(I) IN A FAMILY CHILD CARE HOME,** may not care for more than 8 children, of whom no more than 4 may be under the age of 2 years**; AND**~~

~~**(II) IN A LARGE FAMILY CHILD CARE HOME, MAY NOT CARE FOR MORE THAN 12 CHILDREN.**~~

~~(2) An adult to child ratio of at least 1 adult to every 2 children under the age of 2 years shall be maintained at all times.~~

(B) (1) IN A FAMILY CHILD CARE HOME:

(I) THERE MAY NOT BE MORE THAN:

1. 8 CHILDREN IN CARE AT ANY GIVEN TIME; AND

2. 4 CHILDREN UNDER THE AGE OF 2 YEARS; AND

(II) THERE SHALL BE AN ADULT TO CHILD RATIO OF AT LEAST 1 ADULT TO EVERY 2 CHILDREN UNDER THE AGE OF 2 YEARS.

(2) IN A LARGE FAMILY CHILD CARE HOME:

(I) THERE MAY NOT BE MORE THAN 12 CHILDREN IN CARE AT ANY GIVEN TIME; AND

(II) THERE SHALL BE *A LIMIT ON THE NUMBER OF CHILDREN UNDER THE AGE OF 2 YEARS AND* AN ADULT TO CHILD RATIO THAT ~~COMPLIES~~ *COMPLY* WITH REGULATIONS ADOPTED BY THE DEPARTMENT *UNDER § 5–551 OF THIS PART V OF THIS SUBTITLE.*

(c) If the Department determines that the group size provisions of subsection (b) of this section are unsuitable for a particular family **[**day**]** **CHILD** care home ***OR LARGE FAMILY CHILD CARE HOME***, the Department may decrease the number of children permitted to be in care at that family **[**day**]** **CHILD** care home ***OR LARGE FAMILY CHILD CARE HOME***.

5–554.

(a) A registration under this Part V of this subtitle may be revoked, a **[**day**]** **CHILD** care provider may appeal from the revocation, and the operation of an unregistered family **[**day**]** **CHILD** care home may be enjoined.

5–554.1.

(a) The State Superintendent or other authorized official or employee of the Department may apply to a judge of the District Court or a circuit court for an administrative search warrant to enter any unregistered family **[**day**]** **CHILD** care home to conduct any inspection required or authorized by law to determine compliance with the provisions of this subtitle relating to family **[**day**]** **CHILD** care homes.

(c) A judge of a District Court or circuit court in the jurisdiction in which the unregistered family **[**day**]** **CHILD** care home is located may issue an administrative search warrant on finding that:

(1) the Department has reasonably sought and been denied access to an unregistered family **[**day**]** **CHILD** care home for the purpose of making an inspection;

(2) the requirements of subsection (b) of this section are met;

(3) the official or employee of the Department is authorized or required by law to make an inspection of the unregistered family **[**day**]** **CHILD** care home for which the warrant is sought; and

(4) the Department has shown probable cause for the issuance of the warrant by specific evidence:

(i) of an existing violation of § 5–552 of this subtitle; and

(ii) that the health, safety, and welfare of the children in the unregistered family **[**day**]** **CHILD** care home are substantially threatened due to conditions in the ***UNREGISTERED*** family **[**day**]** **CHILD** care home.

(e) (1) An administrative search warrant issued under this section authorizes the State Superintendent and other officials or employees of the State Department of Education or the Department of Human Resources to enter the specified property to perform the inspection and other functions authorized by law to determine compliance with the provisions of this subtitle relating to family **[**day**]** **CHILD** care homes ***AND LARGE FAMILY CHILD CARE HOMES***.

5–555.

(a) The Department shall prepare and, as needed, update an informational pamphlet for parents of children in family **[**day**]** **CHILD** care.

(b) The pamphlet shall contain:

(1) an outline of family **[**day**]** **CHILD** care regulations;

(c) The Department shall make the pamphlet available to **[**day**]** **CHILD** care providers for distribution to parents.

5–556.

(a) In addition to any other provision of law relating to child abuse and neglect, a local department that receives a report of suspected child abuse under § 5–704 or § 5–705 of this title that concerns a family **[**day**]** **CHILD** care home ***OR LARGE FAMILY CHILD CARE HOME*** shall notify the State Superintendent's designee within 48 hours.

(f) Upon request, the Department of State Police shall provide technical assistance to a local law enforcement agency which is investigating a report of suspected child abuse concerning a family **[**day**]** **CHILD** care home ***OR LARGE FAMILY CHILD CARE HOME***.

5–556.1.

Within 30 days after a child under the age of 6 years enters care in a family **[**day**]** **CHILD** care home ***OR LARGE FAMILY CHILD CARE HOME***, a parent or guardian of the child shall provide to the family **[**day**]** **CHILD** care home ***OR LARGE FAMILY CHILD CARE HOME*** evidence of an appropriate screening for lead poisoning. This evidence may include documentation from the child's continuing care health care provider that the child was screened through an initial questionnaire and was determined not to be at risk for lead poisoning.

5–559.1.

(a) There is a Family **[**Day**]** **CHILD** Care Provider Direct Grant Fund administered by the Department.

(b) To administer grants to family **[**day**]** **CHILD** care providers, the Department may contract with State agencies and nonprofit organizations.

5–559.2.

(b) A grant made under this subtitle shall be awarded as a reimbursement for the expenses incurred by a family **[**day**]** **CHILD** care provider to comply with State and local regulations.

5–559.3.

(b) The Direct Grant Fund shall be used to:

(2) make grants to family **[**day**]** **CHILD** care providers.

(d) The amount of State general funds expended for grants to family **[**day**]** **CHILD** care providers from the Direct Grant Fund may not exceed $50,000 in each year.

5–559.5.

(b) The application shall include:

(1) the identity and location of the family **[**day**]** **CHILD** care provider;

(2) an itemization of known and estimated costs;

(3) the total amount of funds required by the family **[**day**]** **CHILD** care provider to comply with State and local regulations;

(4) the funds available to the applicant without financial assistance from the Department;

(5) the amount of financial assistance sought from the Department;

(6) a statement from the family **[**day**]** **CHILD** care provider on how the grant funds will be used;

(7) information that relates to the family income of the grant applicant; and

(8) any other relevant information that the Department requests.

5–560.

(e) (2) For purposes of §§ 5–561(g), 5–564(a)(2)(i) and (c)(1)(i) and (2), and 5–567 of this subtitle, "employer" includes a child care resource and referral center, an association of registered family **[**day**]** **CHILD** care providers, and an association of licensed child care centers to the extent that the center or association establishes and maintains a pool of individuals who are qualified to work as substitute or temporary employees in a facility identified in § 5–561(b)(1) or (2) of this subtitle.

5–561.

(b) The following facilities shall require employees and employers to obtain a criminal history records check under this Part VI of this subtitle:

(2) a family **[**day**]** **CHILD** care home ***OR LARGE FAMILY CHILD CARE HOME*** required to be registered under Part V of this subtitle;

(c) The following individuals shall obtain a criminal history records check under this Part VI of this subtitle:

(5) any adult known by a local department to be residing in:

(i) a family **[**day**]** **CHILD** care home ***OR LARGE FAMILY CHILD CARE HOME*** required to be registered under this title;

5–564.

(b) (1) The Department shall provide an initial and a revised statement of the applicant's State criminal record to:

(ii) the State Department of Education if the applicant is an employee of:

2. a family **[**day**]** **CHILD** care home ***OR LARGE FAMILY CHILD CARE HOME*** that is required to be registered under Part V of this subtitle.

5–570.

(c) (3) "Child care center" does not include:

(iv) a family **[**day**]** **CHILD** care home ***OR LARGE FAMILY CHILD CARE HOME*** that is required to be registered or is registered under this subtitle.

5–573.

(b) These rules and regulations shall:

(1) ensure safe and sanitary conditions in child care centers;

(2) ensure proper care, protection, and supervision of children in child care centers;

(3) ensure the health of children in child care centers by:

(i) monitoring children for signs and symptoms of child abuse;

(ii) instructing licensees and staff concerning child abuse detection and reporting;

(iii) monitoring health practices to help prevent the spread of disease; and

(iv) monitoring the care of infants and children with special needs;

(4) promote the sound growth and development of children in child care centers;

(5) **[**encourage the care of children in a homelike environment by reflecting the impracticability of conforming a residence to standards that are appropriate for institutions and otherwise providing for centers that are in residences or other facilities and serve between 7 and 12 children and facilities having 6 or fewer children required to be licensed under § 5–574 of this subtitle;

(6)**]** carry out otherwise the purposes and requirements of this Part VII of this subtitle, including imposition of intermediate sanctions to ensure compliance;

[(7)**] (6)** prohibit a child from remaining at a child care center for more than 14 hours in 1 day unless the Department issues an exception for that child based on guidelines set by the State Superintendent;

[(8)**] (7)** (i) require that a child care center have in attendance at all times at least 1 individual who is responsible for supervision of children, including children on field trips, and who holds a current certificate indicating successful completion of approved:

1. basic first aid training through the American Red Cross or through a program with equivalent standards; and

2. cardiopulmonary resuscitation (CPR) training through the American Heart Association or through a program with equivalent standards appropriate for the ages of children for whom care is provided in the child care center; and

(ii) require that a child care center serving more than 20 children have in attendance certificate holders described in item (i) of this item in a ratio of at least 1 certificate holder for every 20 children;

[(9)**] (8)** (i) require that a child care center that receives notice of a contaminated drinking water supply from the child care center's supplier of water, in accordance with § 9–410 of the Environment Article or otherwise, send notice of the drinking water contamination to the parent or legal guardian of each child attending the child care center; and

(ii) require that the notice sent by the child care center shall:

1. be sent within 10 business days after receipt of the notice of contamination from the child care center's water supplier;

2. be in writing;

3. identify the contaminants and their levels in the center's water supply; and

4. describe the child care center's plan for dealing with the water contamination problem until the child care center's water is determined by the appropriate authority to be safe for consumption;

[(10)**] (9)** (i) require a child care center to have a written emergency preparedness plan for emergency situations that require evacuation,

sheltering in place, or other protection of children, such as in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to the children in the child care center;

(ii) require the plan under item (i) of this item to include:

1. a designated relocation site and evacuation route;

2. procedures for notifying parents or other adults responsible for the child of the relocation;

3. procedures to address the needs of individual children, including children with special needs;

4. procedures for the reassignment of staff duties during an emergency, as appropriate; and

5. procedures for communicating with local emergency management officials or other appropriate State or local authorities; and

(iii) require a child care center to train staff and ensure that staff are familiar with the plan; and

[(11)**] (10)** require a child care center to have window coverings in accordance with § 5–505 of this subtitle.

5–592.

(b) The members shall include:

(5) a pediatrician with an interest and expertise in **[**day**] CHILD** care issues, appointed by the State Superintendent;

(6) at least two family **[**day**] CHILD** care providers, appointed by the State Superintendent; and

(f) (2) A member of the Council who is a user of child care services, a family **[**day**] CHILD** care provider, or a child care provider from a child care center is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

5–594.

(c) "Child care provider" means a family **[**day**] CHILD** care provider or a child care center.

(e) "Family **[**day**]** **CHILD** care provider" has the meaning stated in § 5–550(d) of this subtitle.

5–594.3.

(d) Grants made under this part shall be limited to:

(3) family **[**day**]** **CHILD** care homes **AND LARGE FAMILY CHILD CARE HOMES** that serve children who receive child care subsidies through the purchase of child care program.

5–1308.

(c) (3) The performance reviews shall determine whether:

(v) the foster parent or kinship care provider is receiving all services necessary to meet the needs of the child, including **[**day**]** **CHILD** care, respite care, and other support services.

6–103.

(c) The Department of Human Resources shall:

(4) to the extent possible, coordinate delivery of education, health care, mental health care, employment services, and child **[**day**]** care services to single parents by public and private agencies; and

~~14–202.~~

~~(a) The adult protective services program shall include:~~

~~(3) assistance to locate, apply for, and effectively use home care, **[**day**]** **CHILD** care, chore services, transportation, counseling, emergency arrangements, and other health and social services;~~

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before January 1, 2012, the State Department of Education shall adopt regulations that relate to the registration of large family child care homes, as required under § 5–551(a) of the Family Law Article, as enacted by Section 1 of this Act.

SECTION ~~2.~~ *3.* AND BE IT FURTHER ENACTED, That the publisher of the Annotated Code*, in consultation with and subject to the approval of the Department of Legislative Services,* shall change any ~~reference~~ *references* to "family day care" to be "family child care"*, "family day care home" to be "family child care home", and "day care provider" to be "child care provider",* throughout the Annotated Code. These

changes are intended by the General Assembly to be nonsubstantive changes that are consistent with the intent of this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That Sections 1 and 3 of this Act shall take effect January 1, 2012.

SECTION ~~3.~~ *5.* AND BE IT FURTHER ENACTED, That*, except as provided in Section 4 of this Act,* this Act shall take effect ~~October~~ *July* 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 565

(Senate Bill 958)

AN ACT concerning

Maryland Clean Energy Incentive Act – Qualified Energy Resources

FOR the purpose of altering the definition of qualified energy resources under a certain credit against the State income tax for certain electricity produced from certain qualified resources; and generally relating to a certain credit against the State income tax for certain electricity produced from certain qualified resources.

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 10–720(a)
Annotated Code of Maryland
(2010 Replacement Volume)

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

Article – Tax – General

10–720.

(a) (1) In this section the following words have the meanings indicated.

(2) "Administration" means the Maryland Energy Administration.

(3) (i) Except as provided in subparagraphs (ii) and (iii) of this paragraph, "qualified energy resources" has the meaning stated in § 45(c)(1) of the Internal Revenue Code.

(ii) "Qualified energy resources" includes any **[**solid,**]** nonhazardous**[**, cellulosic**]** waste material that is segregated from other waste materials and is derived from:

1. any of the following forest–related resources, not including old–growth timber:

A. mill residues, except sawdust and wood shavings;

B. forest thinnings;

C. slash; or

D. brush;

2. waste pallets, crates, and dunnage and landscape or right–of–way trimmings; or

3. agricultural sources, including**, BUT NOT LIMITED TO,** orchard tree crops, vineyard, grain, legumes, sugar, and other crop by–products or residues.

(iii) "Qualified energy resources" includes methane gas or other combustible gases resulting from the decomposition of organic materials from an agricultural operation, or from a landfill or wastewater treatment plant using one or a combination of the following processes:

1. anaerobic decomposition; or

2. thermal decomposition.

(4) "Qualified Maryland facility" means a facility located in the State that:

(i) primarily uses qualified energy resources to produce electricity and is originally placed in service on or after January 1, 2006, but before January 1, 2016; or

(ii) produces electricity from a qualified energy resource that is co–fired with coal and initially begins co–firing a qualified energy resource on or after January 1, 2006, but before January 1, 2016, regardless of when the original facility was placed in service.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 566

(Senate Bill 959)

AN ACT concerning

Bio–Heating Oil – Income Tax Credit

FOR the purpose of altering the definition of bio–heating oil for purposes of a certain State income tax credit for the purchase of bio–heating oil for certain purposes; extending a certain termination provision and altering certain dates of applicability for a certain State income tax credit for the purchase of certain heating oil for certain uses; and generally relating to a State income tax credit for the purchase of certain heating oil.

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 10–727
Annotated Code of Maryland
(2010 Replacement Volume)

BY repealing and reenacting, with amendments,
Chapter 140 of the Acts of the General Assembly of 2008
Section 3

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

Article – Tax – General

10–727.

(a) (1) In this section the following words have the meanings indicated.

(2) "Administration" means the Maryland Energy Administration.

(3) "Bio–heating oil" means **A** heating oil **[**with a blend of at least 5% biodiesel**]:**

(I) DERIVED FROM THE U.S. ENVIRONMENTAL PROTECTION AGENCY–APPROVED FEEDSTOCKS; OR

(II) ACCEPTED UNDER 42 U.S.C. 7545(O) AS PER THE U.S. EPA RENEWABLE FUEL STANDARD 2 (RFS2) AND THE ACCOMPANYING REGULATIONS UNDER 40 C.F.R. PART 80 FOR DIESEL FUEL REPLACEMENT.

(b) An individual or corporation that receives an initial credit certificate under subsection (d) of this section from the Administration may claim a credit against the State income tax for a taxable year in an amount equal to 3 cents for each gallon of bio–heating oil purchased for space or water heating.

(c) (1) For any taxable year, the credit allowed under this section may not exceed the lesser of:

(i) $500; or

(ii) the State income tax for that taxable year.

(2) The unused amount of the credit for any taxable year may not be carried over to any other taxable year.

(d) (1) On application by a taxpayer, the Maryland Energy Administration shall issue an initial credit certificate for the number of gallons of bio–heating oil purchased by the taxpayer for space or water heating.

(2) The initial credit certificate issued under this subsection shall state the maximum amount of credit that may be claimed by the taxpayer.

(3) On January 1, 2009, and each year thereafter, the Administration shall provide to the Comptroller a list of all taxpayers in the prior tax year that have been issued an initial credit certificate and shall specify for each taxpayer the maximum amount of credit allowed.

(4) The Maryland Energy Administration shall adopt regulations to administer the initial credit certificate required under this subsection.

Chapter 140 of the Acts of 2008

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2008, and shall be applicable to all taxable years beginning after December 31, 2007, but before January 1, **[**2013**] 2018**. It shall remain effective for a period of **[**5**] 10** years and, at the end of June 30, **[**2013**] 2018**, 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 June 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 567

(Senate Bill 961)

AN ACT concerning

State Vehicle Fleet *and Gasoline Service Facilities* – Use *and Selling* of Biofuels

FOR the purpose of altering the requirement that the State ensure that at least a certain percentage of vehicles using diesel fuel in the State vehicle fleet use a blend of fuel containing at least a certain percentage of biodiesel fuel to include the use of certain biofuels; providing that a certain provision does not apply to a State vehicle, piece of heavy equipment, or heating equipment under certain circumstances; *repealing certain requirements regarding the leasing of gasoline service stations located on the John F. Kennedy Memorial Highway; authorizing the Maryland Transportation Authority to require a gasoline service facility located on the John F. Kennedy Memorial Highway to sell a blend of fuel containing at least a certain percentage of biodiesel fuel or certain other biofuel;* and generally relating to the use of biofuels for the State vehicle fleet.

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 14–408
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Transportation
Section 4–404
Annotated Code of Maryland
(2008 Replacement Volume and 2010 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

14–408.

(a) In this section, "biodiesel fuel" means:

(1) a fuel, comprised of mono–alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, that is designated B100 and meets the requirements of ASTM D 6751 and its successors; or

(2) a blend of biodiesel fuel meeting ASTM D 6751 with petroleum–based diesel fuel, designated as BXX, where XX represents the volume percentage of biodiesel fuel in the blend.

(b) In fiscal year 2008 and in each subsequent fiscal year, the State shall ensure that at least 50% of the vehicles using diesel fuel in the State vehicle fleet use a blend of fuel that is at least 5% biodiesel fuel **OR OTHER BIOFUEL APPROVED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY AS A FUEL OR FUEL ADDITIVE OR APPROVED UNDER THE EPA RENEWABLE FUELS STANDARD 2 PROGRAM**.

(c) In fiscal year 2009 and in each subsequent fiscal year, the State shall ensure that at least 50% of the heavy equipment owned by the State using diesel fuel and at least 50% of the heating equipment in State buildings that uses normal or #2 heating oil use, subject to availability, a blend of fuel that is at least 5% biodiesel fuel **OR OTHER BIOFUEL APPROVED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY AS A FUEL OR FUEL ADDITIVE OR APPROVED UNDER THE EPA RENEWABLE FUELS STANDARD 2 PROGRAM**.

(d) This section does not apply to any State vehicle, piece of heavy equipment, or heating equipment for which mechanical failure due to use of biodiesel fuel **OR OTHER BIOFUEL** will void the manufacturer's warranty for that vehicle, piece of heavy equipment, or heating equipment.

Article – Transportation

4–404.

(a) The Authority shall construct any gasoline service facilities that it finds to be needed on the John F. Kennedy Memorial Highway.

[*(b) (1) To give users of the highway a reasonable choice of motor fuels manufactured, produced, or marketed by different companies, at a reasonable price, each gasoline service station shall be offered for lease in accordance with Division II of the State Finance and Procurement Article and this section.*

(2) To promote competition and prevent monopolies, a sufficient number of gasoline service stations operated by at least 2 different companies may be established among the service areas along the highway.

*(3) One person may not be awarded a lease for or have the use of more than one half of the total number of service stations on the entire highway, and 1 supplier, distributor, or retailer of motor fuel may not have the right to market fuel identified by its trademark, trade name, or brand at more than one half of the total number of service stations on the entire highway.****]***

(B) THE AUTHORITY MAY REQUIRE A GASOLINE SERVICE FACILITY LOCATED ON THE JOHN F. KENNEDY MEMORIAL HIGHWAY TO SELL A BLEND OF FUEL THAT IS AT LEAST 5% BIODIESEL FUEL OR OTHER BIOFUEL APPROVED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY AS A FUEL OR FUEL ADDITIVE OR APPROVED UNDER THE EPA RENEWABLE FUELS STANDARD 2 PROGRAM.

(c) The Authority shall regulate the prices of fuel products sold on the highway to the extent necessary to achieve reasonable costs to patrons.

(d) The lessee of any service station established under this section shall accept in payment for products sold and services rendered those credit cards that the Authority directs.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 568

(Senate Bill 974)

AN ACT concerning

Health Insurance – Pharmacy Benefits Managers – ~~Contracts, Disclosures, and Audits~~ Claims

FOR the purpose of ~~requiring each contract between a pharmacy benefits manager and a pharmacy, pharmacist, or retail pharmacy network or agent of a pharmacy, pharmacist, or retail pharmacy network to contain at a minimum certain provisions; requiring a pharmacy benefits manager to disclose certain information to certain entities at certain times; requiring a pharmacy benefits manager that, in a certain contract, calculates reimbursement for prescription drugs and other products and supplies in accordance with a certain formula to use a certain price in that calculation; requiring a pharmacy benefit manager to update certain prices at an interval not less than a certain number of business days and to make certain disclosures about certain prices and a certain methodology; prohibiting a pharmacy benefits manager that has a certain management or ownership interest from discriminating or restricting the rights of a beneficiary or offering certain copayments to a beneficiary; altering the requirements for an audit conducted by a pharmacy benefits manager of a pharmacy or pharmacist under contract with the pharmacy benefits manager; requiring that a copy of a certain final audit report be delivered to a plan~~

~~sponsor within certain periods of time under certain circumstances; requiring a certain recoupment of a certain claims payment to be based only on a certain fee and not on a certain cost; prohibiting a pharmacy benefits manager and a plan sponsor from taking certain actions on the basis of certain errors; making stylistic changes~~ providing that certain errors may not constitute fraud or grounds for recoupment of specified claims payments under specified circumstances; specifying that certain claims remain subject to recoupment of overpayment or payment of any discovered underpayment by a pharmacy benefits manager; defining a certain term; and generally relating to pharmacy benefits managers.

BY repealing and reenacting, with amendments,
Article – Insurance
Section ~~15–1628 and~~ 15–1629
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

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

Article – Insurance

~~15–1628.~~

~~**(A) THIS SECTION APPLIES TO CONTRACTS BETWEEN:**~~

~~**(1) A PHARMACY BENEFITS MANAGER; AND**~~

~~**(2) A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK OR AN AGENT OF A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK.**~~

~~**(B) IN ADDITION TO ANY OTHER REQUIREMENTS OF LAW, EACH CONTRACT SUBJECT TO THIS SECTION SHALL CONTAIN, AT A MINIMUM, THE PROVISIONS REQUIRED BY THIS SECTION.**~~

~~**(C)** At the time of entering into a contract **[**with a pharmacy or a pharmacist**]** **SUBJECT TO THIS SECTION**, and at least 30 working days before any **[**contract**]** change **IN A CONTRACT SUBJECT TO THIS SECTION**, a pharmacy benefits manager shall disclose to the **[**pharmacy or pharmacist**]** **PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK OR AGENT OF THE PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK:**~~

~~(1) the applicable terms, conditions, and reimbursement rates;~~

~~(2) the process and procedures for verifying pharmacy benefits and beneficiary eligibility;~~

~~(3) the dispute resolution and audit appeals process; and~~

~~(4) the process and procedures for verifying the prescription drugs included on the formularies used by the pharmacy benefits manager.~~

~~**(D) (1) IF IN A CONTRACT SUBJECT TO THIS SECTION A PHARMACY BENEFITS MANAGER CALCULATES REIMBURSEMENT FOR PRESCRIPTION DRUGS AND OTHER PRODUCTS AND SUPPLIES IN ACCORDANCE WITH A FORMULA THAT USES A NATIONALLY RECOGNIZED REFERENCE IN THE PRICING CALCULATION, THE PHARMACY BENEFITS MANAGER SHALL USE THE MOST CURRENT NATIONALLY RECOGNIZED REFERENCE PRICE IN THE ACTUAL OR CONSTRUCTIVE POSSESSION OF THE PHARMACY BENEFITS MANAGER OR AGENT OF THE PHARMACY BENEFITS MANAGER.**~~

~~**(2) TO COMPLY WITH PARAGRAPH (1) OF THIS SUBSECTION, A PHARMACY BENEFITS MANAGER SHALL:**~~

~~**(I) UPDATE THE NATIONALLY RECOGNIZED REFERENCE PRICES USED TO CALCULATE REIMBURSEMENT FOR PRESCRIPTION DRUGS AND OTHER PRODUCTS AND SUPPLIES NOT LESS THAN EVERY 3 BUSINESS DAYS; AND**~~

~~**(II) DISCLOSE TO THE PHARMACY OR PHARMACIST THE NATIONALLY RECOGNIZED REFERENCE PRICES AND METHODOLOGY USED TO CALCULATE REIMBURSEMENT FOR PRESCRIPTION DRUGS OR OTHER PRODUCTS AND SUPPLIES.**~~

~~**(E) A PHARMACY BENEFITS MANAGER THAT HAS A MANAGEMENT OR OWNERSHIP INTEREST IN A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK OR IS THE AGENT OF A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK MAY NOT DISCRIMINATE OR RESTRICT THE RIGHTS OF A BENEFICIARY OR OFFER PREFERENTIAL COPAYMENTS TO A BENEFICIARY BASED ON A PHARMACY CLASSIFICATION OF TRADE.**~~

15–1629.

(a) This section does not apply to an audit that involves probable or potential fraud or willful misrepresentation by a pharmacy or pharmacist.

(b) A pharmacy benefits manager shall conduct an audit of a pharmacy or pharmacist under contract with the pharmacy benefits manager in accordance with this section.

(c) A pharmacy benefits manager may not schedule an onsite audit to begin during the first 5 calendar days of a month unless requested by the pharmacy or pharmacist.

(d) When conducting an audit, a pharmacy benefits manager shall:

(1) if the audit is onsite, provide written notice to the pharmacy or pharmacist at least 2 weeks before conducting the initial onsite audit for each audit cycle;

(2) employ the services of a pharmacist if the audit requires the clinical or professional judgment of a pharmacist;

(3) for purposes of validating the pharmacy record with respect to orders or refills of a drug that is a controlled dangerous substance, allow the pharmacy or pharmacist to use hospital or physician records that are:

(i) written; or

(ii) transmitted electronically;

(4) audit each pharmacy and pharmacist under the same standards and parameters as other similarly situated pharmacies or pharmacists audited by the pharmacy benefits manager;

~~**(5) AUDIT THE SAME NUMBER OF CHAIN PHARMACIES AND INDEPENDENT PHARMACIES;**~~

~~**(6) AUDIT THE SAME NUMBER OF BRAND PRESCRIPTION DRUGS AND GENERIC PRESCRIPTION DRUGS;**~~

[(5)**]** ~~**(7)**~~ only audit claims submitted or adjudicated within the 2–year period immediately preceding the audit, unless a longer period is permitted under federal or State law;

[(6)**]** ~~**(8)**~~ deliver the preliminary audit report to the pharmacy or pharmacist within 120 calendar days after the completion of the audit, with reasonable extensions allowed;

[(7)**]** ~~**(9)**~~ in accordance with subsection **[**(g)**]** ~~**(I)**~~ **(H)** of this section, allow a pharmacy or pharmacist to produce documentation to address any discrepancy found during the audit; and

[(8)**]** ~~**(10)**~~ deliver the final audit report to the pharmacy or pharmacist ~~**AND A COPY OF THE FINAL AUDIT REPORT TO THE PLAN SPONSOR**~~:

(i) within 6 months after delivery of the preliminary audit report if the pharmacy or pharmacist does not request an internal appeal under subsection **[**(g)**]** ~~(I)~~ **(H)** of this section; or

(ii) within 30 days after the conclusion of the internal appeals process under subsection **[**(g)**]** ~~(I)~~ **(H)** of this section if the pharmacy or pharmacist requests an internal appeal.

(e) A pharmacy benefits manager may not use the accounting practice of extrapolation to calculate overpayments or underpayments.

(f) The recoupment of a claims payment from a pharmacy or pharmacist by a pharmacy benefits manager shall be based on an actual overpayment or denial of an audited claim unless the projected overpayment or denial is part of a settlement agreed to by the pharmacy or pharmacist.

~~(G) THE RECOUPMENT OF A CLAIMS PAYMENT FROM A PHARMACY OR PHARMACIST BY A PHARMACY BENEFITS MANAGER:~~

~~(1) SHALL BE BASED ONLY ON THE ACTUAL DISPENSING FEE; AND~~

~~(2) MAY NOT INCLUDE THE COST OF THE PRESCRIBED DRUG DISPENSED.~~

~~(H) (1) ON THE BASIS OF A CLERICAL OR RECORD-KEEPING ERROR DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION, A PHARMACY BENEFITS MANAGER AND A PLAN SPONSOR MAY NOT:~~

~~(I) DENY A CLAIM OR SEEK A PENALTY DURING OR AFTER AN AUDIT OF A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK OR AN AGENT OF A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK;~~

~~(II) SEEK RECOUPMENT FROM A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK OR AN AGENT OF A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK; OR~~

~~(III) RECOUP BY SETOFF AGAINST AMOUNTS OWED TO A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK OR AGENT OF A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK.~~

~~(2) FOR PURPOSES OF THIS SUBSECTION, A CLERICAL OR RECORD-KEEPING ERROR INCLUDES A TYPOGRAPHICAL ERROR, MATHEMATICAL CALCULATION ERROR, DATA ENTRY ERROR, AND SCRIVENER'S ERROR, INCLUDING PATIENT DATA OMISSIONS AND INCOMPLETE INFORMATION.~~

(G) (1) IN THIS SUBSECTION, "OVERPAYMENT" MEANS A PAYMENT BY THE PHARMACY BENEFITS MANAGER TO A PHARMACY OR PHARMACIST THAT IS GREATER THAN THE RATE OR TERMS SPECIFIED IN THE CONTRACT BETWEEN THE PHARMACY OR PHARMACIST AND THE PHARMACY BENEFITS MANAGER AT THE TIME THAT THE PAYMENT IS MADE.

(2) A CLERICAL ERROR, RECORD–KEEPING ERROR, TYPOGRAPHICAL ERROR, OR SCRIVENER'S ERROR IN A REQUIRED DOCUMENT OR RECORD MAY NOT CONSTITUTE FRAUD OR GROUNDS FOR RECOUPMENT OF A CLAIMS PAYMENT FROM A PHARMACY OR PHARMACIST BY A PHARMACY BENEFITS MANAGER IF THE PRESCRIPTION WAS OTHERWISE LEGALLY DISPENSED AND THE CLAIM WAS OTHERWISE MATERIALLY CORRECT.

(3) NOTWITHSTANDING PARAGRAPH (2) OF THIS SUBSECTION, CLAIMS REMAIN SUBJECT TO RECOUPMENT OF OVERPAYMENT OR PAYMENT OF ANY DISCOVERED UNDERPAYMENT BY THE PHARMACY BENEFITS MANAGER.

[(g)**]** ~~(H)~~ **(H)** (1) A pharmacy benefits manager shall establish an internal appeals process under which a pharmacy or pharmacist may appeal any disputed claim in a preliminary audit report.

(2) Under the internal appeals process, a pharmacy benefits manager shall allow a pharmacy or pharmacist to request an internal appeal within 30 working days after receipt of the preliminary audit report, with reasonable extensions allowed.

(3) The pharmacy benefits manager shall include in its preliminary audit report a written explanation of the internal appeals process, including the name, address, and telephone number of the person to whom an internal appeal should be addressed.

(4) The decision of the pharmacy benefits manager on an appeal of a disputed claim in a preliminary audit report by a pharmacy or pharmacist shall be reflected in the final audit report.

(5) The pharmacy benefits manager shall deliver the final audit report to the pharmacy or pharmacist within 30 calendar days after conclusion of the internal appeals process.

[(h)**]** ~~(J)~~ **(I)** (1) A pharmacy benefits manager may not recoup by setoff any moneys for an overpayment or denial of a claim until 30 working days after the date the final audit report has been delivered to the pharmacy or pharmacist.

(2) A pharmacy benefits manager shall remit any money due to a pharmacy or pharmacist as a result of an underpayment of a claim within 30 working days after the final audit report has been delivered to the pharmacy or pharmacist.

(3) Notwithstanding the provisions of paragraph (1) of this subsection, a pharmacy benefits manager may withhold future payments before the date the final audit report has been delivered to the pharmacy or pharmacist if the identified discrepancy for all disputed claims in a preliminary audit report for an individual audit exceeds $25,000.

[(i)**]** ~~**(K)**~~ **(J)** On request of the Commissioner or the Commissioner's designee, a pharmacy benefits manager shall provide a copy of its audit procedures or internal appeals process.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 569

(House Bill 1338)

AN ACT concerning

Health Insurance – Pharmacy Benefits Managers – ~~Contracts, Disclosures, and Audits~~ Claims

FOR the purpose of ~~requiring each contract between a pharmacy benefits manager and a pharmacy, pharmacist, or retail pharmacy network or agent of a pharmacy, pharmacist, or retail pharmacy network to contain at a minimum certain provisions; requiring a pharmacy benefits manager to disclose certain information to certain entities at certain times; requiring a pharmacy benefits manager that, in a certain contract, calculates reimbursement for prescription drugs and other products and supplies in accordance with a certain formula to use a certain price in that calculation; requiring a pharmacy benefit manager to update certain prices at an interval not less than a certain number of business days and to make certain disclosures about certain prices and a certain methodology; prohibiting a pharmacy benefits manager that has a certain management or ownership interest from discriminating or restricting the rights of a beneficiary or offering certain copayments to a beneficiary; altering the requirements for an audit conducted by a pharmacy benefits manager of a pharmacy or pharmacist under contract with the pharmacy benefits manager; requiring that a copy of a certain final audit report be delivered to a plan sponsor within certain periods of time under certain circumstances; requiring a certain recoupment of a certain claims payment to be based only on a certain fee and not on a certain cost; prohibiting a pharmacy benefits manager and a plan sponsor from taking certain actions on the basis of certain errors; making~~

~~stylistic changes~~ providing that certain errors may not constitute fraud or grounds for recoupment of specified claims payments under specified circumstances; specifying that certain claims remain subject to recoupment of overpayment or payment of any discovered underpayment by a pharmacy benefits manager; defining a certain term; and generally relating to pharmacy benefits managers.

BY repealing and reenacting, with amendments,
Article – Insurance
Section ~~15–1628 and~~ 15–1629
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

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

Article – Insurance

~~15–1628.~~

~~**(A) THIS SECTION APPLIES TO CONTRACTS BETWEEN:**~~

~~**(1) A PHARMACY BENEFITS MANAGER; AND**~~

~~**(2) A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK OR AN AGENT OF A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK.**~~

~~**(B) IN ADDITION TO ANY OTHER REQUIREMENTS OF LAW, EACH CONTRACT SUBJECT TO THIS SECTION SHALL CONTAIN, AT A MINIMUM, THE PROVISIONS REQUIRED BY THIS SECTION.**~~

~~**(C)** At the time of entering into a contract **[**with a pharmacy or a pharmacist**]** **SUBJECT TO THIS SECTION**, and at least 30 working days before any **[**contract**]** change **IN A CONTRACT SUBJECT TO THIS SECTION**, a pharmacy benefits manager shall disclose to the **[**pharmacy or pharmacist**]** **PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK OR AGENT OF THE PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK:**~~

~~(1) the applicable terms, conditions, and reimbursement rates;~~

~~(2) the process and procedures for verifying pharmacy benefits and beneficiary eligibility;~~

~~(3) the dispute resolution and audit appeals process; and~~

~~(4) the process and procedures for verifying the prescription drugs included on the formularies used by the pharmacy benefits manager.~~

~~(D) (1) IF IN A CONTRACT SUBJECT TO THIS SECTION A PHARMACY BENEFITS MANAGER CALCULATES REIMBURSEMENT FOR PRESCRIPTION DRUGS AND OTHER PRODUCTS AND SUPPLIES IN ACCORDANCE WITH A FORMULA THAT USES A NATIONALLY RECOGNIZED REFERENCE IN THE PRICING CALCULATION, THE PHARMACY BENEFITS MANAGER SHALL USE THE MOST CURRENT NATIONALLY RECOGNIZED REFERENCE PRICE IN THE ACTUAL OR CONSTRUCTIVE POSSESSION OF THE PHARMACY BENEFITS MANAGER OR AGENT OF THE PHARMACY BENEFITS MANAGER.~~

~~(2) TO COMPLY WITH PARAGRAPH (1) OF THIS SUBSECTION, A PHARMACY BENEFITS MANAGER SHALL:~~

~~(I) UPDATE THE NATIONALLY RECOGNIZED REFERENCE PRICES USED TO CALCULATE REIMBURSEMENT FOR PRESCRIPTION DRUGS AND OTHER PRODUCTS AND SUPPLIES NOT LESS THAN EVERY 3 BUSINESS DAYS; AND~~

~~(II) DISCLOSE TO THE PHARMACY OR PHARMACIST THE NATIONALLY RECOGNIZED REFERENCE PRICES AND METHODOLOGY USED TO CALCULATE REIMBURSEMENT FOR PRESCRIPTION DRUGS OR OTHER PRODUCTS AND SUPPLIES.~~

~~(E) A PHARMACY BENEFITS MANAGER THAT HAS A MANAGEMENT OR OWNERSHIP INTEREST IN A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK OR IS THE AGENT OF A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK MAY NOT DISCRIMINATE OR RESTRICT THE RIGHTS OF A BENEFICIARY OR OFFER PREFERENTIAL COPAYMENTS TO A BENEFICIARY BASED ON A PHARMACY CLASSIFICATION OF TRADE.~~

15–1629.

(a) This section does not apply to an audit that involves probable or potential fraud or willful misrepresentation by a pharmacy or pharmacist.

(b) A pharmacy benefits manager shall conduct an audit of a pharmacy or pharmacist under contract with the pharmacy benefits manager in accordance with this section.

(c) A pharmacy benefits manager may not schedule an onsite audit to begin during the first 5 calendar days of a month unless requested by the pharmacy or pharmacist.

(d) When conducting an audit, a pharmacy benefits manager shall:

(1) if the audit is onsite, provide written notice to the pharmacy or pharmacist at least 2 weeks before conducting the initial onsite audit for each audit cycle;

(2) employ the services of a pharmacist if the audit requires the clinical or professional judgment of a pharmacist;

(3) for purposes of validating the pharmacy record with respect to orders or refills of a drug that is a controlled dangerous substance, allow the pharmacy or pharmacist to use hospital or physician records that are:

(i) written; or

(ii) transmitted electronically;

(4) audit each pharmacy and pharmacist under the same standards and parameters as other similarly situated pharmacies or pharmacists audited by the pharmacy benefits manager;

~~**(5) AUDIT THE SAME NUMBER OF CHAIN PHARMACIES AND INDEPENDENT PHARMACIES;**~~

~~**(6) AUDIT THE SAME NUMBER OF BRAND PRESCRIPTION DRUGS AND GENERIC PRESCRIPTION DRUGS;**~~

[(5)**]** ~~**(7)**~~ only audit claims submitted or adjudicated within the 2–year period immediately preceding the audit, unless a longer period is permitted under federal or State law;

[(6)**]** ~~**(8)**~~ deliver the preliminary audit report to the pharmacy or pharmacist within 120 calendar days after the completion of the audit, with reasonable extensions allowed;

[(7)**]** ~~**(9)**~~ in accordance with subsection **[**(g)**]** ~~**(I)**~~ **(H)** of this section, allow a pharmacy or pharmacist to produce documentation to address any discrepancy found during the audit; and

[(8)**]** ~~**(10)**~~ deliver the final audit report to the pharmacy or pharmacist ~~**AND A COPY OF THE FINAL AUDIT REPORT TO THE PLAN SPONSOR**~~:

(i) within 6 months after delivery of the preliminary audit report if the pharmacy or pharmacist does not request an internal appeal under subsection **[**(g)**]** ~~**(I)**~~ **(H)** of this section; or

(ii) within 30 days after the conclusion of the internal appeals process under subsection **[**(g)**]**~~(I)~~ **(H)** of this section if the pharmacy or pharmacist requests an internal appeal.

(e) A pharmacy benefits manager may not use the accounting practice of extrapolation to calculate overpayments or underpayments.

(f) The recoupment of a claims payment from a pharmacy or pharmacist by a pharmacy benefits manager shall be based on an actual overpayment or denial of an audited claim unless the projected overpayment or denial is part of a settlement agreed to by the pharmacy or pharmacist.

~~(G) THE RECOUPMENT OF A CLAIMS PAYMENT FROM A PHARMACY OR PHARMACIST BY A PHARMACY BENEFITS MANAGER:~~

~~(1) SHALL BE BASED ONLY ON THE ACTUAL DISPENSING FEE; AND~~

~~(2) MAY NOT INCLUDE THE COST OF THE PRESCRIBED DRUG DISPENSED.~~

~~(H) (1) ON THE BASIS OF A CLERICAL OR RECORD–KEEPING ERROR DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION, A PHARMACY BENEFITS MANAGER AND A PLAN SPONSOR MAY NOT:~~

~~(I) DENY A CLAIM OR SEEK A PENALTY DURING OR AFTER AN AUDIT OF A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK OR AN AGENT OF A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK;~~

~~(II) SEEK RECOUPMENT FROM A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK OR AN AGENT OF A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK; OR~~

~~(III) RECOUP BY SETOFF AGAINST AMOUNTS OWED TO A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK OR AGENT OF A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK.~~

~~(2) FOR PURPOSES OF THIS SUBSECTION, A CLERICAL OR RECORD–KEEPING ERROR INCLUDES A TYPOGRAPHICAL ERROR, MATHEMATICAL CALCULATION ERROR, DATA ENTRY ERROR, AND SCRIVENER'S ERROR, INCLUDING PATIENT DATA OMISSIONS AND INCOMPLETE INFORMATION.~~

(G) (1) IN THIS SUBSECTION, "OVERPAYMENT" MEANS A PAYMENT BY THE PHARMACY BENEFITS MANAGER TO A PHARMACY OR PHARMACIST THAT IS GREATER THAN THE RATE OR TERMS SPECIFIED IN THE CONTRACT BETWEEN

THE PHARMACY OR PHARMACIST AND THE PHARMACY BENEFITS MANAGER AT THE TIME THAT THE PAYMENT IS MADE.

(2) A CLERICAL ERROR, RECORD–KEEPING ERROR, TYPOGRAPHICAL ERROR, OR SCRIVENER'S ERROR IN A REQUIRED DOCUMENT OR RECORD MAY NOT CONSTITUTE FRAUD OR GROUNDS FOR RECOUPMENT OF A CLAIMS PAYMENT FROM A PHARMACY OR PHARMACIST BY A PHARMACY BENEFITS MANAGER IF THE PRESCRIPTION WAS OTHERWISE LEGALLY DISPENSED AND THE CLAIM WAS OTHERWISE MATERIALLY CORRECT.

(3) NOTWITHSTANDING PARAGRAPH (2) OF THIS SUBSECTION, CLAIMS REMAIN SUBJECT TO RECOUPMENT OF OVERPAYMENT OR PAYMENT OF ANY DISCOVERED UNDERPAYMENT BY THE PHARMACY BENEFITS MANAGER.

[(g)**]** ~~(H)~~ **(H)** (1) A pharmacy benefits manager shall establish an internal appeals process under which a pharmacy or pharmacist may appeal any disputed claim in a preliminary audit report.

(2) Under the internal appeals process, a pharmacy benefits manager shall allow a pharmacy or pharmacist to request an internal appeal within 30 working days after receipt of the preliminary audit report, with reasonable extensions allowed.

(3) The pharmacy benefits manager shall include in its preliminary audit report a written explanation of the internal appeals process, including the name, address, and telephone number of the person to whom an internal appeal should be addressed.

(4) The decision of the pharmacy benefits manager on an appeal of a disputed claim in a preliminary audit report by a pharmacy or pharmacist shall be reflected in the final audit report.

(5) The pharmacy benefits manager shall deliver the final audit report to the pharmacy or pharmacist within 30 calendar days after conclusion of the internal appeals process.

[(h)**]** ~~(J)~~ **(I)** (1) A pharmacy benefits manager may not recoup by setoff any moneys for an overpayment or denial of a claim until 30 working days after the date the final audit report has been delivered to the pharmacy or pharmacist.

(2) A pharmacy benefits manager shall remit any money due to a pharmacy or pharmacist as a result of an underpayment of a claim within 30 working days after the final audit report has been delivered to the pharmacy or pharmacist.

(3) Notwithstanding the provisions of paragraph (1) of this subsection, a pharmacy benefits manager may withhold future payments before the date the final audit report has been delivered to the pharmacy or pharmacist if the identified

discrepancy for all disputed claims in a preliminary audit report for an individual audit exceeds $25,000.

[(i)**]** ~~(K)~~ **(J)** On request of the Commissioner or the Commissioner's designee, a pharmacy benefits manager shall provide a copy of its audit procedures or internal appeals process.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 570

(Senate Bill 977)

AN ACT concerning

Freedom of Speech – Picketing at a Funeral – Distance

FOR the purpose of altering the distance within which a person is prohibited from engaging in picketing activities at a funeral, burial, memorial service, or funeral procession; and generally relating to picketing at a funeral, burial, memorial service, or funeral procession.

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 10–205(c)
Annotated Code of Maryland
(2002 Volume and 2010 Supplement)

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

Article – Criminal Law

10–205.

(c) A person may not engage in picketing activity within **[**100**] 500** feet of a funeral, burial, memorial service, or funeral procession that is targeted at one or more persons attending the funeral, burial, memorial service, or funeral procession.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 571

(Senate Bill 994)

AN ACT concerning

Sales and Use Tax – Alcoholic Beverages – Supplementary Appropriation

FOR the purpose of altering the rate of the sales and use tax imposed on the sale of an alcoholic beverage; ~~requiring the Comptroller to distribute certain revenue from the sales and use tax on the sale of an alcoholic beverage to the General Fund of the State;~~ making this Act a supplementary appropriation to fund a certain waiting list initiative for the Developmental Disabilities Administration; *providing that the appropriation provided under this Act shall have priority over any other appropriation from the additional revenues resulting from this Act that are credited to the General Fund for a certain fiscal year;* ~~requiring the Governor to include certain amounts in the budget bill for certain fiscal years for certain purposes;~~ and generally relating to the sales and use tax imposed on the sale of an alcoholic beverage and a supplementary appropriation.

~~BY repealing and reenacting, with amendments,~~
~~Article – Tax – General~~
~~Section 2–1302.2~~
~~Annotated Code of Maryland~~
~~(2010 Replacement Volume)~~

BY adding to
Article – Tax – General
Section 11–104(g)
Annotated Code of Maryland
(2010 Replacement Volume)

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

Article – Tax – General

~~2–1302.2.~~

~~(A) After making the distributions required under §§ 2–1301 through 2–1302.1 of this subtitle, **OF THE SALES AND USE TAX COLLECTED ON THE SALE OF ALCOHOLIC BEVERAGES UNDER § 11–104(G) OF THIS ARTICLE, THE**~~

~~COMPTROLLER SHALL DISTRIBUTE TO THE GENERAL FUND OF THE STATE THE REVENUE ATTRIBUTABLE TO A SALES AND USE TAX RATE IN EXCESS OF 6%.~~

~~(B) AFTER MAKING THE DISTRIBUTIONS REQUIRED UNDER §§ 2–1301 THROUGH 2–1302.1 OF THIS SUBTITLE AND SUBSECTION (A) OF THIS SECTION, the Comptroller shall pay into the Transportation Trust Fund established under § 3–216 of the Transportation Article:~~

~~(1) for each fiscal year beginning before July 1, 2013, 5.3% of the remaining sales and use tax revenue; and~~

~~(2) for each fiscal year beginning on or after July 1, 2013, 6.5% of the remaining sales and use tax revenue.~~

11–104.

(G) THE SALES AND USE TAX RATE FOR THE SALE OF AN ALCOHOLIC BEVERAGE, AS DEFINED IN § 5–101 OF THIS ARTICLE, IS~~:~~

~~**(1) FOR A SALE ON OR AFTER JULY 1, 2011, BUT BEFORE JULY 1, 2012, 7% OF THE TAXABLE PRICE OF THE ALCOHOLIC BEVERAGE;**~~

~~**(2) FOR A SALE ON OR AFTER JULY 1, 2012, BUT BEFORE JULY 1, 2013, 8% OF THE TAXABLE PRICE OF THE ALCOHOLIC BEVERAGE; AND**~~

~~**(3) FOR A SALE ON OR AFTER JULY 1, 2013,**~~ **9% OF THE TAXABLE PRICE OF THE ALCOHOLIC BEVERAGE.**

SECTION 2. AND BE IT FURTHER ENACTED, That for fiscal year 2012 only and from only those additional revenues resulting from this Act that are credited to the General Fund for fiscal year 2012, and from no other funds, and subject to the provisions of law relating to budgetary procedure to the extent applicable, the amount specified below, or as much thereof as required to accomplish the designated purpose, is hereby appropriated and authorized to be disbursed from as much of those additional revenues as are received by the State:

M00M01.02 Community Services

In addition to the amount appropriated in the budget bill for fiscal year 2012, to supplement the appropriation for fiscal year 2012, the following amount to be used to fund a Waiting List initiative for the Developmental Disabilities Administration. Priority shall be given to individuals in the Crisis Prevention and Crisis Resolution categories of the Waiting List:

General Fund Appropriation ~~$5,000,000~~ *$15,000,000*

SECTION 3. AND BE IT FURTHER ENACTED, That, notwithstanding any other provision of law, the appropriation provided under Section 2 of this Act shall have priority over any other appropriation for fiscal year 2012 from the additional revenues resulting from the increase in the sales and use tax rate for the sale of an alcoholic beverage as provided under this Act or any other Act of the General Assembly.

~~SECTION 3. AND BE IT FURTHER ENACTED, That the Governor shall include at least $10,000,000 in the budget bill for fiscal year 2013 and at least $15,000,000 in the budget bill for fiscal year 2014 to fund a Waiting List initiative for the Developmental Disabilities Administration. Priority shall be given to individuals in the Crisis Prevention and Crisis Resolution categories of the Waiting List.~~

SECTION ~~2.~~ ~~4.~~ ~~3.~~ *4.* AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 572

(House Bill 1213)

AN ACT concerning

Sales and Use Tax – Alcoholic Beverages – ~~Tax Rates~~ Supplementary Appropriation

FOR the purpose of altering ~~State tax rates for alcoholic beverages sold in Maryland; and generally relating to the alcoholic beverage tax~~ the rate of the sales and use tax imposed on the sale of an alcoholic beverage; making this Act a supplementary appropriation to fund certain public school construction projects and related capital improvements; and generally relating to the sales and use tax imposed on the sale of an alcoholic beverage and a supplementary appropriation.

~~BY repealing and reenacting, with amendments,~~
~~Article – Tax – General~~
~~Section 5–105~~
~~Annotated Code of Maryland~~
~~(2010 Replacement Volume)~~

BY adding to
Article – Tax – General
Section 11–104(g)
Annotated Code of Maryland
(2010 Replacement Volume)

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

Article – Tax – General

~~5–105.~~

~~(a) Except as provided in subsection (d) of this section, the alcoholic beverage tax rate for distilled spirits is:~~

~~(1) [$1.50] **$10.03** for each gallon or [39.63 cents] **$2.65** for each liter; and~~

~~(2) if distilled spirits contain a percentage of alcohol greater than 100 proof, an additional tax, for each 1 proof over 100 proof, of [1.5] **10.03** cents for each gallon or [0.3963] **2.65** cents for each liter.~~

~~(b) Except as provided in subsection (d) of this section, the alcoholic beverage tax rate for wine is [40 cents] **$2.96** for each gallon or [10.57] **78.22** cents for each liter.~~

~~(c) Except as provided in subsection (d) of this section, the alcoholic beverage tax rate on beer is [9 cents] **$1.16** for each gallon or [2.3778] **30.6472** cents for each liter.~~

~~(d) The tax imposed under § 5–102(b) of this subtitle shall equal the amount that the discriminating jurisdiction charges a Maryland licensee or permit holder.~~

11–104.

(G) THE SALES AND USE TAX RATE FOR THE SALE OF AN ALCOHOLIC BEVERAGE, AS DEFINED IN § 5–101 OF THIS ARTICLE, IS 9% OF THE TAXABLE PRICE OF THE ALCOHOLIC BEVERAGE.

SECTION 2. AND BE IT FURTHER ENACTED, That for fiscal year 2012 only and from only those additional revenues resulting from this Act that are credited to the General Fund for fiscal year 2012, and from no other funds, and subject to the provisions of law relating to budgetary procedure to the extent applicable, the amount specified below, or as much thereof as required to accomplish the designated purpose, is hereby appropriated and authorized to be disbursed from as much of those additional revenues as are to be received by the State:

D06E02.02 Public School Capital Appropriation

In addition to the amount appropriated in the budget bill for fiscal year 2012, to supplement the appropriation for fiscal year 2012, the following amount to be used to fund public school construction projects:

General Fund Appropriation $47,500,000

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) Notwithstanding §§ 5–301 and 5–302 of the Education Article or any other provision of law, the funds appropriated in Section 2 of this Act shall be allocated to the following counties or regions as provided below. The Board of Public Works shall approve the individual projects, which may or may not be eligible for funding under the Public School Construction Program provided that the proposed project is a public school improvement that meets a school or community need:

Anne Arundel County $5,000,000

Baltimore City $9,000,000

Baltimore County $7,000,000

Eastern Shore (Caroline, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, and Worcester Counties) $1,250,000

Howard County $4,000,000

Montgomery County $9,000,000

Northeast Maryland (Cecil and Harford Counties) $1,250,000

Prince George's County $9,000,000

Southern Maryland (Calvert, Charles, and St. Mary's Counties) $1,250,000

Western Maryland (Allegany, Carroll, Garrett, Frederick, and Washington Counties) $750,000

(b) In approving funding for projects, the Board of Public Works shall consider:

(1) requests from the local jurisdictions; and

(2) projects that:

(i) benefit older school buildings;

(ii) benefit schools with high proportions of children eligible for free and reduced price meals;

(iii) can be completed within one year;

(iv) eliminate or reduce the use of relocatable classrooms;

(v) are designated as A or B by the Interagency Committee on Public School Construction and are not fully funded in the fiscal 2012 Capital Improvement Program approved by the Board of Public Works; or

(vi) reduce energy consumption or incorporate high performance "green" building principles.

SECTION ~~2.~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 573

(House Bill 65)

AN ACT concerning

Electrology Practice Committee – Sunset Extension and Program Evaluation

FOR the purpose of continuing the Electrology Practice Committee 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 Committee; requiring that an evaluation of the Committee and the statutes and regulations that relate to the Committee be performed on or before a certain date; requiring the State Board of Nursing to submit certain reports to certain committees of the General Assembly on or before certain dates; and generally relating to the Electrology Practice Committee.

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 8–6B–29
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – State Government

Section 8–403(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 8–403(b)(19)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health Occupations

8–6B–29.

Subject to the evaluation and reestablishment provisions of the Maryland Program Evaluation Act, and subject to the termination of this title under § 8–802 of this title, this subtitle and all rules and regulations adopted under this subtitle shall terminate and be of no effect after July 1, **[**2013**] 2023**.

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:

(19) Electrology Practice Committee (§ 8–6B–05 of the Health Occupations Article: July 1, **[**2012**] 2022**);

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1, 2011, the State Board of Nursing 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, regarding how the Board has addressed:

(1) examination issues relating to obtaining initial licensure as an electrologist in the State, including the current lack of a viable examination and the authority of the Board to administer a State law section of an examination;

(2) implementation of biennial licensure renewal for electrologists;

(3) improvement of the training of and communication with members of the Electrology Practice Committee;

(4) updating the Board's Web site to include a description of the complaint process with respect to electrologists and a complaint form;

(5) reconciling the difference between fee revenues generated from electrologist licensees and the reported actual cost of the Board to regulate electrologists; and

(6) fee revenue surplus, if any, and any plans to alter electrologist licensure fees as a result.

SECTION 3. AND BE IT FURTHER ENACTED, That, on or before October 1, 2015, the State Board of Nursing 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, regarding the status of the Electrology Practice Committee and the regulation of electrology in the State. The report shall include information for the years fiscal 2011 through fiscal 2015, inclusive, that addresses:

(1) the number of electrologists licensed by the Board;

(2) the number of complaints related to the practice of electrology received by the Board, if any, and the disposition of such complaints; and

(3) a summary of any major legislative or regulatory changes impacting electrology, including changes to fees charged by the Board.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 574

(House Bill 75)

AN ACT concerning

State Board of Examiners of Psychologists – Sunset Extension and Program Evaluation

FOR the purpose of continuing the State Board of Examiners of Psychologists 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 Examiners of Psychologists.

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 18–502
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – State Government
Section 8–403(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 8–403(b)(55)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health Occupations

18–502.

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, **[**2013**] 2023**.

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:

(55) Psychologists, State Board of Examiners of (§ 18–201 of the Health Occupations Article: July 1, **[**2012**]** **2022**);

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1, 2012, the State Board of Examiners of Psychologists 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 update on the Board's plans to require psychology associates to renew their exemption status every 2 years and a determination by the Board as to whether psychology associates should be required to take continuing education credits;

(2) an analysis of the role of psychology associates in the State and whether it would be appropriate to certify or license psychology associates, as well as whether additional disciplinary authority is needed; and

(3) a long–term financial plan that:

(i) assesses options for bringing expenditures in line with revenues, including reducing expenditures;

(ii) identifies the need for any future fee increases, including determining what appropriate increases would be relative to the fees charged by other boards;

(iii) discusses how the Board can maintain an appropriate fund balance; and

(iv) institutes a systematic, ongoing process for long–term financial planning.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 575

(House Bill 93)

AN ACT concerning

Election Law – Independent Expenditures and Electioneering Communications – Reporting

FOR the purpose of altering the definition of "independent expenditure" ~~to include independent expenditures relating to ballot issues~~; authorizing the State Board of Elections to audit certain independent expenditure reports and certain electioneering communication reports; requiring a person to file an independent expenditure or electioneering communication report on a certain date when the person makes aggregate ~~independent~~ expenditures of more than a certain amount in an election cycle on ~~campaign material that is a public communication~~ certain communications; requiring a person who files an independent expenditure or electioneering communication report to file an additional ~~independent expenditure~~ report on a certain date when the person makes aggregate ~~independent~~ expenditures of more than a certain amount on ~~campaign material that is a public communication~~ certain communications following the closing date of the person's previous independent expenditure or electioneering communication report; requiring an independent expenditure or electioneering communication report to cover certain periods; requiring an independent expenditure or electioneering communication report to include certain information; providing that a person is considered to have made an independent expenditure or disbursement for electioneering communications if the person has executed a contract to make an independent ~~expenditure;~~ expenditure or disbursement for electioneering communications; *clarifying that a person who makes a certain contribution may not be considered to have made a disbursement for electioneering communications because of the contribution;* requiring that certain costs of creating and disseminating campaign material be considered in making a certain determination under this Act; requiring the ~~highest ranking official of~~ treasurer or other individual designated by an entity required to file an independent expenditure or electioneering communication report to sign the report and be responsible for filing the report; subjecting an individual who fails to file properly an independent expenditure or electioneering communication report to certain sanctions; requiring an entity that files an independent expenditure or electioneering communication report to include certain information concerning independent expenditures or electioneering communications in ~~any regular, periodic report it submits to its shareholders, members, or donors on its finances or activities; requiring an entity that files an independent expenditure report to post a~~ a certain report distributed to certain individuals or post a certain hyperlink on any Internet site ~~it~~ the entity maintains ~~to the Internet site where the entity's independent expenditure report information is publicly available for a certain period of time~~;

requiring a person required to file an independent expenditure or electioneering communication report under this Act to keep certain records for a certain period of time; authorizing the State Board of Elections to adopt regulations as necessary to implement this Act; providing for ~~the application of this Act;~~ a delayed effective date; *providing that only independent expenditures or disbursements for electioneering communications made after the effective date of this Act shall be considered for certain purposes;* making the provisions of this Act severable; defining certain terms; and generally relating to reporting of independent expenditures and electioneering communications.

BY repealing and reenacting, without amendments,
Article – Election Law
Section 1–101(k)
Annotated Code of Maryland
(2010 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – Election Law
Section 1–101(bb) and 2–102(b)(5)
Annotated Code of Maryland
(2010 Replacement Volume)

BY adding to
Article – Election Law
Section 13–306 and 13–307
Annotated Code of Maryland
(2010 Replacement Volume)

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

Article – Election Law

1–101.

(k) (1) "Campaign material" means any material that:

(i) contains text, graphics, or other images;

(ii) relates to a candidate, a prospective candidate, or the approval or rejection of a question; and

(iii) is published or distributed.

(2) "Campaign material" includes:

(i) material transmitted by or appearing on the Internet or other electronic medium; and

(ii) an oral commercial campaign advertisement.

(bb) **(1)** "Independent expenditure" means an expenditure by a person ~~to aid or promote~~ **EXPRESSLY ADVOCATING** the success or defeat of a **CLEARLY IDENTIFIED** candidate **OR BALLOT ISSUE** if the expenditure is not made in coordination with, or at the request or suggestion of, **[**the**]** **A** candidate, a campaign finance entity of **[**the**]** **A** candidate, **[**or**]** an agent of **[**the**]** **A** candidate**, OR A BALLOT ISSUE COMMITTEE**.

(2) FOR PURPOSES OF THIS SUBSECTION, "CLEARLY IDENTIFIED" MEANS:

(I) THE NAME OF THE CANDIDATE APPEARS;

(II) A PHOTOGRAPH OR DRAWING OF THE CANDIDATE APPEARS; OR

(III) THE IDENTITY OF THE CANDIDATE OR BALLOT ISSUE IS APPARENT BY UNAMBIGUOUS REFERENCE.

2–102.

(b) In exercising its authority under this article and in order to ensure compliance with this article and with any requirements of federal law, the State Board shall:

(5) receive, and in its discretion audit, campaign finance reports**, INDEPENDENT EXPENDITURE REPORTS FILED UNDER § 13–306 OF THIS ARTICLE, AND ELECTIONEERING COMMUNICATION REPORTS FILED UNDER § 13–307 OF THIS ARTICLE**;

13–306.

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

(2) "~~CONTRIBUTION~~ DONATION" MEANS THE GIFT OR TRANSFER, OR PROMISE OF GIFT OR TRANSFER, OF MONEY OR OTHER THING OF VALUE TO A PERSON THAT IS MADE FOR THE PURPOSE OF FURTHERING INDEPENDENT EXPENDITURES.

(3) "MASS MAILING" MEANS A MAILING BY UNITED STATES MAIL OR FACSIMILE OF MORE THAN 500 PIECES OF MAIL MATTER OF AN IDENTICAL OR SUBSTANTIALLY SIMILAR NATURE WITHIN ANY 30–DAY PERIOD.

(4) (I) "PERSON" INCLUDES AN INDIVIDUAL, A PARTNERSHIP, A COMMITTEE, AN ASSOCIATION, A CORPORATION, A LABOR ORGANIZATION, OR ANY OTHER ORGANIZATION OR GROUP OF PERSONS.

(II) "PERSON" DOES NOT INCLUDE A CAMPAIGN FINANCE ENTITY ORGANIZED UNDER SUBTITLE 2, PART II OF THIS TITLE.

(5) (I) "PUBLIC COMMUNICATION" MEANS A COMMUNICATION BY MEANS OF ANY BROADCAST, CABLE, OR SATELLITE COMMUNICATION, NEWSPAPER, MAGAZINE, OUTDOOR ADVERTISING FACILITY, MASS MAILING, OR TELEPHONE BANK TO THE GENERAL PUBLIC, OR ANY OTHER FORM OF GENERAL PUBLIC POLITICAL ADVERTISING.

(II) "PUBLIC COMMUNICATION" DOES NOT INCLUDE:

1. A NEWS STORY, A COMMENTARY, OR AN EDITORIAL DISSEMINATED BY A ~~BONA FIDE NEWS MEDIA ORGANIZATION~~ BROADCASTING STATION, INCLUDING A CABLE TELEVISION OPERATOR, PROGRAMMER, OR PRODUCER, SATELLITE TELEVISION OR RADIO PROVIDER, WEB SITE, NEWSPAPER, MAGAZINE, OR OTHER PERIODICAL PUBLICATION, INCLUDING ANY INTERNET OR ELECTRONIC PUBLICATION, THAT IS NOT CONTROLLED BY A CANDIDATE OR POLITICAL PARTY; OR

2. A CANDIDATE DEBATE OR FORUM.

(6) "TELEPHONE BANK" MEANS MORE THAN 500 TELEPHONE CALLS OF AN IDENTICAL OR SUBSTANTIALLY SIMILAR NATURE WITHIN ANY 30–DAY PERIOD.

(B) ~~A PERSON SHALL FILE AN INDEPENDENT EXPENDITURE REPORT AS REQUIRED IN THIS SECTION FOLLOWING THE DATE ON WHICH THE~~ AFTER A PERSON MAKES AGGREGATE INDEPENDENT EXPENDITURES OF $10,000 OR MORE IN AN ELECTION CYCLE FOR CAMPAIGN MATERIAL THAT IS A PUBLIC COMMUNICATION, THE PERSON SHALL FILE AN INDEPENDENT EXPENDITURE REPORT AS REQUIRED IN THIS SECTION.

(C) (1) IF THE CAMPAIGN MATERIAL RELATES TO A CANDIDATE, THE PERSON SHALL FILE AN INDEPENDENT EXPENDITURE REPORT WITH THE STATE BOARD ON THE NEXT DATE A CAMPAIGN FINANCE ENTITY OF A CANDIDATE IS

REQUIRED TO FILE A CAMPAIGN FINANCE REPORT UNDER § 13–309 OF THIS SUBTITLE.

(2) IF THE CAMPAIGN MATERIAL RELATES TO A BALLOT ISSUE, THE PERSON SHALL FILE AN INDEPENDENT EXPENDITURE REPORT WITH THE STATE BOARD ON THE NEXT DATE A BALLOT ISSUE COMMITTEE IS REQUIRED TO FILE A CAMPAIGN FINANCE REPORT UNDER § 13–309 OF THIS SUBTITLE.

(3) AN INDEPENDENT EXPENDITURE REPORT FILED UNDER THIS SUBSECTION SHALL INCLUDE THE INFORMATION REQUIRED BY SUBSECTION (E) OF THIS SECTION FOR THE PERIOD FROM THE BEGINNING OF THE ELECTION CYCLE THROUGH THE LAST DAY OF THE REPORTING PERIOD UNDER § 13–312 OF THIS SUBTITLE THAT PRECEDES THE REPORT FILING DATE.

(D) (1) A PERSON WHO FILES AN INDEPENDENT EXPENDITURE REPORT UNDER SUBSECTION (C) OF THIS SECTION SHALL FILE AN ADDITIONAL INDEPENDENT EXPENDITURE REPORT FOLLOWING ~~EACH~~ A DATE ON WHICH THE PERSON MAKES AGGREGATE INDEPENDENT EXPENDITURES OF $10,000 OR MORE FOR CAMPAIGN MATERIAL THAT IS A PUBLIC COMMUNICATION FOLLOWING THE CLOSING DATE OF THE PERSON'S PREVIOUS INDEPENDENT EXPENDITURE REPORT.

(2) AN INDEPENDENT EXPENDITURE REPORT UNDER THIS SUBSECTION SHALL:

(I) BE FILED WITH THE STATE BOARD ON THE DATE SPECIFIED IN SUBSECTION (C)(1) AND (2) OF THIS SECTION; AND

(II) INCLUDE THE INFORMATION REQUIRED BY SUBSECTION (E) OF THIS SECTION FOR THE PERIOD FROM THE CLOSING DATE OF THE PREVIOUS INDEPENDENT EXPENDITURE REPORT THROUGH THE LAST DAY OF THE REPORTING PERIOD UNDER § 13–312 OF THIS SUBTITLE THAT PRECEDES THE REPORT FILING DATE.

(E) AN INDEPENDENT EXPENDITURE REPORT SHALL INCLUDE THE FOLLOWING INFORMATION:

(1) THE IDENTITY OF THE PERSON MAKING THE INDEPENDENT EXPENDITURES AND OF ANY PERSON EXERCISING DIRECTION OR CONTROL OVER THE ACTIVITIES OF THE PERSON MAKING THE INDEPENDENT EXPENDITURES;

(2) THE BUSINESS ADDRESS OF THE PERSON MAKING THE INDEPENDENT EXPENDITURES;

(3) THE AMOUNT AND DATE OF EACH INDEPENDENT EXPENDITURE DURING THE PERIOD COVERED BY THE REPORT AND THE PERSON TO WHOM THE EXPENDITURE WAS MADE;

(4) THE CANDIDATE OR BALLOT ISSUE TO WHICH THE INDEPENDENT EXPENDITURE RELATES AND WHETHER THE INDEPENDENT EXPENDITURE SUPPORTS OR OPPOSES THAT CANDIDATE OR BALLOT ISSUE; AND

(5) THE IDENTITY OF EACH PERSON WHO MADE ~~A CONTRIBUTION DONATION~~ *CUMULATIVE DONATIONS IN EXCESS OF $51* TO THE PERSON MAKING THE INDEPENDENT EXPENDITURES DURING THE PERIOD COVERED BY THE REPORT.

(F) FOR PURPOSES OF THIS SECTION, A PERSON SHALL BE CONSIDERED TO HAVE MADE AN INDEPENDENT EXPENDITURE IF THE PERSON HAS EXECUTED A CONTRACT TO MAKE AN INDEPENDENT EXPENDITURE.

(G) THE COST OF CREATING AND DISSEMINATING CAMPAIGN MATERIAL, INCLUDING ANY DESIGN AND PRODUCTION COSTS, SHALL BE CONSIDERED IN DETERMINING THE AGGREGATE AMOUNT OF INDEPENDENT EXPENDITURES MADE BY A PERSON FOR CAMPAIGN MATERIAL THAT IS A PUBLIC COMMUNICATION UNDER THIS SECTION.

~~(G)~~ (H) THE ~~HIGHEST RANKING OFFICIAL OF~~ TREASURER OR OTHER INDIVIDUAL DESIGNATED BY AN ENTITY REQUIRED TO FILE AN INDEPENDENT EXPENDITURE REPORT UNDER THIS SECTION:

(1) SHALL SIGN EACH INDEPENDENT EXPENDITURE REPORT; AND

(2) IS RESPONSIBLE FOR FILING INDEPENDENT EXPENDITURE REPORTS IN FULL AND ACCURATE DETAIL.

~~(H)~~ (I) (1) AN INDIVIDUAL IS SUBJECT TO THE SANCTIONS THAT APPLY TO THE RESPONSIBLE OFFICERS OF A CAMPAIGN FINANCE ENTITY UNDER PART VII OF THIS SUBTITLE FOR FAILURE TO FILE PROPERLY AN INDEPENDENT EXPENDITURE REPORT.

(2) THE FAILURE TO PROVIDE ON AN INDEPENDENT EXPENDITURE REPORT ALL OF THE INFORMATION REQUIRED BY THIS SECTION IS DEEMED A FAILURE TO FILE AND RENDERS THE REPORT OVERDUE AS PROVIDED IN § 13–327(B) OF THIS SUBTITLE.

~~(I)~~ (J) (1) AN ENTITY REQUIRED TO FILE AN INDEPENDENT EXPENDITURE REPORT UNDER THIS SECTION ~~THAT SUBMITS REGULAR, PERIODIC REPORTS TO ITS SHAREHOLDERS, MEMBERS, OR DONORS ON ITS FINANCES OR ACTIVITIES SHALL~~ SHALL DO AT LEAST ONE OF THE FOLLOWING, UNLESS NEITHER ARE APPLICABLE TO THE ENTITY:

(I) ~~INCLUDE IN EACH~~ IF THE ENTITY SUBMITS REGULAR, PERIODIC ~~REPORT~~ REPORTS TO ITS SHAREHOLDERS, MEMBERS, OR DONORS, INCLUDE IN EACH REPORT, IN A CLEAR AND CONSPICUOUS MANNER, THE INFORMATION SPECIFIED IN SUBSECTION (E)(3) THROUGH (5) OF THIS SECTION FOR EACH INDEPENDENT EXPENDITURE MADE DURING THE PERIOD COVERED BY THE REPORT THAT MUST BE INCLUDED IN AN INDEPENDENT EXPENDITURE REPORT; ~~AND~~ OR

(II) IF THE ENTITY MAINTAINS AN INTERNET SITE, POST ON THAT INTERNET SITE A HYPERLINK FROM ITS HOMEPAGE TO THE INTERNET SITE WHERE THE ENTITY'S INDEPENDENT EXPENDITURE REPORT INFORMATION IS PUBLICLY AVAILABLE.

(2) AN ENTITY SHALL POST THE HYPERLINK REQUIRED UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION WITHIN 24 HOURS OF THE ENTITY'S INDEPENDENT EXPENDITURE REPORT INFORMATION BEING MADE PUBLICLY AVAILABLE ON THE INTERNET, AND THE HYPERLINK SHALL REMAIN POSTED ON THE ENTITY'S INTERNET SITE UNTIL THE END OF THE ELECTION CYCLE DURING WHICH THE ENTITY FILED AN INDEPENDENT EXPENDITURE REPORT.

(K) (1) A PERSON REQUIRED TO FILE AN INDEPENDENT EXPENDITURE REPORT UNDER THIS SECTION SHALL KEEP DETAILED AND ACCURATE RECORDS OF:

(I) ALL INDEPENDENT EXPENDITURES MADE BY THE PERSON FOR CAMPAIGN MATERIAL THAT IS A PUBLIC COMMUNICATION; AND

(II) ALL DONATIONS RECEIVED BY THE PERSON THAT ARE FOR THE PURPOSE OF FURTHERING INDEPENDENT EXPENDITURES FOR CAMPAIGN MATERIAL THAT IS A PUBLIC COMMUNICATION.

(2) RECORDS REQUIRED TO BE KEPT UNDER THIS SUBSECTION SHALL BE PRESERVED FOR 2 YEARS AFTER THE END OF THE ELECTION CYCLE IN WHICH THE PERSON FILED THE INDEPENDENT EXPENDITURE REPORT TO WHICH THE RECORDS RELATE.

~~(J)~~ (L) THE STATE BOARD MAY ADOPT REGULATIONS AS NECESSARY TO IMPLEMENT THE REQUIREMENTS OF THIS SECTION.

13–307.

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

(2) "DONATION" MEANS THE GIFT OR TRANSFER, OR PROMISE OF GIFT OR TRANSFER, OF MONEY OR OTHER THING OF VALUE TO A PERSON THAT IS MADE FOR THE PURPOSE OF FURTHERING ELECTIONEERING COMMUNICATIONS.

(3) (I) "ELECTIONEERING COMMUNICATION" MEANS A BROADCAST, CABLE, OR SATELLITE COMMUNICATION THAT:

1. REFERS TO A CLEARLY IDENTIFIED CANDIDATE OR BALLOT ISSUE;

2. IS MADE WITHIN 60 DAYS OF AN ELECTION DAY ON WHICH THE CANDIDATE OR BALLOT ISSUE IS ON THE BALLOT; ~~AND~~

3. IS CAPABLE OF BEING RECEIVED BY 50,000 OR MORE INDIVIDUALS IN THE CONSTITUENCY WHERE THE CANDIDATE OR BALLOT ISSUE IS ON THE BALLOT*; AND*

4. IS NOT MADE IN COORDINATION WITH, OR AT THE REQUEST OR SUGGESTION OF, A CANDIDATE, A CAMPAIGN FINANCE ENTITY OF A CANDIDATE, AN AGENT OF A CANDIDATE, OR A BALLOT ISSUE COMMITTEE.

(II) "ELECTIONEERING COMMUNICATION" DOES NOT INCLUDE:

1. AN INDEPENDENT EXPENDITURE;

2. A NEWS STORY, A COMMENTARY, OR AN EDITORIAL DISSEMINATED BY A BROADCASTING STATION, INCLUDING A CABLE TELEVISION OPERATOR, PROGRAMMER, OR PRODUCER, OR SATELLITE TELEVISION OR RADIO PROVIDER THAT IS NOT CONTROLLED BY A CANDIDATE OR POLITICAL PARTY;

3. A CANDIDATE DEBATE OR FORUM; OR

4. A COMMUNICATION THAT PROPOSES A COMMERCIAL TRANSACTION.

(III) FOR PURPOSES OF THIS PARAGRAPH, "CLEARLY IDENTIFIED" MEANS:

1. THE NAME OF A CANDIDATE APPEARS;

2. A PHOTOGRAPH OR DRAWING OF A CANDIDATE APPEARS; OR

3. THE IDENTITY OF A CANDIDATE OR BALLOT ISSUE IS APPARENT BY UNAMBIGUOUS REFERENCE.

(4) (I) "PERSON" INCLUDES AN INDIVIDUAL, A PARTNERSHIP, A COMMITTEE, AN ASSOCIATION, A CORPORATION, A LABOR ORGANIZATION, OR ANY OTHER ORGANIZATION OR GROUP OF PERSONS.

(II) "PERSON" DOES NOT INCLUDE A CAMPAIGN FINANCE ENTITY ORGANIZED UNDER SUBTITLE 2, PART II OF THIS TITLE.

(B) AFTER A PERSON MAKES AGGREGATE DISBURSEMENTS OF $10,000 OR MORE IN AN ELECTION CYCLE FOR ELECTIONEERING COMMUNICATIONS, THE PERSON SHALL FILE AN ELECTIONEERING COMMUNICATION REPORT AS REQUIRED IN THIS SECTION.

(C) (1) IF THE ELECTIONEERING COMMUNICATIONS RELATE TO A CANDIDATE, THE PERSON SHALL FILE AN ELECTIONEERING COMMUNICATION REPORT WITH THE STATE BOARD ON THE NEXT DATE A CAMPAIGN FINANCE ENTITY OF A CANDIDATE IS REQUIRED TO FILE A CAMPAIGN FINANCE REPORT UNDER § 13–309 OF THIS SUBTITLE.

(2) IF THE ELECTIONEERING COMMUNICATIONS RELATE TO A BALLOT ISSUE, THE PERSON SHALL FILE AN ELECTIONEERING COMMUNICATION REPORT WITH THE STATE BOARD ON THE NEXT DATE A BALLOT ISSUE COMMITTEE IS REQUIRED TO FILE A CAMPAIGN FINANCE REPORT UNDER § 13–309 OF THIS SUBTITLE.

(3) AN ELECTIONEERING COMMUNICATION REPORT FILED UNDER THIS SUBSECTION SHALL INCLUDE THE INFORMATION REQUIRED BY SUBSECTION (E) OF THIS SECTION FOR THE PERIOD FROM THE BEGINNING OF THE ELECTION CYCLE THROUGH THE LAST DAY OF THE REPORTING PERIOD UNDER § 13–312 OF THIS SUBTITLE THAT PRECEDES THE REPORT FILING DATE.

(D) (1) A PERSON WHO FILES AN ELECTIONEERING COMMUNICATION REPORT UNDER SUBSECTION (C) OF THIS SECTION SHALL FILE AN ADDITIONAL ELECTIONEERING COMMUNICATION REPORT FOLLOWING A DATE ON WHICH

THE PERSON MAKES AGGREGATE DISBURSEMENTS OF $10,000 OR MORE FOR ELECTIONEERING COMMUNICATIONS FOLLOWING THE CLOSING DATE OF THE PERSON'S PREVIOUS ELECTIONEERING COMMUNICATION REPORT.

(2) AN ELECTIONEERING COMMUNICATION REPORT UNDER THIS SUBSECTION SHALL:

(I) BE FILED WITH THE STATE BOARD ON THE DATE SPECIFIED IN SUBSECTION (C)(1) AND (2) OF THIS SECTION; AND

(II) INCLUDE THE INFORMATION REQUIRED BY SUBSECTION (E) OF THIS SECTION FOR THE PERIOD FROM THE CLOSING DATE OF THE PREVIOUS ELECTIONEERING COMMUNICATION REPORT THROUGH THE LAST DAY OF THE REPORTING PERIOD UNDER § 13–312 OF THIS SUBTITLE THAT PRECEDES THE REPORT FILING DATE.

(E) AN ELECTIONEERING COMMUNICATION REPORT SHALL INCLUDE THE FOLLOWING INFORMATION:

(1) THE IDENTITY OF THE PERSON MAKING DISBURSEMENTS FOR ELECTIONEERING COMMUNICATIONS AND OF ANY PERSON EXERCISING DIRECTION OR CONTROL OVER THE ACTIVITIES OF THE PERSON MAKING THE DISBURSEMENTS FOR ELECTIONEERING COMMUNICATIONS;

(2) THE BUSINESS ADDRESS OF THE PERSON MAKING THE DISBURSEMENTS FOR ELECTIONEERING COMMUNICATIONS;

(3) THE AMOUNT AND DATE OF EACH DISBURSEMENT FOR ELECTIONEERING COMMUNICATIONS DURING THE PERIOD COVERED BY THE REPORT AND THE PERSON TO WHOM THE DISBURSEMENT WAS MADE;

(4) THE CANDIDATE OR BALLOT ISSUE TO WHICH THE ELECTIONEERING COMMUNICATIONS RELATE;

(5) THE IDENTITY OF EACH PERSON WHO MADE ~~A DONATION~~ *CUMULATIVE DONATIONS IN EXCESS OF $51* TO THE PERSON MAKING THE DISBURSEMENTS FOR ELECTIONEERING COMMUNICATIONS DURING THE PERIOD COVERED BY THE REPORT.

(F) *(1)* FOR PURPOSES OF THIS SECTION, A PERSON SHALL BE CONSIDERED TO HAVE MADE A DISBURSEMENT FOR AN ELECTIONEERING COMMUNICATION IF THE PERSON HAS EXECUTED A CONTRACT TO MAKE A DISBURSEMENT FOR AN ELECTIONEERING COMMUNICATION.

(2) A PERSON WHO MAKES A CONTRIBUTION TO A CAMPAIGN FINANCE ENTITY MAY NOT BE CONSIDERED TO HAVE MADE A DISBURSEMENT FOR ELECTIONEERING COMMUNICATIONS UNDER THIS SECTION BECAUSE OF THE CONTRIBUTION.

(G) THE COST OF CREATING AND DISSEMINATING ELECTIONEERING COMMUNICATIONS, INCLUDING ANY DESIGN AND PRODUCTION COSTS, SHALL BE CONSIDERED IN DETERMINING THE AGGREGATE AMOUNT OF DISBURSEMENTS FOR ELECTIONEERING COMMUNICATIONS MADE BY A PERSON UNDER THIS SECTION.

(H) THE TREASURER OR OTHER INDIVIDUAL DESIGNATED BY AN ENTITY REQUIRED TO FILE AN ELECTIONEERING COMMUNICATION REPORT UNDER THIS SECTION:

(1) SHALL SIGN EACH ELECTIONEERING COMMUNICATION REPORT; AND

(2) IS RESPONSIBLE FOR FILING ELECTIONEERING COMMUNICATION REPORTS IN FULL AND ACCURATE DETAIL.

(I) (1) AN INDIVIDUAL IS SUBJECT TO THE SANCTIONS THAT APPLY TO THE RESPONSIBLE OFFICERS OF A CAMPAIGN FINANCE ENTITY UNDER PART VII OF THIS SUBTITLE FOR FAILURE TO FILE PROPERLY AN ELECTIONEERING COMMUNICATION REPORT.

(2) THE FAILURE TO PROVIDE ON AN ELECTIONEERING COMMUNICATION REPORT ALL OF THE INFORMATION REQUIRED BY THIS SECTION IS DEEMED A FAILURE TO FILE AND RENDERS THE REPORT OVERDUE AS PROVIDED IN § 13–327(B) OF THIS SUBTITLE.

(J) (1) AN ENTITY REQUIRED TO FILE AN ELECTIONEERING COMMUNICATION REPORT UNDER THIS SECTION SHALL DO AT LEAST ONE OF THE FOLLOWING, UNLESS NEITHER ARE APPLICABLE TO THE ENTITY:

(I) IF THE ENTITY SUBMITS REGULAR, PERIODIC REPORTS TO ITS SHAREHOLDERS, MEMBERS, OR DONORS, INCLUDE IN EACH REPORT IN A CLEAR AND CONSPICUOUS MANNER, THE INFORMATION SPECIFIED IN SUBSECTION (E)(3) THROUGH (5) OF THIS SECTION FOR EACH DISBURSEMENT FOR ELECTIONEERING COMMUNICATIONS MADE DURING THE PERIOD COVERED BY THE REPORT THAT MUST BE INCLUDED IN AN ELECTIONEERING COMMUNICATION REPORT; OR

(II) IF THE ENTITY MAINTAINS AN INTERNET SITE, POST ON THAT INTERNET SITE A HYPERLINK FROM ITS HOMEPAGE TO THE INTERNET SITE WHERE THE ENTITY'S ELECTIONEERING COMMUNICATION REPORT INFORMATION IS PUBLICLY AVAILABLE.

(2) (I) AN ENTITY SHALL POST THE HYPERLINK REQUIRED UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION WITHIN 24 HOURS OF THE ENTITY'S ELECTIONEERING COMMUNICATION REPORT INFORMATION BEING MADE PUBLICLY AVAILABLE ON THE INTERNET.

(II) THE HYPERLINK SHALL REMAIN POSTED ON THE ENTITY'S INTERNET SITE UNTIL THE END OF THE ELECTION CYCLE DURING WHICH THE ENTITY FILED AN ELECTIONEERING COMMUNICATION REPORT.

(K) (1) A PERSON REQUIRED TO FILE AN ELECTIONEERING COMMUNICATION REPORT UNDER THIS SECTION SHALL KEEP DETAILED AND ACCURATE RECORDS OF:

(I) ALL DISBURSEMENTS FOR ELECTIONEERING COMMUNICATIONS MADE BY THE PERSON; AND

(II) ALL DONATIONS RECEIVED BY THE PERSON THAT ARE FOR THE PURPOSE OF FURTHERING ELECTIONEERING COMMUNICATIONS.

(2) RECORDS REQUIRED TO BE KEPT UNDER THIS SUBSECTION SHALL BE PRESERVED UNTIL 2 YEARS AFTER THE END OF THE ELECTION CYCLE IN WHICH THE PERSON FILED THE ~~INDEPENDENT EXPENDITURE~~ *ELECTIONEERING COMMUNICATION* REPORT TO WHICH THE RECORDS RELATE.

(L) THE STATE BOARD MAY ADOPT REGULATIONS AS NECESSARY TO IMPLEMENT THE REQUIREMENTS OF THIS SECTION.

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply retroactively and shall be applied to independent expenditures made on or after January 1, 2011.~~

SECTION 2. AND BE IT FURTHER ENACTED, That only independent expenditures or disbursements for an electioneering communication made after the effective date of this Act shall be considered in determining whether a person has made the aggregate amount of independent expenditures or disbursements for electioneering communications that subjects the person to the requirements of this Act.

SECTION ~~2.~~ *3.* 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 ~~3.~~ *4.* AND BE IT FURTHER ENACTED, That this Act shall take effect ~~June~~ December 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 576

(House Bill 104)

AN ACT concerning

Higher Education – Community Colleges – Tuition Waiver for Disabled Individuals

FOR the purpose of clarifying and amending the requirements for obtaining an exemption from the payment of tuition at community colleges for certain disabled individuals; establishing certain conditions for the tuition waiver; limiting the tuition waiver to a maximum number of credits per semester; clarifying that receipt of certain benefits under the Social Security Act provides eligibility for the tuition waiver; and generally relating to tuition waivers for disabled individuals at community colleges.

BY repealing and reenacting, with amendments,
Article – Education
Section 16–106(c)
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

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

Article – Education

16–106.

(c) (1) Any resident of this State who is **[**retired from**]** **OUT OF** the work force by reason of total and permanent disability who enrolls at a community college in a class that has at least 10 regularly enrolled students:

(i) Is exempt from payment of tuition **FOR UP TO 6 CREDITS PER SEMESTER OR UP TO 12 CREDITS PER SEMESTER IF THE INDIVIDUAL IS ENROLLED IN CLASSES AS PART OF A DEGREE OR A CERTIFICATE PROGRAM DESIGNED TO LEAD TO EMPLOYMENT**; and

(ii) Shall be counted in computing full–time equivalent enrollment under § 16–305 of this title.

(2) In order to receive this exemption, an individual who meets the requirements of paragraph (1) of this subsection shall **[**obtain**] PROVIDE THE COMMUNITY COLLEGE WITH** certification from the Social Security Administration **[**or**],** the Railroad Retirement Board **[**that the individual receives disability or retirement benefits under the Social Security Act or the Railroad Retirement Act.

(3) In order to obtain this exemption, an individual who meets the requirements of paragraph (1) of this subsection, who was a federal employee, and who does not receive disability or retirement benefits under the Social Security Act or the Railroad Retirement Act shall obtain certification from**], OR IN THE CASE OF A FORMER FEDERAL EMPLOYEE, FROM** the individual's federal retirement or pension authority of the **[**employee's**] INDIVIDUAL'S**:

(i) Total and permanent disability; and

(ii) Receipt of disability **OR RETIREMENT** benefits based on a standard that is at least as stringent as the standard applied by the Social Security Act.

~~(4)~~ (3) CERTIFICATION FROM THE SOCIAL SECURITY ADMINISTRATION OF AN INDIVIDUAL'S RECEIPT OF DISABILITY OR RETIREMENT BENEFITS UNDER EITHER TITLE II OR TITLE XVI OF THE FEDERAL SOCIAL SECURITY ACT SHALL SATISFY THE REQUIREMENT IN PARAGRAPH ~~(3)(II)~~ (2)(II) OF THIS SUBSECTION.

(4) (I) IN ORDER TO RECEIVE THIS EXEMPTION, AN INDIVIDUAL WHO MEETS THE REQUIREMENTS OF PARAGRAPH (1) OF THIS SUBSECTION AND IS ENROLLED IN A DEGREE OR CERTIFICATE PROGRAM SHALL SUBMIT A TIMELY APPLICATION FOR ANY STATE OR FEDERAL STUDENT FINANCIAL AID, OTHER THAN A STUDENT LOAN, FOR WHICH THE STUDENT MAY QUALIFY.

(II) ANY STUDENT FINANCIAL AID, OTHER THAN A STUDENT LOAN, RECEIVED BY THE STUDENT SHALL BE APPLIED FIRST TO PAY THE STUDENT'S TUITION.

(III) UNDER THIS EXEMPTION, THE WAIVER SHALL APPLY TO THE DIFFERENCE, IF ANY, BETWEEN THE CHARGE FOR TUITION AND THE FINANCIAL AID AWARD, NOT INCLUDING A STUDENT LOAN, THAT THE STUDENT RECEIVES.

(IV) ON REQUEST, THE COMMUNITY COLLEGE SHALL ASSIST ANY INDIVIDUAL REQUIRED TO SUBMIT AN APPLICATION FOR STATE OR FEDERAL STUDENT FINANCIAL AID UNDER THIS PARAGRAPH.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 577

(House Bill 111)

AN ACT concerning

Department of Natural Resources – Fishing – Regulatory Authority

FOR the purpose of authorizing the ~~Department~~ Secretary of Natural Resources~~, subject to certain standards and requirements, to adopt regulations governing the manner, methods, and gear for catching and possessing fish~~ to adopt regulations, in consultation with certain commissions, governing the use of certain types of fishing gear under certain circumstances; requiring the Department to consider certain factors before adopting certain regulations; repealing provisions of law that require a person to possess a valid fishing license before using certain devices to catch or attempt to catch finfish; prohibiting the Department from adopting regulations governing the use of certain crabbing gear for certain purposes; and generally relating to the regulatory authority of the Department of Natural Resources with respect to catching and possessing fish.

BY adding to
Article – Natural Resources
Section 4–221
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 4–704 and 4–803(b)

Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – Natural Resources
Section 4–803(a)
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

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

Article – Natural Resources

4–221.

~~SUBJECT TO THE PROVISIONS OF THIS TITLE, THE DEPARTMENT MAY ADOPT REGULATIONS GOVERNING THE MANNER, METHODS, AND GEAR FOR CATCHING AND POSSESSING FISH.~~

(A) THE AUTHORITY PROVIDED BY THIS SECTION IS IN ADDITION TO ANY OTHER AUTHORITY OF THE SECRETARY PROVIDED BY LAW.

(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE SECRETARY, AFTER CONSULTATION WITH THE TIDAL FISHERIES ADVISORY COMMISSION AND THE SPORT FISHERIES ADVISORY COMMISSION, MAY ADOPT REGULATIONS TO DEFINE AND GOVERN THE USE OF:

(I) RECREATIONAL FISHING GEAR; AND

(II) THE FOLLOWING TYPES OF COMMERCIAL FISHING GEAR:

1. FISH POTS;

2. BANK TRAPS;

3. FYKE NETS; AND

4. HOOP NETS.

(2) THE DEPARTMENT SHALL CONSIDER RELEVANT BIOLOGICAL, ECOLOGICAL, AND SOCIOECONOMIC FACTORS BEFORE ADOPTING REGULATIONS UNDER THIS SUBSECTION.

4–704.

(a) **[**A person may not catch or attempt to catch finfish in the tidal waters of the State by the use of any net or other device except hook and line, dip net operated by hand, spear gun, or bow and arrow pursuant to the provisions of this subtitle unless he possesses a valid license to catch finfish issued by the Department.

(b)**]** An applicant for a license to catch finfish shall furnish information the Department requires.

[(c)**] (B)** The Department may not grant a license to any person, under the provisions of this subtitle, to set a pound net on the location occupied by any other pound net or within 4,500 feet in the Chesapeake Bay or 1,500 feet in a tributary of the Chesapeake Bay measured at right angles to the line of stakes, unless the other licensee failed to apply for renewal of his license by the expiration date of the year for which it was granted.

4–803.

(a) The Department may adopt rules and regulations to effectuate the following purposes:

(1) To restrict catching and possessing any blue crab;

(2) The methods by which crabs are taken;

(3) To close or open any specified area to catch crabs;

(4) To prohibit or restrict devices used to catch crabs;

(5) To establish seasons to catch crabs; and

(6) To establish minimum size limits for hard, soft, and peeler crabs. However, this section does not permit the Department to change existing license fees for catching, picking, canning, packing, or shipping cooked hard or soft crabs or crab meat; or for selling, or shipping live hard or soft crabs by barrel or crate. The Department may set license fees on types of gear or equipment if not otherwise set by law.

(b) The Department may not adopt regulations to:

(1) Restrict a tidal fish licensee who catches crabs using trotline gear to a workday of less than 8 hours per day, excluding time spent setting or taking up gear; **OR**

(2) Establish time restrictions on a tidal fish licensee using trotline gear for setting and taking up gear**[**; or

(3) Prohibit a tidal fish licensee from obstructing the cull ring of a hard crab pot at any time of the year in order to catch peeler crabs**]**.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 578

(House Bill 145)

AN ACT concerning

~~Health~~ *Environment* – Cadmium in Children's Jewelry – Prohibition

FOR the purpose of prohibiting a person, on or after a certain date, from manufacturing, selling, offering for sale, or distributing in the State certain children's jewelry that contains a certain amount of cadmium; ~~requiring~~ authorizing the ~~Department of Health and Mental Hygiene, in consultation with the~~ Department of the Environment~~,~~ to adopt certain regulations; providing that this Act does not apply to certain toys regulated under a certain federal law; defining certain terms; and generally relating to a prohibition on cadmium in children's jewelry.

~~BY adding to~~
~~Article – Health – General~~
~~Section 24–305~~
~~Annotated Code of Maryland~~
~~(2009 Replacement Volume and 2010 Supplement)~~

BY adding to
Article – Environment
Section 6–1401 through 6–1404 to be under the new subtitle "Subtitle 14. Cadmium in Children's Jewelry"
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

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

~~Article – Health – General~~

~~24–305.~~

Article – Environment

SUBTITLE 14. CADMIUM IN CHILDREN'S JEWELRY.

6–1401.

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

~~(2)~~ (B) "CADMIUM" MEANS ELEMENTAL CADMIUM AND ANY COMPOUND OR ALLOY THAT CONTAINS CADMIUM.

~~(3)~~ (C) "CHILDREN'S JEWELRY" MEANS ANY JEWELRY, INCLUDING A CHARM, BRACELET, PENDANT, NECKLACE, EARRING, OR RING, AND ANY COMPONENT OF JEWELRY, DESIGNED OR INTENDED TO BE WORN OR USED BY A CHILD UNDER THE AGE OF ~~12~~ 13 YEARS.

6–1402.

~~(B)~~ ON OR AFTER JULY 1, 2012, A PERSON MAY NOT MANUFACTURE, SELL, OFFER FOR SALE, OR DISTRIBUTE IN THE STATE ANY CHILDREN'S JEWELRY THAT CONTAINS CADMIUM AT MORE THAN 0.0075% BY WEIGHT.

6–1403.

~~(C)~~ THE ~~DEPARTMENT OF HEALTH AND MENTAL HYGIENE, IN CONSULTATION WITH THE~~ DEPARTMENT OF THE ENVIRONMENT~~, SHALL~~ MAY ADOPT REGULATIONS TO IMPLEMENT THIS ~~SECTION~~ SUBTITLE.

6–1404.

~~(D)~~ THIS ~~SECTION~~ SUBTITLE DOES NOT APPLY TO ANY TOY REGULATED FOR CADMIUM EXPOSURE UNDER THE FEDERAL CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 579

(House Bill 208)

AN ACT concerning

Aquaculture – Shellfish Leasing Areas – Expansion

FOR the purpose of altering the areas within which the Secretary of Natural Resources may establish certain limits relating to aquaculture; authorizing the Department of Natural Resources to resurvey certain areas for a certain purpose; requiring the Department to amend natural oyster bar charts or coordinates by regulation under certain circumstances; altering the location restrictions for Aquaculture Enterprise Zones and submerged land leases; establishing certain restrictions for Aquaculture Enterprise Zones and leases of submerged land located within a sanctuary; ~~providing that certain riparian owners have the right of first refusal to apply on or before a certain date for an aquaculture lease under certain circumstances;~~ providing that the Department may only issue a shellfish lease to a corporation under certain circumstances; providing that certain restrictions on the locations of submerged land leases do not apply to certain persons with certain riparian rights; making a certain technical correction; making the provisions of this Act severable; altering certain definitions; defining a certain term; and generally relating to oysters and shellfish aquaculture.

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 4–1001(o), 4–1009, 4–1101(i), 4–11A–01(f) and (j), 4–11A–05, 4–11A–06, 4–11A–07, and 4–11A–16
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

BY adding to
Article – Natural Resources
Section 4–1102 and 4–11A–01(r)
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

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

Article – Natural Resources

4–1001.

(o) "Natural oyster bar" means any submerged oyster bar, reef, rock, or area represented as an oyster bar on the charts of the Oyster Survey of 1906 to 1912**[,]** and

its amendments**[**, or any area declared by any circuit court to be a natural oyster bar, or any area on which the Department plants oysters or shells. A natural oyster bar also means any bar beneath the waters of the State where the natural growth of oysters abounds to the extent that the public has resorted to the bar for a livelihood, whether continuously or at intervals, during any oyster season within five years prior to the filing of any application for a lease of the area in question, or within five years prior to the making of a resurvey under the provisions of Subtitle 11. The actual conditions of the area in question at any time within the five–year period shall be considered in determining whether or not the area is a natural oyster bar**]**.

4–1009.

(a) During the closed season for taking oysters, a person may take seed oysters from the natural bars of the State marked by the Department for a period not exceeding one month in any one year, at times designated by the Department. The seed oysters shall be taken only in accordance with rules and regulations the Department prescribes, sold only to lessees of private oyster grounds, delivered only on leased oyster bottoms and subject to the provisions of § 4–1103(c) of this title.

(b) The Secretary may establish by rule or regulation daily catch limits on the quantities of oysters which may be caught from the **[**natural oyster bars**]** **WATERS** of the State **EXCEPT LEASED AREAS AND AQUACULTURE ENTERPRISE ZONES**, and may amend the daily catch limits to conserve the public oyster resource. Notice of the establishment or amendment of these catch limits, including all applicable reasons for the Department's action, shall be given before publication, to the Joint Committee on Administrative, Executive, and Legislative Review and by publication of the notice in at least one newspaper of general circulation in the State, in at least one newspaper of general circulation in each county in which the affected waters are located, and on the website of the Department not less than one week prior to the effective date.

(c) A person may not land, sell, or attempt to land or sell on any day oysters from the waters of the State exceeding the daily catch limit established by the Secretary by more than 10 percent. However, in emergencies, the Department may authorize unloading up to two daily catch limits in 1 day. A licensed oyster buyer or dealer may sell or attempt to sell oysters which he shows were purchased from another catcher.

(d) All oysters landed or offered for sale on any day by any person licensed to catch oysters which are in excess of the daily catch limit shall become the property of the State, and payment shall be made directly to the State by the buyer or receiver of the oysters at the same price paid the catcher for the balance of his catch. All funds received under this subsection shall be deposited to the credit of the Fisheries Research and Development Fund and shall be used for repletion of the natural oyster bars of the State.

4–1101.

(i) "Natural oyster bar" means any submerged oyster bar, reef, rock, or area represented as an oyster bar on the charts of the Oyster Survey of 1906 to 1912**[**,**]** and its amendments**[**, or any area declared by any circuit court to be a natural oyster bar, or any area on which the Department plants oysters or shells. A natural oyster bar also means any bar beneath the waters of the State where the natural growth of oysters abounds to the extent that the public has resorted to the bar for a livelihood, whether continuously or at intervals, during any oyster season within five years prior to the filing of any application for a lease of the area in question, or within five years prior to making of a resurvey under § 4–1102. The actual condition of the area in question at any time within the five–year period shall be considered in determining whether or not the area is a natural oyster bar**]**.

4–1102.

(A) THE DEPARTMENT MAY RESURVEY ANY SUBMERGED AREA OF THE STATE TO DETERMINE THE POSITION AND EXTENT OF ANY NATURAL OYSTER BAR.

(B) IF, AFTER CONDUCTING A SURVEY IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION, THE DEPARTMENT FINDS THAT ANY NATURAL OYSTER BAR IS LOCATED INCORRECTLY ON EXISTING CHARTS OR THAT THE EXISTING CHARTS DO NOT REFLECT THE ACTUAL CONDITION OF SUBMERGED LANDS, THE DEPARTMENT SHALL AMEND THE EXISTING CHARTS OR COORDINATES BY REGULATION.

4–11A–01.

(f) "Chesapeake Bay" means the waters commonly known as the Chesapeake Bay **AS DEFINED BY THE CHARTS OF THE OYSTER SURVEY OF 1906 TO 1912 AND ITS AMENDMENTS**.

(j) "Natural oyster bar" means any submerged oyster bar, reef, rock, or area represented as an oyster bar on the charts of the Oyster Survey of 1906 to 1912**[**,**]** and its amendments**[**, or any area declared by any circuit court to be a natural oyster bar, or any area on which the Department plants oysters or shells**]**.

(R) "YATES BAR" MEANS ANY SUBMERGED OYSTER BAR, REEF, ROCK, OR AREA REPRESENTED AS AN OYSTER BAR ON THE CHARTS OF THE OYSTER SURVEY OF 1906 TO 1912 NOT INCLUDING ANY AMENDMENTS.

4–11A–05.

(a) This section applies to leasing in an Aquaculture Enterprise Zone in the Chesapeake Bay.

(b) (1) In consultation with the Department of the Environment and the Wetlands Administrator of the Board of Public Works, the Department shall establish Aquaculture Enterprise Zones in the Chesapeake Bay.

(2) An Aquaculture Enterprise Zone may not be located:

(i) Within a minimum of 50 feet of shoreline or any pier without the written permission of the riparian owner at the time of designation of the Aquaculture Enterprise Zone;

(ii) Within 150 feet of the public shellfish fishery or a registered pound net site;

(iii) Within 150 feet of an **[**oyster sanctuary or**]** oyster reserve **OR ANY YATES BAR LOCATED IN AN OYSTER SANCTUARY**;

(iv) Within 150 feet of a federal navigational channel;

(v) In any creek, cove, bay, or inlet less than 300 feet wide at its mouth at mean low tide; or

(vi) In an SAV Protection Zone.

(3) In determining the location of an Aquaculture Enterprise Zone, the Department shall consider potential conflicts presented by other uses of the proposed area, to include navigation, recreation, and commercial fishing.

(4) Before adopting regulations establishing an Aquaculture Enterprise Zone, the Department shall hold a public hearing in the county or counties immediately adjacent to the proposed location of the Aquaculture Enterprise Zone.

(c) (1) Subject to paragraph (2) of this subsection, the Department may issue to any person an aquaculture lease in an Aquaculture Enterprise Zone.

(2) (i) **1.** The Department shall set aside 25% of each Aquaculture Enterprise Zone for leasing to persons who hold tidal fish licenses under Subtitle 7 of this title and who have actively used those licenses during the 3 years preceding June 1, 2009.

~~(ii)~~ **2.** An applicant for a lease under this ~~paragraph~~ **SUBPARAGRAPH** shall comply with the provisions for leasing set forth in this subtitle.

~~(iii)~~ **3.** The set–aside provided for in ~~subparagraph (i)~~ **SUBSUBPARAGRAPH 1** of this ~~paragraph~~ **SUBPARAGRAPH** shall expire June 1, 2011.

(II) THE DEPARTMENT MAY ISSUE AN AQUACULTURE LEASE TO A CORPORATION ONLY IF:

1. THE CORPORATION IS ORGANIZED UNDER THE LAWS OF THE STATE; AND

2. MORE THAN 50% OF THE STOCK IN THE CORPORATION IS OWNED BY RESIDENTS OF THE STATE.

(3) **[**the**] THE** Department may establish a buffer between leased areas within an Aquaculture Enterprise Zone.

(d) A person who leases an area in an Aquaculture Enterprise Zone may cultivate shellfish:

(1) On the submerged land;

(2) In temporary protective enclosures approved by the Department on the surface of the submerged land;

(3) Subject to approval by the United States Army Corps of Engineers, on or under the surface of the water in a floating structure or in a structure on the submerged bottom, except that the height of the structure may not exceed 18 inches; or

(4) In any other manner authorized by the Department.

(E) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, AN AQUACULTURE ENTERPRISE ZONE LOCATED WITHIN A SANCTUARY MUST BE COMPATIBLE WITH OYSTER RESTORATION AND MUST SATISFY THE CRITERIA FOR PERMISSIBLE LEASING WITHIN A SANCTUARY AS PROVIDED IN REGULATIONS ADOPTED UNDER THIS SUBTITLE.

4–11A–06.

(a) This section applies to a submerged land lease in the Chesapeake Bay that is not in an Aquaculture Enterprise Zone.

(b) (1) **(I)** ~~The~~ **SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE** Department may issue to a person a submerged land lease in waters of the Chesapeake Bay that meet applicable water quality requirements for shellfish cultivation as determined by the Department of the Environment.

(II) THE DEPARTMENT MAY ISSUE A SUBMERGED LAND LEASE IN THE WATERS OF THE CHESAPEAKE BAY TO A CORPORATION ONLY IF:

1. THE CORPORATION IS ORGANIZED UNDER THE LAWS OF THE STATE; AND

2. MORE THAN 50% OF THE STOCK IN THE CORPORATION IS OWNED BY RESIDENTS OF THE STATE.

(2) A submerged land lease may not be located:

(i) Within a minimum of 50 feet of shoreline or any pier without the written permission of the riparian owner at the time of initial application for the lease;

(ii) Within 150 feet of the public shellfish fishery or a registered pound net site;

(iii) Within 150 feet of an **[**oyster sanctuary or**]** oyster reserve **OR ANY YATES BAR LOCATED IN AN OYSTER SANCTUARY**;

(iv) Within 150 feet of a federal navigational channel;

(v) ~~In~~ **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, IN** any creek, cove, bay, or inlet less than 300 feet wide at its mouth at mean low tide; or

(vi) In an SAV Protection Zone.

(3) PARAGRAPH (2)(V) OF THIS SUBSECTION DOES NOT APPLY TO A RIPARIAN OWNER OR A LAWFUL OCCUPANT OF THE RIPARIAN PROPERTY.

(c) A person with a submerged land lease in the Chesapeake Bay may cultivate shellfish on the submerged land, in temporary protective enclosures approved by the Department on the surface of the submerged land, or in any other manner authorized by the Department.

(D) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, A LEASE OF SUBMERGED LAND LOCATED WITHIN A SANCTUARY MUST BE COMPATIBLE WITH OYSTER RESTORATION AND MUST SATISFY THE CRITERIA FOR PERMISSIBLE LEASING WITHIN A SANCTUARY AS PROVIDED IN REGULATIONS ADOPTED UNDER THIS SUBTITLE.

4–11A–07.

(a) This section applies to a submerged land lease in the waters of the Atlantic Coastal Bays.

(b) **(1)** ~~The~~ **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE** Department may issue to a person a submerged land lease in waters of the Atlantic Coastal Bays that meet applicable water quality requirements for shellfish cultivation as determined by the Department of the Environment.

(2) THE DEPARTMENT MAY ISSUE A SUBMERGED LAND LEASE IN THE WATERS OF THE ATLANTIC COASTAL BAYS TO A CORPORATION ONLY IF:

(I) THE CORPORATION IS ORGANIZED UNDER THE LAWS OF THE STATE; AND

(II) MORE THAN 50% OF THE STOCK IN THE CORPORATION IS OWNED BY RESIDENTS OF THE STATE.

(c) **(1)** A submerged land lease may not be located:

~~(1)~~ **(I)** Within a minimum of 50 feet of shoreline or any pier without the written permission of the riparian owner at the time of initial application for the lease;

~~(2)~~ **(II)** Within 150 feet of the public shellfish fishery or a registered pound net site;

~~(3)~~ **(III)** Within 150 feet of any **[**oyster sanctuary or**]** oyster reserve **OR A YATES BAR LOCATED IN AN OYSTER SANCTUARY**;

~~(4)~~ **(IV)** Within 150 feet of a federal navigational channel;

~~(5)~~ **(V)** ~~In~~ **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN** any creek, cove, bay, or inlet less than 300 feet wide at its mouth at mean low tide;

~~(6)~~ **(VI)** In an SAV Protection Zone; or

~~(7)~~ **(VII)** In a setback or buffer from the Assateague Island National Seashore established by the Department.

(2) PARAGRAPH (1)(V) OF THIS SUBSECTION DOES NOT APPLY TO A RIPARIAN OWNER OR A LAWFUL OCCUPANT OF THE RIPARIAN PROPERTY.

(d) A person with a submerged land lease in the Atlantic Coastal Bays may cultivate shellfish on the submerged land, in temporary protective enclosures approved by the Department on the surface of the submerged land, or in any other manner authorized by the Department.

(e) (1) The Department may establish submerged land areas in the Atlantic Coastal Bays that:

(i) Are preapproved for leasing;

(ii) May not be leased;

(iii) May be approved for leasing only on specific application and review by the Department.

(2) In establishing areas that are preapproved for leasing or that may not be leased under paragraph (1) of this subsection, the Department shall consider potential conflicts presented by other uses of the proposed area, including navigation, recreation, and commercial fishing.

(F) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, A LEASE OF SUBMERGED LAND LOCATED WITHIN A SANCTUARY MUST BE COMPATIBLE WITH OYSTER RESTORATION AND MUST SATISFY THE CRITERIA FOR PERMISSIBLE LEASING WITHIN A SANCTUARY AS PROVIDED IN REGULATIONS ADOPTED UNDER THIS SUBTITLE.

4–11A–16.

[(a) An owner or other lawful occupant shall have exclusive right to use any creek, cove, or inlet for preserving or depositing oysters or other shellfish if the water surface at the mouth of the creek, cove, or inlet is 300 feet or less in width at mean low water. However, this cove, creek, or inlet may not be included in the lines of any patent and all rights of the riparian proprietor shall extend only to the middle of the creek, cove, or inlet. In the waters of St. Mary's County, the riparian grounds of any creek, cove, or inlet meeting the qualifications enumerated above shall be considered and treated as leased grounds for all of the purposes of § 4–11A–13 of this subtitle. However, any dredging license issued under § 4–11A–13 of this subtitle shall be issued only to the riparian owner for the purpose of dredging shellfish on his riparian grounds. In the waters of Dorchester County, shellfish may be dredged on riparian grounds by the riparian owner by any means in any creek, cove, or inlet.

(b)**]** The owner of any wharf or other structure constructed on or about the water and approved by the corps of engineers, shall have exclusive use, for the purpose of growing and harvesting shellfish, of the area:

(1) Below the owner's wharf or structure; and

(2) In Calvert, Howard, St. Mary's, and Talbot counties only, within 5 feet of the owner's wharf or structure, oysters grown in trays, baskets, or containers that are attached to a private pier or wharf by lines or ropes that are the property of the owner of the pier or wharf.

SECTION 2. AND BE IT FURTHER ENACTED, That ~~any riparian owner who has used or is actively using any creek, cove, or inlet directly in front of his or her property for depositing oysters or other shellfish if the water surface at the mouth of the creek, cove, or inlet is 300 feet or less in width at mean low water shall have the right of first refusal to apply on or before December 31, 2011, for a submerged land lease for that area in accordance with the provisions of Title 4, Subtitle 11A of the Natural Resources Article~~ 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 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 580

(House Bill 211)

AN ACT concerning

Maryland Commission on Human Relations – Name Change

FOR the purpose of changing the name of the Maryland Commission on Human Relations to the Maryland Commission on Civil Rights; correcting cross–references to reflect the name change; providing that letterhead, business cards, and other documents reflecting the renaming of the Commission may not be used until all letterhead, business cards, and other documents already in print and reflecting the name of the Commission before the effective date of this Act are used; and generally relating to changing the name of the Maryland Commission on Human Relations.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 19–355
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Insurance
Section 2–202
Annotated Code of Maryland

(2003 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Public Safety
Section 2–307 and 12–202(h)
Annotated Code of Maryland
(2003 Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 19–103(e), (g), and (h) and 19–116
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 9–2404, 10–107, 10–1103, and 20–101; and 20–201 to be under the amended subtitle "Subtitle 2. Commission on Civil Rights"
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – State Personnel and Pensions
Section 5–203 and 5–205(c)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Transportation
Section 5–408
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

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

Article – Health – General

19–355.

(a) A hospital or related institution may not discriminate in providing personal care for an individual because of the race, color, or national origin of the individual.

(b) The Commission on **[**Human Relations**]** **CIVIL RIGHTS** shall enforce this section as provided in Title 20 of the State Government Article.

Article – Insurance

2–202.

(a) (1) Notwithstanding any other law and except as provided in paragraph (2) of this subsection, the Commissioner has exclusive jurisdiction to enforce by administrative action the laws of the State that relate to the underwriting or rate–setting practices of an insurer.

(2) The **[**Human Relations Commission**]** **COMMISSION ON CIVIL RIGHTS** has concurrent jurisdiction with the Commissioner over alleged discrimination on the basis of race, creed, color, or national origin.

(b) When the Commissioner has exclusive jurisdiction under subsection (a) of this section, the **[**Human Relations Commission**]** **COMMISSION ON CIVIL RIGHTS** may:

(1) refer complaints about discriminatory practices to the Commissioner;

(2) appear before the Commissioner as a party at a hearing about discriminatory practices;

(3) make recommendations about discriminatory practices to the Commissioner;

(4) represent a complainant in proceedings under § 2–210 of this subtitle; and

(5) appeal as a party aggrieved by an order or decision of the Commissioner under § 2–215 of this subtitle or § 11–503 of this article.

(c) The Commissioner shall notify the **[**Human Relations Commission**]** **COMMISSION ON CIVIL RIGHTS** of any hearing scheduled on a complaint about alleged discriminatory practices.

(d) On request of the **[**Human Relations Commission**]** **COMMISSION ON CIVIL RIGHTS** and unless the complainant objects, the Commissioner shall give the **[**Human Relations Commission**]** **COMMISSION ON CIVIL RIGHTS** all information about any complaint about alleged discriminatory practices received by the Commissioner.

(e) The Commissioner and the **[**Human Relations Commission**]** **COMMISSION ON CIVIL RIGHTS** shall set guidelines for determining when allegations in a complaint about alleged discriminatory practices are sufficient to warrant a hearing.

Article – Public Safety

2–307.

(a) The Department shall collect, analyze, and disseminate information about the incidence of crime in the State.

(b) (1) The Department shall collect and analyze information about incidents apparently directed against an individual or group because of race, religion, ethnicity, or sexual orientation.

(2) Each local law enforcement agency and the State Fire Marshal shall provide the Department with the information described in paragraph (1) of this subsection.

(3) The Department shall adopt procedures for the collection and analysis of the information described in paragraph (1) of this subsection.

(4) The Department shall make monthly reports to the Commission on **[**Human Relations**]** **CIVIL RIGHTS** about the information described in paragraph (1) of this subsection.

12–202.

(h) (1) The Department shall cooperate with and provide technical assistance to the **[**Human Relations Commission**]** **COMMISSION ON CIVIL RIGHTS** concerning an action brought by the **[**Human Relations Commission**]** **COMMISSION ON CIVIL RIGHTS** to enforce § 20–705 or § 20–706 of the State Government Article.

(2) This section does not limit the authority of the **[**Human Relations Commission**]** **COMMISSION ON CIVIL RIGHTS** to enforce §§ 20–705 and 20–706 of the State Government Article.

Article – State Finance and Procurement

19–103.

(e) "Commercial Nondiscrimination Policy" means the provisions contained under this title and any regulations or documentation requirements adopted by the **[**Maryland**]** Commission on **[**Human Relations**]** **CIVIL RIGHTS** in accordance with this title.

(g) "Commission" means the **[**Maryland**]** Commission on **[**Human Relations**]** **CIVIL RIGHTS**.

(h) "Commission staff" means employees of the **[**Maryland**]** Commission on **[**Human Relations**]** **CIVIL RIGHTS** designated by the Commission to process, investigate, and pursue complaints filed under this title.

19–116.

Every contract that the State enters into shall include the following language:

"As a condition of entering into this agreement, upon the request of the **[**Maryland**]** Commission on **[**Human Relations**]** **CIVIL RIGHTS**, and only after the filing of a complaint against the company under Title 19 of the State Finance and Procurement Article, as amended from time to time, the company agrees to: provide to the State within 60 days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the company has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by the contractor on each subcontract or supply contract. The company further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, to provide any documents relevant to any investigation that is requested by the State. The company understands and agrees that violation of this clause shall be considered a material breach of this agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.".

Article – State Government

9–2404.

(a) There is a Maryland Advisory Council on the Deaf and Hard of Hearing.

(b) (1) The Council consists of 18 members appointed by the Governor, with the advice and consent of the Senate.

(2) Of the 18 Council members, at least five of the members shall be deaf and hard of hearing individuals.

(c) Of the 18 Council members:

(1) one shall be the State Superintendent or a designee from the State Department of Education;

(2) one shall be the Secretary or a designee from the Department of Health and Mental Hygiene;

(3) one shall be the Secretary or a designee from the Department of Human Resources;

(4) one shall be the Secretary or a designee from the Department of Transportation;

(5) one shall be from the **[**Human Relations Commission**]** **COMMISSION ON CIVIL RIGHTS**;

(6) one shall be the Secretary or a designee from the Department of Labor, Licensing, and Regulation;

(7) one shall be the Secretary or a designee from the Department of Housing and Community Development;

(8) one shall be the Superintendent or a designee from the Maryland School for the Deaf;

(9) one shall be the Secretary or a designee from the Department of Aging; and

(10) nine shall be from the general public.

(d) (1) The nine members from the general public shall be chosen from different geographical areas of the State.

(2) Of the nine members from the general public:

(i) five shall be deaf and hard of hearing individuals;

(ii) one shall be a private citizen with special knowledge or expertise relating to services to deaf and hard of hearing individuals;

(iii) one shall be a parent of a deaf or hard of hearing child;

(iv) one shall be from a private agency providing services to deaf and hard of hearing individuals; and

(v) one shall be a person with special knowledge or expertise relating to services to individuals who are deafblind.

10–107.

(a) "Unit counsel" means the unit counsel for the **[**Human Relations Commission**]** **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.

10–1103.

(a) Each State department, agency, or program listed or identified under subsection (c) of this section shall take reasonable steps to provide equal access to public services for individuals with limited English proficiency.

(b) Reasonable steps to provide equal access to public services include:

(1) the provision of oral language services for individuals with limited English proficiency, which must be through face–to–face, in–house oral language services if contact between the agency and individuals with limited English proficiency is on a weekly or more frequent basis;

(2) (i) the translation of vital documents ordinarily provided to the public into any language spoken by any limited English proficient population that constitutes 3% of the overall population within the geographic area served by a local office of a State program as measured by the United States Census; and

(ii) the provision of vital documents translated under item (i) of this paragraph on a statewide basis to any local office as necessary; and

(3) any additional methods or means necessary to achieve equal access to public services.

(c) The provisions of this subtitle shall be fully implemented according to the following schedule:

(1) on or before July 1, 2003, full implementation by:

(i) the Department of Human Resources;

(ii) the Department of Labor, Licensing, and Regulation;

(iii) the Department of Health and Mental Hygiene;

(iv) the Department of Juvenile Justice; and

(v) the Workers' Compensation Commission;

(2) on or before July 1, 2004, full implementation by:

(i) the Department of Aging;

(ii) the Department of Public Safety and Correctional Services;

(iii) the Department of Transportation, not including the Maryland Transit Administration;

(iv) the **[**Maryland Human Relations Commission**]** **COMMISSION ON CIVIL RIGHTS**;

(v) the Department of State Police; and

(vi) five independent agencies, boards, or commissions, to be determined by the Secretary of Human Resources, in consultation with the Office of the Attorney General;

(3) on or before July 1, 2005, full implementation by:

(i) the Comptroller of Maryland;

(ii) the Department of Housing and Community Development;

(iii) the Maryland Transit Administration;

(iv) the Department of Natural Resources;

(v) the Maryland State Department of Education;

(vi) the Office of the Attorney General; and

(vii) five independent agencies, boards, or commissions to be determined by the Secretary of Human Resources, in consultation with the Office of the Attorney General; and

(4) on or before July 1, 2006, full implementation by:

(i) the Department of Agriculture;

(ii) the Department of Business and Economic Development;

(iii) the Department of Veterans Affairs;

(iv) the Department of the Environment; and

(v) five independent agencies, boards, or commissions to be determined by the Secretary of Human Resources, in consultation with the Office of the Attorney General.

20–101.

(a) In Subtitles 1 through 11 of this title the following words have the meanings indicated.

(b) "Commission" means the Commission on **[**Human Relations**]** **CIVIL RIGHTS**.

(c) "Complainant" means a person that files a complaint alleging a discriminatory act under this title.

(d) "Discriminatory act" means an act prohibited under:

(1) Subtitle 3 of this title (Discrimination in Places of Public Accommodation);

(2) Subtitle 4 of this title (Discrimination by Persons Licensed or Regulated by Department of Labor, Licensing, and Regulation);

(3) Subtitle 5 of this title (Discrimination in Leasing of Commercial Property);

(4) Subtitle 6 of this title (Discrimination in Employment);

(5) Subtitle 7 of this title (Discrimination in Housing); or

(6) Subtitle 8 of this title (Aiding, Abetting, or Attempting Discriminatory Act; Obstructing Compliance).

(e) (1) "Respondent" means a person accused in a complaint of a discriminatory act.

(2) "Respondent" includes a person identified during an investigation of a complaint and joined as an additional or substitute respondent.

(f) "Sexual orientation" means the identification of an individual as to male or female homosexuality, heterosexuality, or bisexuality.

Subtitle 2. Commission on **[**Human Relations**]** **CIVIL RIGHTS**.

20–201.

There is a Commission on **[**Human Relations**]** **CIVIL RIGHTS**.

Article – State Personnel and Pensions

5–203.

Except as provided in § 5–209 of this subtitle, in addition to any right to file an employment discrimination complaint with the **[**Maryland**]** Commission on **[**Human Relations**]** **CIVIL RIGHTS**, with the Equal Employment Opportunity Commission, or in court, an employee may elect to pursue an allegation of employment discrimination under the complaint resolution procedures of this subtitle.

5–205.

(c) An appointing authority shall provide each employee subject to this subtitle with a notice of:

(1) the protections and remedies against employment discrimination available to the employee under:

(i) this subtitle;

(ii) the laws governing the **[**Maryland**]** Commission on **[**Human Relations**]** **CIVIL RIGHTS**; and

(iii) the laws governing the Equal Employment Opportunity Commission; and

(2) the applicable time limitations for filing complaints under those laws.

Article – Transportation

5–408.

(a) In its operation of an airport, airport facility, or air navigation facility owned or controlled by this State, the Administration, with the approval of the Secretary and subject to the direction of the Commission, may contract, lease, or otherwise arrange with any person to:

(1) Provide the person with services furnished by the Administration or its agents at the airport or facility; or

(2) Grant to the person the privilege of:

(i) Using or improving for commercial purposes any part of the airport or facility; or

(ii) Supplying services, facilities, goods, commodities, or other things at the airport or facility.

(b) (1) For the privileges granted, the Administration may establish any terms and conditions and fix any charges, rentals, or fees that:

(i) Are reasonable and uniform for the same class of privilege or service;

(ii) Are established with due regard to the property and improvements used and the expenses of operation to this State; and

(iii) Do not deprive the public of its rightful, equal, and uniform use of any part of the airport or facility.

(2) The Administration shall monitor the charges, fees, or prices of any goods or services offered to the public by persons granted the privilege under this section. Every contract, lease, or other arrangement shall provide that charges, fees, or prices:

(i) May not be increased without the prior approval of the Administration; and

(ii) Are to be reasonable. In determining reasonableness the Administration shall consider the charges, fees, or prices for the same goods or services at comparable airports.

(3) The Administration shall:

(i) Monitor the employment practices under Title 20, Subtitle 6 of the State Government Article of persons granted privileges under this section; and

(ii) Refer for investigation all alleged violations of § 20–606 of the State Government Article to the **[**State**]** Commission on **[**Human Relations**]** **CIVIL RIGHTS**, the Equal Employment Opportunity Commission, or any appropriate State or federal administrative body.

(c) (1) In this subsection, "commercial activity" means the sale, merchandising, marketing, or promotion of any goods or services.

(2) Commercial activity is permitted at an airport operated by the Administration only when expressly authorized by and in a manner prescribed by the Administration.

SECTION 2. AND BE IT FURTHER ENACTED, That letterhead, business cards, and other documents reflecting the renaming of the Maryland Commission on Human Relations to be the Maryland Commission on Civil Rights may not be used until all letterhead, business cards, and other documents already in print and reflecting the name of the Commission before the effective date of this Act have been used.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 581

(House Bill 214)

AN ACT concerning

Maryland Agricultural Land Preservation Foundation – Critical Farms Fund and Program

FOR the purpose of authorizing the Maryland Agricultural Land Preservation Foundation to acquire certain interests in property for certain purposes, and to dispose of that property under certain circumstances in accordance with the Critical Farms Program; requiring the development of a certain method and a certain procedure for a certain purpose; establishing the Critical Farms Fund for the acquisition of certain easements under the Critical Farms Program and the Farmland Preservation Partnership Program; clarifying that the Governor may include a certain appropriation in the annual budget; requiring the Foundation to submit a certain report to the General Assembly under a certain circumstance; exempting certain dispositions of real property from approval by the Board of Public Works; and generally relating to the Maryland Agricultural Land Preservation Foundation's Critical Farms Program.

BY repealing and reenacting, with amendments,
Article – Agriculture
Section 2–504, 2–505(c), 2–517, and 2–517.1
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – Agriculture
Section 2–505(a) and (b)
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 10–302.1
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Agriculture

2–504.

The Maryland Agricultural Land Preservation Foundation has the following general powers:

(1) To sue and be sued in contractual matters in its own name;

(2) To enter into contracts generally and to execute all instruments necessary or appropriate to carry out its purposes;

(3) To acquire, by gift, purchase, devise, bequest or grant, easements in gross or other rights to restrict the use of agricultural land and woodland as may be designated to maintain the character of the land as agricultural land or woodland;

(4) TO ACQUIRE AND HOLD, BY GIFT, PURCHASE, DEVISE, BEQUEST OR GRANT, REAL AND PERSONAL PROPERTY, OR ANY INTEREST THEREIN, TO CARRY OUT THE LEGISLATIVE INTENT OF PRESERVING PRIME AGRICULTURAL LAND AND WOODLAND AND CONSERVING, IMPROVING, ADMINISTERING, INVESTING, OR DISPOSING OF ANY PROPERTY TO FURTHER THE PURPOSES OF THE CRITICAL FARMS PROGRAM UNDER THIS SUBTITLE;

[(4)**] (5)** To adopt, with the approval of the Secretary, regulations and procedures necessary to implement the provisions of this subtitle; and

[(5)**] (6)** To promote the dissemination of information to farmers throughout the State concerning the activities of the Foundation.

2–505.

(a) The Maryland Agricultural Land Preservation Fund is created and continued for the purposes specified in this subtitle.

(b) The Maryland Agricultural Land Preservation Fund shall comprise:

(1) Any money made available to the Fund by general or special fund appropriations; and

(2) Any money made available to the Fund by grants or transfers from governmental or private sources.

(c) (1) The Comptroller of the Treasury may not disburse any money from the Maryland Agricultural Land Preservation Fund other than:

(i) For costs associated with the staffing and administration of the Maryland Agricultural Land Preservation Foundation;

(ii) For reasonable expenses incurred by the members of the board of trustees of the Maryland Agricultural Land Preservation Foundation in the performance of official duties; **[**and**]**

(iii) For consideration in the purchase of agricultural land preservation easements beginning with fiscal year 1979 and each fiscal year thereafter**; AND**

(IV) FOR COSTS ASSOCIATED WITH ACQUISITION OF AGRICULTURAL LAND PRESERVATION EASEMENTS APPROVED BY THE FOUNDATION THROUGH THE CRITICAL FARMS PROGRAM, AS PROVIDED IN § 2–517 OF THIS SUBTITLE.

(2) The Maryland Agricultural Land Preservation Foundation may provide grants to the Maryland Agricultural and Resource–Based Industry Development Corporation, subject to conditions jointly agreed upon by the Foundation and the Corporation, to facilitate:

(i) An installment purchase agreement program; or

(ii) The funding of the Next Generation Farmland Acquisition Program.

(3) The Maryland Agricultural Land Preservation Foundation may provide grants to counties to facilitate:

(i) The Critical Farms Program, as provided in § 2–517 of this subtitle, subject to conditions jointly agreed upon by the Foundation and the county;

(ii) The purchase of easements under a county installment purchase agreement program approved by the Foundation, as provided in § 2–510.1 of this subtitle; and

(iii) The payment of the principal of and interest on bonds issued by a county for the sole purpose of purchasing agricultural land preservation easements that meet the requirements of this subtitle, subject to conditions jointly agreed upon by the Foundation and the county.

(4) Grants provided by the Maryland Agricultural Land Preservation Foundation may not be:

(i) Used to fund county land preservation programs; or

(ii) Pledged to secure county–issued bonds.

2–517.

(a) (1) The Maryland Agricultural Land Preservation Foundation **[**and the Department of Planning**]** shall establish a Critical Farms Program **THAT IS SEPARATE AND INDEPENDENT FROM THE REQUIREMENTS OF THE MARYLAND AGRICULTURAL LAND PRESERVATION PROGRAM ESTABLISHED UNDER THIS SUBTITLE**.

(2) The purpose of the Program is to provide interim or emergency financing for the acquisition of agricultural preservation easements on critical farms that would otherwise be sold for nonagricultural uses.

(b) (1) **[**A**] THE FOUNDATION, WITH** county **APPROVAL,** shall determine if a property qualifies for the Critical Farms Program in accordance with the criteria developed under paragraph (2) of this subsection.

(2) (i) The Foundation **[**and**], IN CONSULTATION WITH** the Department **OF PLANNING,** shall develop criteria for counties to consider when determining whether a property qualifies for the Program.

(ii) The criteria shall include:

1. The qualifying strategic characteristics of the property, including location and productivity;

2. The circumstances creating the risk of the property being sold for nonagricultural purposes;

3. When applicable, the characteristics of the purchaser of strategic farmland seeking assistance from the Program;

4. The consistency of the proposed acquisition with county goals and priorities and**, IF APPLICABLE,** the county's priority preservation area; and

5. Evaluation of the property as a priority easement acquisition.

[(c) The Maryland Agricultural Land Preservation Foundation and the Department of Planning shall examine options for easement acquisition on critical farms and identify those that will enable the Critical Farms Program to succeed.**]**

(C) (1) THE MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION SHALL DEVELOP, IN CONSULTATION WITH THE DEPARTMENT OF GENERAL SERVICES:

(I) A METHOD FOR VALUATING AN OPTION TO PURCHASE AN EASEMENT ON PROPERTY UNDER THE CRITICAL FARMS PROGRAM; AND

(II) A PROCEDURE FOR PURCHASING AN EASEMENT OPTION FROM THE OWNER OR PURCHASER OF A CRITICAL FARM UNDER THE CRITICAL FARMS PROGRAM.

(2) FOR PURPOSES OF SETTING AN EASEMENT ACQUISITION VALUE FOR A STATE EASEMENT PROGRAM, A PROPERTY PARTICIPATING IN THE PROGRAM BY SALE OF EASEMENT OPTION SHALL BE VALUED:

(I) AS IF IT WAS NOT SUBJECT TO ANY RESTRICTION IMPOSED UNDER THIS SUBTITLE; AND

(II) IN ACCORDANCE WITH THE VALUATION REQUIREMENTS OF THE SPECIFIC STATE EASEMENT PROGRAM TO WHICH THE CRITICAL FARMS PROGRAM PARTICIPANT MAY APPLY TO SELL AN EASEMENT.

(3) AFTER A FINAL EASEMENT SALE, THE FOUNDATION SHALL BE REIMBURSED BY THE CRITICAL FARMS PROGRAM PARTICIPANT FOR THE AMOUNT THAT WAS PAID BY THE FOUNDATION FOR THE EASEMENT OPTION.

(4) THE FOUNDATION SHALL DEPOSIT THE REIMBURSEMENT IN THE CRITICAL FARMS FUND.

(5) THE FOUNDATION MAY BE REIMBURSED FOR EXPENSES ASSOCIATED WITH THE ACQUISITION OF AN EASEMENT OPTION FROM THE PROCEEDS OF THE FINAL EASEMENT SALE AND SHALL DEPOSIT THE REIMBURSED EXPENSES IN THE CRITICAL FARMS FUND.

(D) (1) WHEN ACQUIRING A FEE SIMPLE INTEREST IN PROPERTY UNDER THE CRITICAL FARMS PROGRAM, THE MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION MAY SUBMIT TO THE BOARD OF PUBLIC WORKS FOR APPROVAL AT THE SAME TIME AS ACQUISITION A PLAN FOR SUBSEQUENT DISPOSITION OF ALL OR ANY PORTION OF THE PROPERTY.

(2) DISPOSITION OF PROPERTY UNDER THE PROGRAM MAY INCLUDE THE SALE, LEASE, EXCHANGE, OR TRANSFER OF THE PROPERTY.

(3) ANY PROCEEDS FROM THE DISPOSITION OF PROPERTY UNDER THE PROGRAM SHALL BE DEPOSITED IN THE CRITICAL FARMS FUND.

(4) WHEN DISPOSING OF PROPERTY UNDER THIS SUBSECTION, THE FOUNDATION SHALL IMPOSE A PERPETUAL AGRICULTURAL LAND PRESERVATION EASEMENT ON THE PROPERTY TO RESTRICT THE USE OF THE PROPERTY TO AGRICULTURAL PURPOSES.

(5) THE FOUNDATION MAY REQUIRE REIMBURSEMENT FOR EXPENSES ASSOCIATED WITH THE ACQUISITION AND DISPOSITION OF PROPERTY UNDER THIS SUBSECTION FROM THE PURCHASER OF THE PROPERTY AND SHALL DEPOSIT THE REIMBURSED EXPENSES IN THE CRITICAL FARMS FUND.

(6) PROPERTY CONVEYED UNDER THIS SUBSECTION IS NOT:

(I) EXCESS PERSONAL PROPERTY UNDER § 4–501 OF THE STATE FINANCE AND PROCUREMENT ARTICLE; OR

(II) SUBJECT TO THE REQUIREMENTS OF § 5–310 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(E) (1) IN THIS SUBSECTION, "FUND" MEANS THE CRITICAL FARMS FUND.

(2) THERE IS A CRITICAL FARMS FUND IN THE DEPARTMENT.

(3) THE PURPOSE OF THE FUND IS TO FINANCE THE ACQUISITION OF AGRICULTURAL LAND PRESERVATION EASEMENTS ON CRITICAL FARMS BY:

(I) THE PURCHASE OF EASEMENT OPTIONS UNDER THIS SECTION AND UNDER § 2–517.1 OF THIS SUBTITLE; AND

(II) THE PURCHASE OF A FEE SIMPLE INTEREST IN LAND AND RESALE WITH AN AGRICULTURAL LAND PRESERVATION EASEMENT IN PLACE.

(4) THE FUND IS A CONTINUING, NONLAPSING REVOLVING FUND THAT IS NOT SUBJECT TO § 7–302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(5) THE GOVERNOR MAY INCLUDE EACH YEAR IN THE BUDGET AN APPROPRIATION TO THE FUND CONSISTENT WITH SECTION 5 OF THE AGRICULTURAL STEWARDSHIP ACT OF 2006.

(6) IF THE GOVERNOR'S APPROPRIATION INCREASES THE FUND TO MORE THAN $16 MILLION, THE FOUNDATION SHALL SUBMIT A REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2–1246 OF THE STATE GOVERNMENT ARTICLE, THAT ADEQUATELY DOCUMENTS THE ADDITIONAL NEED.

[(d)**] (F)** The Maryland Agricultural Land Preservation Foundation **[**and the Department of Planning**]** may **[**jointly**]** adopt regulations to implement the provisions of this section.

2–517.1.

(a) (1) **[**(i)**]** The Foundation may establish a Farmland Preservation Partnership Program that is governed by the requirements of this section.

(2) THE FARMLAND PRESERVATION PARTNERSHIP PROGRAM MAY INCLUDE THE ACQUISITION OF EASEMENTS UNDER THE CRITICAL FARMS PROGRAM AS PROVIDED UNDER § 2–517 OF THIS SUBTITLE.

[(ii)**] (3)** The objective of the Partnership Program is to preserve productive agricultural and forested lands.

[(2)**] (4)** (i) The Foundation may form partnerships for the purpose of purchasing easements on qualifying properties.

(ii) **[**The**] EXCEPT FOR THE CRITICAL FARMS PROGRAM WHERE STATE FUNDS MAY BE MADE AVAILABLE AS DETERMINED BY THE FOUNDATION, THE** Foundation's partners shall cover the full purchase price, which may include the administrative costs of any easement for which the Foundation will be the grantee or the co–grantee.

(iii) The properties that qualify for the Partnership Program shall meet the criteria developed by the Foundation in accordance with subsection (b) of this section.

(b) (1) The Foundation shall develop criteria that determine when a farm qualifies for the Partnership Program.

(2) At a minimum, any qualifying farm shall:

(i) Meet the Foundation's size criteria;

(ii) As determined by the Foundation, contain significant productive agricultural soil or forest soil; and

(iii) Be approved for participation in the Partnership Program by the governing body of the local jurisdiction in which the property is located.

(c) Notwithstanding any other provision of this subtitle, an easement acquired by the Foundation in accordance with this section is not subject to the ranking, valuation, or development restrictions of this subtitle, except as determined by the Foundation's board of trustees.

Article – State Finance and Procurement

10–302.1.

This subtitle does not apply to**:**

(1) the release of a lot subject to an agricultural land preservation easement under § 2–513 of the Agriculture Article**; OR**

(2) THE SALE, TRANSFER, EXCHANGE, LEASE, OR OTHER DISPOSITION OF REAL PROPERTY HELD BY THE MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION UNDER THE CRITICAL FARMS PROGRAM UNDER § 2–517 OF THE AGRICULTURE ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 582

(House Bill 216)

AN ACT concerning

Health Services Cost Review Commission – User Fees

FOR the purpose of increasing the total amount of user fees that the Health Services Cost Review Commission may assess on certain hospitals and related institutions; and generally relating to the Health Services Cost Review Commission.

BY repealing and reenacting, without amendments,
Article – Health – General
Section 19–213(a) and (b)
Annotated Code of Maryland

(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 19–213(c)(1)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

19–213.

(a) (1) In this section the following words have the meanings indicated.

(2) "Facilities" means hospitals and related institutions whose rates have been approved by the Commission.

(b) The Commission shall assess and collect user fees on facilities as defined in this section.

(c) (1) The total fees assessed by the Commission may not exceed **[**$5,500,000**] $7,000,000**.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 583

(House Bill 230)

AN ACT concerning

Baltimore City – Education – <u>Public School Facilities and</u> Construction Bond Authority

FOR the purpose of ~~altering the maximum aggregate principal amount of school construction bonds that the Baltimore City Board of School Commissioners may issue;~~ altering the maximum maturity date of ~~bonds~~ <u>school construction bonds that the Baltimore City Board of School Commissioners may issue; requiring the Board to submit a certain report on a certain plan for public school facilities</u>

on or before a certain date; and generally relating to public school facilities and the issuance of bonds for school construction in Baltimore City.

BY repealing and reenacting, with amendments,
Article – Education
Section ~~4–306.2(b) and (g)(2)~~ 4–306.2(g)(2)
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – Education
Section 4–306.2(a) ~~and (e)~~ through (e)
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

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

Article – Education

4–306.2.

(a) The board may issue bonds for the purpose of financing or refinancing all or any part of the costs of any project.

(b) (1) Except as provided in paragraph (2) of this subsection, the aggregate principal amount of bonds outstanding, including the amount of any reserve fund requirement established for the bonds, may not exceed, as of the date that the bonds are issued, **[**$100,000,000**]** **~~$250,000,000~~**.

(2) The aggregate principal amount of bonds outstanding does not include Qualified School Construction Bonds as defined in § 54F of the Internal Revenue Code.

(c) Bonds shall be authorized by a resolution of the board and may be secured by a trust agreement by and between the board and a corporate trustee or trustees which may be any trust company or bank having the powers of a trust company within or outside of the State.

(d) Before the board may issue a bond under this section, the Mayor and City Council of Baltimore shall pass a resolution approving the board's issuance of the bond and shall forward that resolution to the board.

(e) The resolution of the board authorizing the bonds:

(1) Shall describe the projects which are to be financed or refinanced by the bond;

(2) Shall state the maximum principal amount of the bond;

(3) Shall describe the sources of payment of the bonds;

(4) Shall provide that the proceeds of the bonds shall be invested in accordance with any investment policy approved by the board; and

(5) May provide that the bonds are redeemable before maturity at a price or prices and under terms and conditions or in accordance with a method determined by the board.

(g) The bonds shall:

(2) Mature at a time or times not exceeding the useful life of the projects for which the bonds are issued, but in no event shall the maturity of the bonds exceed **[**15**] 30** years from their date or dates of issue, as may be determined by the board;

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1, 2011, the Baltimore City Board of School Commissioners shall report to the Senate Budget and Taxation Committee and the House Appropriations Committee, in accordance with § 2–1246 of the State Government Article, on a long–term plan for the alignment of public school facilities with projected enrollments and educational programs within the Baltimore City Public School System.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 584

(House Bill 244)

AN ACT concerning

Anne Arundel County – Workers' Compensation – Occupational Disease – Deputy Sheriffs

FOR the purpose of extending the presumption of a compensable occupational disease under workers' compensation law to include Anne Arundel County deputy sheriffs who suffer from heart disease or hypertension resulting in partial or total disability or death under certain circumstances; requiring that workers' compensation benefits received under this Act are in addition to certain

retirement benefits, subject to a certain adjustment; requiring certain Anne Arundel County deputy sheriffs to submit certain medical reports to the Anne Arundel County Sheriff on or before a certain date; clarifying language; and generally relating to compensability under workers' compensation law to include Anne Arundel County deputy sheriffs.

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section 9–503(b) and (e)
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

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

Article – Labor and Employment

9–503.

(b) (1) A paid police officer employed by an airport authority, a county, the Maryland–National Capital Park and Planning Commission, a municipality, or the State, a deputy sheriff of Montgomery County, or, subject to paragraph (2) of this subsection, a **DEPUTY SHERIFF OF ANNE ARUNDEL COUNTY,** deputy sheriff of Baltimore City, Montgomery County correctional officer, Prince George's County deputy sheriff, Prince George's County correctional officer, or **[**a**]** deputy sheriff of Allegany County is presumed to be suffering from an occupational disease that was suffered in the line of duty and is compensable under this title if:

(i) the police officer, deputy sheriff, or correctional officer is suffering from heart disease or hypertension; and

(ii) the heart disease or hypertension results in partial or total disability or death.

(2) (i) A **DEPUTY SHERIFF OF ANNE ARUNDEL COUNTY, A** deputy sheriff of Baltimore City, Montgomery County correctional officer, Prince George's County deputy sheriff, or Prince George's County correctional officer is entitled to the presumption under this subsection only to the extent that the individual suffers from heart disease or hypertension that is more severe than the individual's heart disease or hypertension condition existing prior to the individual's employment as a **DEPUTY SHERIFF OF ANNE ARUNDEL COUNTY,** deputy sheriff of Baltimore City, Montgomery County correctional officer, Prince George's County deputy sheriff, or Prince George's County correctional officer.

(ii) To be eligible for the presumption under this subsection, **A DEPUTY SHERIFF OF ANNE ARUNDEL COUNTY,** a deputy sheriff of Baltimore City,

Montgomery County correctional officer, Prince George's County deputy sheriff, or Prince George's County correctional officer, as a condition of employment, shall submit to a medical examination to determine any heart disease or hypertension condition existing prior to the individual's employment as a **DEPUTY SHERIFF OF ANNE ARUNDEL COUNTY,** deputy sheriff of Baltimore City, Montgomery County correctional officer, Prince George's County deputy sheriff, or Prince George's County correctional officer.

(e) (1) Except as provided in paragraph (2) of this subsection, any paid firefighter, paid fire fighting instructor, sworn member of the Office of the State Fire Marshal, paid police officer, paid law enforcement employee of the Department of Natural Resources, **[**a**]** **DEPUTY SHERIFF OF ANNE ARUNDEL COUNTY,** park police officer or employee of the Maryland–National Capital Park and Planning Commission, deputy sheriff of Montgomery County, deputy sheriff of Baltimore City, Montgomery County correctional officer, deputy sheriff of Prince George's County, or Prince George's County correctional officer who is eligible for benefits under subsection (a), (b), (c), or (d) of this section or the dependents of those individuals shall receive the benefits in addition to any benefits that the individual or the dependents of the individual are entitled to receive under the retirement system in which the individual was a participant at the time of the claim.

(2) The benefits received under this title shall be adjusted so that the weekly total of those benefits and retirement benefits does not exceed the weekly salary that was paid to the paid law enforcement employee of the Department of Natural Resources, a park police officer or employee of the Maryland–National Capital Park and Planning Commission, firefighter, fire fighting instructor, sworn member of the Office of the State Fire Marshal, police officer, deputy sheriff, or Prince George's County or Montgomery County correctional officer.

SECTION 2. AND BE IT FURTHER ENACTED, That, notwithstanding the provisions of § 9–503(b)(2) of the Labor and Employment Article, as enacted by Section 1 of this Act, an Anne Arundel County deputy sheriff who is employed on or before September 30, 2011:

(1) as a condition of continued employment, shall provide to the Anne Arundel County Sheriff on or before December 31, 2011, a copy of a baseline medical report disclosing and describing any existing heart disease or hypertension from which the deputy sheriff may be suffering; and

(2) is entitled to the presumption under § 9–503(b)(2) of the Labor and Employment Article, as enacted by Section 1 of this Act, only to the extent that the individual suffers from heart disease or hypertension condition existing as of the date of the medical report provided under paragraph (1) of this section.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 585

(House Bill 257)

AN ACT concerning

Election Law – Access to Voting Room and Voting Booth by Minors Not Eligible to Vote

FOR the purpose of increasing the maximum age at which a minor may accompany a voter in the voting room and voting booth at a polling place under certain circumstances; and generally relating to access to the voting room and voting booth by minors at the polling place.

BY repealing and reenacting, with amendments,
Article – Election Law
Section 10–308 and 10–310(c)
Annotated Code of Maryland
(2010 Replacement Volume)

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

Article – Election Law

10–308.

(a) An election judge shall allow the following individuals to have access to the voting room at a polling place:

(1) a voter;

(2) an individual who accompanies a voter in need of assistance in accordance with § 10–310(c) of this subtitle;

(3) polling place staff;

(4) a member or other representative of the State Board or local board;

(5) an accredited watcher or challenger under § 10–311 of this subtitle;

(6) an individual under the age of **[**13**] 18** who accompanies a voter in accordance with § 10–310(c) of this subtitle, provided that**:**

(I) the individual is in the care of the voter and does not disrupt or interfere with normal voting procedures; and

(II) THE INDIVIDUAL IS NOT ELIGIBLE TO VOTE IN THAT ELECTION; AND

(7) any other individual authorized by the State Board or local board.

(b) Notwithstanding the provisions of subsection (a)(6) of this section, not more than two individuals under the age of **[**13**] 18** may accompany a voter in accordance with § 10–310(c) of this subtitle.

10–310.

(c) (1) Before a voter enters a voting booth, at the request of the voter, an election judge shall:

(i) instruct the voter about the operation of the voting system; and

(ii) allow the voter an opportunity to operate a model voting device, if appropriate to the voting system in use.

(2) (i) 1. After a voter enters the voting booth, at the request of the voter, two election judges representing different political parties shall instruct the voter on the operation of the voting device.

2. An election judge may not suggest in any way how the voter should vote for a particular ticket, candidate, or position on a question.

3. After instructing the voter, the election judges shall exit the voting booth and allow the voter to vote privately.

(ii) A voter may take into the polling place any written or printed material to assist the voter in marking or preparing the ballot.

(3) (i) Except as provided in subparagraph (ii) of this paragraph, a voter who requires assistance in marking or preparing the ballot because of a physical disability or an inability to read the English language may choose any individual to assist the voter.

(ii) A voter may not choose the voter's employer or agent of that employer or an officer or agent of the voter's union to assist the voter in marking the ballot.

(4) If the voter requires the assistance of another in voting, but declines to select an individual to assist, an election judge, in the presence of another election judge that represents another political party, shall assist the voter in the manner prescribed by the voter.

(5) An individual assisting a voter may not suggest in any way how the voter should vote for a particular ticket, candidate, or position on a question.

(6) If a voter requires assistance under paragraph (4) or (5) of this subsection, the election judge shall record, on a form prescribed by the State Board, the name of the voter who required assistance and the name of the individual providing assistance to the voter.

(7) Except as provided in paragraph (3) or (4) of this subsection, an individual over the age of **[**12**] 17** years may not accompany a voter into a voting booth.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ June 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 586

(House Bill 263)

AN ACT concerning

Frederick County – Roadside Solicitation of Money or Donations – Permit Program

FOR the purpose of authorizing Frederick County or a municipal corporation in Frederick County under certain conditions to enact a permit program allowing a person to stand in a roadway, median divider, or intersection to solicit money or donations from the occupant of a vehicle; requiring a permit application to include certain information; requiring the county or municipal corporation to approve or deny an application within a certain period; authorizing the county or municipal corporation to impose conditions on the solicitation; and generally relating to a permit program for roadside solicitation of money and donations in Frederick County.

BY repealing and reenacting, with amendments,
Article – Transportation
Section 21–507(c)
Annotated Code of Maryland

(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – Transportation
Section 21–507(k)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Transportation

21–507.

(c) In Carroll County, Charles County, **[**Frederick County,**]** Harford County, and Washington County, a person may not stand in a roadway, median divider, or intersection to solicit money or donations of any kind from the occupant of a vehicle.

(K) (1) THIS SUBSECTION APPLIES ONLY IN FREDERICK COUNTY.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A PERSON MAY NOT STAND IN A ROADWAY, A MEDIAN DIVIDER, OR AN INTERSECTION TO SOLICIT MONEY OR DONATIONS FROM THE OCCUPANT OF A VEHICLE.

(3) THE COUNTY OR A MUNICIPAL CORPORATION IN THE COUNTY MAY BY ORDINANCE ENACT A PERMIT PROGRAM TO ALLOW A PERSON TO STAND IN A ROADWAY, A MEDIAN DIVIDER, OR AN INTERSECTION TO SOLICIT MONEY OR DONATIONS FROM THE OCCUPANT OF A VEHICLE IF THE SOLICITATION OCCURS COMPLETELY IN THE COUNTY OR MUNICIPAL CORPORATION.

(4) IF THE COUNTY OR A MUNICIPAL CORPORATION ENACTS AN ORDINANCE ESTABLISHING A PERMIT PROGRAM, THE ORDINANCE SHALL REQUIRE A PERSON SEEKING A PERMIT TO FILE AN APPLICATION CONTAINING THE FOLLOWING INFORMATION:

(I) THE DATE, TIME, AND LOCATION OF THE SOLICITATION;

(II) THE MANNER AND CONDITIONS UNDER WHICH THE SOLICITATION IS TO OCCUR; AND

(III) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF A CONTACT PERSON OF THE EMPLOYING OR SPONSORING PERSON, AGENCY, OR ENTITY ON WHOSE BEHALF THE SOLICITATION IS TO BE MADE, WHO WILL BE

ABLE TO PROVIDE ADDITIONAL INFORMATION TO THE COUNTY, MUNICIPAL CORPORATION, OR THE DESIGNEE OF THE COUNTY OR MUNICIPAL CORPORATION.

(5) THE COUNTY OR MUNICIPAL CORPORATION:

(I) WITHIN 5 DAYS AFTER THE APPLICATION IS FILED, SHALL APPROVE OR DENY THE APPLICATION; AND

(II) MAY IMPOSE CONDITIONS ON THE SOLICITATION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.

Chapter 587

(House Bill 286)

AN ACT concerning

Hospitals and Freestanding Ambulatory Care Facilities – ~~Pracitioner~~ Practitioner Performance Evaluation

FOR the purpose of requiring hospitals and freestanding ambulatory care facilities, as a condition of licensure, to establish a certain practitioner performance evaluation process ~~and~~; requiring hospitals to analyze the results of the process; requiring the practitioner performance evaluation process to include a certain review of care; requiring hospitals and freestanding ambulatory care facilities to take into account the results of the practitioner performance evaluation process for a member of the medical staff in a certain reappointment process; establishing a certain fine for certain noncompliance; ~~establishing requirements for practitioner performance evaluation procedures in freestanding ambulatory care facilities;~~ making certain stylistic changes; and generally relating to practitioner performance evaluation in hospitals and freestanding ambulatory care facilities.

BY repealing and reenacting, without amendments,
Article – Health – General
Section 19–319(a) and 19–3B–02(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 19–319(e)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)
(As enacted by Chapters 90 and 91 of the Acts of the General Assembly of 2009)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 19–3B–03(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY adding to
Article – Health – General
Section 19–319(i)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

19–319.

(a) To qualify for a license, an applicant and the hospital or related institution to be operated shall meet the requirements of this section.

(e) (1) In this subsection, "uniform standard credentialing form" means:

(i) The form designated by the Secretary through regulation for credentialing physicians who seek to be employed by or have staff privileges at a hospital; or

(ii) The uniform credentialing form that the Insurance Commissioner designates under § 15–112.1 of the Insurance Article.

(2) As a condition of licensure, each hospital shall:

(i) Establish a credentialing process for the physicians who are employed by or who have staff privileges at the hospital; and

(ii) Use the uniform standard credentialing form as the initial application of a physician seeking to be credentialed.

(3) Use of the uniform standard credentialing form does not preclude a hospital from requiring supplemental or additional information as part of the hospital's credentialing process.

(4) The Secretary shall, by regulation and in consultation with hospitals, physicians, interested community and advocacy groups, and representatives of the Maryland Defense Bar and Plaintiffs' Bar, establish minimum standards for a credentialing process which shall include:

(i) A formal written appointment process documenting the physician's education, clinical expertise, licensure history, insurance history, medical history, claims history, and professional experience.

(ii) A requirement that an initial appointment to staff not be complete until the physician has successfully completed a probationary period.

(iii) A formal, written reappointment process to be conducted at least every 2 years. The reappointment process shall document the physician's pattern of performance by analyzing **[**claims filed against the physician, data dealing with utilization, quality, and risk, a review of clinical skills, adherence to hospital bylaws, policies and procedures, compliance with continuing education requirements, and mental and physical status**]:**

1. CLAIMS FILED AGAINST THE PHYSICIAN;

2. DATA DEALING WITH UTILIZATION, QUALITY, AND RISK;

3. CLINICAL SKILLS;

4. ADHERENCE TO HOSPITAL BYLAWS, POLICIES, AND PROCEDURES;

5. COMPLIANCE WITH CONTINUING EDUCATION REQUIREMENTS;

6. MENTAL AND PHYSICAL STATUS; AND

7. THE RESULTS OF THE PRACTITIONER PERFORMANCE EVALUATION PROCESS UNDER SUBSECTION (I) OF THIS SECTION.

(5) If requested by the Department, a hospital shall provide documentation that, prior to employing or granting privileges to a physician, the hospital has complied with the requirements of this subsection and that, prior to

renewing employment or privileges, the hospital has complied with the requirements of this subsection.

(6) If a hospital fails to establish or maintain a credentialing process required under this subsection, the Secretary may impose the following penalties:

(i) Delicensure of the hospital; or

(ii) $500 per day for each day the violation continues.

(I) (1) AS A CONDITION OF LICENSURE, EACH HOSPITAL SHALL ESTABLISH A PRACTITIONER PERFORMANCE EVALUATION PROCESS THAT OBJECTIVELY EVALUATES THE PERFORMANCE OF EACH MEMBER OF THE MEDICAL STAFF AT THE HOSPITAL.

(2) THE PRACTITIONER PERFORMANCE EVALUATION PROCESS SHALL INCLUDE A REVIEW OF CARE PROVIDED TO PATIENTS AT THE HOSPITAL BY THE MEMBERS OF THE MEDICAL STAFF.

(3) THE REVIEW OF CARE SHALL:

(I) BE UNDERTAKEN FOR CASES CHOSEN AT RANDOM AND FOR CASES WITH UNEXPECTED ADVERSE OUTCOMES;

(II) BE BASED ON OBJECTIVE REVIEW STANDARDS;

(III) INCLUDE A REVIEW OF THE APPROPRIATENESS OF THE PLAN OF CARE FOR THE PATIENT, PARTICULARLY ANY MEDICAL PROCEDURES PERFORMED ON THE PATIENT, IN RELATION TO THE PATIENT'S CONDITION; <u>AND</u>

(IV) BE CONDUCTED BY MEMBERS OF THE MEDICAL STAFF <u>OR, AT THE DISCRETION OF THE HOSPITAL, EXTERNAL REVIEWERS,</u> WHO:

1. ARE OF THE SAME SPECIALTY AS THE MEMBER OF THE MEDICAL STAFF UNDER REVIEW;

2. HAVE BEEN TRAINED TO PERFORM PRACTITIONER PERFORMANCE EVALUATION; AND

3. ARE NOT OTHERWISE ASSOCIATED WITH THE CASE UNDER REVIEW.

(4) A HOSPITAL SHALL TAKE INTO ACCOUNT THE RESULTS OF THE PRACTITIONER PERFORMANCE EVALUATION PROCESS FOR A MEMBER OF

THE MEDICAL STAFF IN THE REAPPOINTMENT PROCESS ESTABLISHED UNDER SUBSECTION (E) OF THIS SECTION.

(5) IF A HOSPITAL FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS SUBSECTION, THE SECRETARY MAY IMPOSE A FINE OF UP TO $500 PER DAY PER VIOLATION FOR EACH DAY A VIOLATION CONTINUES.

19–3B–02.

(a) A freestanding ambulatory care facility may not operate in the State unless the Secretary has granted the facility a license.

19–3B–03.

(a) **(1)** After consultation with representatives of payors, health care practitioners, and ambulatory care facilities, the Secretary shall by regulation establish:

[(1)**]** **(I)** Procedures to implement the provisions of this subtitle; and

[(2)**]** **(II)** Standards to ensure quality of care and patient safety that shall include:

[(i)**]** **1.** Procedures for credentialing and **[**peer review**]** **PRACTITIONER PERFORMANCE EVALUATION**;

[(ii)**]** **2.** Qualifications of health care practitioners and support personnel;

[(iii)**]** **3.** Procedures to be followed in the event of an emergency, including a requirement that in the event of an emergency the patient be transported to the nearest appropriate emergency care facility;

[(iv)**]** **4.** Procedures for quality control of any biomedical equipment;

[(v)**]** **5.** Procedures for postoperative recovery;

[(vi)**]** **6.** Procedures for discharge; and

[(vii)**]** **7.** Any other procedures that the Secretary considers necessary for quality of care and patient safety.

(2) THE PROCEDURES FOR PRACTITIONER PERFORMANCE EVALUATION REQUIRED UNDER PARAGRAPH (1)(II)1 OF THIS SUBSECTION

SHALL ~~BE SUBSTANTIALLY THE SAME AS THE PROCEDURES FOR PRACTITIONER PERFORMANCE EVALUATION REQUIRED FOR HOSPITALS UNDER § 19–319 OF THIS TITLE~~ INCLUDE A REVIEW OF CARE PROVIDED TO PATIENTS AT THE FREESTANDING AMBULATORY CARE FACILITY BY MEMBERS OF THE MEDICAL STAFF.

(3) THE REVIEW OF CARE SHALL:

(I) BE UNDERTAKEN FOR CASES CHOSEN AT RANDOM AND FOR CASES WITH UNEXPECTED ADVERSE OUTCOMES;

(II) BE BASED ON OBJECTIVE REVIEW STANDARDS;

(III) INCLUDE A REVIEW OF THE APPROPRIATENESS OF THE PLAN OF CARE FOR THE PATIENT, PARTICULARLY ANY MEDICAL PROCEDURES PERFORMED ON THE PATIENT, IN RELATION TO THE PATIENT'S CONDITION; AND

(IV) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, BE CONDUCTED BY AT LEAST TWO MEMBERS OF THE MEDICAL STAFF WHO:

1. ~~ARE~~ AS APPROPRIATE, ARE OF THE SAME SPECIALTY AS THE MEMBER OF THE MEDICAL STAFF UNDER REVIEW; AND

2. HAVE BEEN TRAINED IN THE FREESTANDING AMBULATORY CARE FACILITY'S POLICIES AND PROCEDURES REGARDING PRACTITIONER PERFORMANCE EVALUATION.

(4) A REVIEW OF THE CARE PROVIDED BY A MEMBER OF THE MEDICAL STAFF WHO IS A SOLO PRACTITIONER ~~OR WHO PRACTICES IN A SINGLE PRACTICE-OWNED FREESTANDING AMBULATORY CARE FACILITY~~ SHALL BE CONDUCTED BY AN EXTERNAL REVIEWER.

(5) A FREESTANDING AMBULATORY CARE FACILITY SHALL TAKE INTO ACCOUNT THE RESULTS OF THE PRACTITIONER PERFORMANCE EVALUATION PROCESS FOR A MEMBER OF THE MEDICAL STAFF IN THE REAPPOINTMENT PROCESS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.