HOUSE . . . . . No. __

The Commonwealth of Massachusetts

COMMISSION ON UNIFORM STATE LAWS

c/o Stephen Y. Chow, Commissioner

125 Summer Street, 8th Floor

Boston, Massachusetts 02114

November 1, 2016

The Honorable Steven T. James

Clerk of the House of Representatives

State House, Room 145

Boston, Massachusetts 02133

Dear Clerk James:

In accordance with the provisions of Section 33 of Chapter 30 of the General Laws and under the authority granted to it by the provisions of Section 27 of Chapter 6 of the General Laws, the Board of Commissioners on Uniform State Laws herewith respectfully submits the following legislative recommendation for filing and action in the 2017-2018 legislative session.

1. AN ACT MAKING UNIFORM THE LAW REGARDING TRADE SECRETS.

This legislation would adopt the Uniform Trade Secrets Act (UTSA) promulgated by the Uniform Law Commission (the ULC) in 1979 (and revised in 1985) with some modifications recommended by the Boston Bar Association and presented in the previous legislative sessions. The legislation would codify the common law, with proper clarification, on rights and remedies arising from the misappropriation of trade secrets, which may have significant commercial value for a business or other enterprise. Forty-seven States and the District of Columbia have enacted the UTSA.

2. AN ACT MAKING AMENDMENTS TO THE UNIFORM COMMERCIAL CODE COVERING PROVISIONS DEALING WITH NEGOTIABLE INSTRUMENTS AND BANK DEPOSITS AND COLLECTIONS.

The proposed legislation makes certain amendments to Articles 3 and 4 of the Uniform Commercial Code promulgated by the ULC in 2002. Article 3 deals with negotiable instruments, such as checks and negotiable promissory notes. Article 4 deals with bank deposits and collections. The proposed legislation would clarify existing rules for lost negotiable instruments and how a maker of a negotiable note obtains a discharge on payments when the note has been sold. It also removes various barriers to electronic

commerce, protects consumers who have claims or defenses on negotiable promissory notes issued for the purchase of consumer goods, conforms the state law rules on telephonically generated checks to newly issued federal regulations, and updates the provisions of Article 3 dealing with guaranties on negotiable instruments. Eleven States and the District of Columbia have adopted these amendments.

3. AN ACT ADOPTING THE UNIFORM ASSIGNMENT OF RENTS ACT.

This legislation would adopt the Uniform Assignment of Rents Act (UARA) promulgated by the ULC in 2005. The legislation provides basic rules that establish the "security interest" of a creditor in the rent (income) from rental property, the rights of tenants to notice and the effect of notice, and the priority of the security interest against other creditors. The bill removes a number of uncertainties under current law, thereby facilitating the extension of credit secured by interests in real estate rents. Five States have enacted the UARA.

4. AN ACT TO RENAME THE UNIFORM FRAUDULENT TRANSFER ACT AND MAKE OTHER AMENDMENTS THERETO.

The proposed legislation would adopt the amendments to the Uniform Fraudulent Transfer Act promulgated by the ULC in 2014. The amendments would, among other things, rename the Act as the "Uniform Voidable Transactions Act", and substitute the word "voidable" for "fraudulent" throughout the Act, to clarify that the elements of common law fraud need not be proven in order for the Act to provide a remedy. The amendments also provide uniform burdens and standards of proof for an action under the Act and a choice of law rule and would clarify certain defenses to actions under the Act. It has been enacted by nine States.

5. AN ACT RELATIVE TO THE UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT.

This legislation would update and add to Chapter 209B, of the General Laws, which was based on the 1968 Uniform Child Custody Jurisdiction Act, with the 1996 Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), which among other things provides for a rebuttable presumption of continuing exclusive jurisdiction in the home State. Massachusetts is the last of the fifty States that has not enacted the UCCJEA (also enacted in the District of Columbia and the U.S. Virgin Islands), leaving it in the odd position that children subject to child custody orders from other States would presumptively remain subject to the jurisdiction of the order-issuing court after removal from the State, but those subject to Massachusetts orders would not.

6. AN ACT REVISING THE UNIFORM ARBITRATION ACT FOR COMMERCIAL DISPUTES.

This legislation would adopt the Revised Uniform Arbitration Act (UAA) promulgated by the ULC in 2000 as a replacement for the Uniform Arbitration Act that it previously promulgated in 1955. Massachusetts adopted the prior act in 1960, which appears as Chapter 251 of the General Laws as the Uniform Arbitration Act for Commercial Disputes. The proposed legislation would modernize the existing statute, particularly in light of the Federal Arbitration Act and the rise in use of the arbitration approach. Specialized matters such as arbitration of labor disputes would remain outside the scope of this legislation. Eighteen States and the District of Columbia have adopted the revised UAA.

7. AN ACT MAKING UNIFORM CERTAIN ASPECTS OF MEDIATION.

This legislation would adopt the Uniform Mediation Act (UMA) promulgated by the ULC in 2001. The legislation focuses on communications (notices) and privileges in the mediation process to promote confidence in, and the integrity of, that form of alternative dispute resolution. The bill adopts optional text that specifically requires a mediator to be impartial unless agreed otherwise. The UMA would promote mediation across State lines and has been enacted by twelve States and the District of Columbia.

8. AN ACT TO ESTABLISH UNIFORM COLLABORATIVE LAW.

This legislation would standardize the most important features of collaborative law, a form of alternative dispute resolution that is becoming more popular in the states. Collaborative law is now used mainly in family law disputes, but its practice has spread to other areas of the law, including the settlement of contract and insurance disputes. The Act encourages the development and growth of collaborative law as an option for parties that wish to use it. The Act mandates the essential elements of disclosure and discussion between prospective parties in order to guarantee that all parties enter into the collaborative agreement with informed consent. Since its promulgation in 2009, fourteen States and the District of Columbia have enacted the Uniform Collaborative Law Act.

9. AN ACT REVISING THE LAW RECOGNIZING FOREIGN-COUNTRY MONEY JUDGMENTS.

This legislation would update Chapter 235, Section 23A, of the General Laws, which was based on the 1962 version of the Uniform Foreign Money-Judgments Recognition Act, with the 2005 Uniform Foreign-Country Money Judgments Recognition Act (UFCMJRA), which adds provision on burden of proof, procedure, and a statute of limitations. The UFCMJRA has been enacted by twenty-one States and the District of Columbia.

10. AN ACT RELATIVE TO THE UNIFORM UNSWORN FOREIGN DECLARATIONS ACT.

This legislation, prompted by the difficulty of obtaining consular certifications in the security regime post-9/11, would extend to state proceedings the same flexibility that federal courts have employed for since 1976 under 28 U.S.C. § 1746, allowing an unsworn declaration executed outside the U.S. to be recognized and valid as the equivalent of a sworn affidavit if it substantially includes the language declaring truth under penalty of perjury. The 2008 Uniform Unsworn Foreign Declarations Act has been enacted in twenty-one States and the District of Columbia.

11. AN ACT RELATIVE TO THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT.

This legislation would add to the General Laws the Uniform Real Property Electronic Recording Act (URPERA) promulgated by the ULC in 2004 to extend to real property recording the benefits of the Uniform Electronic Transactions Act (UETA) promulgated by the ULC in 1999, which was enacted by the General Court in 2003 as Chapter 110G of the General Laws. URPERA does three fairly simple things to facilitate electronic recording of real property. First, it establishes that any requirement for originality, for a paper document or for a writing manually signed before it may be recorded, is satisfied by an electronic document and signature. This is essentially an express extension of the principles of UETA to the specific requirements for recording documents relating to real estate transactions in any state. Second, it establishes what standards a recording office must follow and what it must do to make electronic recording effective. For example, the office must comply with standards set by the board established in a state to set them. It must set up a system for searching and retrieving electronic

documents. There are a minimum group of requirements established in URPERA. Third, URPERA establishes the board that sets statewide standards and requires it to set uniform standards that must be implemented in every recording office. URPERA has been enacted by twenty-nine States, the District of Columbia and the U.S. Virgin Islands. This bill adds URPERA as a new chapter 36A following chapter 36 addressed to the registers of deeds, which the General Court may address to the recorders of the Land Court under chapter 185 by adopting bracketed language in the bill.

12. AN ACT RELATIVE TO THE UNIFORM ELECTRONIC LEGAL MATERIAL ACT.

This legislation would enact the Uniform Electronic Legal Material Act (UELMA) promulgated in 2011 by the ULC in response to an increasing number of states publishing statutes and other legal materials in electronic format only in order to conserve financial resources. UELMA does not require publication in electronic format and does not prescribe particular technologies. However, where the relevant official publisher of legal material chooses to publish an official version of the material electronically, that material must be authenticated by providing a method to determine that it is unaltered; preserved, either in electronic or print form; and accessible, for use by the public on a permanent basis. The bill proposes certain materials and official publishers that may be amended upon further study. In the five years since its promulgation, thirteen States have enacted UELMA.

Respectfully,

STEPHEN Y. CHOW,
Uniform Law Commissioner

HOUSE . . . . . NO.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seventeen

AN ACT MAKING UNIFORM THE LAW REGARDING TRADE SECRETS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Sections 42 and 42A of chapter 93 of the General Laws are hereby repealed.

SECTION 2. The General Laws are hereby amended by inserting after chapter 93K the following chapter:--

CHAPTER 93L

UNIFORM TRADE SECRETS ACT

Section 1. As used in this chapter the following words, shall unless the context clearly requires otherwise, have the following meanings:

(1) "Improper means", includes, without limitation, theft, bribery, misrepresentation, unreasonable intrusion into private physical or electronic space, or breach or inducement of a breach of a confidential relationship or other duty to limit acquisition, disclosure or use of information; reverse engineering from properly accessed materials or information is not improper means;

(2) "Misappropriation",

(i) an act of acquisition of a trade secret of another by a person who knows or who has reason to know that the trade secret was acquired by improper means; or

(ii) an act of disclosure or of use of a trade secret of another without that person's express or implied consent by a person who

(A) used improper means to acquire knowledge of the trade secret or

(B) at the time of the actor's disclosure or use, knew or had reason to know that the actor's knowledge of the trade secret was

[I] derived from or through a person who had utilized improper means to acquire it;

[II] acquired under circumstances giving rise to a duty to limit its acquisition, disclosure, or use; or

[III] derived from or through a person who owed a duty to the person seeking relief to limit its acquisition, disclosure, or use; or

(C) before a material change of the actor's position, knew or had reason to know that it was a trade secret and that the actor's knowledge of it had been acquired by accident, mistake, or through another person's act as described in subsections 1(2)(i) or 1(2)(ii)(A) or –(B).

(3) "Person", a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) "Trade secret", specified or specifiable information, whether or not fixed in tangible form or embodied in any tangible thing, including but not limited to a formula, pattern,

compilation, program, device, method, technique, process, business strategy, customer list, invention, or scientific, technical, financial or customer data that

[i] at the time of the alleged misappropriation, provided economic advantage, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, others who might obtain economic advantage from its acquisition, disclosure or use; and

[ii] at the time of the alleged misappropriation was the subject of efforts that were reasonable under the circumstances, which may include reasonable notice, to protect against it being acquired, disclosed or used without the consent of the person properly asserting rights therein or such person's predecessor in interest.

Section 2. (a) Actual or threatened misappropriation may be enjoined upon principles of equity, including but not limited to consideration of prior party conduct and circumstances of potential use, upon a showing that information qualifying as a trade secret has been or is threatened to be misappropriated. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate any economic advantage that otherwise would be derived from misappropriation.

(b) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

Section 3. (a) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation of information qualifying as a trade secret. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by the imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(b) If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).

Section 4. The court may award reasonable attorney's fees and costs to the prevailing party if: (i) a claim of misappropriation is made or defended in bad faith, (ii) a motion to enter or to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists. In considering such an award, the court may take into account the claimant’s specification of trade secrets and the proof that such alleged trade secrets were misappropriated.

Section 5. (a) In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

(b) In an action under this chapter, in alleging trade secrets misappropriation a party must state with reasonable particularity the circumstances thereof, including the nature of the trade secrets and the basis for their protection. Before commencing discovery relating to an alleged trade secret, the party alleging misappropriation shall identify the trade secret with sufficient particularity under the circumstances of the case to allow the court to determine the appropriate parameters of discovery and to enable reasonably other parties to prepare their defense.

Section 6. An action for misappropriation must be brought within 3 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this chapter, a continuing disclosure or use constitutes a single claim.

Section 7. (a) Except as provided in subsection (b), this chapter shall supersede any conflicting laws of the Commonwealth providing civil remedies for the misappropriation of a trade secret.

(b) This chapter does not affect:

(1) contractual remedies, provided that, to the extent such remedies are based on an interest in the economic advantage of information claimed to be confidential, such confidentiality shall be determined according to the definition of trade secret in subsection 1(4), where the terms and circumstances of the underlying contract shall be considered in such determination;

(2) remedies based on submissions to governmental units;

(3) other civil remedies to the extent that they are not based upon misappropriation of a trade secret; or

(4) criminal remedies, whether or not based upon misappropriation of a trade secret.

Section 8. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among States enacting it.

Section 9. This chapter shall be known and may be cited as the Uniform Trade Secrets Act.

SECTION 3. This Act takes effect on July first, two thousand and seventeen, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the Act also does not apply to the continuing misappropriation that occurs after the effective date.

HOUSE . . . . . NO.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seventeen

AN ACT MAKING AMENDMENTS TO THE UNIFORM COMMERCIAL CODE COVERING PROVISIONS DEALING WITH NEGOTIABLE INSTRUMENTS AND BANK DEPOSITS AND COLLECTIONS

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 3-103(a) of chapter 106 of the General Laws is hereby amended by striking the definition out of the definition of "good faith", by inserting the following definitions in alphabetical order and by renumbering all of the definitions in numerical order:--

(2) "Consumer account" means an account established by an individual primarily for personal, family, or household purposes.

(3) "Consumer transaction" means a transaction in which an individual incurs an obligation primarily for personal, family, or household purposes.

(10) "Principal obligor," with respect to an instrument, means the accommodated party or any other party to the instrument against whom a secondary obligor has recourse under this Article.

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

(15) “Remotely-created consumer item” means an item drawn on a consumer account, which is not created by the payor bank and does not bear a handwritten signature purporting to be the signature of the drawer.

(16) “Secondary obligor,” with respect to an instrument, means (i) an indorser or an accommodation party, (ii) a drawer having the obligation described in Section 3-414(d), or (iii) any other party to the instrument that has recourse against another party to the instrument pursuant to Section 3-116(b).

SECTION 2. Section 3-103(b) of said chapter 106 is hereby amended by inserting a reference to a definition for “Account” which appears in “Section 4-104”.

SECTION 3. Section 3-106 of said chapter 106 is hereby amended by striking out the word “writing” wherever it appears in that Section and by inserting in each place thereof the following word:-- “record”.

SECTION 4. Section 3-116(b) of said chapter 106 is hereby amended by striking out the words “3-419(e)” in that Section and by inserting in place thereof the following words:-- “3-419(f)”.

SECTION 5. Section 3-116(c) of said chapter 106 is hereby repealed.

SECTION 6. Section 3-119 of said chapter 106 is hereby amended by striking out the word “written” in that Section and by inserting, after the word “litigation”, the following words:-- “in a record”.

SECTION 7. Section 3-305(a) of said chapter 106 is hereby amended by striking out the words “stated in subsection (b)” in that Section and by inserting in place thereof the following words:-- “otherwise provided in this section”.

SECTION 8. Section 3-305 of said chapter 106 is hereby amended by inserting the following new subsections at the end of Section 3-305:--

(e) In a consumer transaction, if law other than this Article requires that an instrument include a statement to the effect that the rights of a holder or transferee are subject to a claim or defense that the issuer could assert against the original payee and the instrument does not include such a statement:

(1) the instrument has the same effect as if the instrument included such a statement;

(2) the issuer may assert against the holder or transferee all claims and defenses that would have been available if the instrument included such a statement; and

(3) the extent to which the claims may be asserted against the holder or transferee is determined as if the instrument included such a statement.

(f) This section is subject to law other than this Article which establishes a different rule for consumer transactions.

SECTION 9. Said chapter 106 is hereby amended by striking out Section 3-309(a), and inserting in place thereof the following Section:--

(a) A person not in possession of an instrument is entitled to enforce the instrument if:

(1) the person seeking to enforce the instrument:

(A) was entitled to enforce the instrument when loss of possession occurred; or

(B) has directly or indirectly acquired ownership of the instrument from a person that was entitled to enforce the instrument when loss of possession occurred;

(2) the loss of possession was not the result of a transfer by the person or a lawful seizure; and

(3) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

SECTION 10. Section 3-312(a)(3) of said chapter 106 is hereby amended by striking out the word "written" in that Section and by inserting, after the word "made", the following words:-- "in a record".

SECTION 11. Section 3-416(a) of said chapter 106 is hereby amended by striking out the word "and" after the word "warrantor;" in subsection (4), by striking out the period at the end of subsection (5), by inserting in place thereof the following:-- "; and" and by inserting the following subsection:--

(6) with respect to a remotely-created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

SECTION 12. Section 3-416 of said chapter 106 is hereby further amended by inserting the following subsection at the end of Section 3-416:--

(e) A claim for breach of the warranty in subsection (a)(6) is available against a previous transferor of the item only to the extent that under applicable law (including the applicable choice-of-law principle) all previous transferors of the item made the warranty in subsection (a)(6).

SECTION 13. Section 3-417(a) of said chapter 106 is hereby amended by striking out the word "and" after the word "altered;" in subsection (2), by striking out the period at the end of subsection (3), by inserting in place thereof the following:-- "; and" and by inserting the following subsection:--

(4) with respect to any remotely-created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

SECTION 14. Section 3-417 of said chapter 106 is hereby further amended by inserting the following subsection at the end of Section 3-417:--

(g) A claim for breach of the warranty in subsection (a)(4) is available against a previous transferor of the item only to the extent that under applicable law (including the applicable choice-of-law principle) all previous transferors of the item made the warranty in subsection (a)(4).

SECTION 15. Section 3-419 of said chapter 106 is hereby amended by striking out subsection (e) and by inserting the following new subsections at the end of Section 3-419:--

(e) If the signature of a party to an instrument is accompanied by words indicating that the party guarantees payment or the signer signs the instrument as an accommodation party in some other manner that does not unambiguously indicate an intention to guarantee collection rather than payment, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument in the same circumstances as the accommodated party would be obliged, without prior resort to the accommodated party by the person entitled to enforce the instrument.

(f) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. In proper circumstances, an accommodation party may obtain relief that requires the accommodated party to perform its obligations on the instrument. An accommodated party that pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

SECTION 16. Said chapter 106 is hereby amended by striking out Section 3-602, and inserting in place thereof the following Section:--

SECTION 3-602. PAYMENT.

(a) Subject to subsection (e), an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument, and to a person entitled to enforce the instrument.

(b) Subject to subsection (e), a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person that formerly was entitled to enforce the note only if at the time

of the payment the party obliged to pay has not received adequate notification that the note has been transferred and that payment is to be made to the transferee. A notification is adequate only if it is signed by the transferor or the transferee, reasonably identifies the transferred note, and provides an address at which payments subsequently are to be made. Upon request, a transferee shall seasonably furnish reasonable proof that the note has been transferred. Unless the transferee complies with the request, a payment to the person that formerly was entitled to enforce the note is effective for purposes of subsection (c) even if the party obliged to pay the note has received a notification under this subsection.

(c) Subject to subsection (e), to the extent of a payment under subsections (a) and (b), the obligation of the party obliged to pay the instrument is discharged even if payment is made with knowledge of a claim to the instrument under Section 3-306 by another person.

(d) Subject to subsection (e), a transferee, or any party that has acquired rights in the instrument directly or indirectly from a transferee, including a party that has rights as a holder in due course, is deemed to have notice of any payment that is made under subsection (b) after the note is transferred to the transferee but before the party obliged to pay the note receives adequate notification of the transfer.

(e) The obligation of a party to pay an instrument is not discharged under subsections (a) through (d) if:

(1) a claim to the instrument under Section 3-306 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) the person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

(f) In this section, "signed," with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

SECTION 17. Section 3-604(a) of said chapter 106 is hereby amended by striking out the word “writing” in that Section and by inserting in place thereof the following word:-- “record”.

SECTION 18. Section 3-604 of said chapter 106 is hereby amended by inserting the following new subsection at the end of Section 3-604:--

(c) As used in this section, “signed” with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

SECTION 19. Said chapter 106 is hereby amended by striking out Section 3-605, and inserting in place thereof the following Section:--

SECTION 3-605. DISCHARGE OF SECONDARY OBLIGORS.

(a) If a person entitled to enforce an instrument releases the obligation of a principal obligor in whole or in part and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the release preserve the secondary obligor's recourse, the principal obligor is discharged, to the extent of the release, from any other duties to the secondary obligor under this Article.

(2) Unless the terms of the release provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor, the secondary obligor is discharged to the same extent as the principal obligor from any unperformed portion of its obligation on the instrument. If the instrument is a check and the obligation of the secondary obligor is based on an indorsement of the check, the secondary obligor is discharged without regard to the language or circumstances of the discharge or other release.

(3) If the secondary obligor is not discharged under paragraph (2), the secondary obligor is discharged to the extent of the value of the consideration for the release and to the extent that the release would otherwise cause loss to the secondary obligor.

(b) If a person entitled to enforce an instrument grants a principal obligor an extension of the time at which one or more payments are due on the instrument and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the extension preserve the secondary obligor's recourse, the extension correspondingly extends the time for performance of any other duties owed to the secondary obligor by the principal obligor under this Article.

(2) The secondary obligor is discharged to the extent that the extension would otherwise cause loss to the secondary obligor.

(3) To the extent that the secondary obligor is not discharged under paragraph (2), the secondary obligor may perform its obligations to a person entitled to enforce the instrument as if the time for payment had not been extended or, unless the terms of the extension provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor as if the time for payment had not

been extended, treat the time for performance of its obligations as having been extended correspondingly.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to a modification of the obligation of a principal obligor other than a complete or partial release or an extension of the due date and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. The modification correspondingly modifies any other duties owed to the secondary obligor by the principal obligor under this Article.

(2) The secondary obligor is discharged from any unperformed portion of its obligation to the extent that the modification would otherwise cause loss to the secondary obligor.

(3) To the extent that the secondary obligor is not discharged under paragraph (2), the secondary obligor may satisfy its obligation on the instrument as if the modification had not occurred or treat its obligation on the instrument as having been modified correspondingly.

(d) If the obligation of a principal obligor is secured by an interest in collateral, another party to the instrument is a secondary obligor with respect to that obligation, and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of the secondary obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the recourse of the secondary obligor or the reduction in value of the interest causes an increase in the amount by which the amount of the recourse exceeds the value of the interest. For purposes of this subsection, impairing the value of an interest in collateral includes failure to obtain or maintain perfection or recordation of the interest in collateral; release of collateral without substitution of collateral of equal value or equivalent reduction of the underlying obligation; failure to perform a duty to preserve the value of collateral owed, under

Article 9 or other law, to a debtor or other person secondarily liable; and failure to comply with applicable law in disposing of or otherwise enforcing the interest in collateral.

(e) A secondary obligor is not discharged under subsections (a)(3), (b), (c), or (d) unless the person entitled to enforce the instrument knows that the person is a secondary obligor or has notice under Section 3-419(c) that the instrument was signed for accommodation.

(f) A secondary obligor is not discharged under this section if the secondary obligor consents to the occurrence or nonoccurrence of the event or conduct that is the basis of the discharge or the instrument or a separate agreement of the party provides for waiver of discharge under this section specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral. Unless the circumstances indicate otherwise, consent by the principal obligor to an act that would lead to a discharge under this section constitutes consent to that act by the secondary obligor if the secondary obligor controls the principal obligor or deals with the person entitled to enforce the instrument on behalf of the principal obligor.

(g) A release or extension preserves a secondary obligor's recourse if the terms of the release or extension provide that:

(1) the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor; and

(2) the recourse of the secondary obligor continues as if the release or extension had not been granted.

(h) Except as otherwise provided in subsection (i), a secondary obligor asserting discharge under this section has the burden of persuasion both with respect to the occurrence of the acts alleged to harm the secondary obligor and loss or prejudice caused by those acts.

(i) If the secondary obligor demonstrates prejudice caused by an impairment of its recourse and the circumstances of the case indicate that the amount of loss is not reasonably susceptible of calculation or requires proof of facts that are not ascertainable, it is presumed that the act impairing recourse caused a loss or impairment equal to the liability of the secondary obligor on the instrument. In that event, the

burden of persuasion as to any lesser amount of the loss is on the person entitled to enforce the instrument.

SECTION 20. Section 4-104(b) of said chapter 106 is hereby amended by striking out the reference to a definition for “bank” and to the definition for “good faith”.

SECTION 21. Section 4-104(c) of said chapter 106 is hereby amended by inserting a reference to a definition for “record” which appears in “Section 3-103”, and by inserting a reference to a definition for “remotely-created consumer item” which appears in “Section 3-103”.

SECTION 22. Section 4-207(a) of said chapter 106 is hereby amended by striking out the word “and” after the word “warrantor;” in subsection (4), by striking out the period at the end of subsection (5), by inserting in place thereof the following:-- “; and” and by inserting the following subsection:--

(6) with respect to any remotely-created consumer item, the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

SECTION 23. Section 4-207 of said chapter 106 is hereby further amended by inserting the following subsection at the end of Section 4-207:--

(f) A claim for breach of the warranty in subsection (a)(6) is available against a previous transferor of the item only to the extent that under applicable law (including the applicable choice-of-law principle) all previous transferors of the item made the warranty in subsection (a)(6).

SECTION 24. Section 4-208(a) of said chapter 106 is hereby amended by striking out the word “and” after the word “altered;” in subsection (2), by striking out the period at the end of subsection (3), by inserting in place thereof the following:-- “; and” and by inserting the following subsection:--

(4) with respect to any remotely-created consumer item, the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

SECTION 25. Section 4-208 of said chapter 106 is hereby further amended by inserting the following subsection at the end of Section 4-208:--

(g) A claim for breach of the warranty in subsection (a)(4) is available against a previous transferor of the item only to the extent that under applicable law (including the applicable choice-of-law principle) all previous transferors of the item made the warranty in subsection (a)(4).

SECTION 26. Section 4-212(a) of said chapter 106 is hereby amended by striking out the word “written” in that Section and by inserting in place thereof the following words:-- “record providing”.

SECTION 27. Section 4-301(a) of said chapter 106 is hereby amended by striking out the word “or” in subsection (1), by striking out subsection (2) and by inserting the following new subsections at the end of Section 4-301(a):--

(2) returns an image of the item, if the party to which the return is made has entered into an agreement to accept the an image as a return of the item; and the image is returned in accordance with that agreement; or

(3) sends a record providing notice of dishonor or nonpayment if the item is unavailable for return.

SECTION 28. Section 4-403(b) of said chapter 106 is hereby amended by striking out the word “writing” wherever it appears in that Section and by inserting in each place thereof the following word:-- “a record”.

HOUSE . . . . . NO.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seventeen

AN ACT ADOPTING THE UNIFORM ASSIGNMENT OF RENTS ACT

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 4 of chapter 183 of the General Laws is hereby amended by deleting such section and by substituting therefor the following:-

A conveyance of an estate in fee simple, fee tail or for life, or a lease for more than seven years from the making thereof, or an assignment of rents from an estate or lease, shall not be valid as against any person, except the grantor or lessor, his heirs and devisees and persons having actual notice of it, unless it, or an office copy as provided in section thirteen of chapter thirty-six, or, with respect to such a lease or an assignment of rents, a notice of lease, as hereinafter defined, or a document creating an assignment of rents in accordance with chapter one hundred eighty-three D, is recorded in the registry of deeds for the county or district in which the land to which it relates lies. A "notice of lease", as

used in this section, shall mean an instrument in writing executed by all persons who are parties to the lease of which notice is given and shall contain the following information with reference to such lease:—the date of execution thereof and a description, in the form contained in such lease, of the premises demised, and the term of such lease, with the date of commencement of such term and all rights of extension or renewal.

SECTION 2. Section 26 of chapter 183 of the General Laws is hereby amended by deleting such section and by substituting therefor the following:-

Until default in the performance or observance of the condition of a mortgage of real estate, the mortgagor or his heirs and assigns may hold and enjoy the mortgaged premises, unless otherwise stated in the mortgage, and may receive the rents and profits thereof except as provided in chapter one hundred eighty-three D.

SECTION 3. The General Laws are hereby further amended by adding the following new chapter 183D:-

CHAPTER 183D. UNIFORM ASSIGNMENT OF RENTS ACT

SECTION 1. SHORT TITLE. This chapter may be cited as the Uniform Assignment of Rents Act.

SECTION 2. DEFINITIONS. In this chapter:

(1) "Assignee" means a person entitled to enforce an assignment of rents.

(2) "Assignment of rents" means a transfer of an interest in rents in connection with an obligation secured by real property located in this state and from which the rents arise.

(3) "Assignor" means a person that makes an assignment of rents or the successor owner of the real property from which the rents arise.

(4) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(5) "Day" means calendar day.

(6) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank, savings bank, savings and loan association, credit union, or trust company.

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

(8) “Notification” means a document containing information that this chapter requires a person to provide to another, signed by the person required to provide the information.

(9) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(10) “Proceeds” means personal property that is received or collected on account of a tenant’s obligation to pay rents.

(11) “Purchase” means to take by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(12) “Rents” means:

(A) sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person;

(B) sums payable to an assignor under a policy of rental interruption insurance covering real property;

(C) claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person;

(D) sums payable to terminate an agreement to possess or occupy real property of another person;

(E) sums payable to an assignor for payment or reimbursement of expenses incurred in owning, operating and maintaining, or constructing or installing improvements on, real property; or

(F) any other sums payable under an agreement relating to the real property of another person that constitute rents under law of this state other than this chapter.

(13) “Secured obligation” means an obligation the performance of which is secured by an assignment of rents.

(14) “Security instrument” means a document, however denominated, that creates or provides for a security interest in real property, whether or not it also creates or provides for a security interest in personal property.

(15) “Security interest” means an interest in property that arises by agreement and secures performance of an obligation.

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

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the document an electronic sound, symbol, or process.

(17) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(18) “Submit for recording” means to submit a document complying with applicable legal standards, with required fees and taxes, to the appropriate governmental office under chapter 183 of the General Laws.

(19) “Tenant” means a person that has an obligation to pay sums for the right to possess or occupy, or for possessing or occupying, the real property of another person.

SECTION 3. MANNER OF GIVING NOTIFICATION.

(a) Except as otherwise provided in subsections (c) and (d), a person gives a notification or a copy of a notification under this chapter:

(1) by depositing it with the United States Postal Service or with a commercially reasonable delivery service, properly addressed to the intended recipient’s address as specified in subsection (b), with first-class postage or cost of delivery provided for; or

(2) if the recipient agreed to receive notification by facsimile transmission, electronic mail, or other electronic transmission, by sending it to the recipient in the agreed manner at the address specified in the agreement.

(b) The following rules determine the proper address for giving a notification under subsection (a):

(1) A person giving a notification to an assignee shall use the address for notices to the assignee provided in the document creating the assignment of rents, but, if the assignee has provided the person giving the notification with a more recent address for notices, the person giving the notification shall use that address.

(2) A person giving a notification to an assignor shall use the address for notices to the assignor provided in the document creating the assignment of rents, but, if the assignor has provided the person giving the notification with a more recent address for notices, the person giving the notification shall use that address.

(3) If a tenant's agreement with an assignor provides an address for notices to the tenant and the person giving notification has received a copy of the agreement or knows the address for notices specified in the agreement, the person giving the notification shall use that address in giving a notification to the tenant. Otherwise, the person shall use the address of the premises covered by the agreement.

(c) If a person giving a notification pursuant to this chapter and the recipient have agreed to the method for giving a notification, any notification must be given by that method.

(d) If a notification is received by the recipient, it is effective even if it was not given in accordance with subsection (a) or (c).

SECTION 4. SECURITY INSTRUMENT CREATES ASSIGNMENT OF RENTS; ASSIGNMENT OF RENTS CREATES SECURITY INTEREST.

(a) An enforceable security instrument creates an assignment of rents arising from the real property described in the security instrument, unless the security instrument provides otherwise.

(b) An assignment of rents creates a presently effective security interest in all accrued and unaccrued rents arising from the real property described in the document creating the assignment, regardless of whether the document is in the form of an absolute assignment, an absolute assignment conditioned upon default, an assignment as additional security, or any other form. The security interest in rents is separate and distinct from any security interest held by the assignee in the real property.

SECTION 5. RECORDATION; PERFECTION OF SECURITY INTEREST IN RENTS; PRIORITY OF CONFLICTING INTERESTS IN RENTS.

(a) A document creating an assignment of rents may be submitted for recording in the registry of deeds for the county or district in which the land to which the assignment relates in the same manner as any other document evidencing a conveyance of an interest in real property.

(b) Upon recording, the security interest in rents created by an assignment of rents is fully perfected, even if a provision of the document creating the assignment or law of this state other than this chapter would preclude or defer enforcement of the security interest until the occurrence of a subsequent event, including a subsequent default of the assignor, the assignee's obtaining possession of the real property, or the appointment of a receiver.

(c) Except as otherwise provided in subsection (d), a perfected security interest in rents takes priority over the rights of a person that, after the security interest is perfected:

(1) acquires a judicial lien against the rents or the real property from which the rents arise; or

(2) purchases an interest in the rents or the real property from which the rents arise.

(d) A perfected security interest in rents has priority over the rights of a person described in subsection (c) with respect to future advances to the same extent as the assignee's security interest in the real property has priority over the rights of that person with respect to future advances.

SECTION 6. ENFORCEMENT OF SECURITY INTEREST IN RENTS.

(a) An assignee may enforce an assignment of rents using one or more of the methods specified in Sections 7, 8, and 9 or any other method sufficient to enforce the assignment under law of this state other than this chapter.

(b) From the date of enforcement, the assignee or, in the case of enforcement by appointment of a receiver under Section 7, the receiver, is entitled to collect all rents that:

(1) have accrued but remain unpaid on that date; and

(2) accrue on or after that date, as those rents accrue.

SECTION 7. ENFORCEMENT BY APPOINTMENT OF RECEIVER.

(a) An assignee is entitled to the appointment of a receiver for the real property subject to the assignment of rents if:

(1) the assignor is in default and:

(A) the assignor has agreed in a signed document to the appointment of a receiver in the event of the assignor's default;

(B) it appears likely that the real property may not be sufficient to satisfy the secured obligation;

(C) the assignor has failed to turn over to the assignee proceeds that the assignee was entitled to collect; or

(D) a subordinate assignee of rents obtains the appointment of a receiver for the real property; or

(2) other circumstances exist that would justify the appointment of a receiver under law of this state other than this chapter.

(b) An assignee may file a petition for the appointment of a receiver in connection with an action:

(1) to foreclose the security instrument;

(2) for specific performance of the assignment;

(3) seeking a remedy on account of waste or threatened waste of the real property subject to the assignment; or

(4) otherwise to enforce the secured obligation or the assignee's remedies arising from the assignment.

(c) An assignee that files a petition under subsection (b) shall also give a copy of the petition in the manner specified in Section 3 to any other person that, 10 days before the date the petition is filed, held a recorded assignment of rents arising from the real property.

(d) If an assignee enforces an assignment of rents under this section, the date of enforcement is the date on which the court enters an order appointing a receiver for the real property subject to the assignment.

(e) From the date of its appointment, a receiver is entitled to collect rents as provided in Section 6(b). The receiver also has the authority provided in the order of appointment and law of this state other than this chapter.

(f) The following rules govern priority among receivers:

(1) If more than one assignee qualifies under this section for the appointment of a receiver, a receivership requested by an assignee entitled to priority in rents under this chapter has priority over a receivership requested by a subordinate assignee, even if a court has previously appointed a receiver for the subordinate assignee.

(2) If a subordinate assignee obtains the appointment of a receiver, the receiver may collect the rents and apply the proceeds in the manner specified in the order appointing the receiver until a receiver is appointed under a senior assignment of rents.

SECTION 8. ENFORCEMENT BY NOTIFICATION TO ASSIGNOR.

(a) Upon the assignor's default, or as otherwise agreed by the assignor, the assignee may give the assignor a notification demanding that the assignor pay over the proceeds of any rents that the assignee is entitled to collect under Section 6. The assignee shall also give a copy of the notification to any other person that, 10 days before the notification date, held a recorded assignment of rents arising from the real property.

(b) If an assignee enforces an assignment of rents under this section, the date of enforcement is the date on which the assignor receives a notification under subsection (a).

(c) An assignee's failure to give a notification under subsection (a) to any person holding a recorded assignment of rents does not affect the effectiveness of the notification as to the assignor, but the other person is entitled to any relief permitted under law of this state other than this chapter.

(d) An assignee that holds a security interest in rents solely by virtue of Section 4(a) may not enforce the security interest under this section while the assignor occupies the real property as the assignor's primary residence.

SECTION 9. ENFORCEMENT BY NOTIFICATION TO TENANT.

(a) Upon the assignor's default, or as otherwise agreed by the assignor, the assignee may give to a tenant of the real property a notification demanding that the tenant pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue. The assignee shall give a copy of the notification to the assignor and to any other person that, 10 days before the

notification date, held a recorded assignment of rents arising from the real property. The notification must be signed by assignee and:

(1) identify the tenant, assignor, assignee, premises covered by the agreement between the tenant and the assignor, and assignment of rents being enforced;

(2) provide the recording data for the document creating the assignment or other reasonable proof that the assignment was made;

(3) state that the assignee has the right to collect rents in accordance with the assignment;

(4) direct the tenant to pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue;

(5) describe the manner in which subsections (c) and (d) affect the tenant's payment obligations;

(6) provide the name and telephone number of a contact person and an address to which the tenant can direct payment of rents and any inquiry for additional information about the assignment or the assignee's right to enforce the assignment; and

(7) contain a statement that the tenant may consult a lawyer if the tenant has questions about its rights and obligations.

(b) If an assignee enforces an assignment of rents under this section, the date of enforcement is the date on which the tenant receives a notification substantially complying with subsection (a).

(c) Subject to subsection (d) and any other claim or defense that a tenant has under law of this state other than this chapter, following receipt of a notification substantially complying with subsection (a):

(1) a tenant is obligated to pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue, unless the tenant has previously received a notification from another assignee of rents given by that assignee in accordance with this section and the other assignee has not canceled that notification;

(2) unless the tenant occupies the premises as the tenant's primary residence, a tenant that pays rents to the assignor is not discharged from the obligation to pay rents to the assignee;

(3) a tenant's payment to the assignee of rents then due satisfies the tenant's obligation under the tenant's agreement with the assignor to the extent of the payment made; and

(4) a tenant's obligation to pay rents to the assignee continues until the tenant receives a court order directing the tenant to pay the rent in a different manner or a signed document from the assignee canceling its notification, whichever occurs first.

(d) A tenant that has received a notification under subsection (a) is not in default for nonpayment of rents accruing within 30 days after the date the notification is received before the earlier of:

(1) 10 days after the date the next regularly scheduled rental payment would be due; or

(2) 30 days after the date the tenant receives the notification.

(e) Upon receiving a notification from another creditor that is entitled to priority under Section 5(c) that the other creditor has enforced and is continuing to enforce its interest in rents, an assignee that has given a notification to a tenant under subsection (a) shall immediately give another notification to the tenant canceling the earlier notification.

(f) An assignee's failure to give a notification under subsection (a) to any person holding a recorded assignment of rents does not affect the effectiveness of the notification as to the assignor and those tenants receiving the notification. However, the person entitled to the notification is entitled to any relief permitted by law of this state other than this chapter.

(g) An assignee that holds a security interest in rents solely by virtue of Section 4(a) may not enforce the security interest under this section while the assignor occupies the real property as the assignor's primary residence.

SECTION 10. NOTIFICATION TO TENANT: FORM. No particular phrasing is required for the notification specified in Section 9. However, the following form of notification, when properly completed, is sufficient to satisfy the requirements of Section 9:

NOTIFICATION TO PAY RENTS TO PERSON OTHER THAN LANDLORD

Tenant:_____

Name of Tenant

Property Occupied by Tenant (the "Premises"):_____
Address

Landlord:_____
Name of landlord

Assignee:_____
Name of assignee

Address of Assignee and Telephone Number of Contact Person:

Address of assignee

Telephone number of person to contact

1. The Assignee named above has become the person entitled to collect your rents on the Premises listed above under _____
Name of document
(the "Assignment of Rents") dated _____, and recorded at _____
Date Recording data
in the _____.
Appropriate governmental office under the recording act of this state

You may obtain additional information about the Assignment of Rents and the Assignee's right to enforce it at the address listed above.

2. The Landlord is in default under the Assignment of Rents. Under the Assignment of Rents, the Assignee is entitled to collect rents from the Premises.

3. This notification affects your rights and obligations under the agreement under which you occupy the Premises (your "Agreement"). In order to provide you with an opportunity to consult with a lawyer, if your next scheduled rental payment is due within 30 days after you receive this notification, neither the Assignee nor the Landlord can hold you in default under your Agreement for nonpayment of that rental payment until 10 days after the due date of that payment

or 30 days following the date you receive this notification, whichever occurs first. You may consult a lawyer at your expense concerning your rights and obligations under your Agreement and the effect of this notification.

4. You must pay to the Assignee at the address listed above all rents under your Agreement which are due and payable on the date you receive this notification and all rents accruing under your Agreement after you receive this notification. If you pay rents to the Assignee after receiving this notification, the payment will satisfy your rental obligation to the extent of that payment.

5. Unless you occupy the Premises as your primary residence, if you pay any rents to the Landlord after receiving this notification, your payment to the Landlord will not discharge your rental obligation, and the Assignee may hold you liable for that rental obligation notwithstanding your payment to the Landlord.

6. If you have previously received a notification from another person that also holds an assignment of the rents due under your Agreement, you should continue paying your rents to the person that sent that notification until that person cancels that notification. Once that notification is canceled, you must begin paying rents to the Assignee in accordance with this notification.

7. Your obligation to pay rents to the Assignee will continue until you receive either:

(a) a written order from a court directing you to pay the rent in a manner specified in that order; or

(b) written instructions from the Assignee canceling this notification.

Name of assignee

By: Officer/authorized agent of assignee

SECTION 11. EFFECT OF ENFORCEMENT. The enforcement of an assignment of rents by one or more of the methods identified in Sections 7, 8, and 9, the application of proceeds by the assignee under Section 12 after enforcement, the payment of expenses under Section 13, or an action under Section 14(d) does not:

(1) make the assignee a mortgagee in possession of the real property;

(2) make the assignee an agent of the assignor;

(3) constitute an election of remedies that precludes a later action to enforce the secured obligation;

(4) make the secured obligation unenforceable; or

(5) limit any right available to the assignee with respect to the secured obligation.

SECTION 12. APPLICATION OF PROCEEDS. Unless otherwise agreed, an assignee that collects rents under this chapter or collects upon a judgment in an action under Section 14(d) shall apply the sums collected in the following order to:

(1) the assignee's reasonable expenses of enforcing its assignment of rents, including, to the extent provided for by agreement and not prohibited by law of this state other than this chapter, reasonable attorney's fees and costs incurred by the assignee;

(2) reimbursement of any expenses incurred by the assignee to protect or maintain the real property subject to the assignment;

(3) payment of the secured obligation;

(4) payment of any obligation secured by a subordinate security interest or other lien on the rents if, before distribution of the proceeds, the assignor and assignee receive a notification from the holder of the interest or lien demanding payment of the proceeds; and

(5) the assignor.

SECTION 13. APPLICATION OF PROCEEDS TO EXPENSES OF PROTECTING REAL PROPERTY; CLAIMS AND DEFENSES OF TENANT.

(a) Unless otherwise agreed by the assignee, and subject to subsection (c), an assignee that collects rents following enforcement under Section 8 or 9 need not apply them to the payment of expenses of protecting or maintaining the real property subject to the assignment.

(b) Unless a tenant has made an enforceable agreement not to assert claims or defenses, the right of the assignee to collect rents from the tenant is subject to the terms of the agreement between the assignor and tenant and any claim or defense arising from the assignor's nonperformance of that agreement.

(c) This chapter does not limit the standing or right of a tenant to request a court to appoint a receiver for the real property subject to the assignment or to seek other relief on the ground that the assignee's nonpayment of expenses of protecting or maintaining the real property has caused or threatened harm to the tenant's interest in the property. Whether the tenant is entitled to the appointment of a receiver or other relief is governed by law of this state other than this chapter.

SECTION 14. TURNOVER OF RENTS; COMMINGLING AND IDENTIFIABILITY OF RENTS; LIABILITY OF ASSIGNOR.

(a) In this section, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(b) If an assignor collects rents that the assignee is entitled to collect under this chapter:

(1) the assignor shall turn over the proceeds to the assignee, less any amount representing payment of expenses authorized by the assignee; and

(2) the assignee continues to have a security interest in the proceeds so long as they are identifiable.

(c) For purposes of this chapter, cash proceeds are identifiable if they are maintained in a segregated account or, if commingled with other funds, to the extent the assignee can identify them by a method of tracing, including application of equitable principles, that is permitted under law of this state other than this chapter with respect to commingled funds.

(d) In addition to any other remedy available to the assignee under law of this state other than this chapter, if an assignor fails to turn over proceeds to the assignee as required by subsection (b), the assignee may recover from the assignor in a civil action:

(1) the proceeds, or an amount equal to the proceeds, that the assignor was obligated to turn over under subsection (b); and

(2) reasonable attorney's fees and costs incurred by the assignee to the extent provided for by agreement and not prohibited by law of this state other than this chapter.

(e) The assignee may maintain an action under subsection (d) without bringing an action to foreclose any security interest that it may have in the real property. Any sums recovered in the action must be applied in the manner specified in Section 12.

(f) Unless otherwise agreed, if an assignee entitled to priority under Section 5(c) enforces its interest in rents after another creditor holding a subordinate security interest in rents has enforced its interest under Section 8 or 9, the creditor holding the subordinate security interest in rents is not obligated to turn over any proceeds that it collects in good faith before the creditor receives notification that the senior assignee has enforced its interest in rents. The creditor shall turn over to the senior assignee any proceeds that it collects after it receives the notification.

SECTION 15. PERFECTION AND PRIORITY OF ASSIGNEE'S SECURITY INTEREST IN PROCEEDS.

(a) In this section:

(1) "Article 9" means Article 9 of the Uniform Commercial Code as adopted in chapter 106 of the General Laws or, to the extent applicable to any particular issue, Article 9 as adopted by the state whose laws govern that issue under the choice-of-laws rules contained in Article 9 as adopted by this state.

(2) "Conflicting interest" means an interest in proceeds, held by a person other than an assignee, that is:

(A) a security interest arising under Article 9; or

(B) any other interest if Article 9 resolves the priority conflict between that person and a secured party with a conflicting security interest in the proceeds.

(b) An assignee's security interest in identifiable cash proceeds is perfected if its security interest in rents is perfected. An assignee's security interest in identifiable noncash proceeds is perfected only if the assignee perfects that interest in accordance with Article 9.

(c) Except as otherwise provided in subsection (d), priority between an assignee's security interest in identifiable proceeds and a conflicting interest is governed by the priority rules in Article 9.

(d) An assignee's perfected security interest in identifiable cash proceeds is subordinate to a conflicting interest that is perfected by control under Article 9 but has priority over a conflicting interest that is perfected other than by control.

SECTION 16. PRIORITY SUBJECT TO SUBORDINATION. This chapter does not preclude subordination by agreement as to rents or proceeds.

SECTION 17. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 18. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et. seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

SECTION 19. APPLICATION TO EXISTING RELATIONSHIPS.

(a) Except as otherwise provided in this section, this chapter governs the enforcement of an assignment of rents and the perfection and priority of a security interest in rents, even if the document creating the assignment was signed and delivered before the effective date of this chapter.

(b) This chapter does not affect an action or proceeding commenced before the effective date of this chapter.

(c) Section 4(a) of this chapter does not apply to any security instrument signed and delivered before the effective date of this chapter.

(d) This chapter does not affect:

(1) the enforceability of an assignee's security interest in rents or proceeds if, immediately before the effective date of this chapter, that security interest was enforceable;

(2) the perfection of an assignee's security interest in rents or proceeds if, immediately before the effective date of this chapter, that security interest was perfected; or

(3) the priority of an assignee's security interest in rents or proceeds with respect to the interest of another person if, immediately before the effective date of this chapter, the interest of the other person was enforceable and perfected, and that priority was established.

HOUSE . . . . . NO.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seventeen

AN ACT TO RENAME THE UNIFORM FRAUDULENT TRANSFER ACT AND MAKE OTHER AMENDMENTS THERETO

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The title of chapter 109A of the General Laws is hereby amended by striking out the words "**FRAUDULENT TRANSFER**" in that title and by inserting in place thereof the following words:-- "**VOIDABLE TRANSACTIONS**".

SECTION 2. Said chapter 109A is hereby amended by striking out Section 1 and by inserting in place thereof the following Section:--

§ 1. Citation of chapter

This chapter, which was formerly cited as the Uniform Fraudulent Transfer Act, may be cited as the Uniform Voidable Transactions Act.

SECTION 3. Said chapter 109A is hereby amended by striking out Section 2 and by inserting in place thereof the following Section:--

§ 2. Definitions

As used in this chapter, the following words shall, unless the context requires otherwise, have the following meanings:—

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

(A) as a fiduciary or agent without sole discretionary power to vote the securities; or

(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

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

(A) as a fiduciary or agent without sole discretionary power to vote the securities; or

(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

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

(iv) a person that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

"Asset", property of a debtor, but the term shall not include:

(i) property to the extent it is encumbered by a valid lien;

(ii) property to the extent it is generally exempt under nonbankruptcy law; or

(iii) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

"Claim", except as used in "claim for relief", a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

"Creditor", a person that has a claim.

"Debt", liability on a claim.

"Debtor", a person that is liable on a claim.

"Electronic", relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Insider", includes:

(i) if the debtor is an individual:

(A) a relative of the debtor or of a general partner of the debtor;

(B) a partnership in which the debtor is a general partner;

(C) a general partner in a partnership described in clause (B); or

(D) a corporation of which the debtor is a director, officer, or person in control;

(ii) if the debtor is a corporation:

(A) a director of the debtor;

(B) an officer of the debtor;

(C) a person in control of the debtor;

(D) a partnership in which the debtor is a general partner;

(E) a general partner in a partnership described in clause (D); or

(F) a relative of a general partner, director, officer, or person in control of the debtor;

(iii) if the debtor is a partnership:

(A) a general partner in the debtor;

(B) a relative of a general partner in, a general partner of, or a person in control of the debtor;

(C) another partnership in which the debtor is a general partner;

(D) a general partner in a partnership described in clause (C); or

(E) a person in control of the debtor;

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

(v) a managing agent of the debtor.

"Lien", a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

"Organization", a person other than an individual.

"Person", an individual, estate, partnership, association, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal or commercial entity.

"Property", anything that may be the subject of ownership.

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

"Relative", an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

"Sign", with present intent to authenticate or adopt a record:

(i) to execute or adopt a tangible symbol; or

(ii) to attach to or logically associate with the record an electronic symbol, sound, or process.

"Transfer", every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license and creation of a lien or other encumbrance.

"Valid lien", a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

SECTION 4. Said chapter 109A is hereby amended by striking out Section 3 and by inserting in place thereof the following Section:--

§ 3. Insolvency; excluded assets

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

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

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

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

SECTION 5. The title of Section 5 of said chapter 109A is hereby amended by striking out the word "**Fraudulent**" in that title and by inserting in place thereof the following word:-- "**Voidable**".

SECTION 6. Section 5 of said chapter 109A is hereby further amended by striking out the word "fraudulent" in Section 5(a) and by inserting in place thereof the following word:-- "voidable".

SECTION 7. Section 5 of said chapter 109A is hereby further amended by striking out Section 5(a)(2)(ii) and by inserting in place thereof the following subsection:--

(ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

SECTION 8. Section 5 of said chapter 109A is hereby further amended by striking out the word "who" in Section 5(b)(11) and by inserting in place thereof the following word:-- "that".

SECTION 9. Section 5 of said chapter 109A is hereby further amended by inserting the following new subsection at the end of Section 5:--

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

SECTION 10. The title of Section 6 of said chapter 109A is hereby amended by striking out the word "**Fraudulent**" in that title and by inserting in place thereof the following word:-- "**Voidable**".

SECTION 11. Section 6 of said chapter 109A is hereby further amended by striking out the word "fraudulent" wherever it appears in that Section and by inserting in each place thereof the following word:-- "voidable".

SECTION 12. Section 6 of said chapter 109A is hereby further amended by inserting the following new subsection at the end of Section 6:--

(c) Subject to subsection (b) of section three, a creditor making a claim for relief under subsection (a) or (b) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

SECTION 13. Section 7(1)(i) of said chapter 109A is hereby amended by striking out the word "whom" in that Section and by inserting in place thereof the following word:-- "which".

SECTION 14. Section 7 of said chapter 109A is hereby further amended by inserting the word "and" after the word "transferred;" in Section 7(4).

SECTION 15. Section 7 of said chapter 109A is hereby further amended by striking out Section 7(5)(ii) and by inserting in place thereof the following subsection:--

(ii) if evidenced by a record, when the record signed by the obligor is delivered to or for the benefit of the obligee.

SECTION 16. Section 8(a)(2) of said chapter 109A is hereby amended by striking out that Section and by inserting in place thereof the following subsection:--

(2) an attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law; and

SECTION 17. Section 8 of said chapter 109A is hereby further amended by striking out the comma after the word "procedure" in Section 8(a)(3) and by inserting in place thereof the following:-- ":".

SECTION 18. Said chapter 109A is hereby amended by striking out Section 9 and by inserting in place thereof the following Section:--

§ 9. Voidable transfers; creditor's judgment

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

(b) To the extent a transfer is avoidable in an action by a credit under paragraph (1) of subsection (a) of section eight, the following rules apply:

(1) Except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(i) the first transferee of the asset or the person for whose benefit the transfer was made; or

(ii) an immediate or mediate transferee of the first transferee, other than:

(A) a good-faith transferee that took for value; or

(B) an immediate or mediate good-faith transferee of a person described in clause (A).

(2) Recovery pursuant to paragraph (1) of subsection (a) or (b) of section eight of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in clause (i) or (ii) of paragraph (1).

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

(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) a lien on or a right to retain an interest in the asset transferred;

(2) enforcement of an obligation incurred; or

(3) a reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under paragraph (2) of subsection (a) of section five or section six if the transfer results from:

(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) enforcement of a security interest in compliance with Article 9 of chapter one hundred and six, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(f) A transfer is not voidable under subsection (b) of section six:

(1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent the new value was secured by a valid lien;

(2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(g) The following rules determine the burden of proving matters referred to in this section:

(1) A party that seeks to invoke subsection (a), (d), (e), or (f) has the burden of proving the applicability of that subsection.

(2) Except as otherwise provided in paragraphs (3) and (4), the creditor has the burden of proving each applicable element of subsection (b) or (c).

(3) The transferee has the burden of proving the applicability to the transferee of clause (A) or (B) of clause (ii) of paragraph 1 of subsection (b).

(4) A party that seeks adjustment under subsection (c) has the burden of proving the adjustment.

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

SECTION 19. Said chapter 109A is hereby amended by striking out Section 10 and by inserting in place thereof the following Section:--

§ 10. Limitation of actions

A claim for relief with respect to a transfer or obligation under this chapter shall be extinguished unless action is brought:

(a) under paragraph (1) of subsection (a) of section five, not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(b) under paragraph (2) of subsection (a) of section five or subsection (a) of section six, not later than four years after the transfer was made or the obligation was incurred; or

(c) under subsection (b) of section six, not later than one year after the transfer was made.

SECTION 20. Said chapter 109A is hereby amended by renumbering Section 11 as follows:-- "**§ 13.**" and by inserting the following new Section 11:--

§ 11. Governing Law

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

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

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

SECTION 21. Said chapter 109A is hereby amended by renumbering the original Section 13 as follows:-- "**§ 16.**".

SECTION 22. Said chapter 109A is hereby amended by renumbering Section 12 as follows:-- "**§ 14.**" and by inserting the following new Section 12:--

§ 12. Application to series organization

(a) In this section:

(1) "Protected series" means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in paragraph (2).

(2) "Series organization" means an organization that, pursuant to the law under which it is organized, has the following characteristics:

(i) The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series.

(ii) Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization.

(iii) Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

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

SECTION 23. Said chapter 109A is hereby amended by inserting the following new Section 15:--

§ 15. Relation to electronic signatures in Global and National Commerce Act

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

SECTION 24. The amendments to chapter 109A made by this bill: (a) apply to a transfer made or obligation incurred on or after the effective date of the amendments; (b) do not apply to a transfer made or obligation incurred before the effective date of the amendments; and (c) do not apply to a right of action that has accrued before the effective date of the amendments. For the foregoing purposes a transfer is made and an obligation is incurred at the time provided in section six of the chapter.

HOUSE . . . . . NO.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seventeen

AN ACT RELATIVE TO THE UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 209A of the General Laws is hereby amended by striking the existing text and substituting the following:—

Chapter 209A

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This Act may be cited as the Uniform Child-Custody Jurisdiction and Enforcement Act.

SECTION 102. DEFINITIONS. In this Act:

(1) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(2) "Child" means an individual who has not attained 18 years of age.

(3) "Child-custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(4) "Child-custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under article 3.

(5) "Commencement" means the filing of the first pleading in a proceeding.

(6) "Court" means an entity authorized under the law of a State to establish, enforce, or modify a child-custody determination.

(7) "Home State" means the State in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the State in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(8) "Initial determination" means the first child-custody determination concerning a particular child.

(9) "Issuing court" means the court that makes a child-custody determination for which enforcement is sought under this Act.

(10) "Issuing State" means the State in which a child-custody determination is made.

(11) "Modification" means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(12) "Person" includes government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) "Person acting as a parent" means a person, other than a parent, who:

(A) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and

(B) has been awarded legal custody by a court or claims a right to legal custody under the law of this Commonwealth.

(14) "Physical custody" means the physical care and supervision of a child.

(15) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Tribe" means an Indian tribe, or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a State.

(17) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

SECTION 103. PROCEEDINGS GOVERNED BY OTHER LAW. This Act does not govern:

(1) An adoption proceeding; or

(2) A proceeding pertaining to the authorization of emergency medical care for a child.

SECTION 104. APPLICATION TO INDIAN TRIBES.

(a) A child-custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. section 1901 et seq., is not subject to this Act to the extent it is governed by the Indian Child Welfare Act.

(b) A court of this Commonwealth shall treat a tribe as a State of the United States for purposes of articles 1 and 2.

(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this Act must be recognized and enforced under the provisions of article 3.

SECTION 105. INTERNATIONAL APPLICATION OF ACT.

(a) A court of this Commonwealth shall treat a foreign country as a State of the United States for purposes of applying articles 1 and 2.

(b) A child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this Act must be recognized and enforced under article 3 of this Act.

(c) The court need not apply the provisions of this Act when the child custody law of the other country violates fundamental principles of human rights.

SECTION 106. BINDING FORCE OF CHILD-CUSTODY DETERMINATION. A child-custody determination made by a court of this Commonwealth that had jurisdiction under this Act binds all persons who have been served in accordance with the laws of this Commonwealth or notified in accordance with section 108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. The determination is conclusive as to them as to all decided issues of law and fact except to the extent the determination is modified.

SECTION 107. PRIORITY. If a question of existence or exercise of jurisdiction under this Act is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

SECTION 108. NOTICE TO PERSONS OUTSIDE COMMONWEALTH.

(a) Notice required for the exercise of jurisdiction when a person is outside this Commonwealth may be given in a manner prescribed by the law of this Commonwealth for the service of process or by the law of the State in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice, but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this Commonwealth or by the law of the State in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

SECTION 109. APPEARANCE AND LIMITED IMMUNITY.

(a) A party to a child-custody proceeding who is not subject to personal jurisdiction in this Commonwealth and is a responding party under article 2, a party in a proceeding to modify a child-custody determination under article 2, or a petitioner in a proceeding to enforce or register a child-custody determination under article 3 may appear and participate in the proceeding without submitting to personal jurisdiction over the party for another proceeding or purpose.

(b) A party is not subject to personal jurisdiction in this Commonwealth solely by being physically present for the purpose of participating in a proceeding under this Act. If a party is subject to personal jurisdiction in this Commonwealth on a basis other than physical presence, the party may be served with process in this Commonwealth. If a party present in this Commonwealth is subject to the jurisdiction of another State, service of process allowable under the laws of that State may be accomplished in this Commonwealth.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this Act committed by an individual while present in this Commonwealth.

SECTION 110. COMMUNICATION BETWEEN COURTS.

(a) A court of this Commonwealth may communicate with a court in another State concerning a proceeding arising under this Act.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, the parties shall be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) A communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of that communication.

(d) Except as provided in subsection (c), a record must be made of the communication. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that which is stored in an electronic or other medium and is retrievable in perceivable form. A record includes notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum or an electronic record of the communication between the courts, or a memorandum or an electronic record made by a court after the communication.

SECTION 111. TAKING TESTIMONY IN ANOTHER STATE.

(a) In addition to other procedures available to a party, a party to a child- custody proceeding may offer testimony of witnesses who are located in another State, including testimony of the parties and the child, by deposition or other means allowable in this Commonwealth for testimony taken in another State. The court on its own motion may order that the testimony of a person be taken in another State and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this Commonwealth may permit an individual residing in another State to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that State. A court of this Commonwealth shall cooperate with courts of other States in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another State to a court of this Commonwealth by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS.

(a) A court of this Commonwealth may request the appropriate court of another State to:

(1) hold an evidentiary hearing;

(2) order a person to produce or give evidence under procedures of that State;

(3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) forward to the court of this Commonwealth a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another State, a court of this Commonwealth may hold a hearing or enter an order described in subsection (a).

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this Commonwealth.

(d) A court of this Commonwealth shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until

the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another State, the court shall forward a certified copy of these records.

ARTICLE 2

JURISDICTION

SECTION 201. INITIAL CHILD-CUSTODY JURISDICTION.

(a) Except as otherwise provided in section 204, a court of this Commonwealth has jurisdiction to make an initial child-custody determination only if:

(1) this Commonwealth is the home State of the child on the date of the commencement of the proceeding, or was the home State of the child within six months before the commencement of the proceeding and the child is absent from this Commonwealth but a parent or person acting as a parent continues to live in this Commonwealth;

(2) a court of another State does not have jurisdiction under paragraph (1), or a court of the home State of the child has declined to exercise jurisdiction on the ground that this Commonwealth is the more appropriate forum under section 207 or 208, and:

(A) the child and the child's parents, or the child and at least one parent or a person acting as a parent have a significant connection with this Commonwealth other than mere physical presence; and

(B) substantial evidence is available in this Commonwealth concerning the child's care, protection, training, and personal relationships;

(3) all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this Commonwealth is the more appropriate forum to determine the custody of the child under section 207 or 208; or

(4) no State would have jurisdiction under paragraph (1), (2), or (3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child- custody determination by a court of this Commonwealth.

(c) Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child-custody determination.

SECTION 202. EXCLUSIVE, CONTINUING JURISDICTION.

(a) Except as otherwise provided in section 204, a court of this Commonwealth that has made a child-custody determination consistent with section 201 or 203 has exclusive, continuing jurisdiction over the determination until:

(1) a court of this Commonwealth determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this Commonwealth and that substantial evidence is no longer available in this Commonwealth concerning the child's care, protection, training, and personal relationships; or

(2) a court of this Commonwealth or a court of another State determines that neither the child, nor a parent, nor any person acting as a parent presently resides in this Commonwealth; or

(3) the court finds that a parent or person acting as a parent who resides in this Commonwealth has engaged in a serious incident or pattern of abuse as defined by chapter 208, section 28A against the other parent or person acting as a parent, or against a child who is the subject of the proceeding. If the court so finds, it shall be presumed that this Commonwealth does not have continuing, exclusive jurisdiction over the determination unless the victim or the victim’s custodial parent or guardian consents to continuing, exclusive jurisdiction; or

(4) the parties mutually agree in writing that this Commonwealth shall no longer have continuing, exclusive jurisdiction and said agreement has been approved by the court.

(b) A court of this Commonwealth that has exclusive, continuing jurisdiction under this section may decline to exercise its jurisdiction if the court determines that it is an inconvenient forum under section 207.

(c) A court of this Commonwealth that has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 201.

SECTION 203. JURISDICTION TO MODIFY CHILD CUSTODY DETERMINATION. Except as otherwise provided in section 204, a court of this Commonwealth may not modify a child-custody determination made by a court of another State unless a court of this Commonwealth has jurisdiction to make an initial determination under section 201(a)(1) or (2) and:

(1) the court of the other State determines it no longer has exclusive, continuing jurisdiction under section 202 or that a court of this Commonwealth would be a more convenient forum under section 207;

(2) a court of this Commonwealth or a court of the other State determines that neither the child, nor a parent, nor any person acting as a parent presently resides in the other State; or

(3) the parents or all persons acting as parents have mutually agreed in writing that this Commonwealth shall have the authority to modify a determination and such agreement has been approved by the court.

SECTION 204. TEMPORARY EMERGENCY JURISDICTION.

(a) A court of this Commonwealth has temporary emergency jurisdiction if the child is present in this Commonwealth and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child-custody determination that is entitled to be enforced under this Act, and if no child-custody proceeding has been commenced in a court of a State having jurisdiction under sections 201 through 203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a State having jurisdiction under sections 201 through 203. If a child-custody proceeding has not been or is not commenced in a court of a State having jurisdiction under sections 201 through 203, a child-custody determination made under this section becomes a final determination, if:

(1) it so provides; and

(2) this Commonwealth becomes the home State of the child.

(c) If there is a previous child-custody determination that is entitled to be enforced under this Act, or a child-custody proceeding has been commenced in a court of a State having jurisdiction under sections 201 through 203, any order issued by a court of this Commonwealth under this section must specify in the order a period of time which the court considers adequate to allow the person seeking an order to obtain an order from the State having jurisdiction under sections 201 through 203. The order issued in this Commonwealth remains in effect until an order is obtained from the other State within the period specified or the period expires.

(d) A court of this Commonwealth that has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced, or

a child-custody determination has been made, by a court of a State having jurisdiction under sections 201 through 203, shall immediately communicate with the other court. A court of this Commonwealth that is exercising jurisdiction pursuant to sections 201 through 203, upon being informed that a child-custody proceeding has been commenced, or a child-custody determination has been made by a court of another State under a statute similar to this section shall immediately communicate with the court of that State. The purpose of the communication is to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

SECTION 205. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER.

(a) Before a child-custody determination is made under this Act, notice and an opportunity to be heard in accordance with the standards of section 108 must be given to all persons entitled to notice under the law of this Commonwealth as in child-custody proceedings between residents of this Commonwealth, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This Act does not govern the enforceability of a child-custody determination made without notice and an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this Act are governed by the law of this Commonwealth as in child-custody proceedings between residents of this Commonwealth.

SECTION 206. SIMULTANEOUS PROCEEDINGS.

(a) Except as otherwise provided in section 204, a court of this Commonwealth may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child had been previously commenced in a court of another State having jurisdiction substantially in conformity with this Act, unless the proceeding has been terminated or is stayed by the court of the other State because a court of this Commonwealth is a more convenient forum under section 207.

(b) Except as otherwise provided in section 204, a court of this Commonwealth, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 209. If the court determines that a child-custody proceeding was previously commenced in a court in another State having jurisdiction substantially in accordance with this Act, the court of this Commonwealth shall stay its proceeding and communicate with the court of the other State. If the court of the State having jurisdiction substantially in accordance with this Act does not determine that the court of this Commonwealth is a more appropriate forum, the court of this Commonwealth shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of this Commonwealth shall determine whether a proceeding to enforce the determination has been commenced in another State. If a proceeding to enforce a child-custody determination has been commenced in another State, the court may:

(1) stay the proceeding for modification pending the entry of an order of a court of the other State enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) enjoin the parties from continuing with the proceeding for enforcement; or

(3) proceed with the modification under conditions it considers appropriate.

SECTION 207. INCONVENIENT FORUM.

(a) A court of this Commonwealth that has jurisdiction under this Act to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another State is a more appropriate forum. The issue of inconvenient forum may be raised upon the court's own motion, request of another court, or motion of a party.

(b) Before determining whether it is an inconvenient forum, a court of this Commonwealth shall consider whether it is appropriate that a court of another State exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) whether domestic violence has occurred and is likely to continue in the future and which State could best protect the parties and the child;

(2) the length of time the child has resided outside this Commonwealth;

(3) the distance between the court in this Commonwealth and the court in the State that would assume jurisdiction;

(4) the relative financial circumstances of the parties and the effect of such circumstance on the ability to litigate in a foreign jurisdiction;

(5) any agreement of the parties as to which State should assume jurisdiction;

(6) the nature and location of the evidence required to resolve the pending litigation, including the testimony of the child;

(7) the ability of the court of each State to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) the familiarity of the court of each State with the facts and issues of the pending litigation.

(c) If a court of this Commonwealth determines that it is an inconvenient forum and that a court of another State is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated State and may impose any other condition the court considers just and proper.

(d) A court of this Commonwealth may decline to exercise its jurisdiction under this Act if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

SECTION 208. JURISDICTION DECLINED BY REASON OF CONDUCT.

(a) Except as otherwise provided in section 204 or by other law of this Commonwealth, if a court of this Commonwealth has jurisdiction under this Act because a person invoking the jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) a court of the State otherwise having jurisdiction under sections 201 through 203 determines that this Commonwealth is a more appropriate forum under section 207; or

(3) no other State would have jurisdiction under sections 201 through 203.

(b) If a court of this Commonwealth declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the wrongful conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under sections 201 through 203.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall charge the party invoking the jurisdiction of the court with necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the award would be clearly inappropriate. The court may not assess fees, costs, or expenses against this State except as otherwise provided by law other than this Act.

SECTION 209. INFORMATION TO BE SUBMITTED TO COURT.

(a) Subject to local law providing for the confidentiality of procedures, addresses, and other identifying information, in a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number of the proceeding, and the date of the child-custody determination, if any;

(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court and the case number and the nature of the proceeding; and

(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) is not furnished, the court, upon its own motion or that of a party, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subsection (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this Commonwealth or any other State that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be put at risk by the disclosure of identifying information, that information shall be sealed and not disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

SECTION 210. APPEARANCE OF PARTIES AND CHILD.

(a) A court of this Commonwealth may order a party to a child-custody proceeding who is in this Commonwealth to appear before the court personally with or without the child. The court may order any person who is in this Commonwealth and who has physical custody or control of the child to appear physically with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this Commonwealth, the court may order that a notice given pursuant to section 108 include a statement directing the party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child-custody proceeding who is outside this Commonwealth is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

ARTICLE 3

ENFORCEMENT

SECTION 301. DEFINITIONS. In this article:

(1) "Petitioner" means a person who seeks enforcement of a child-custody determination or enforcement of an order for the return of the child under the Hague Convention on the Civil Aspects of International Child Abduction.

(2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of a child-custody determination or enforcement of an order for the return of the child under the Hague Convention on the Civil Aspects of International Child Abduction.

SECTION 302. SCOPE; TEMPORARY VISITATION.

(a) This article may be invoked to enforce:

(1) a child-custody determination; and

(2) an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A court of this Commonwealth which does not have jurisdiction to modify a child-custody determination, may issue a temporary order enforcing

(1) a visitation schedule made by a court of another State; or

(2) the visitation provisions of a child-custody determination of another State that does not provide for a specific visitation schedule.

(c) If a court of this Commonwealth makes an order under subparagraph (b)(2), it shall specify in the order a period of time which it considers adequate to allow the person seeking the order to obtain an order from the State having jurisdiction under article 2. The order remains in effect until an order is obtained from the other State or the period expires.

SECTION 303. DUTY TO ENFORCE.

(a) A court of this Commonwealth shall recognize and enforce a child-custody determination of a court of another State if the latter court exercised jurisdiction that was in substantial conformity with this Act or the determination was made under factual circumstances meeting the jurisdictional standards of this Act and the determination has not been modified in accordance with this Act.

(b) A court may utilize any remedy available under other law of this Commonwealth to enforce a child-custody determination made by a court of another State. The procedure provided by this article does not affect the availability of other remedies to enforce a child-custody determination.

SECTION 304. REGISTRATION OF CHILD-CUSTODY DETERMINATION.

(a) A child-custody determination issued by a court of another State may be registered in this Commonwealth, with or without a simultaneous request for enforcement, by sending to the appropriate court in this Commonwealth:

(1) a letter or other document requesting registration;

(2) two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) except as otherwise provided in section 209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a), the registering court shall:

(1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) serve notice upon the persons named pursuant to (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subsection (b)(2) must state:

(1) that a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this Commonwealth;

(2) that a hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

(3) that failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) the issuing court did not have jurisdiction under article 2;

(2) the child-custody determination sought to be registered has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under article 2; or

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section 108 in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter which could have been asserted at the time of registration.

SECTION 305. ENFORCEMENT OF REGISTERED DETERMINATION.

(a) A court of this Commonwealth may grant any relief normally available under the law of this Commonwealth to enforce a registered child-custody determination made by a court of another State.

(b) A court of this Commonwealth shall recognize and enforce, but may not modify except in accordance with article 2, a registered child-custody determination of another State.

SECTION 306. SIMULTANEOUS PROCEEDINGS. If a proceeding for enforcement under this article has been or is commenced in this Commonwealth and a court of this Commonwealth determines that a proceeding to modify the determination has been commenced in another State having jurisdiction to modify the determination under article 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

SECTION 307. EXPEDITED ENFORCEMENT OF CHILD-CUSTODY DETERMINATION.

(a) A petition under this article must be verified. Certified copies of all orders sought to be enforced and of the order confirming registration, if any, must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

(1) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this Act or federal law and, if so, identify the court, the case number of the proceeding, and the action taken;

(3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court and the case number and the nature of the proceeding;

(4) the present physical address of the child and the respondent, if known; and

(5) whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought.

(c) If the child-custody determination has been registered and confirmed under section 304, the petition must also state the date and place of registration.

(d) The court shall issue an order directing the respondent to appear with or without the child at a hearing and may enter any orders necessary to ensure the safety of the parties and the child.

(e) The hearing must be held on the next judicial day following service of process unless that date is impossible. In that event, the court must hold the hearing on the first day possible. The court may extend the date of hearing at the request of the petitioner.

(f) The order must state the time and place of the hearing and must advise the respondent that at the hearing the court will order the delivery of the child and the payment of fees, costs, and expenses under section 311, and may set an additional hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) the child-custody determination has not been registered and confirmed under section 304, and that

(A) the issuing court did not have jurisdiction under article 2;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under article 2 or federal law; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of section 108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under section 304, but has been vacated, stayed or modified by a court of a State having jurisdiction to do so under article 2 or federal law.

SECTION 308. SERVICE OF PETITION AND ORDER. Except as otherwise provided in section 310, the petition and order must be served, by any method authorized by the law of this Commonwealth, upon respondent and any person who has physical custody of the child.

SECTION 309. HEARING AND ORDER.

(a) Unless the court enters a temporary emergency order pursuant to section 204, upon a finding that a petitioner is entitled to the physical custody of the child immediately, the court shall order the child delivered to the petitioner unless the respondent establishes that:

(1) the child-custody determination has not been registered and confirmed under section 304, and that

(A) the issuing court did not have jurisdiction under article 2;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed or modified by a court of a State having jurisdiction to do so under article 2 or federal law; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of section 108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under section 304, but has been vacated, stayed or modified by a court of a State having jurisdiction to do so under article 2 or federal law.

(b) The court shall award the fees, costs, and expenses authorized under section 311 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this article.

SECTION 310. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.

(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is likely to suffer serious imminent physical harm or removal from this Commonwealth.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is likely to suffer serious imminent physical harm or be imminently removed from this Commonwealth, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed. The warrant must include the statements required by section 307(b).

(c) A warrant to take physical custody of a child must:

(1) recite the facts upon which a conclusion of serious imminent physical harm or removal from the jurisdiction is based;

(2) direct law enforcement officers to take physical custody of the child immediately; and

(3) provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this Commonwealth. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by the exigency of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

SECTION 311. COSTS, FEES, AND EXPENSES.

(a) The court shall award the prevailing party, including a State, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses,

attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a State except as otherwise provided by law other than this Act.

SECTION 312. RECOGNITION AND ENFORCEMENT. A court of this Commonwealth shall accord full faith and credit to an order made consistently with this Act which enforces a child-custody determination by a court of another State unless the order has been vacated, stayed, or modified by a court authorized to do so under article 2.

SECTION 313. APPEALS. An appeal may be taken from a final order in a proceeding under this article in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under section 204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

SECTION 314. ROLE OF PROSECUTOR OR PUBLIC OFFICIAL.

(a) In a case arising under this Act or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or other appropriate public official may take any lawful action, including resort to a proceeding under this article or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:

(1) an existing child-custody determination;

(2) a request from a court in a pending child-custody case;

(3) a reasonable belief that a criminal statute has been violated; or

(4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A prosecutor or appropriate public official acts on behalf of the court and may not represent any party to a child-custody determination.

SECTION 315. ROLE OF LAW ENFORCEMENT. At the request of a prosecutor or other appropriate public official acting under section 314, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official with responsibilities under section 314.

SECTION 316. COSTS AND EXPENSES. If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law enforcement officers under section 314 or 315.

ARTICLE 4

MISCELLANEOUS PROVISIONS

SECTION 401. APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 402. SEVERABILITY CLAUSE. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 2. Chapter 208, section 28 of the General Laws is amended by adding at the end thereof:--- "The jurisdiction of any court to modify an existing judgment as to care and custody of a minor child and shall be subject to the provisions of the Uniform Child-Custody Jurisdiction and Enforcement Act, chapter 209A."

SECTION 3. This Act takes effect on July first, two thousand and seventeen. A motion or other request for relief made in a child-custody or enforcement proceeding that was commenced before the effective date of this Act is governed by the law in effect at the time the motion or other request was made.

HOUSE . . . . . NO.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seventeen

THE COMMONWEALTH OF MASSACHUSETTS

AN ACT REVISING THE UNIFORM ARBITRATION ACT FOR COMMERCIAL DISPUTES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 251 of the General Laws is hereby amended by striking the existing text and substituting the following:—

CHAPTER 251

UNIFORM ARBITRATION ACT

Section 1. In this chapter:

(1) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(2) "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(3) "Court" means a court of competent jurisdiction in this Commonwealth.

(4) "Knowledge" means actual knowledge.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Section 2. (a) Except as otherwise provided in this chapter, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(b) A person has notice if the person has knowledge of the notice or has received notice.

(c) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

Section 3. (a) This chapter governs an agreement to arbitrate made on or after the effective date of this chapter.

(b) This chapter governs an agreement to arbitrate made before the effective date of this chapter if all the parties to the agreement or to the arbitration proceeding so agree in a record.

(c) On or after the effective date of this chapter, this chapter governs an agreement to arbitrate whenever made.

Section 4. (a) Except as otherwise provided in subsections (b) and (c), a party to an agreement to arbitrate or to an arbitration proceeding may waive or, the parties may vary the effect of, the requirements of this chapter to the extent permitted by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) waive or agree to vary the effect of the requirements of section 5(a), 6(a), 8, 17(a), 17(b), 26, or 28;

(2) agree to unreasonably restrict the right under section 9 to notice of the initiation of an arbitration proceeding;

(3) agree to unreasonably restrict the right under section 12 to disclosure of any facts by a neutral arbitrator; or

(4) waive the right under section 16 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this chapter, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(c) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or section 3(a) or (c), 7, 14, 18, 20(d) or (e), 22, 23, 24, 25(a) or (b), 29, 30, 31, or 32.

Section 5. (a) Except as otherwise provided in section 28, an application for judicial relief under this chapter must be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this chapter must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or rule of court for serving motions in pending cases.

Section 6. (a) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(d) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

Section 7. (a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) if the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

(2) if the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(c) If the court finds that there is no enforceable agreement, it may not pursuant to subsection (a) or (b) order the parties to arbitrate.

(d) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

(e) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise a motion under this section may be made in any court as provided in section 27.

(f) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(g) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

Section 8. (a) Before an arbitrator is appointed and is authorized and able to chapter, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) After an arbitrator is appointed and is authorized and able to act:

(1) the arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action and

(2) a party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to chapter timely or the arbitrator cannot provide an adequate remedy.

(c) A party does not waive a right of arbitration by making a motion under subsection (a) or (b).

Section 9. (a) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(b) Unless a person objects for lack or insufficiency of notice under section 15(c) not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack of or insufficiency of notice.

Section 10. (a) Except as otherwise provided in subsection (c), upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) there are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(2) the claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(3) the existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

Section 11. (a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to chapter and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(b) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

Section 12. (a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(1) a financial or personal interest in the outcome of the arbitration proceeding; and

(2) an existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or another arbitrators.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

(c) If an arbitrator discloses a fact required by subsection (a) or (b) to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under section 23(a)(2) for vacating an award made by the arbitrator.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b), upon timely objection by a party, the court under section 23(a)(2) may vacate an award.

(e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and

substantial relationship with a party is presumed to chapter with evident partiality under section 23(a)(2).

(f) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under section 23(a)(2).

Section 13. If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under section 15(c).

Section 14. (a) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this Commonwealth acting in a judicial capacity.

(b) The immunity afforded by this section supplements any immunity under other law.

(c) The failure of an arbitrator to make a disclosure required by section 12 does not cause any loss of immunity under this section.

(d) In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this Commonwealth acting in a judicial capacity. This subsection does not apply:

(1) to the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

(2) to a hearing on a motion to vacate an award under section 23(a)(1) or (2) if the movant establishes prima facie that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (d), and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney's fees and other reasonable expenses of litigation.

Section 15. (a) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) if all interested parties agree; or

(2) upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.

(c) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under subsection (c), a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross examine witnesses appearing at the hearing.

(e) If an arbitrator ceases or is unable to chapter during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with section 11 to continue the proceeding and to resolve the controversy.

Section 16. A party to an arbitration proceeding may be represented by a lawyer.

Section 17. (a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b) In order to make the proceedings fair, expeditious, and cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.

(d) If an arbitrator permits discovery under subsection (c), the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a non-complying party to the extent a court could if the controversy were the subject of a civil action in this Commonwealth.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this Commonwealth.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this Commonwealth.

(g) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this Commonwealth and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another State upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost effective. A subpoena or discovery-related order issued by an arbitrator in another State must be served in the manner provided by law for service of subpoenas in a civil action in this Commonwealth and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this Commonwealth.

Section 18. If an arbitrator makes a pre-award ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under section 19. A prevailing party may make a motion to the court for an expedited order to confirm the award under section 22, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under section 23 or 24.

Section 19. (a) An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(b) An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

Section 20. (a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) upon a ground stated in section 24(a)(1) or (3);

(2) because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) to clarify the award.

(b) A motion under subsection (a) must be made and notice given to all parties within 20 days after the movant receives notice of the award.

(c) A party to the arbitration proceeding must give notice of any objection to the motion within 10 days after receipt of the notice.

(d) If a motion to the court is pending under section 22, 23, or 24, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) upon a ground stated in sections 4(a)(1) or (3);

(2) because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) to clarify the award.

(e) An award modified or corrected pursuant to this section is subject to sections 19(a), 22, 23, and 24.

Section 21. (a) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(b) An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(c) As to all remedies other than those authorized by subsections (a) and (b), an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under section 22 or for vacating an award under section 23.

(d) An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

(e) If an arbitrator awards punitive damages or other exemplary relief under subsection (a), the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

Section 22. After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court

shall issue a confirming order unless the award is modified or corrected pursuant to section 20 or 24 or is vacated pursuant to section 23.

Section 23. (a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(1) the award was procured by corruption, fraud, or other undue means;

(2) there was:

(A) evident partiality by an arbitrator appointed as a neutral arbitrator;

(B) corruption by an arbitrator; or

(C) misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 15, so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) an arbitrator exceeded the arbitrator's powers;

(5) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under section 15(c) not later than the beginning of the arbitration hearing; or

(6) the arbitration was conducted without proper notice of the initiation of an arbitration as required in section 9 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) A motion under this section must be filed within 90 days after the movant receives notice of the award pursuant to section 19 or within 90 days after the movant receives notice of a

modified or corrected award pursuant to section 20, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the movant.

(c) If the court vacates an award on a ground other than that set forth in subsection (a)(5), it may order a rehearing. If the award is vacated on a ground stated in subsection (a)(1) or (2), the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in subsection (a)(3), (4), or (6), the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in section 19(b) for an award.

(d) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

Section 24. (a) Upon motion made within 90 days after the movant receives notice of the award pursuant to section 19 or within 90 days after the movant receives notice of a modified or corrected award pursuant to section 20, the court shall modify or correct the award if:

(1) there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(2) the arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(3) the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b) If a motion made under subsection (a) is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(c) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

Section 25. (a) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(c) On application of a prevailing party to a contested judicial proceeding under section 22, 23, or 24, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

Section 26. (a) A court of this Commonwealth having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(b) An agreement to arbitrate providing for arbitration in this Commonwealth confers exclusive jurisdiction on the court to enter judgment on an award under this chapter.

Section 27. A motion pursuant to section 5 must be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion may be

made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this Commonwealth, in the court of any county in this Commonwealth. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.

Section 28. (a) An appeal may be taken from:

(1) an order denying a motion to compel arbitration;

(2) an order granting a motion to stay arbitration;

(3) an order confirming or denying confirmation of an award;

(4) an order modifying or correcting an award;

(5) an order vacating an award without directing a rehearing; or

(6) a final judgment entered pursuant to this chapter.

(b) An appeal under this section must be taken as from an order or a judgment in a civil action.

Section 29. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

Section 30. The provisions of this chapter governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act.

SECTION 2. This Act takes effect on July first, two thousand and seventeen. This Act does not affect an action or proceeding commenced or right accrued before this Act takes effect. Subject to section 3 of this Act, an arbitration agreement made before the effective date of this chapter is governed by the Uniform Arbitration Act for Commercial Disputes.

HOUSE . . . . . NO.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seventeen

AN ACT MAKING UNIFORM CERTAIN ASPECTS OF MEDIATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by inserting after chapter 251 the following chapter:--

CHAPTER 251A

UNIFORM MEDIATION ACT

Section 1. This chapter may be cited as the UNIFORM MEDIATION ACT.

Section 2. In this chapter:

(1) "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

(2) "Mediation communication" means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

(3) "Mediator" means an individual who conducts a mediation.

(4) "Nonparty participant" means a person, other than a party or mediator, that participates in a mediation.

(5) "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(7) "Proceeding" means:

(A) a judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery; or

(B) a legislative hearing or similar process.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Sign" means:

(A) to execute or adopt a tangible symbol with the present intent to authenticate a record; or

(B) to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

Section 3. (a) Except as otherwise provided in subsection (b) or (c), this chapter applies to a mediation in which:

(1) the mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator;

(2) the mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or

(3) the mediation parties use as a mediator an individual who holds himself or herself out as a mediator or the mediation is provided by a person that holds itself out as providing mediation.

(b) The chapter does not apply to a mediation:

(1) relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship;

(2) relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that the chapter applies to a mediation arising out of a dispute that has been filed with an administrative agency or court;

(3) conducted by a judge who might make a ruling on the case; or

(4) conducted under the auspices of:

(A) a primary or secondary school if all the parties are students or

(B) a correctional institution for youths if all the parties are residents of that institution.

(C) If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under sections 4 through 6 do not apply to the mediation

or part agreed upon. However, sections 4 through 6 apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

Section 4. (a) Except as otherwise provided in section 6, a mediation communication is privileged as provided in subsection (b) and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by section 5.

(b) In a proceeding, the following privileges apply:

(1) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.

(2) A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.

(3) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

Section 5. (a) A privilege under section 4 may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:

(1) in the case of the privilege of a mediator, it is expressly waived by the mediator; and

(2) in the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(b) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under section 4, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(c) A person that intentionally uses a mediation to plan, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under section 4.

Section 6. (a) There is no privilege under section 4 for a mediation communication that is:

(1) in an agreement evidenced by a record signed by all parties to the agreement;

(2) available to the public under chapter 66 or made during a session of a mediation which is open, or is required by law to be open, to the public;

(3) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(4) intentionally used to plan a crime, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity;

(5) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;

(6) except as otherwise provided in subsection (c), sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or

(7) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the case is referred by a court to mediation and a public agency participates.

(b) There is no privilege under section 4 if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:

(1) a court proceeding involving a felony or misdemeanor; or

(2) except as otherwise provided in subsection (c), a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(c) A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection (a)(6) or (b)(2).

(d) If a mediation communication is not privileged under subsection (a) or (b), only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (a) or (b) does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

Section 7. (a) Except as required in subsection (b), a mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.

(b) A mediator may disclose:

(1) whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;

(2) a mediation communication as permitted under section 6; or

(3) a mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(c) A communication made in violation of subsection (a) may not be considered by a court, administrative agency, or arbitrator.

Section 8. Unless subject to the requirements of chapters 30A, 34, 39, and 40 regarding open meetings and chapter 66 regarding public records, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this Commonwealth.

Section 9. (a) Before accepting a mediation, an individual who is requested to serve as a mediator shall:

(1) make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and

(2) disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.

(b) If a mediator learns any fact described in subsection (a)(1) after accepting a mediation, the mediator shall disclose it as soon as is practicable.

(c) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(d) A person that violates subsection (a), (b), or (g) is precluded by the violation from asserting a privilege under section 4.

(e) Subsections (a), (b), (c), and (g) do not apply to an individual acting as a judge.

(f) This chapter does not require that a mediator have a special qualification by background or profession.

(g) A mediator must be impartial, unless after disclosure of the facts required in subsections (a) and (b) to be disclosed, the parties agree otherwise.

Section 10. An attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of participation given before the mediation may be rescinded.

Section 11. This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et seq., but this chapter does not modify, limit, or supersede section 101(c) of that Act or authorize electronic delivery of any of the notices described in section 103(b) of that Act.

Section 12. In applying and construing this chapter, consideration should be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 2. This Act takes effect on July first, two thousand and seventeen. This chapter governs a mediation pursuant to a referral or an agreement to mediate made on or after the effective date of this chapter. On or after one year from the effective date of this chapter, this chapter governs an agreement to mediate whenever made

HOUSE . . . . . NO.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seventeen

AN ACT TO ESTABLISH UNIFORM COLLABORATIVE LAW

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by inserting after chapter 251 the following chapter:--

CHAPTER 251B

UNIFORM COLLABORATIVE LAW ACT

Section 1. This chapter may be cited as the Uniform Collaborative Law Act.

Section 2. In this chapter:

(1) "Collaborative law communication" means a statement, whether oral or in a record, or verbal or nonverbal, that:

(A) is made to conduct, participate in, continue, or reconvene a collaborative law process; and

(B) occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.

(2) “Collaborative law participation agreement” means an agreement by persons to participate in a collaborative law process.

(3) “Collaborative law process” means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons:

(A) sign a collaborative law participation agreement; and

(B) are represented by collaborative lawyers.

(4) “Collaborative lawyer” means a lawyer who represents a party in a collaborative law process.

(5) “Collaborative matter” means a dispute, transaction, claim, problem, or issue for resolution, including a dispute, claim, or issue in a proceeding, which is described in a collaborative law participation agreement.

(6) “Law firm” means:

(A) lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association; and

(B) lawyers employed in a legal services organization, or the legal department of a corporation or other organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.

(7) “Nonparty participant” means a person, other than a party and the party’s collaborative lawyer, that participates in a collaborative law process.

(8) “Party” means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

(9) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(10) “Proceeding” means:

(A) a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related prehearing and post-hearing motions, conferences, and discovery; or

(B) a legislative hearing or similar process.

(11) “Prospective party” means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.

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

(13) “Related to a collaborative matter” means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

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

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(15) “Tribunal” means:

(A) a court, arbitrator, administrative agency, or other body acting in an adjudicative capacity which, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party’s interests in a matter; or

(B) a legislative body conducting a hearing or similar process.

Section 3. This chapter applies to a collaborative law participation agreement that meets the requirements of section 4 signed on or after the effective date of this chapter.

Section 4. (a) A collaborative law participation agreement must:

(1) be in a record;

(2) be signed by the parties;

(3) state the parties' intention to resolve a collaborative matter through a collaborative law process under this chapter;

(4) describe the nature and scope of the matter;

(5) identify the collaborative lawyer who represents each party in the process; and

(6) contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative law process.

(b) Parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with this chapter.

Section 5. (a) A collaborative law process begins when the parties sign a collaborative law participation agreement.

(b) A tribunal may not order a party to participate in a collaborative law process over that party's objection.

(c) A collaborative law process is concluded by a:

(1) resolution of a collaborative matter as evidenced by a signed record;

(2) resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or

(3) termination of the process.

(d) A collaborative law process terminates:

(1) when a party gives notice to other parties in a record that the process is ended;

(2) when a party:

(A) begins a proceeding related to a collaborative matter without the agreement of all parties; or

(B) in a pending proceeding related to the matter:

(i) initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;

(ii) requests that the proceeding be put on the tribunal's active calendar; or

(iii) takes similar action requiring notice to be sent to the parties; or

(3) except as otherwise provided by subsection (g), when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

(e) A party's collaborative lawyer shall give prompt notice to all other parties in a record of a discharge or withdrawal.

(f) A party may terminate a collaborative law process with or without cause.

(g) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues, if not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection (e) is sent to the parties:

(1) the unrepresented party engages a successor collaborative lawyer; and

(2) in a signed record:

(A) the parties consent to continue the process by reaffirming the collaborative law participation agreement;

(B) the agreement is amended to identify the successor collaborative lawyer; and

(C) the successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.

(h) A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.

(i) A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.

Section 6. (a) Persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to subsection (c) and sections 7 and 8, the filing operates as an application for a stay of the proceeding.

(b) The parties shall file promptly with the tribunal notice in a record when a collaborative law process concludes. The stay of the proceeding under subsection (a) is lifted when the notice is filed. The notice may not specify any reason for termination of the process.

(c) A tribunal in which a proceeding is stayed under subsection (a) may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the process is ongoing or concluded. It may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative law matter.

(d) A tribunal may not consider a communication made in violation of subsection (c).

(e) A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative process is filed based on delay or failure to prosecute.

Section 7. During a collaborative law process, a tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party or family or household member.

Section 8. A tribunal may approve an agreement resulting from a collaborative law process.

Section 9. (a) Except as otherwise provided in subsection (c), a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.

(b) Except as otherwise provided in subsection (c) and sections 10 and 11, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (a).

(c) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:

(1) to ask a tribunal to approve an agreement resulting from the collaborative law process; or

(2) to seek or defend an emergency order to protect the health, safety, welfare, or interest of a party, or family or household member if a successor lawyer is not immediately available to represent that person.

(d) If subsection (c)(2) applies, a collaborative lawyer, or lawyer in a law firm with which the collaborative lawyer is associated, may represent a party or family or household member only

until the person is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of the person.

Section 10. (a) The disqualification of section 9(a) applies to a collaborative lawyer representing a party with or without fee.

(b) After a collaborative law process concludes, another lawyer in a law firm with which a collaborative lawyer disqualified under section 9(a) is associated may represent a party without fee in the collaborative matter or a matter related to the collaborative matter if:

(1) the party has an annual income that qualifies the party for free legal representation under the criteria established by the law firm for free legal representation;

(2) the collaborative law participation agreement so provides; and

(3) the collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation.

Section 11. (a) The disqualification of section 9(a) applies to a collaborative lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality.

(b) After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent a government or governmental subdivision, agency, or instrumentality in the collaborative matter or a matter related to the collaborative matter if:

(1) the collaborative law participation agreement so provides; and

(2) the collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation.

Section 12. Except as provided by law other than this [act], during the collaborative law process, on the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery. A party also shall update promptly previously disclosed information that has materially changed. The parties may define the scope of disclosure during the collaborative law process.

Section 13. This chapter does not affect:

(1) the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or

(2) the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this Commonwealth.

Section 14. Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

(1) assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;

(2) provide the prospective party with information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation; and

(3) advise the prospective party that:

(A) after signing an agreement if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates;

(B) participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause; and

(C) the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by section 9(c), 10(b), or 11(b).

Section 15. (a) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall make reasonable inquiry whether the prospective party has a history of a coercive or violent relationship with another prospective party.

(b) Throughout a collaborative law process, a collaborative lawyer reasonably and continuously shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.

(c) If a collaborative lawyer reasonably believes that the party the lawyer represents or the prospective party who consults the lawyer has a history of a coercive or violent relationship with another party or prospective party, the lawyer may not begin or continue a collaborative law process unless:

(1) the party or the prospective party requests beginning or continuing a process; and

(2) the collaborative lawyer reasonably believes that the safety of the party or prospective party can be protected adequately during a process.

Section 16. A collaborative law communication is confidential to the extent agreed by the parties in a signed record or as provided by law of this Commonwealth other than this chapter.

Section 17. (a) Subject to sections 18 and 19, a collaborative law communication is privileged under subsection (b), is not subject to discovery, and is not admissible in evidence.

(b) In a proceeding, the following privileges apply:

(1) A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication.

(2) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process.

Section 18. (a) A privilege under section 17 may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

(b) A person that makes a disclosure or representation about a collaborative law communication which prejudices another person in a proceeding may not assert a privilege under section 17, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

Section 19. (a) There is no privilege under section 17 for a collaborative law communication that is:

(1) available to the public under chapter 4, section 7 and chapter 66, section 10, or made during a session of a collaborative law process that is open, or is required by law to be open, to the public;

(2) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(3) intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity; or

(4) in an agreement resulting from the collaborative law process, evidenced by a record signed by all parties to the agreement.

(b) The privileges under section 17 for a collaborative law communication do not apply to the extent that a communication is:

(1) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process; or

(2) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult, unless the [child protective services agency or adult protective services agency] is a party to or otherwise participates in the process.

(c) There is no privilege under section 17 if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative law communication is sought or offered in:

(1) a court proceeding involving a felony or misdemeanor; or

(2) a proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense to avoid liability on the contract is asserted.

(d) If a collaborative law communication is subject to an exception under subsection (b) or (c), only the part of the communication necessary for the application of the exception may be disclosed or admitted.

(e) Disclosure or admission of evidence excepted from the privilege under subsection (b) or (c) does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(f) The privileges under section 17 do not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This subsection does not apply to a collaborative law communication made by a person that did not receive actual notice of the agreement before the communication was made.

Section 20. (a) If an agreement fails to meet the requirements of section 4, or a lawyer fails to comply with section 14 or 15, a tribunal may nonetheless find that the parties intended to enter into a collaborative law participation agreement if they:

(1) signed a record indicating an intention to enter into a collaborative law participation agreement; and

(2) reasonably believed they were participating in a collaborative law process.

(b) If a tribunal makes the findings specified in subsection (a), and the interests of justice require, the tribunal may:

(1) enforce an agreement evidenced by a record resulting from the process in which the parties participated;

(2) apply the disqualification provisions of sections 5, 6, 9, 10, and 11; and

(3) apply a privilege under section 17.

Section 21. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

Section 22. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001, et seq., but does not modify, limit, or supersede section 101(c) of that Act, 15 U.S.C Section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. section 7003(b).

SECTION 2. This Act takes effect on July first, two thousand and seventeen.

HOUSE . . . . . NO.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seventeen

AN ACT REVISING THE LAW RECOGNIZING FOREIGN-COUNTRY MONEY JUDGMENTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 23A of chapter 235 of the General Laws is hereby repealed.

SECTION 2. The General Laws are hereby amended by in chapter 235 in place of section 23A the following sections:--

SECTION 23A. SHORT TITLE. Sections 23A through 23K of this chapter may be cited as the Uniform Foreign-Country Money Judgments Recognition Act.

SECTION 23B. DEFINITIONS. In this Act:

(1) "Foreign country" means a government other than:

(A) the United States;

(B) a state, district, commonwealth, territory, or insular possession of the United States; or

(C) any other government with regard to which the decision in this Commonwealth as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(2) "Foreign-country judgment" means a judgment of a court of a foreign country.

SECTION 23C. APPLICABILITY.

(a) Except as otherwise provided in subsection (b), this Act applies to a foreign-country judgment to the extent that the judgment:

(1) grants or denies recovery of a sum of money; and

(2) under the law of the foreign country where rendered, is final, conclusive, and enforceable.

(b) This Act does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

(1) a judgment for taxes;

(2) a fine or other penalty; or

(3) a judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that this Act applies to the foreign-country judgment.

SECTION 23D. STANDARDS FOR RECOGNITION OF FOREIGN-COUNTRY JUDGMENT.

(a) Except as otherwise provided in subsections (b) and (c), a court of this Commonwealth shall recognize a foreign-country judgment to which this Act applies.

(b) A court of this Commonwealth may not recognize a foreign-country judgment if:

(1) the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) the foreign court did not have personal jurisdiction over the defendant; or

(3) the foreign court did not have jurisdiction over the subject matter.

(c) A court of this Commonwealth need not recognize a foreign-country judgment if:

(1) the defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

(2) the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case

(3) the judgment or the cause of action on which the judgment is based is repugnant to the public policy of this Commonwealth or of the United States;

(4) the judgment conflicts with another final and conclusive judgment;

(5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;

(6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;

(7) the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or

(8) the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(d) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) or (c) exists.

SECTION 23E. PERSONAL JURISDICTION.

(a) A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if:

(1) the defendant was served with process personally in the foreign country;

(2) the defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

(3) the defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(4) the defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;

(5) the defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or

(6) the defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action arising out of that operation.

(b) The list of bases for personal jurisdiction in subsection (a) is not exclusive. The courts of this Commonwealth may recognize bases of personal jurisdiction other than those listed in subsection(a) as sufficient to support a foreign-country judgment.

SECTION 23F. PROCEDURE FOR RECOGNITION OF FOREIGN-COUNTRY JUDGMENT.

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

SECTION 23G. EFFECT OF RECOGNITION OF FOREIGN-COUNTRY JUDGMENT. If the court in a proceeding under section 23F finds that the foreign-country judgment is entitled to recognition under this Act then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) conclusive between the parties to the same extent as the judgment of a sister State entitled to full faith and credit in this Commonwealth would be conclusive; and

(2) enforceable in the same manner and to the same extent as a judgment rendered in this Commonwealth.

SECTION 23H. STAY OF PROCEEDINGS PENDING APPEAL OF FOREIGN-COUNTRY JUDGMENT. If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

SECTION 23I. STATUTE OF LIMITATIONS. An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 15 years from the date that the foreign-country judgment became effective in the foreign country.

SECTION 23J. UNIFORMITY OF INTERPRETATION. In applying and construing this Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 23K. SAVING CLAUSE. This Act does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of this Act.

SECTION 3. This Act takes effect on July first, two thousand and seventeen, and applies to all actions commenced on or after the effective date of this Act in which the issue of recognition of a foreign-country judgment is raised.

HOUSE . . . . . NO.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seventeen

AN ACT RELATIVE TO THE UNIFORM UNSWORN FOREIGN DECLARATIONS ACT.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by inserting after section 83 of chapter 233 the following sections 84A through 84H:--

SECTION 84A. SHORT TITLE. Sections 84A through 84H may be cited as the Uniform Unsworn Foreign Declarations Act.

SECTION 84B. DEFINITIONS. In this Act:

(1) "Boundaries of the United States" means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(2) "Law" includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, and an administrative rule, regulation, or order.

(3) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(5) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(6) "Sworn declaration" means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.

(7) "Unsworn declaration" means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

SECTION 84C. APPLICABILITY. This Act applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States. This Act does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

SECTION 84D. VALIDITY OF UNSWORN DECLARATION. (a) Except as otherwise provided in subsection (b), if a law of this Commonwealth requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this Act has the same effect as a sworn declaration.

(b) This Act does not apply to:

(1) a deposition;

(2) an oath of office;

(3) an oath required to be given before a specified official other than a notary public;

(4) a declaration to be recorded pursuant to chapter 183; or

(5) an oath required by section 2-504 of chapter 190B.

SECTION 84E. REQUIRED MEDIUM. If a law of this Commonwealth requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

SECTION 84F. FORM OF UNSWORN DECLARATION. An unsworn declaration under this Act must be in substantially the following form:

I declare under penalty of perjury under the law of Commonwealth of Massachusetts that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the ___ day of _____, _____, at _____,
(date) (month) (year) (city or other location, and state)

_____.
(country)

_____
(printed name)

_____
(signature)

SECTION 84G. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform Act, consideration must be given to the need to promote

uniformity of the law with respect to its subject matter among states that enact it.

SECTION 84H. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001, et seq., but does not modify, limit, or supersede section 101(c) of that Act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. section 7003(b).

SECTION 2. This Act takes effect on July first, two thousand and seventeen.

HOUSE . . . . . NO.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seventeen

AN ACT RELATIVE TO THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by inserting after chapter 36 the following chapter:--

CHAPTER 36A

UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

SECTION 1. SHORT TITLE. This chapter may be cited as the Uniform Real Property Electronic Recording Act.

SECTION 2. DEFINITIONS. In this chapter:

(1) “Document” means information that is:

(A) inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(B) eligible to be recorded in the land records maintained by the registers of deeds under chapter 36[and the recorder under chapter 185, collectively referred to herein as the “register”].

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

(3) “Electronic document” means a document that is received by the recorder in an electronic form.

(4) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(5) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(6) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 3. VALIDITY OF ELECTRONIC DOCUMENTS.

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this chapter.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

SECTION 4. RECORDING OF DOCUMENTS.

(a) In this section, "paper document" means a document that is received by the register in a form that is not electronic.

(b) A register:

(1) who implements any of the functions listed in this section shall do so in compliance with standards established by the Secretary of the Commonwealth.

(2) may receive, index, store, archive, and transmit electronic documents.

(3) may provide for access to, and for search and retrieval of, documents and information by electronic means.

(4) who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index.

(5) may convert paper documents accepted for recording into electronic form.

(6) may convert into electronic form information recorded before the register began to record electronic documents.

(7) may accept electronically any fee that the register is authorized to collect.

(8) may agree with other officials of a state or a political subdivision thereof, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees and taxes.

SECTION 5. ADMINISTRATION AND STANDARDS.

(a) The Secretary of the Commonwealth, in consultation with the persons identified in section 17 of chapter 110G, shall adopt standards to implement this Act.

(b) To keep the standards and practices of registers in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this Act and to keep the technology used by registers in this Commonwealth compatible with technology used by recording offices in other jurisdictions that enact substantially this Act, the Secretary of the Commonwealth, so far as is consistent with the purposes, policies, and provisions of this act, in adopting, amending, and repealing standards shall consider:

(1) standards and practices of other jurisdictions;

(2) the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association;

(3) the views of interested persons and governmental officials and entities;

(4) the needs of counties and districts of varying size, population, and resources; and

(5) standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

SECTION 6. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 7. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. section 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. section 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that Act (15 U.S.C. section 7003(b)).

SECTION 2. This Act takes effect on July first, two thousand and seventeen.

HOUSE . . . . . NO.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seventeen

AN ACT RELATIVE TO THE UNIFORM ELECTRONIC LEGAL MATERIAL ACT.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by inserting after chapter 4:--

CHAPTER 5

UNIFORM ELECTRONIC LEGAL MATERIAL ACT

SECTION 1. SHORT TITLE. This chapter may be cited as the Uniform Electronic Legal Material Act.

SECTION 2. DEFINITIONS. In this chapter:

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) "Legal material" means, whether or not in effect:

(A) the Constitution of the Commonwealth of Massachusetts

(B) the Session Laws;

(C) the General Laws;

(D) a state agency rule or decision that has or had the effect of law;

(E) other material published in the Massachusetts Register or the Code of Massachusetts Regulations; or

(F) the reported decisions and rules of the following state courts: the Supreme Judicial Court, the Appeals Court and the Trial Court.

(3) "Official publisher" means:

(A) for the material recited in subsections (2)(A)-(C), the Secretary of the Commonwealth;

(B) for the material recited in subsection (2)(D) that is not published in the Massachusetts Register or the Code of Massachusetts Regulation, the state agency;

(C) for the material recited in subsection (2)(E), the Secretary of the Commonwealth; or

(E) for the material recited in subsection (2)(F), the Supreme Judicial Court.

(4) "Publish" means to display, present, or release to the public, or cause to be displayed, presented, or released to the public, by the official publisher.

(5) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(6) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 3. APPLICABILITY. This chapter applies to all legal material in an electronic record that is designated as official under section 4 and first published electronically on or after

the effective date of this Act.

SECTION 4. LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

(a) If an official publisher publishes legal material only in an electronic record, the publisher shall:

(1) designate the electronic record as official; and

(2) comply with sections 5, 7, and 8.

(b) An official publisher that publishes legal material in an electronic record and also publishes the material in a record other than an electronic record may designate the electronic record as official if the publisher complies with sections 5, 7, and 8.

SECTION 5. AUTHENTICATION OF OFFICIAL ELECTRONIC RECORD. An official publisher of legal material in an electronic record that is designated as official under section 4 shall authenticate the record. To authenticate an electronic record, the publisher shall provide a method for a user to determine that the record received by the user from the publisher is unaltered from the official record published by the publisher.

SECTION 6. EFFECT OF AUTHENTICATION.

(a) Legal material in an electronic record that is authenticated under section 5 is presumed to be an accurate copy of the legal material.

(b) If another State has adopted a law substantially similar to this Act, legal material in an electronic record that is designated as official and authenticated by the official publisher in that State is presumed to be an accurate copy of the legal material.

(c) A party contesting the authentication of legal material in an electronic record authenticated under section 5 has the burden of proving by a preponderance of the evidence that the record is not authentic.

SECTION 7. PRESERVATION AND SECURITY OF LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

(a) An official publisher of legal material in an electronic record that is or was designated as official under section 4 shall provide for the preservation and security of the record in an electronic form or a form that is not electronic.

(b) If legal material is preserved under subsection (a) in an electronic record, the official publisher shall:

(1) ensure the integrity of the record;

(2) provide for backup and disaster recovery of the record; and

(3) ensure the continuing usability of the material.

SECTION 8. PUBLIC ACCESS TO LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD. An official publisher of legal material in an electronic record that is required to be preserved under section 7 shall ensure that the material is reasonably available for use by the public on a permanent basis.

SECTION 9. STANDARDS. In implementing this Act, an official publisher of legal material in an electronic record shall consult the persons identified in section 17 of chapter 110G and consider:

(1) standards and practices of other jurisdictions;

(2) the most recent standards regarding authentication of, preservation and security of, and public access to, legal material in an electronic record and other electronic records, as promulgated by national standard-setting bodies;

(3) the needs of users of legal material in an electronic record;

(4) the views of governmental officials and entities and other interested persons; and

(5) to the extent practicable, methods and technologies for the authentication of, preservation and security of, and public access to, legal material which are compatible with the methods and technologies used by other official publishers in this state and in other states that have adopted a law substantially similar to this chapter.

SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001, et seq., but does not modify, limit, or supersede section 101(c) of that Act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. section 7003(b).

SECTION 2. This Act takes effect on July first, two thousand and seventeen.