# TITLE 4 ECONOMIC RESOURCES

## LIST OF SECTIONS AFFECTED (WITH DATES)
## SEPT. 1, 2007 – DEC. 31, 2010

standard type: amended section; **bold** type: new or reenacted section;
~~strikeout~~ type: repealed section; underlined type: renumbered section; *italics* type: corrected section

| Title | § | PL/LL & Section # | | Eff'v Date |
|---|---|---|---|---|
| 4 CMC | *1103 source and comment correction* | | | |
| | 1205(c) | PL 15-120 | 2 | 12/21/07 |
| | 1205(c) | PL 16-33 | 2 | 3/26/09 |
| | ~~1304~~ | PL 16-2 | 10 | 5/3/08 |
| | ~~1426~~ | PL 17-1 | 6(A) | 3/22/10 |
| | *1505 comment correction* | | | |
| | 1708 | PL 15-108 | 5 | 1/1/08 |
| | **3327** | **PL 17-24** | 2 | 10/25/10 |
| | ***Commission correction - renumbered 5001- 5092 (original codification of PL 15-88) to 40101- 40192 as follows:*** | | | |
| | ***40101*** | ***PL 15-88*** | ***2(101)*** | *10/2/07* |
| | ***40102*** | | ***2(102)*** | |
| | ***40103*** | | ***2(103)*** | |
| | ***40104*** | | ***2(104)*** | |
| | ***40105*** | | ***2(105)*** | |
| | ***40106*** | | ***2(106)*** | |
| | ***40107*** | | ***2(107)*** | |
| | ***40111*** | | ***2(201)*** | |
| | ***40112*** | | ***2(202)*** | |
| | ***40113*** | | ***2(203)*** | |
| | ***40114*** | | ***2(204)*** | |
| | ***40121*** | | ***2(301)*** | |
| | ***40122*** | | ***2(302)*** | |
| | ***40123*** | | ***2(303)*** | |
| | ***40124*** | | ***2(304)*** | |
| | ***40125*** | | ***2(305)*** | |
| | ***40126*** | | ***2(306)*** | |
| | ***40127*** | | ***2(307)*** | |
| | ***40128*** | | ***2(308)*** | |
| | ***40131*** | | ***2(401)*** | |
| | ***40132*** | | ***2(402)*** | |
| | ***40133*** | | ***2(403)*** | |
| | ***40134*** | | ***2(404)*** | |
| | ***40135*** | | ***2(405)*** | |
| | ***40136*** | | ***2(406)*** | |
| | ***40141*** | | ***2(501)*** | |
| | ***40142*** | | ***2(502)*** | |
| | ***40143*** | | ***2(503)*** | |
| | ***40144*** | | ***2(504)*** | |
| | ***40151*** | | ***2(601)*** | |
| | ***40152*** | | ***2(602)*** | |
| | ***40153*** | | ***2(603)*** | |
| | ***40155*** | | ***2(701)*** | |
| | ***40156*** | | ***2(702)*** | |
| | ***40157*** | | ***2(703)*** | |
| | ***40158*** | | ***2(704)*** | |
| | ***40159*** | | ***2(705)*** | |
| | ***40161*** | | ***2(801)*** | |
| | ***40162*** | | ***2(802)*** | |
| | ***40163*** | | ***2(803)*** | |
| | ***40164*** | | ***2(804)*** | |
| | ***40165*** | | ***2(805)*** | |
| | ***40166*** | | ***2(806)*** | |
| | ***40167*** | | ***2(807)*** | |
| | ***40171*** | | ***2(901)*** | |
| | ***40172*** | | ***2(902)*** | |
| | ***40173*** | | ***2(903)*** | |
| | ***40174*** | | ***2(904)*** | |
| | ***40175*** | | ***2(905)*** | |
| | ***40176*** | | ***2(906)*** | |
| | ***40177*** | | ***2(907)*** | |
| | ***40178*** | | ***2(908)*** | |
| | ***40181*** | | ***2(1001)*** | |
| | ***40182*** | | ***2(1002)*** | |
| | ***40183*** | | ***2(1003)*** | |
| | ***40185*** | | ***2(1101)*** | |
| | ***40186*** | | ***2(1102)*** | |
| | ***40187*** | | ***2(1103)*** | |
| | ***40188*** | | ***2(1104)*** | |
| | ***40189*** | | ***2(1105)*** | |
| | ***40191*** | | ***2(1201)*** | |
| | ***40192*** | | ***2(1202)*** | |
| | **5511(j)** | **PL 15-115** | **3** | 11/29/07 |
| | **5511(k)** | **PL 16-27** | **2** | 1/7/09 |
| | 5512 | PL 15-91 | 2 | 10/2/07 |
| | **5513** | **PL 16-27** | **5** | 1/7/09 |
| | 5526 | PL 15-115 | 5 | 11/29/07 |
| | 5554 | PL 16-27 | **2** | 1/7/09 |
| | 5557 | | 4 | |
| | 5564 | PL 15-115 | 7 | 11/29/07 |

| | | | |
|---|---|---|---|
| 5566 | | 6 | |
| **5585** | | **4** | |
| 5585 | PL 16-44 | 2 | 8/14/09 |
| **5586** | PL 15-115 | **4** | 11/29/07 |
| 5586 | PL 16-44 | 2 | 8/14/09 |
| *5611(c)(4)* | *commission correction* | | 12/31/10 |
| ~~5701-5711~~ | PL 17-1 | 6(C) | 3/22/10 |
| 5704 | PL 15-108 | 5 | 1/1/08 |
| 5708(a) | PL 15-108 | 5 | 1/1/08 |
| 5802 | PL 15-117 | 4 | 11/29/07 |
| ~~5901(a)~~ | PL 16-5 | 3 | 6/5/08 |
| **5901(a)** | **PL 16-5** | **3** | 6/5/08 |
| 5904 | PL 17-1 | 6(D)(1) | 3/22/10 |
| 5916 | | 6(D)(2) | |
| ~~5931-33~~ | | 6(E) | |
| 5941(a) | PL 15-108 | 6 | 1/1/08 |
| 5953 | PL 17-1 | 6(F)(1) | 3/22/10 |
| 5957 | | 6(F)(2) | |
| 50103 | | 6(G)(1) | |
| ~~50106~~ | | 6(G)(2) | |
| 51109 | | 6(H) | |
| **51501** | **PL 15-117** | **3(51401)** | 11/29/07 |
| **51502** | | **3(51402)** | |
| **51503-51508** | | **3(51403-408)** | |
| **51509-51522** | | **3(51409-422)** | |
| **51523-51532** | | **3(51423-32)** | |
| **51533-51544** | | **3(51433-444)** | |
| **51545-51547** | | **3(51445-447)** | |
| **51548** | | **3(51448)** | |
| **51549-51555** | | **3(51449-455)** | |
| **51556-51558** | | **3(51456-458)** | |
| **51559-51563** | | **3(51459-463)** | |
| **60101(3)** | **PL 15-85** | **2** | 9/20/07 |
| **60101(6)** | | | |
| **60101(11)** | | | |
| **60101(14)** | | | |
| former 60101(3),(4),(5),(6),(7),(8),(9),(10) renumbered to (4),(5),(7),(8),(9),(10),(12),(13) resp'y | | | |
| ~~60151(2),(3)~~ | PL 15-85 | 3 | 9/20/07 |
| **60151(2),(3)** | | | |
| **60155** | | **4** | |
| *7505* | *cmt. correction* | | 12/31/07 |
| ~~8111-8123~~ | PL 16-17 | 10 | 10/1/08 |
| **8111** | | **10(8111)** | |
| **8112** | | **10(8112)** | |
| **8113** | | **11** | |
| **8121** | | **10(8121)** | |
| 8122(d) | PL 17-3 | 2 | 5/12/10 |
| **8122** | PL 16-17 | **10(8122)** | 10/1/08 |
| **8123** | | **10(8123)** | |
| 8123(e) | Exec Order 08-09 30 CR 28773 (Sept. 25, 2008) | | |
| **8124** | **PL 15-87** | **3** | 9/26/07 |
| ~~8131-8134~~ | PL 16-17 | 10 | 10/1/08 |
| **8131** | | **10(8131)** | |
| **8132** | | **10(8132)** | |
| **8133** | | **10(8133)** | |
| **8134** | | **10(8134)** | |
| 8141(h) | PL 15-97 | 2 | 10/4/07 |
| ~~8141-8142~~ | PL 16-17 | 10 | 10/1/08 |
| **8141** | | **10(8141)** | |
| **8142** | | **10(8142)** | |
| 8143 | PL 15-123 | 2 | 12/3/07 |
| 8143(b) | PL 16-2 | 6 | 5/3/08 |
| **8143(e)** | | **8(d)** | |
| ~~8143~~ | PL 16-17 | 10 | 10/1/08 |
| **8143** | | **10(8143)** | |
| **8144** | **PL 15-122** | **2(8144)** | 12/5/07 |
| **8145** | | **2(8145)** | |
| ~~8144-45~~ | PL 16-17 | 10 | 10/1/08 |
| **8144** | | **10(8144)** | |
| **8145** | | **10(8145)** | |
| **8146** | **PL 15-94** | **2** | 10/4/07 |
| 8146(suspended until 12/31/08) | PL 16-2 | 2 | 5/3/08 |
| **8147** | **PL 15-94** | **3** | 10/4/07 |
| **8148** | **PL 15-94** | **4** | 10/4/07 |
| ~~8151-8158~~ | PL 16-17 | 10 | 10/1/08 |
| **8151** | | **10(8151)** | |
| **8152** | | **10(8152)** | |
| **8153** | | **10(8153)** | |
| **8154** | | **10(8154)** | |
| **8155** | | **10(8155)** | |
| **8156** | | **10(8156)** | |
| **8157** | | **10(8157)** | |
| **8158** | | **10(8158)** | |
| **8191** | **PL 16-17** | **3** | 10/1/08 |
| **8191(h)** | | **6** | |
| **8192** | | **4** | |
| **8193** | | **5** | |
| **8194** | | **7** | |
| **8195** | | **8** | |
| **8196** | | **9** | |
| **8402(c)** | **PL 16-9** | **2(a)** | 8/1/08 |
| 8402 former (c)-(h) renumbered (d)-(i) respectively | | | |
| 8402(f) | | 2(b) | |
| **8407(c),(d)** | **PL 16-2** | **12** | **5/3/08** |
| 8411(d) | PL 16-9 | 2(c) | 8/1/08 |
| **8411(o)** | **PL 16-9** | **2(d)** | |
| **8444(f)** | **PL 16-2** | **11(f)** | **5/3/08** |
| 8521 | PL 15-87 | 2(8621) | 9/26/07 |
| 8522 | | 2(8622) | |
| 8524 | | 2(8624) | |
| 8525 | | 2(8625) | |
| 8531 | | 2(8631) | |
| 8533 | | 2(8633) | |
| 8534 | | 2(8634) | |
| 8535 | | 2(8635) | |
| 8537 | | 2(8637) | |
| 8539 | | 2(8639) | |
| 8540 | | 2(8640) | |
| 8543 | | 2(8643) | |
| 8562(a)(suspended) | PL 16-35 | 2 | 3/27/09 |
| 8564 | PL 15-87 | 2(8664) | 9/26/07 |

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|---|---|---|---|---|---|---|---|
| 8565 | | 2(8665) | | 9504 | PL 17-1 | 6(B) | 3/22/10 |
| 8566 | | 2(8666) | | 9602 | PL 15-108 | 5 | 1/1/08 |
| 8571 | | 2(8671) | | **9701** | **PL 15-93** | **2** | 10/4/07 |
| 8572 | | 2(8672) | | | | | |
| 9353(d) | PL 15-99 | 1 | 10/19/07 | | | | |
| 9503 | PL 15-108 | 5 | 1/1/08 | | | | |

# DIVISION 1: REVENUE AND TAXATION

## CHAPTER 1. GENERAL.

### § 1103. Definitions.

. . .

**Source:** . . . repealed and reenacted by PL 14-35, § 3(1103); new (l), (o), (t), and (u) added by PL 15-78 § 2, thus former (l) and (m) renumbered to (m) and (n), former (n)-(q) renumbered to (p)-(s), and former (r)-(bb) renumbered to (v)-(ff), respectively, modified.

**Commission Comment:** . . . For more information regarding PL 15-78, which was enacted on August 7, 2007, see comment to 4 CMC § 1503.

## CHAPTER 2. WAGE AND SALARY AND EARNINGS TAXES.

### § 1205. Education Tax Credit.

(a) - (b) [unchanged]

(c) A "qualified educational institution" under this section means:

(1) The Public School System ("PSS");

(2) Northern Marianas College ("NMC");

(3) An educational institution located in the Commonwealth which has been issued a Letter of Determination granting tax exempt status under Section 501(c)(3) of the IRC by the Division of Revenue and Taxation prior to the date of the donation for which the tax credit is taken;

(4) Commonwealth Museum of History and Culture;

(5) Northern Mariana Islands Council for the Humanities;

(6) Joeten-Kiyu Public Library

(7) Northern Marianas Trade Institute.

(d) [unchanged]

**Source:** . . . (c)(6) added by PL 15-120 § 2; (c)(7) added by PL 16-33, § 2.

**Commission Comment:** . . . Public Law 15-120 took effect on December 21, 2007. PL 15-120 contained severability and savings clause provisions and the following:

Section 1. Findings and Purpose. The Legislature finds that the Education Tax Credit was enacted to provide an incentive to private individuals and business entities to make contributions to qualified educational institutions. The existing statute lists the Public School System, the Northern Marianas College, educational institutions which have been issued Letters

of Determination granting tax exempt status under Section 501(c)(3) of the Internal Revenue Code, the Commonwealth Museum of History and Culture, and the Northern Mariana Islands Council for the Humanities as "qualified educational institutions." The Legislature also finds that the Joeten-Kiyu Public Library is another such educational institution that will benefit from contributions by private individuals and business entities. The Joeten-Kiyu Public Library serves the people of the Commonwealth by providing access to information, knowledge and material in support of educational, entrepreneurial, cultural, research and recreational activities. The library also assists students and the general public in obtaining accurate and current information as well as provides: classic or popular fiction, nonfiction, and reference books, and magazines and materials in printed, multi-media, and digital formats. In addition to these services, the library has also established an Information Technology Center, Manamko Program, and an Outreach Program. The library places a special emphasis on Children's and Youth collections, services, and programs.

The Legislature therefore finds that the Joeten-Kiyu Public Library serves a critical function in the community by providing access to information and ideas that are fundamental to functioning successfully in today's information and knowledge-based society. The Legislature finally finds that the purpose of this Act to permit the Joeten-Kiyu Public Library to benefit from private contributions to be appropriate and timely. Public libraries provide support to schools and students, stimulate learning in the community, and add to the appeal of our community.

Public Law 16-33 took effect on March 26, 2009. PL 16-33 contained severability and savings clause provisions and the following:

Section 1. Findings and Purpose. The Legislature finds that with the upcoming implementation of federal immigration law pursuant to U.S. Public Law 110-229, there is an imminent need to train the residents of the Commonwealth in the trades professions including carpentry, masonry, painting, plumbing, electrical, etc. The Legislature further finds that the establishment of the Northern Marianas Trade Institute is the first step to training such residents in the trades profession. However, with limited resources, the Northern Marianas Trade Institute cannot expand its programs and accommodate the many students eager to participate in such training. Accordingly, the purpose of this legislation is to include the Northern Marianas Trade Institute in the definition of a qualified education institution pursuant to 4 CMC § 1205 so that the institution may qualify for education tax credits.

## CHAPTER 3. GROSS REVENUE TAX.

### § 1304. Tax on Banks, Banking Institutions, Building and Loan Associations and Other Financial Institutions. [Repealed]

**Source:** PL 9-22, § 1(1304) (repealing PL 3-11, § 304); repealed by PL 16-2 § 10.

**Commission Comment**: See comment to 4 CMC § 8143 for more information regarding PL 16-2.

## CHAPTER 4. EXCISE TAX AND USER FEES.

### Article 2. 3.7 Percent Customs Service Certification.

. . .

§ 1426. Certificate of Origin Denials. [Deleted by PL 17-1 § 6(A)]

### § 1402. Excise Tax.

**Case Annotations:** *Villanueva v. Tinian Shipping and Transp., Inc.,* 2005 MP 12, 7 N.M.I. 182 (2005).

### § 1411. Environmental Beautification Tax.

**TAXES**

**Legislative Authority**

– **Generally**
The Government has the power to force forfeiture when taxes have not been paid. Section 1411(c) of Title 4 of the Commonwealth Code provides that unpaid taxes may result in a forfeiture pursuant to 6 CMC § 2150. Accordingly, the collection of tax is not the same as the collection of a debt and thus may properly be the subject of a preliminary injunction to prevent a defendant from disposing of assets. 4 CMC § 1411(c); 6 CMC § 2150. *Villanueva v. Tinian Shipping and Transp., Inc.*, 2005 MP 12 ¶ 16, 7 N.M.I. 182, 186 (2005).

### § 1426. Certificate of Origin Denials. [Deleted]

**Source:** . . . deleted by PL 17-1 § 6(A) (March 22, 2010).*

**Commission Comment:** . . .* PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding PL 17-1, see comment to 3 CMC § 4511.

## CHAPTER 5. MISCELLANEOUS TAXES AND LICENSE FEES.

### § 1505. Gaming Machine Jackpot Tax.

. . .

**Commission Comment:** . . . The commission deleted figures that were mere repetitions of words in the above section pursuant to 1 CMC § 3806(e). For more information regarding PL 15-78, which was enacted on August 7, 2007, see comment to 4 CMC § 1503.

## CHAPTER 7. INCOME TAX.

### § 1708. Tax Relief.

(a) [unchanged]

(b) *Rebate Offset Amount.*

(1) The rebate offset amount shall be:

(i) [unchanged]

(ii) In the case of a taxpayer who is a Free Trade Zone licensee, the rebate

offset amount shall be the sum of:

(A) [unchanged]

(B) an amount determined by multiplying that portion of the rebate base attributable to income of the business from activities conducted within Free Trade Zone(s) by the yearly average proportion which citizen or permanent resident worker employees of the licensee comprise of the licensee's total workforce within Free Trade Zone(s). For purpose of this clause, "citizen or permanent resident worker" means the same as defined in 3 CMC § 4412(n).*

(c) [unchanged]

(d) [unchanged]

(e) [unchanged]

(f) The Secretary shall prescribe by regulation the procedure, manner, and requirements of obtaining a rebate under § 1708 of NMTIT taxes claimed on amended returns filed after the due date prescribed by law for the filing of the original of such returns.

**Source:** . . . (f) added by PL 14-35, § 6(I); (b)(1)(ii)(B) amended by global amendment PL 15-108, § 5.

**Commission Comment:** . . . See the comment to 4 CMC § 1101 regarding PL 14-35.

*The commission changed references in subsection (b)(1)(ii)(B) from "resident worker" to "citizen or permanent resident worker" as required by PL 108, § 5. However, the commission notes that 3 CMC § 4412 was repealed by PL 108, § 4. Following the codification of PL 15-108, "permanent resident" is defined in 3 CMC § 4511(j).

# CHAPTER 8. ADMINISTRATION PROVISIONS.

## Article 1. General Provisions.

### § 1807. Tax Forms

**STATUTES OF LIMITATION**

**Applicability**

**– Particular Cases**

Section 1807 of Title 4 of the Commonwealth Code provides that records must be kept for three years and provides penalties for violations of the record keeping requirements. It makes no reference to a statute of limitations. There is no legislative history that indicates an intent to shorten the generally applicable six year statute of limitations to three years for tax actions. 4 CMC § 1807. *Villanueva v. Tinian Shipping and Transp., Inc.*, 2005 MP 12 ¶ 14, 7 N.M.I. 182, 185 (2005).

### § 1813. Timely Mailing Treated as Timely Filing and Paying.

**TAXES**

**Legislative Authority**

**– Generally**

The Government is authorized, pursuant to 4 CMC § 1813, to utilize the courts to collect taxes which have been imposed or authorized under the Commonwealth Code and Commonwealth Rule of Civil Procedure 65 permits the Superior Court to issue preliminary injunctions using its sound discretion. Therefore, it is not inappropriate for the Government to seek a preliminary injunction from the Superior Court relating to the collection of taxes. 4 CMC § 1813; Com. R. Civ. P. 65. *Villanueva v. Tinian Shipping and Transp., Inc.*, 2005 MP 12 ¶ 17, 7 N.M.I. 182, 186 (2005).

**§ 1817. Closing Agreements; Compromises.**

**Case Annotations:** *Estate of Muna v. Commonwealth,* 2007 MP 16, 7 N.M.I. 473 (2007).

# DIVISION 3: BUSINESSES AND PROFESSIONS

## CHAPTER 3. NOTARIES PUBLIC.

### Article 2. Powers and Duties.

**§ 3327. Mandatory Notary Services.** **[new section]**

The following offices shall ensure that at least one of their employees is a certified notary public to provide such notary services free of charge to residents of the CNMI:

(a) Saipan Higher Education Financial Assistance Board;
(b) CNMI Scholarship Office;
(c) Marianas Hawaii Liaison Office;
(d) CNMI Liaison Office, Guam;
(e) Rota Municipal Scholarship Foundation Office;
(f) Office of the Tinian and Aguiguan Municipal Scholarship Board; and
(g) United States House of Representative for the CNMI in Washington, D.C.

**Source:** PL 17-24 § 2(101).

**Commission Comment:** Public Law 17-24 (enacted on October 25, 2010) contained severability and savings provisions and the following:

Section 1. Findings and Purposes. The Legislature finds that there are instances where CNMI residents abroad are burdened with seeking out notary publics and the financial expenses associated with notarizing their documents for schools and other matters. With the established office of The United States House of Representative for the CNMI in Washington, D.C., liaison offices in Hawaii and Guam, it is reasonable to require that such offices have an employee certified as a notary public to defray such hardships. The Legislature further finds it reasonable to require that the Saipan Higher Education Financial Assistance Board, the CNMI Scholarship Office, the Rota Municipal Scholarship Foundation Office, and the Office of the Tinian and Aguiguan Municipal Scholarship Board have an employee certified as a notary public for the efficient processing of scholarship documentation. It is therefore the purpose of this Act to require the United States House of Representative for the CNMI in Washington, D.C., liaison offices in Hawaii and Guam, the Saipan Higher Education Financial Assistance Board, the Scholarship Office, the Rota Municipal Scholarship Foundation Office, and the Office of the Tinian and Aguiguan Municipal Scholarship Board

to have an employee certified as a notary public.

# DIVISION 4 CORPORATIONS, PARTNERSHIPS AND ASSOCIATIONS

## PART 1 CORPORATIONS: GENERAL PROVISIONS.

### CHAPTER 3. PURPOSE AND POWERS.

**§ 4312. General Powers.**

**Case Annotations:** *PAC United Corp. (CNMI) v. Guam Concrete Builders,* 2002 MP 15, 6 N.M.I. 446 (2002).

## PART 2 BUSINESS CORPORATIONS.

### CHAPTER 8. DIRECTORS AND OFFICERS.

**Article 1. Board of Directors.**

**§ 4444. Election of Directors by Certain Classes of Shareholders.**

**Case Annotations:** *Angello v. Louis Vuitton Saipan, Inc.,* 2000 MP 12, 6 N.M.I. 132 (2000).

**§ 4445. Terms of Directors Generally.**

**Case Annotations:** *Angello v. Louis Vuitton Saipan, Inc.,* 2000 MP 12, 6 N.M.I. 132 (2000).

## PART 4. BUSINESS PARTNERSHIPS. [New part]

## CHAPTER 1. UNIFORM PARTNERSHIP ACT.

Article 1. General Provisions.
Article 2. Nature of Partnership.
Article 3. Relations of Partners to Persons Dealing with Partnership.
Article 4. Relations of Partners to Each Other and to Partnership.
Article 5. Transferees and Creditors of Partner.
Article 6. Partner's Dissociation.
Article 7. Partner's Dissociation When Business Not Wound Up.
Article 8. Winding Up Partnership Business.
Article 9. Conversions and Mergers.
Article 10. Limited Liability Partnership.
Article 11. Foreign Limited Liability Partnership.
Article 12. Miscellaneous Provisions.

### Article 1. General Provisions.

§ 40101. Definitions.
§ 40102. Knowledge and Notice.
§ 40103. Effect of Partnership Agreement; Nonwaivable Provisions.
§ 40104. Supplemental Principles of Law.
§ 40105. Execution, Filing, and Recording of Statements.
§ 40106. Governing Law.
§ 40107. Partnership Subject to Amendment or Repeal of Chapter.

**§ 40101. Definitions.**

In this chapter:

(a) "Business" includes every trade, occupation, and profession.

(b) "Debtor in bankruptcy" means a person who is the subject of:

(1) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(2) A comparable order under federal, state, or foreign law governing insolvency.

(c) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(d) "Foreign limited liability partnership" means a partnership that:

(1) Is formed under laws other than the laws of this Commonwealth; and

(2) Has the status of a limited liability partnership under those laws.

(e) "Limited liability partnership" means a partnership that has filed a statement of qualification under 4 CMC § 40181 and does not have a similar statement in effect in any other jurisdiction.

(f) "Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under 4 CMC § 40112, predecessor law, or comparable law of another jurisdiction.

(g) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(h) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(i) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other

rights.

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

(k) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(l) "Statement" means a statement of partnership authority under 4 CMC § 40123, a statement of denial under 4 CMC § 40124, a statement of dissociation under 4 CMC § 40158, a statement of dissolution under 4 CMC § 40165, a statement merger under 4 CMC § 40177, a statement of qualification under 4 CMC § 40181, a statement of foreign qualification under 4 CMC § 40186, or an amendment or cancellation of any of the foregoing.

(m) "Statement" means a statement of partnership authority under 4 CMC § 40123, a statement of denial under 4 CMC § 40124, a statement of dissociation under 4 CMC § 40158, a statement of dissolution under 4 CMC § 40165, a statement of merger under 4 CMC § 40177, a statement of qualification under 4 CMC § 40181, a statement of foreign qualification under 4 CMC § 40186, or an amendment or cancellation of any of the foregoing.

(n) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

**Source:** PL 15-88, § 2(101), modified.

**Commission Comment:** The commission inserted the appropriate code section references and changed capitalization in this section pursuant to 1 CMC § 3806(c) and (f). Public Law 15-88, enacted on October 2, 2007, contained severability and savings provisions and the following:

Section 1. Findings. The Legislature finds that nearly every state except Louisiana has adopted some version of the Uniform Partnership Act drafted by the National Conference of Commissioners on Uniform State Laws. The Conference first considered a uniform law of partnership in 1902. The resulting Uniform Partnership Act ("UPA") was finally approved by the Conference in 1914. The UPA governs general partnerships, and also governs limited partnerships except where the limited partnership statute is inconsistent. The National Conference has noted over the past 80 years, the 49 states that adopted the UPA made remarkably few amendments.

In January of 1986, an American Bar Association subcommittee issued a detailed report that recommended extensive revisions to the UPA. The ABA Report recommended that the "entity theory "of partnership law should be incorporated into any revision of the UPA whenever possible. Following a series of revisions in 1992 and 1993, the Revised Uniform Partnership Act (1992) [RUPA] was adopted unanimously by a vote of the States on August 6, 1992, adopted unanimously by the Conference in 1994, and approved by the American Bar Association House of Delegates in August, 1994. The RUPA gives supremacy to the partnership agreement in almost all situations.

In 1995, the Conference appointed a Drafting Committee to add provisions to RUPA authorizing the creation of a new form of general partnership called a limited liability partnership (LLP). At the time RUPA was first approved in 1992, only two states had adopted limited liability partnership legislation. By the time the LLP amendments to RUPA were approved by the Conference at the 1996 Annual Meeting, however, over forty states had adopted limited liability partnership provisions to their general partnership statutes.

The LLP amendments to RUPA deal with four major issues: (1) scope of a partner's liability shield; (2) the voting requirement to become an LLP; (3) the effect of becoming an LLP on the partnership agreement; and (4) the annual filing requirement. The revised uniform law, incorporating the LLP amendments is known as the Uniform Partnership Act (1997).

The legislature finds that the Uniform Partnership Act (1997) is an appropriate and long overdue law in the Commonwealth. It brings the Commonwealth into the mainstream of American partnership law but adopts the modern trend among the various states in dealing with increasingly complex partnership issues. Before this Act, the Commonwealth relied

solely on the common law for resolution of partnership issues. This Act incorporates much of the existing common law and also provides maximum flexibility and protection to partnerships and their individual members. It also establishes a vital role for the Commonwealth Government, through its Registrar of Corporations, by giving it certain well defined powers over domestic and foreign LLP's in the Commonwealth.

. . .

Section 3. Short Title. This Act may be cited as the "Uniform Partnership Act."

**§ 40102. Knowledge and Notice.**

(a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:

(1) knows of it;

(2) has received a notification of it; or

(3) has reason to know it exists from all of the facts known to the person at the time in question.

(c) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(d) A person receives a notification when the notification:

(1) comes to the person's attention; or

(2) is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(e) Except as otherwise provided in subsection (f), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(f) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

**Source:** PL 15-88, § 2(102), modified.

**Commission Comment:** The commission changed capitalization in this section pursuant to 1 CMC § 3806(c) and (f).

**§ 40103. Effect of Partnership Agreement; Nonwaivable Provisions.**

(a) Except as otherwise provided in subsection (b), relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(b) The partnership agreement may not:

(1) vary the rights and duties under 4 CMC § 40105 except to eliminate the duty to provide copies of statements to all of the partners;

(2) unreasonably restrict the right of access to books and records under 4 CMC

§ 40133(b);

(3) eliminate the duty of loyalty under 4 CMC §§ 40134(b) or 40153(b)(3), but:

(i) the partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or

(ii) all of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(4) unreasonably reduce the duty of care under 4 CMC § 40134(c) or 4 CMC § 40153(b)(3);

(5) eliminate the obligation of good faith and fair dealing under 4 CMC § 40134(d), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(6) vary the power to dissociate as a partner under 4 CMC § 40152, except to require the notice under 4 CMC § 40151(a) to be in writing;

(7) vary the right of a court to expel a partner in the events specified in 4 CMC § 40151(e);

(8) vary the requirement to wind up the partnership business in cases specified in 4 CMC § 40161(d), (e), or (f);

(9) vary the law applicable to a limited liability partnership under 4 CMC § 40106(b); or

(10) restrict rights of third parties under this chapter.

**Source:** PL 15-88, § 2(103), modified.

**Commission Comment:** Pursuant to 1 CMC § 3806(c), (d) and (f), the commission inserted the appropriate code section references for references to PL 15-88 sections; changed all references to "this Act" to "this chapter;" and changed capitalization in this section.

**§ 40104. Supplemental Principles of Law.**

(a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) If an obligation to pay interest arises under this chapter and the rate is not specified, the prevailing rate is that specified for judgments for the payment of money, currently codified at 7 CMC § 4101.

**Source:** PL 15-88, § 2(104), modified.

**Commission Comment:** The commission changed all references to "this Act" to "this chapter" pursuant to 1 CMC § 3806(d).

**§ 40105. Execution, Filing, and Recording of Statements.**

(a) A statement may be filed in the office of the Registrar of Corporations. A certified copy of a statement that is filed in an office in another state may be filed in the office of the Registrar of Corporations. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this Commonwealth.

(b) A certified copy of a statement that has been filed in the office of the Registrar of Corporations and recorded in the Commonwealth Recorder's Office for recording transfers of real property has the effect provided for recorded statements in this chapter. A recorded statement that is

not a certified copy of a statement filed in the office of the Registrar of Corporations does not have the effect provided for recorded statements in this chapter.

(c) A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by this chapter. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

(d) A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(e) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(f) The Registrar of Corporations may collect a fee for filing or providing a certified copy of a statement. The Commonwealth Recorder's office may collect a fee for recording a statement.

**Source:** PL 15-88, § 2(105), modified.

**Commission Comment:** The commission changed all references to "this Act" to "this chapter;" and changed capitalization in this section pursuant to 1 CMC § 3806(d) and (f).

**§ 40106. Governing Law.**

(a) Except as otherwise provided in subsection (b), the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

(b) The law of this Commonwealth governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

**Source:** PL 15-88, § 2(106).

**§ 40107. Partnership Subject to Amendment or Repeal of Chapter.**

A partnership governed by this chapter is subject to any amendment to or repeal of this chapter.

**Source:** PL 15-88, § 2(107), modified.

**Commission Comment:** The commission changed references to "this Act" to "this chapter" pursuant to 1 CMC § 3806(d).

**Article 2. Nature of Partnership**.

§ 40111. Partnership As Entity.
§ 40112. Formation of Partnership.
§ 40113. Partnership Property.
§ 40114. When Property is Partnership Property.

**§ 40111. Partnership As Entity.**

(a) A partnership is an entity distinct from its partners.

(b) A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under 4 CMC § 40181.

**Source:** PL 15-88, § 2(201), modified.

**Commission Comment:** The commission changed "Section 1001" to "4 CMC § 40181" in subsection (b) pursuant to 1 CMC § 3806(c).

**§ 40112. Formation of Partnership.**

(a) Except as otherwise provided in subsection (b), the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(b) An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter.

(c) In determining whether a partnership is formed, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) of a debt by installments or otherwise;

(ii) for services as an independent contractor or of wages or other compensation to an employee;

(iii) of rent;

(iv) of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;

(v) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or

(vi) for the sale of the goodwill of a business or other property by installments or otherwise.

**Source:** PL 15-88, § 2(202), modified.

**Commission Comment:** The commission changed references to "this Act" to "this chapter" pursuant to 1 CMC § 3806(d).

**§ 40113. Partnership Property.**

Property acquired by a partnership is property of the partnership and not of the partners individually.

**Source:** PL 15-88, § 2(203).

**§ 40114. When Property is Partnership Property.**

(a) Property is partnership property if acquired in the name of

(1) the partnership; or

(2) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) Property is acquired in the name of the partnership by a transfer to:

(1) the partnership in its name; or

(2) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(d) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

**Source:** PL 15-88, § 2(204).

**Article 3. Relations of Partners to Persons Dealing with Partnership**.

§ 40121. Partner Agent of Partnership.
§ 40122. Transfer of Partnership Property.
§ 40123. Statement of Partnership Authority.
§ 40124. Statement of Denial.
§ 40125. Partnership Liable For Partner's Actionable Conduct.
§ 40126. Partner's Liability.
§ 40127. Action By and Against and Partners.
§ 40128. Liability of Purported Partner.

**§ 40121. Partner Agent of Partnership.**

Subject to the effect of a statement of partnership authority under 4 CMC § 40123:

_____(a) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

(b) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

**Source:** PL 15-88, § 2(301), modified.

**Commission Comment:** The commission changed "Section 303" to "4 CMC § 40123" pursuant to 1 CMC § 3806(c).

**§ 40122. Transfer of Partnership Property.**

(a) Partnership property may be transferred as follows:

(1) Subject to the effect of a statement of partnership authority under 4 CMC § 40123, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

(2) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(3) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under 4 CMC § 40121 and:

(1) as to a subsequent transferee who gave value for property transferred under subsection (a)(l) and (2), proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(2) as to a transferee who gave value for property transferred under subsection (a)(3), proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(c) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (b), from any earlier transferee of the property.

(d) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

**Source:** PL 15-88, § 2(302), modified.

**Commission Comment:** The commission changed PL 15-88 section references to corresponding code sections pursuant to 1 CMC § 3806(c).

**§ 40123. Statement of Partnership Authority.**

(a) A partnership may file a statement of partnership authority, which:

(1) must include:

(i) the name of the partnership;

(ii) the street address of its chief executive office and of one office in this Commonwealth, if there is one;

(iii) the names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection (b); and

(iv) the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(2) may state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(b) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(c) If a filed statement of partnership authority is executed pursuant to 4 CMC § 40105(c) and states the name of the partnership but does not contain all of the other information required by subsection (a), the statement nevertheless operates with respect to a person not a partner as provided in subsections (d) and (e).

(d) Except as otherwise provided in subsection (g), a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(e) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(f) Except as otherwise provided in subsections (d) and (e) and 4 CMC §§ 40158 and 40165, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(g) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the Registrar of Corporations.

**Source:** PL 15-88, § 2(303), modified.

**Commission Comment:** The commission changed PL 15-88 section references to corresponding code sections pursuant to 1 CMC § 3806(c).

### § 40124. Statement of Denial.

A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to 4 CMC § 40123(b) may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in 4 CMC § 40123(d) and (e).

**Source:** PL 15-88, § 2(304), modified.

**Commission Comment:** The commission changed PL 15-88 section references to corresponding codified sections pursuant to 1 CMC § 3806(c).

### § 40125. Partnership Liable for Partner's Actionable Conduct.

(a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a

result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

**Source:** PL 15-88, § 2(305).

**§ 40126. Partner's Liability.**

(a) Except as otherwise provided in subsections (b) and (c), all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

(c) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under 4 CMC § 40181(b).

**Source:** PL 15-88, § 2(306), modified.

**Commission Comment:** The commission changed "Section 1001" to "4 CMC § 40181" in subsection (c) pursuant to 1 CMC § 3806(c).

**§ 40127. Actions By and Against Partnership and Partners.**

(a) A partnership may sue and be sued in the name of the partnership.

(b) An action may be brought against the partnership and, to the extent not inconsistent with 4 CMC § 40126, any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(d) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under 4 CMC § 40126 and:

(1) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) the partnership is a debtor in bankruptcy;

(3) the partner has agreed that the creditor need not exhaust partnership assets;

(4) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any partnership liability or obligation resulting from a representation

by a partner or purported partner under 4 CMC § 40128.

**Source:** PL 15-88, § 2(307), modified.

**Commission Comment:** The commission changed PL 15-88 section references to corresponding code sections pursuant to 1 CMC § 3806(c).

**§ 40128. Liability of Purported Partner.**

(a) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(b) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(d) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

(e) Except as otherwise provided in subsections (a) and (b), persons who are not partners as to each other are not liable as partners to other persons.

**Source:** PL 15-88, § 2(308).

**Article 4. Relations of Partners to Each Other and to Partnership.**

§ 40131. Partner's Rights and Duties.
§ 40132. Distributions in Kind.
§ 40133. Partner's Right and Duties with Respect to Information.
§ 40134. General Standards of Partner's Conduct.
§ 40135. Actions by Partnership and Partners.
§ 40136. Continuation of Partnership Beyond Definite Term or Particular Undertaking.

**§ 40131. Partner's Rights and Duties.**

(a) Each partner is deemed to have an account that is:

(1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (c) or (d) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under 4 CMC § 40121.

**Source:** PL 15-88, § 2(401), modified.

**Commission Comment:** The commission changed "Section 301" to "4 CMC § 40121"in subsection (k) pursuant to 1 CMC § 3806(c).

### § 40132. Distributions in Kind.

A partner has no right to receive, and may not be required to accept, a distribution in kind.

**Source:** PL 15-88, § 2(402).

### § 40133. Partner's Rights and Duties with Respect to Information.

(a) A partnership shall keep its books and records, if any, at its chief executive office.

(b) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(c) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

(1) without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this chapter; and

(2) on demand, any other information concerning the partnership's business and affairs,

except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

**Source:** PL 15-88, § 2(403), modified.

**Commission Comment:** The commission changed references to "this Act" to "this chapter" pursuant to 1 CMC § 3806(d).

**§ 40134. General Standards of Partner's Conduct.**

(a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c) .

(b) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(1) to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

(2) to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

(3) to refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(f) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

(g) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

**Source:** PL 15-88, § 2(404), modified.

**Commission Comment:** The commission changed references to "this Act" to "this chapter" pursuant to 1 CMC § 3806(d).

**§ 40135. Actions by Partnership and Partners.**

(a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

(1) enforce the partner's rights under the partnership agreement;

(2) enforce the partner's rights under this chapter, including:

(i) the partner's rights under 4 CMC §§ 40131, 40133 or 40134;

(ii) the partner's right on dissociation to have the partner's interest in the

partnership purchased pursuant to 4 CMC § 40155 or enforce any other right under article 6 or 7; or

(iii) the partner's right to compel a dissolution and winding up of the partnership business under 4 CMC § 40161 or enforce any other right under article 8; or

(3) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

**Source:** PL 15-88, § 2(405), modified.

**Commission Comment:** The commission changed capitalization and references to "this Act" to "this chapter" and changed PL 15-88 section references to corresponding code sections pursuant to 1 CMC § 3806(c), (d) and (f).

**§ 40136. Continuation of Partnership Beyond Definite Term or Particular Undertaking.**

(a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

**Source:** PL 15-88, § 2(406).

**Article 5. Transferees and Creditors of Partner**.

§ 40141. Partner Not Co-Owner of Partnership Property.
§ 40142. Partner's Transferable Interest in Partnership.
§ 40143. Transfer of Partner's Transferable Interest.
§ 40144. Partner's Transferable Interest Subject to Charging Order.

**§ 40141. Partner Not Co-owner of Partnership Property.**

A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

**Source:** PL 15-88, § 2(501).

**§ 40142. Partner's Transferable Interest in Partnership.**

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

**Source:** PL 15-88, § 2(502).

**§ 40143. Transfer of Partner's Transferable Interest.**

(a) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(1) is permissible;

(2) does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and

(3) does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(b) A transferee of a partner's transferable interest in the partnership has a right:

(1) to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(2) to receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(3) to seek under 4 CMC § 40161(f) a judicial determination that it is equitable to wind up the partnership business.

(c) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(d) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(e) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

(f ) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

**Source:** PL 15-88, § 2(503), modified.

**Commission Comment:** The commission changed PL 15-88 section references to corresponding code sections pursuant to 1 CMC § 3806(c).

**§ 40144. Partner's Transferable Interest Subject to Charging Order.**

(a) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(b) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed:

(1) by the judgment debtor;

(2) with property other than partnership property, by one or more of the other partners; or

(3) with partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

(d) This chapter does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

**Source:** PL 15-88, § 2(504), modified.

**Commission Comment:** The commission changed references to "this Act" to "this chapter" pursuant to 1 CMC § 3806(d).

**Article 6. Partner's Dissociation**.

§ 40151. Events Causing Partner's Dissociation.
§ 40152. Partner's Power to Dissociate: Wrongful Dissociation.
§ 40153. Effects of Partner's Dissociation.

**§ 40151. Events Causing Partner's Dissociation.**

A partner is dissociated from a partnership upon the occurrence of any of the following events:

(a) The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

(b) An event agreed to in the partnership agreement as causing the partner's dissociation;

(c) The partner's expulsion pursuant to the partnership agreement;

(d) The partner's expulsion by the unanimous vote of the other partners if:

(1) it is unlawful to carry on the partnership business with that partner;

(2) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;

(3) within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(4) a partnership that is a partner has been dissolved and its business is being wound up;

(e) On application by the partnership or another partner, the partner's expulsion by judicial determination because:

(1) the partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(2) the partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under 4 CMC § 40134; or

(3) the partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;

(f) The partner's:

(1) becoming a debtor in bankruptcy;

(2) executing an assignment for the benefit of creditors;

(3) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(4) failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated;

(g) In the case of a partner who is an individual:

(1) the partner's death;

(2) the appointment of a guardian or general conservator for the partner; or

(3) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(h) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(i) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(j) Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

**Source:** PL 15-88, § 2(601), modified.

**Commission Comment:** The commission changed capitalization and PL 15-88 section references to corresponding code sections pursuant to 1 CMC § 3806(c) and (f).

**§ 40152. Partner's Power to Dissociate: Wrongful Dissociation.**

(a) A partner has the power to dissociate at any time, rightfully or wrongly, by express will pursuant to 4 CMC § 40151(a).

(b) A partner's dissociation is wrongful only if:

(1) it is in breach of an express provision of the partnership agreement; or

(2) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(i) the partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under 4 CMC § 40151(f) through (j) or wrongful dissociation under this subsection;

(ii) the partner is expelled by judicial determination under 4 CMC § 40151(e);

(iii) the partner is dissociated by becoming a debtor in bankruptcy; or

(iv) in the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

**Source:** PL 15-88, § 2(602), modified.

**Commission Comment:** The commission changed PL 15-88 section references to corresponding code sections pursuant to 1 CMC § 3806(c).

**§ 40153. Effect of Partner's Dissociation.**

(a) If a partner's dissociation results in a dissolution and winding up of the partnership business, article 8 applies; otherwise, article 7 applies.

(b) Upon a partner's dissociation:

(1) the partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in 4 CMC § 40163;

(2) the partner's duty of loyalty under 4 CMC § 40134(b)(3) terminates; and

(3) the partner's duty of loyalty under 4 CMC § 40134(b)(l) and (2) and duty of care under 4 CMC § 40134(c) continue only with regard to matters arising and events occurring

before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to 4 CMC § 40163.

**Source:** PL 15-88, § 2(603), modified.

**Commission Comment:** The commission changed capitalization and references to specific sections of PL 15-88 to corresponding code sections pursuant to 1 CMC § 3806(c) and (f).

**Article 7. Partner's Dissociation When Business Not Wound Up.**

§ 40155. Purchase of Dissociated Partner's Interest.
§ 40156. Dissociated Partner's Power to Bind and Liability to Partnership.
§ 40157. Dissociated Partner's Liability to Other Persons.
§ 40158. Statement of Dissociation.
§ 40159. Continued Use of Partnership Name.

**§ 40155. Purchase of Dissociated Partner's Interest.**

(a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under 4 CMC § 40161, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b).

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under 4 CMC § 40167(b) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under 4 CMC § 40152(b), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under 4 CMC § 40156.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c).

(f) If a deferred payment is authorized under subsection (h), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subsection (e) or (f) must be accompanied by the following:

(1) a statement of partnership assets and liabilities as of the date of dissociation;
(2) the latest available partnership balance sheet and income statement, if any;
(3) an explanation of how the estimated amount of the payment was calculated; and
(4) written notice that the payment is in full satisfaction of the obligation to purchase

unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (c), or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to 4 CMC § 40135(b)(2)(ii), to determine the buyout price of that partner's interest, any offsets under subsection (c), or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (g).

**Source:** PL 15-88, § 2(701), modified.

**Commission Comment:** The commission changed PL 15-88 section references to corresponding code sections pursuant to 1 CMC § 3806(c).

**§ 40156. Dissociated Partner's Power to Bind and Liability to Partnership.**

(a) For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under article 9, is bound by an act of the dissociated partner which would have bound the partnership under 4 CMC § 40121 before dissociation only if at the time of entering into the transaction the other party:

(1) reasonably believed that the dissociated partner was then a partner;

(2) did not have notice of the partner's dissociation; and

(3) is not deemed to have had knowledge under 4 CMC § 40123(e) or notice under 4 CMC § 40158(c).

(b) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (a) was still a partner, did not have notice of the partner's dissociation, and is not deemed to have had knowledge of the dissociation under 4 CMC § 40123(e) or notice thereof under 4 CMC § 40158(c).

**Source:** PL 15-88, § 2(702), modified.

**Commission Comment:** The commission changed capitalization and PL 15-88 section references to corresponding code sections pursuant to 1 CMC § 3806(c) and (f).

**§ 40157. Dissociated Partner's Liability to Other Persons.**

(a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation

incurred after dissociation, except as otherwise provided in subsection (b).

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under article 9, within two years after the partner's dissociation, only if the partner is liable for the obligation under 4 CMC § 40126 and at the time of entering into the transaction the other party:

(1) reasonably believed that the dissociated partner was then a partner;

(2) did not have notice of the partner's dissociation; and

(3) is not deemed to have had knowledge under 4 CMC § 40123(e) or notice under 4 CMC § 40158(c).

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

**Source:** PL 15-88, § 2(703), modified.

**Commission Comment:** The commission changed capitalization and PL 15-88 section references to corresponding code sections pursuant to 1 CMC § 3806(c) and (f).

**§ 40158. Statement of Dissociation.**

(a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of 4 CMC § 40123(d) and (e).

(c) For the purposes of 4 CMC §§ 40156(a)(3) and 40157(b)(3), a person not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.

**Source:** PL 15-88, § 2(704), modified.

**Commission Comment:** The commission changed PL 15-88 section references to corresponding code sections pursuant to 1 CMC § 3806(c).

**§ 40159. Continued Use of Partnership Name.**

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

**Source:** PL 15-88, § 2(705).

**Article 8. Winding Up Partnership Business.**

§ 40161. Events Causing Dissolution and Winding Up of Partnership Business.
§ 40162. Partnership Continues After Dissolution.
§ 40163. Right to Wind Up Partnership Business.
§ 40164. Partner's Power to Bind Partnership After Dissolution.
§ 40165. Statement of Dissolution.
§ 40166. Partner's Liability to Other Partners After Dissolution.

§ 40167. Settlement of Accounts and Contributions Among Partners.

**§ 40161. Events Causing Dissolution and Winding Up of Partnership Business.**

A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

(a) In a partnership at will, the partnership's having notice from a partner, other than a partner who is disassociated under 4 CMC § 40151(b) though (j), of that partner's express will to withdraw as a partner, or on a later date specified by the partner;

(b) In a partnership for a definite term or particular undertaking:

(1) within 90 days after a partner's dissociation by death or otherwise under 4 CMC § 40151(f) through (j) or wrongful dissociation under 4 CMC § 40152(b), the express will of at least half of the remaining partners to wind up the partnership business, for which purpose a partner's rightful dissociation pursuant to 4 CMC § 40152(b)(2)(i) constitutes the expression of that partner's will to wind up the partnership business;

(2) the express will of all of the partners to wind up the partnership business; or

(3) the expiration of the term or the completion of the undertaking;

(c) An event agreed to in the partnership agreement resulting in the winding up of the partnership business;

(d) An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

(e) On application by a partner, a judicial determination that:

(1) the economic purpose of the partnership is likely to be unreasonably frustrated;

(2) another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or

(3) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(f) on application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

(1) after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(2) at any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

**Source:** PL 15-88, § 2(801), modified.

**Commission Comment:** The commission changed capitalization and references to specific sections of PL 15-88 to corresponding code sections pursuant to 1 CMC § 3806(c) and(f).

**§ 40162. Partnership Continues After Dissolution.**

(a) Subject to subsection (b), a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

(b) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:

(1) the partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and

(2) the rights of a third party accruing under 4 CMC § 40164(a) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

**Source:** PL 15-88, § 2(802), modified.

**Commission Comment:** The commission changed PL 15-88 section references to corresponding code sections pursuant to 1 CMC § 3806(c).

**§ 40163. Right to Wind Up Partnership Business.**

(a) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the Commonwealth Superior Court, for good cause shown, may order judicial supervision of the winding up.

(b) The legal representative of the last surviving partner may wind up a partnership's business.

(c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to 4 CMC § 40167, settle disputes by mediation or arbitration, and perform other necessary acts.

**Source:** PL 15-88, § 2(803).

**§ 40164. Partner's Power to Bind Partnership After Dissolution.**

Subject to 4 CMC § 40165, a partnership is bound by a partner's act after dissolution that:

(a) Is appropriate for winding up the partnership business; or

(b) Would have bound the partnership under 4 CMC § 40121 before dissolution, if the other party to the transaction did not have notice of the dissolution.

**Source:** PL 15-88, § 2(804), modified.

**Commission Comment:** The commission changed capitalization and PL 15-88 section references to corresponding code sections pursuant to 1 CMC § 3806(c) and (f).

**§ 40165. Statement of Dissolution.**

(a) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(b) A statement of dissolution cancels a filed statement of partnership authority for the purposes of 4 CMC § 40123(d) and is a limitation on authority for the purposes of 4 CMC § 40123(e).

(c) For the purposes of 4 CMC §§ 40121 and 40164, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

(d) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect

to a person not a partner as provided in 4 CMC § 40123(d) and (e) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

**Source:** PL 15-88, § 2(805), modified.

**Commission Comment:** The commission changed PL 15-88 section references to corresponding code sections pursuant to 1 CMC § 3806(c).

**§ 40166. Partner's Liability to Other Partners After Dissolution.**

(a) Except as otherwise provided in subsection (b) and 4 CMC § 40126, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under 4 CMC § 40164.

(b) A partner who, with knowledge of the dissolution, incurs a partnership liability under 4 CMC § 40164(b) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

**Source:** PL 15-88, § 2(806), modified.

**Commission Comment:** The commission changed PL 15-88 section references to corresponding code sections pursuant to 1 CMC § 3806(c).

**§ 40167. Settlement of Accounts and Contributions Among Partners.**

(a) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b).

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under 4 CMC § 40126.

(c) If a partner fails to contribute the full amount required under subsection (b), all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under 4 CMC § 40126. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under 4 CMC § 40126.

(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under 4 CMC § 40126.

(e) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to

contribute to the partnership.

**Source:** PL 15-88, § 2(807), modified.

**Commission Comment:** The commission changed PL 15-88 section references to corresponding code sections pursuant to 1 CMC § 3806(c).

**Article 9. Conversions and Mergers.**

§ 40171. Definitions.
§ 40172. Conversion of Partnership to Limited Partnership.
§ 40173. Conversion of Limited Partnership to Partnership.
§ 40174. Effect of Conversion; Entity Unchanged.
§ 40175. Merger of Partnerships.
§ 40176. Effect of Merger.
§ 40177. Statement of Merger.
§ 40178. Nonexclusive.

**§ 40171. Definitions.**

In this article:

(a) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(b) "Limited partner" means a limited partner in a limited partnership.

(c) "Limited partnership" means a limited partnership created under the law of the Commonwealth, predecessor law, or comparable law of another jurisdiction.

(d) "Partner" includes both a general partner and a limited partner.

**Source:** PL 15-88, § 2(901).

**§ 40172. Conversion of Partnership to Limited Partnership.**

(a) A partnership may be converted to a limited partnership pursuant to this section.

(b) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:

(1) a statement that the partnership was converted to a limited partnership from a partnership;

(2) its former name; and

(3) a statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(d) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(e) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation

incurred by the limited partnership within 90 days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in the law of the Commonwealth.

**Source:** PL 15-88, § 2(902).

**§ 40173. Conversion of Limited Partnership to Partnership.**

(a) A limited partnership may be converted to a partnership pursuant to this section.

(b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

(c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

(d) The conversion takes effect when the certificate of limited partnership is canceled.

(e) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in 4 CMC § 40126, the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

**Source:** PL 15-88, § 2(903), modified.

**Commission Comment:** The commission changed PL 15-88 section references to corresponding code sections pursuant to 1 CMC § 3806(c).

**§ 40174. Effect of Conversion; Entity Unchanged.**

(a) A partnership or limited partnership that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) all property owned by the converting partnership or limited partnership remains vested in the converted entity;

(2) all obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(3) an action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

**Source:** PL 15-88, § 2(904), modified.

**Commission Comment:** The commission changed capitalization pursuant to 1 CMC § 3806(f).

**§ 40175. Merger of Partnerships.**

(a) Pursuant to a plan of merger approved as provided in subsection (c), a partnership may be merged with one or more partnerships or limited partnerships.

(b) The plan of merger must set forth:

(1) the name of each partnership or limited partnership that is a party to the merger;

(2) the name of the surviving entity into which the other partnerships or limited partnerships will merge;

(3) whether the surviving entity is a partnership or a limited partnership and the status of each partner;

(4) the terms and conditions of the merger;

(5) the manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and

(6) the street address of the surviving entity's chief executive office.

(c) The plan of merger must be approved:

(1) in the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and

(2) in the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or other jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger takes effect on the later of:

(1) the approval of the plan of merger by all parties to the merger, as provided in subsection (c);

(2) the filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(3) any effective date specified in the plan of merger.

**Source:** PL 15-88, § 2(905), modified.

**Commission Comment:** The commission changed capitalization pursuant to 1 CMC § 3806(f).

**§ 40176. Effect of Merger.**

(a) When a merger takes effect:

(1) the separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;

(2) all property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(3) all obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(4) an action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

(b) The Registrar of Corporations of this Commonwealth is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the Registrar of Corporations of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the Registrar of Corporations shall mail a copy of the process to the surviving foreign partnership or limited partnership.

(c) A partner of the surviving partnership or limited partnership is liable for:

(1) all obligations of a party to the merger for which the partner was personally liable before the merger;

(2) all other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and

(3) except as otherwise provided in 4 CMC § 40126, all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of

property of the entity if the partner is a limited partner.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date af the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in 4 CMC § 40167 or in the Limited Partnership Act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

(e) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under 4 CMC § 40155 or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under 4 CMC § 40156 by an act of a general partner dissociated under this subsection, and the partner is liable under 4 CMC § 40157 for transactions entered into by the surviving entity after the merger takes effect.

**Source:** PL 15-88, § 2(906), modified.

**Commission Comment:** The commission changed PL 15-88 section references to corresponding code sections pursuant to 1 CMC § 3806(c).

**§ 40177. Statement of Merger.**

(a) After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

(b) A statement of merger must contain:

(1) the name of each partnership or limited partnership that is a party to the merger;

(2) the name of the surviving entity into which the other partnerships or limited partnership were merged;

(3) the street address of the surviving entity's chief executive office and of an office in this Commonwealth, if any; and

(4) whether the surviving entity is a partnership or a limited partnership.

(c) Except as otherwise provided in subsection (d), for the purposes of 4 CMC § 40122, property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(d) For the purposes of 4 CMC § 40122, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

(e) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to 4 CMC § 40105(c), stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection (b), operates with respect to the partnerships or limited partnerships named to the extent provided in subsections (c) and (d).

**Source:** PL 15-88, § 2(907), modified.

**Commission Comment:** The commission changed PL 15-88 section references to corresponding code sections pursuant to 1 CMC § 3806(c).

**§ 40178. Nonexclusive.**

This article is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

**Source:** PL 15-88, § 2(908), modified.

**Commission Comment:** The commission changed capitalization pursuant to 1 CMC § 3806(f).

**Article 10. Limited Liability Partnership**.

§ 40181. Statement of Qualification.
§ 40182. Name.
§ 40183. Annual Report.

**§ 40181. Statement of Qualification.**

(a) A partnership may become a limited liability partnership pursuant to this section.

(b) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(c) After the approval required by subsection (b), a partnership may become a limited liability partnership by filing a statement of qualification. The statement must contain:

(1) the name of the partnership;

(2) the street address of the partnership's chief executive office and, if different, the street address of an office in this Commonwealth, if any;

(3) if the partnership does not have an office in this Commonwealth, the name and street address of the partnership's agent for service of process;

(4) a statement that the partnership elects to be a limited liability partnership; and

(5) a deferred effective date, if any.

(d) The agent of a limited liability partnership for service of process must be an individual who is a resident of this Commonwealth or other person authorized to do business in this Commonwealth.

(e) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to 4 CMC § 40105(d) or revoked pursuant to 4 CMC § 40183.

(f) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (c).

(g) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(h) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

**Source:** PL 15-88, § 2(1001), modified.

**Commission Comment:** The commission changed references to specific sections of PL 15-88 to corresponding code sections pursuant to 1 CMC § 3806(c).

**§ 40182. Name.**

The name of a limited liability partnership must end with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP."

**Source:** PL 15-88, § 2(1002).

**Commission Comment:** The commission inserted punctuation inside quotation marks in this section pursuant to 1 CMC § 3806(g).

**§ 40183. Annual Report.**

(a) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this Commonwealth, shall file an annual report in the office of the which contains:

(1) the name of the limited liability partnership and the State or other jurisdiction under whose laws the foreign limited liability partnership is formed;

(2) the street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this Commonwealth, if any; and

(3) if the partnership does not have an office in this Commonwealth, the name and street address of the partnership's current agent for service of process.

(b) An annual report must be filed in accordance with the provisions governing corporations in 4 CMC § 4693(c) of each year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this Commonwealth.

(c) The Registrar of Corporations may revoke the statement of qualification of a partnership that fails to file an annual report when due or pay the required filing fee. To do so, the Registrar of Corporations shall provide the partnership at least 60 days' written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is not effective if the annual report is filed and the fee is paid before the effective date of the revocation.

(d) A revocation under subsection (c) only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(e) A partnership whose statement of qualification has been revoked may apply to the Registrar of Corporations for reinstatement within two years after the effective date of the revocation. The application must state:

(1) the name of the partnership and the effective date of the revocation; and

(2) that the ground for revocation either did not exist or has been corrected.

(f) A reinstatement under subsection (e) relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

**Source:** PL 15-88, § 2(1003).

**Article 11. Foreign Limited Liability Partnership**

§ 40185. Law Governing Foreign Limited Liability Partnership.
§ 40186. Statement of Foreign Qualification.
§ 40187. Effect of Failure to Qualify.
§ 40188. Activities Not Constituting Transacting Business.
§ 40189. Action by Attorney General.

**§ 40185. Law Governing Foreign Limited Liability Partnership.**

(a) The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this Commonwealth.

(c) A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this Commonwealth as a limited liability partnership.

**Source:** PL 15-88, § 2(1101).

**§ 40186. Statement of Foreign Qualification.**

(a) Before transacting business in this Commonwealth, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

(1) the name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose law it is formed and ends with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP;"

(2) the street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this Commonwealth, if any;

(3) if there is no office of the partnership in this Commonwealth, the name and street address of the partnership's agent for service of process; and

(4) a deferred effective date, if any.

(b) The agent of a foreign limited liability company for service of process must be an individual who is a resident of this Commonwealth or other person authorized to do business in this Commonwealth.

(c) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to 4 CMC § 40105(d) or revoked pursuant to 4 CMC § 40183.

(d) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

**Source:** PL 15-88, § 2(1102), modified.

**Commission Comment:** The commission replaced PL 15-88 section references with corresponding code sections, changed capitalization and inserted punctuation inside quotation marks pursuant to 1 CMC § 3806(c), (f) and (g).

**§ 40187. Effect of Failure to Qualify.**

(a) A foreign limited liability partnership transacting business in this Commonwealth may not maintain an action or proceeding in this Commonwealth unless it has in effect a statement of foreign qualification.

(b) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this Commonwealth.

(c) A limitation on personal liability of a partner is not waived solely by transacting business in this Commonwealth without a statement of foreign qualification.

(d) If a foreign limited liability partnership transacts business in this Commonwealth without a statement of foreign qualification, the Registrar of Corporations is its agent for service of process with respect to a right of action arising out of the transaction of business in this Commonwealth.

**Source:** PL 15-88, § 2(1103).

**§ 40188. Activities Not Constituting Transacting Business.**

(a) Activities of a foreign limited liability partnership which do not constitute transacting business for the purpose of this article include:

(1) maintaining, defending, or settling an action or proceeding;

(2) holding meetings of its partners or carrying on any other activity concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;

(8) collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

(9) conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions; and

(10) transacting business in interstate commerce.

(b) For purposes of this article, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (a), constitutes transacting business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this state.

**Source:** PL 15-88, § 2(1104), modified.

**Commission Comment:** The commission changed capitalization pursuant to 1 CMC § 3806(f).

**§ 40189. Action by Attorney General.**

The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of this article.

**Source:** PL 15-88, § 2(1105), modified.

**Commission Comment:** The commission changed capitalization pursuant to 1 CMC § 3806(f).

**Article 12. Miscellaneous Provisions**.

§ 40191. Uniformity of Application and Construction.
§ 40192. Applicability.

**§ 40191. Uniformity of Application and Construction.**

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

**Source:** PL 15-88, § 2(1201), modified.

**Commission Comment:** The commission changed references to "this Act" to "this chapter"and changed capitalization pursuant to 1 CMC § 3806(d) and (f).

**§ 40192. Applicability.**

(a) Before January 1, 2008, this chapter governs only a partnership formed:

(1) after the effective date of this chapter; and

(2) before the effective date of this chapter, that elects, as provided by subsection (c), to be governed by this Chapter.

(b) On and after January 1, 2008, this chapter governs all partnerships.

(c) Before January 1, 2008, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this chapter. The provisions of this chapter relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one year before the partnership's election to be governed by this chapter only if the third party knows or has received a notification of the partnership's election to be governed by this chapter.

**Source:** PL 15-88, § 2(1202), modified.

**Commission Comment:** The commission changed references to "this Act" to "this chapter" pursuant to 1 CMC § 3806(d).

# DIVISION 5: BUSINESS REGULATION

## CHAPTER 1. CONSUMER PROTECTION.

### Article 1. Consumer Protection Act.

**§ 5101. Short Title.**

**Case Annotations:** *Matsunaga v. Matsunaga*, 2006 MP 25 (2006).

**CONSUMER PROTECTION**

**Generally**

The intent of the Consumer Protection Act, 4 CMC § 5101, *et seq.*, is to protect consumers. 4 CMC § 5101, *et seq. Isla Fin. Servs. v. Sablan*, 2001 MP 21 ¶ 24, 6 N.M.I. 338, 342 (2001).

In determining whether a party violated the Consumer Protection Act, 4 CMC § 5101, *et seq.*, the operative question is not whether the party actually deceived another, but whether the party acted in a way that was unfair or would likely cause

confusion to a hypothetical person. 4 CMC § 5101, *et seq.* *Isla Fin. Servs. v. Sablan*, 2001 MP 21 ¶ 24, 6 N.M.I. 338, 342 (2001).

It is not error for the trial court to use the Federal Fair Debt Collection Practices Act, 15 U.S.C. 1692, *et seq.*, for interpretive purposes, applying its analysis to the damages provision of the CNMI Consumer Protection Act, 4 CMC § 5101, *et seq*., set forth at 4 CMC § 5112(a). 15 U.S.C. 1692, *et seq*.; 4 CMC § 5101, *et seq.,*; 4 CMC § 5112(a). *Isla Fin. Servs. v. Sablan*, 2001 MP 21 ¶ 28, 6 N.M.I. 338, 343 (2001).

**Applications, Particular**

– **Construction Contractors**

. . .

– **Gambling**

. . .

– **Particular Cases**
A party's mention of a deceased's outstanding debt and the ability of the deceased to rest in peace to a relative carries the implication of moral and legal obligations and is likely to cause misunderstanding in any similarly situated consumers mind, and thus would constitute a violation of the Consumer Protection Act, 4 CMC § 5101, *et seq.* 4 CMC § 5101, *et seq.* *Isla Fin. Servs. v. Sablan*, 2001 MP 21 ¶ 25, 6 N.M.I. 338, 342 (2001).

**Operation and Effect**

. . .

**Remedies**

. . .

**Standard of Proof**
A person need only show that it was more probable than not that a party's conduct in trade or commerce created a likelihood of confusion or misunderstanding or was unfair or deceptive to a hypothetical consumer in order to prove a violation of the Consumer Protection Act, 4 CMC 5101, *et seq.* 4 CMC § 5101, *et seq.* *Isla Fin. Servs. v. Sablan*, 2001 MP 21 ¶ 24, 6 N.M.I. 338, 342 (2001).

– **Preponderance of the Evidence**
In the CNMI, the preponderance of the evidence standard of proof shall be used for cases in which a claimant seeks to prove a violation of the Consumer Protection Act, 4 CMC § 5101, *et seq. Isla Fin. Servs. v. Sablan*, 2001 MP 21 ¶ 22, 6 N.M.I. 338, 342 (2001).

**Case Annotations:** *Matsunaga v. Matsunaga,* 2006 MP 25, 7 N.M.I. 379 (2006).

## § 5102. Consumer Protection: Findings and Purpose.

**Case Annotations:** *Isla Fin. Servs. v. Sablan,* 2001 MP 21, 6 N.M.I. 338 (2001).

## § 5104. Definitions.

**Case Annotations:** *Isla Fin. Servs. v. Sablan,* 2001 MP 21, 6 N.M.I. 338 (2001).

## § 5105. Unlawful Acts or Practices.

**Case Annotations:** *Isla Fin. Servs. v. Sablan,* 2001 MP 21, 6 N.M.I. 338 (2001).

**Applications, Particular**

– **Construction Contractors**

. . .

### § 5112. Private and Class Actions.

**CONSUMER PROTECTION**

**Generally**
It is not error for the trial court to use the Federal Fair Debt Collection Practices Act, 15 U.S.C. 1692, *et seq.,* for interpretive purposes, applying its analysis to the damages provision of the CNMI Consumer Protection Act, 4 CMC § 5101, *et seq.,* set forth at 4 CMC § 5112(a). 15 U.S.C. 1692, *et seq.*; 4 CMC § 5101, *et seq.,*; 4 CMC § 5112(a). *Isla Fin. Servs. v. Sablan*, 2001 MP 21 ¶ 28, 6 N.M.I. 338, 343 (2001).

**Attorney's Fees**

– **Particular Cases**
Since Commonwealth Consumer Protection Act, 4 CMC § 5101 *et seq.*, was violated in action based on defective workmanship in construction of house, and Act provides that trial court shall award costs and reasonable attorney's fees if plaintiff prevails in claim based on Act, trial court appropriately awarded attorney's fees. 4 CMC § 5112(a). *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

## CHAPTER 5. ALCOHOLIC BEVERAGE CONTROL.

## Article 1. General.

### § 5511. Definitions.

When used in this chapter:
(a) - (i) [unchanged]
(j) "Sampling" means activity in which an alcoholic beverage is sampled or tasted for free.
(k) Sterile passenger holding areas are the areas at and beyond the screening checkpoints, the holding rooms, and the boarding gates.

**Source:** . . . (j) added by PL 15-115 § 3; (k) added by PL 16-27, § 2, modified.

**Commission Comment:** . . . For more information regarding PL 15-115, see comment to 4 CMC § 5585. The commission changed capitalization in subsection (j) pursuant to 1 CMC § 3806(f). Public Law 16-27 was enacted on January 7, 2009. The date next to Governor's signature in PL 16-27, January 7, 2008, is clearly a typographical error. In addition to amendments to provisions in this chapter, PL 16-27 contained definition and regulations sections that are codified in 3 CMC §§ 5511(j) and 5513, respectively. PL 16-27 also contained severability and savings clause provisions and the following:

Section 1. Findings and Purpose. The Legislature finds that due to the difficult economic situation the Commonwealth is currently facing, it is very important to find any means that will encourage revenue.

The Legislature further finds that passengers arriving and departing in our airports come from different time zones and should not be subject to legislations that are regulated by time or hours permissible. Therefore, it is the purpose of this act to allow, within the Sterile Passenger Holding Areas, the purchase of alcoholic beverages, regardless of time or day for consumption within, as a way of generating more revenue.

As for the vendors that cater outside of the Sterile Passenger Holding Areas, they will be subject to existing laws. Vendors may sale or serve alcoholic beverages provided that they acquire the necessary licenses and conform to 4 CMC § 5554

subparagraph (a) Hours of Sale: On-Sale Premises and 4 CMC § 5557 subparagraph (a) Election Day: Sale Prohibited.

**§ 5512. Applicability.**

(a) The statutes in this chapter shall be applicable to each senatorial district, unless the senatorial district enacts local laws pursuant to subsection (b) below which differ from the statutes contained herein.

(b) Except as provided by 4 CMC § 5512 (c), a senatorial district may, by the enactment of local law, regulate the sale and consumption of alcohol within said senatorial district. Such local laws may be more or less restrictive or permissive than the statutes in this chapter. The statutes in this chapter shall apply in full force and effect to each senatorial district until the enactment of positive local law which is clearly intended to supercede the statutes contained in this chapter. The intent to supercede any individual statute in this chapter shall be demonstrated by a positive statement in the "findings" section of the local law that the individual statute is to be superceded, with a citation to the statute to be superceded.

(c) The importation into the commonwealth of alcoholic beverages shall be regulated by Commonwealth law which shall not be superceded by local law. The manufacture of alcoholic beverages within the commonwealth shall be regulated by Commonwealth law which shall not be superceded by local law. The following statutes may not be amended by local law: 4 CMC § 5523; 4 CMC § 5524; 4 CMC § 5531; 4 CMC § 5559; 4 CMC § 5560; and 4 CMC § 5595.

**Source:** . . . amended by PL 15-91 § 2.

**Commission Comment:** Public Law 15-91, effective on October 2, 2007, includes severability and savings clause provisions and the following:

Section 1. Findings and Purpose. The Legislature finds that the current laws concerning the sale of alcohol were enacted prior to the first Commonwealth Legislature, and they have not been amended in any major way notwithstanding the long passage of time.

The Legislature finds that the Local Law Act of 1983, Public Law 3-77, clearly states that the regulation of the curfew for bars and other business establishments is purely a local matter pertaining to matters within the individual senatorial districts. Yet, to date, no local delegation has enacted local laws pursuant to this authority in part because it is unclear exactly what may be regulated, given the codification of the Commonwealth's Alcohol Beverage Control statutes.

The Legislature finds that different senatorial districts have differing situations: casino gaming and casinos are in one senatorial district and not the others while different districts have a greater prevalence of resorts and resort areas. These facts militate towards the proposition that the Delegations, through the enactment of local laws, are in the best position to regulate the aspects of the sale and consumption of alcohol to maximize the economic benefits of the sale of alcoholic beverages.

Therefore, it is the purpose of this Act to explicitly empower the local delegations to enact local laws which are more or less restrictive than the current statutes.

**§ 5513. Regulations.**

The Department of Commerce is authorized to promulgate rules and regulations to implement the intent and provisions of 4 CMC §§ 5511(j), 5554 and 5557.

**Source:** PL 16-27, § 5, modified.

**Commission Comment:** . . . The commission substituted "4 CMC §§ 5511(j), 5554 and 5557" (the codified sections of PL 16-27) for "this Act" pursuant to 1 CMC § 3806(d). See comment to 1 CMC

§ 5511 for information regarding PL 16-27.

## Article 2. Licenses.

### § 5526. Classes and Fees.

The classes of licenses and fees therefor are as follows:

| | | |
|---|---|---|
| Class 1 | Manufacturer's License | $250 |
| | Annual Sampling Fee | $50 |
| Class 2 | Wholesale Agent's License | $250 |
| | Annual Sampling Fee | $50 |
| Class 3 | Retail Dealer's On-Sale License: | |
| | Beer and Wine | $20 |
| | General | $30 |
| | Annual Sampling Fee | $15 |
| General | (if a Class A restaurant license holder) | $25 |
| | Annual Sampling Fee | $15 |
| Class 4 | Retail Dealer's Off-Sale License: | |
| | Beer and Wine | $25 |
| | General | $30 |
| | Annual Sampling Fee | $15 |
| Class 5 | Temporary Beer License | $10 |
| Class 6 | Club License | $100 |

**Source:** . . . amended by PL 15-115 § 5.

**Commission Comment:** . . . For more information regarding PL 15-115, see comment to 4 CMC § 5585.

## Article 3. Standards for Licensees.

### § 5554. Hours of Sale: On-Sale Premises.

(a) An on-sale licensee shall not sell or serve any alcoholic beverages after two a.m. A licensee may begin selling and serving alcoholic beverages at nine a.m., and shall secure and close his or her business premises at two a.m., except as otherwise provided.

(b) The hours for selling and serving alcoholic beverages by an on-sale licensee, as specified in subparagraph (a) of this section, shall not apply to on-sale licensees operating within the sterile passenger holding areas at commercial airports of the Commonwealth of the Northern Marianas Islands.

**Source:** . . . amended by PL 16-27, § 3, modified.

**Commission Comment:** . . . The commission changed capitalization in subsection (b) pursuant to 1 CMC § 3806(f).

### § 5557. Election Day: Sale Prohibited.

(a) An on- or off-sale licensee shall not sell or serve alcoholic beverages on any island

where an election is in progress during the hours when the polls are required by law to be opened for voting, except as otherwise provided.

(b) The prohibition with respect to the sale or the serving of alcoholic beverages whenever an election is in progress during the hours when the polls are required by law to be opened for voting shall not apply to on-sale licensees operating within the sterile passenger holding areas at commercial airports of the Commonwealth of the Northern Marianas Islands.

**Source:** . . . amended by PL 16-27, § 4, modified.

**Commission Comment:** The commission changed capitalization in subsection (b) pursuant to 1 CMC § 3806(f).

**§ 5564. Stacking Drinks Prohibited.**

No on-sale licensee, agent, or employee thereof shall serve more than one drink at any one time to any individual; provided that bucket sale of no more than six cans or bottled alcoholic beverages may be sold. Bucket sale specials must be served in a larger container such as a bucket.

**Source:** . . . amended by PL 15-115 § 7, modified.

**Commission Comment:** The commission removed numbers that repeated words pursuant to 1 CMC § 3806(e). For more information regarding PL 15-115, see comment to 4 CMC § 5585.

**§ 5566. Minors: Sitting at Bar Prohibited; Penalty.**

A licensee, his agent, or employee shall not permit any person under the age of 21 to sit or stand at the bar of any establishment which is primarily engaged in the sale of alcoholic beverages; provided, however, that minors may be permitted in an established dining area. Any violation of 4 CMC § 5566 and/or this section* is punishable by and in accordance with the penal provisions of 4 CMC § 5569(c).

* As stated in the original.

**Source:** . . . amended by PL 15-115 § 6.

**Commission Comment:** For more information regarding PL 15-115, see comment to 4 CMC § 5585.

**Article 5. Alcoholic Beverage Sampling.** **[new article]**

§ 5585. Sampling Activity or Event. **[former article 5 renumbered to article 6]**

§ 5586. Procedures for Sampling.

**§ 5585. Sampling Activity or Event.**

~~There shall be no limitation on the frequency of sampling activities or events. Sampling activities or events may be conducted at any on-sale or off-sale licensed establishment.~~

There shall be no limitation on the frequency of sampling activities or events. Sampling activities or events may be conducted at any on-sale or off-sale licensed establishment by the sampling licensee without any further restricting regulations and/or approval not referenced in this provision by the Department of Commerce, Alcoholic Beverage and Tobacco Control Division.

**Source:** PL 15-115 § 4; amended by PL 16-44 § 2, modified.

**Commission Comment:** The commission changed capitalization pursuant to 1 CMC § 3806(f). Public Law 15-115 was enacted on November 29, 2007. In addition to severability and savings clause provisions, PL 15-115 contained the following:

Section 1. Short Title. This Act may be cited as the "The Alcoholic Beverage Control Amendments Act of 2007."

Section 2. Findings and Purposes. The Legislature finds that the existing Alcoholic Beverage Control Act does not provide any provisions for wine, beer, or other alcoholic beverages tasting or sampling for on-sale or off-sale licensees. Therefore, the purpose of this act is to provide for controlled procedures for conducting alcoholic beverage sampling.

. . .

Section 8. Regulations. Within 60 days after the enactment of this Act, the Secretary of Commerce shall promulgate rules and regulations necessary to carry out the intent of this Act.

Public Law 16-44, enacted on August 14, 2009, contained severability and savings clause provisions and the following:

Section 1. Findings and Purposes. The Legislature finds that Public Law 15-115 needs clarification as indicated by regulations promulgated with respect to Alcohol Beverage Sampling. It is the intent of the legislature to decrease the bureaucratic burdens placed upon the licensees conducting the sampling. Therefore, the purpose of this legislation is to amend the provisions for controlled procedures for conducting alcoholic beverage sampling.

. . .

Section 3. Regulations. No further rules or regulations are necessary to carry out the intent of this legislation.

### § 5586. Procedures for Sampling.

(a) No sample may be offered from more than four products at any one time.

(b) No more than one bottle of each of the four products to be sampled may be displayed and opened at any one time.

(c) Samples given shall not be more than 2 ounces for each product sampled.

(d) All open bottles must be visible at all times and all open bottles must be removed at the conclusion of the sampling activity.

(e) The sampling must be held in a designated tasting area within the establishment.

(f) No sample may be offered to, or allowed to be consumed by an intoxicated person or a person under the age of twenty-one years. This person must not be allowed to loiter in the premises.

(g) No person under the age of twenty-one years may conduct or participate in the sampling activity.

**Source:** PL 15-115 § 4; amended by PL 16-44 § 2.

**Commission Comment:** PL 16-44 § 2 amended 4 CMC §§ 5585-5586. The content of this section in Public Laws 15-115 and 16-44 are the same so no changes were made by PL 16-44. For information regarding Public Laws 15-115 and 16-44, see comment to 4 CMC § 5585.

## ~~Article 5.~~ Article 6. Enforcement and Penalties. [renumbered article]

## CHAPTER 6. BUSINESS LICSNESES.

**Article 1. Fees and Administration.**

**§ 5611. Business License Fees**.

(a)-(b) [unchanged]

(c) Terms. Licenses issued under this section are valid for one year and are not transferable. Provided, however, the Department of Finance may transfer a business license to an applicant for garment manufacturing if a license is:

(1)-(3) [unchanged]

(4) If the Department of Finance, in consultation with the Department of Labor, finds that a garment manufacturer has ceased operation; under the following conditions:

(i) Upon a written finding from the Secretary of Finance that the conditions set forth in 4 CMC § 5701(b)(2)-(3) are satisfied; and upon

(ii) Posting of a cash bond, irrevocable letter of credit or other form of financial assurances in an amount of, and for the purposes set forth, in regulations jointly promulgated by the Department of Finance and Department of Labor; in no event shall the amount be less than the aggregate cost for repatriation of the workers employed by the license holder.

The amendment set forth in this section shall not apply to any business license held by garment manufacturers listed in Schedule A of P.L. 11-76, as amended, which ceased operations prior to January 1, 2005.

(d)-(h) [unchanged]

## CHAPTER 7. GARMENT MANUFACTURING. [Repealed by PL 17-1 § 6(C)]

§ 5701. Definitions. [Repealed by PL 17-1 § 6(C)]
§ 5702. Prohibition on Issuance of New Licenses. [Repealed by PL 17-1 § 6(C)]
§ 5703. Restriction on Renewal of License.[Repealed by PL 17-1 § 6(C)]
§ 5704. Restriction on Issuance of Labor Certificates and Entry Permits. [Repealed by PL 17-1 § 6(C)]
§ 5705. Garment Worker Pool. [Repealed by PL 11-76 § 9(b)]
§ 5706. Reporting Requirements and Penalties. [Repealed by PL 17-1 § 6(C)]
§ 5707. Authority to Implement by Rules and Regulations. [Repealed by PL 17-1 § 6(C)]
§ 5708. Garment Manufacturing Industry Cap and ~~Non-Resident Alien~~ Foreign National Worker Quota.[Repealed by PL 17-1 § 6(C)]
§ 5709. Prohibition on Manpower Hire. [Repealed by PL 17-1 § 6(C)]
§ 5710. Criminal Penalties. [Repealed by PL 17-1 § 6(C)]
§ 5711. Maintaining and Monitoring Cap. [Repealed by PL 17-1 § 6(C)]

**§ 5701. Definitions [Repealed].**

**Source:** . . .; repealed by PL 17-1 § 6(C) (March 22, 2010).*

**Commission Comment:** . . .*PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

## § 5702. Prohibition on Issuance of New Licenses [Repealed].

**Source:** . . .; repealed by PL 17-1 § 6(C) (March 22, 2010).*

**Commission Comment:** . . .*PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

## § 5703. Restriction on Renewal of License [Repealed].

**Source:** . . .; repealed by PL 17-1 § 6(C) (March 22, 2010).*

**Commission Comment:** . . .*PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

## § 5704. Restriction on Issuance of Labor Certificates and Entry Permits [Repealed].

~~The cause to be issued or renewed any Nonresident Foreign National Worker Entry Permit or Nonresident Foreign National Worker Certificate to or on behalf of any non-immigrant alien to be employed in the garment industry except upon a written finding by the Secretary of Labor and Immigration that the applicant is:~~

~~(a) - (d) [unchanged]~~

**Source:** . . . amended by global amendment PL 15-108, § 5; repealed by PL 17-1 § 6(C) (March 22, 2010).*

**Commission Comment:** . . .*PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

## § 5706. Reporting Requirements and Penalties [Repealed].

**Source:** . . .; repealed by PL 17-1 § 6(C) (March 22, 2010).*

**Commission Comment:** *PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

## § 5707. Authority to Implement by Rules and Regulations [Repealed].

**Source:** . . .; repealed by PL 17-1 § 6(C) (March 22, 2010).*

**Commission Comment:** . . .*PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

### § 5708. Garment Manufacturing Industry Cap and ~~Non-Resident Alien~~ Foreign National Worker Quota [Repealed].

~~(a) There is imposed on the garment industry in the Commonwealth a cap of not more than 15,727 foreign national workers. The cap includes positions in all job categories, from management to line worker in the garment industry.~~

~~(b)-(c) [unchanged]~~

**Source:** . . . section title and subsection (a) amended by global amendment PL 15-108, § 5; repealed by PL 17-1 § 6(C) (March 22, 2010).*

### § 5709. Prohibition on Manpower Hire [Repealed].

**Source:** . . .; repealed by PL 17-1 § 6(C) (March 22, 2010).*

**Commission Comment:** . . .*PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

### § 5710. Criminal Penalties [Repealed].

**Source:** . . .; repealed by PL 17-1 § 6(C) (March 22, 2010).*

**Commission Comment:** . . .*PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

### § 5711. Maintaining and Monitoring Cap [Repealed].

**Source:** . . .; repealed by PL 17-1 § 6(C) (March 22, 2010).*

**Commission Comment:** . . .*PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

## CHAPTER 8. MECHANIC'S LIENS.

**§ 5802. Mechanics' Liens.**

Any licensed construction contractor, or supplier of construction material for the improvement of real property, shall have a lien upon the improvement, as well as upon the interest of the owner of the improvement in the real property upon which the same is situated, or for the benefit of which the same was constructed, for the price agreed to be paid; provided that the owner has not paid in full the cost of the construction material of the improvement of real property. Individual laborers shall have no right to a mechanics' lien except through their employer in cases in which the employer is a licensed construction contractor.

**Source:** . . . amended by PL 15-117, § 4.

**Commission Comment:** See comment to 4 CMC § 51501 for more information about PL 15-117.

## CHAPTER 9. REGULATION OF FOREIGN INVESTMENT.

### Article 1. General Provisions.

**§ 5901. Definitions.**

(a) "Alien" means any person who is not a citizen or national of the United States, or not a permanent resident of the Commonwealth of the Northern Mariana Islands pursuant to 3 CMC § 4202.

(b)-(n) [unchanged]

**Source:** . . . subsection (a) repealed and reenacted by PL 16-5 § 3.

**Commission Comment:** . . . See commission comment to 3 CMC § 4303 for more information regarding PL 16-5, which took effect on June 5, 2008.

**§ 5904. Certification.**

The secretary or his or her designee shall certify that an alien investor has met the requirements for a commerce certificate before a business license may be processed by the Secretary of Finance. The certification by the secretary shall be consistent with the recommendation by the Foreign Investment Review Committee. No business or foreign national ID shall be issued or granted without the expressed approval by way of certification of the Secretary of Commerce.

**Source:** . . . PL 17-1 § 6(D)(1) (March 22, 2010).*

**Commission Comment:** *PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

**§ 5916. Classification.**

The review committee may classify an alien who owns an interest in a foreign corporation that incorporates in the Commonwealth as an alien investor if the alien satisfactorily establishes his or her ownership interest in the foreign corporation and meets the requisite criteria and standards of the commerce certificate applied for.

**Source:** . . . PL 17-1 § 6(D)(2) (March 22, 2010).*

**Commission Comment:** *PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

## Article 3. Regular Term Business Certificate.

§ 5931. Regular Term Business Certificate; Conditions. [Repealed by PL 17-1 § 6(E)]
§ 5932. Regular Term Business Certificate; Standard of Review. [Repealed by PL 17-1 § 6(E)]
§ 5933. Regular Term Business Certificate; Application Process. [Repealed by PL 17-1 § 6(E)]

### § 5931. Regular Term Business Certificate; Conditions [Repealed].

**Source:** . . . repealed by PL 17-1 § 6(E) (March 22, 2010).*

**Commission Comment:** *PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

### § 5932. Regular Term Business Certificate; Standard of Review [Repealed].

**Source:** . . . repealed by PL 17-1 § 6(E) (March 22, 2010).*

**Commission Comment:** . . .*PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

### § 5933. Regular Term Business Certificate; Application Process [Repealed].

**Source:** . . . repealed by PL 17-1 § 6(E) (March 22, 2010).*

**Commission Comment:** *PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

## Article 4. Long Term Business Certificate.

**§ 5941. Long Term Business Certificate; Conditions.**

(a) A holder of a long term business certificate is entitled to lawfully engage in business in the Commonwealth for a period of two years; provided, however, that the holder shall post $25,000 to secure payment of claims made by the Commonwealth government for taxes and government fees and penalties. The deposit shall be in the form of a bond in the amount of $25,000 issued by a surety company licensed to transact business in the Commonwealth, and approved by the Commonwealth Insurance Commissioner, naming the Secretary of the Department of Commerce as the beneficiary. Such surety company shall be listed as acceptable for federal projects by the United States Department of the Treasury or other surety companies having positive capital/surplus as determined and approved by the Commonwealth Insurance Commissioner. The Secretary of the Department of Commerce may, by regulation, impose such other requirements as the Secretary may find reasonably necessary to ensure the reliability and capability of such surety. The bond must run for a minimum term of one year, renewable annually, must provide for a minimum of 30 days notice to the Secretary prior to its being cancelled, and must contain such other terms that the Secretary, by regulation, deems necessary and proper.

No matter the type of security used for the deposit, the security shall not be released until the alien investor provides the Secretary of the Department of Commerce with a statement from the Department of Finance that all applicable taxes and financial obligations to the CNMI Government are fully satisfied. The alien investor must also publish the notice, in at least one daily newspaper distributed throughout the Commonwealth, once a week for four consecutive weeks, that the investor has either ceased operation or has divested its interest in the business in the Commonwealth and has applied to the Secretary of the Department of Commerce for release of the security deposit. Said notice must also contain any details as prescribed by the Secretary of the Department of Commerce by regulation, but, at a minimum, will apprise the Commonwealth government that the security deposit shall be released unless a claim is served upon the Secretary of the Department of Commerce within six months of the last publication of the notice together with a copy of a complaint showing that a civil action has been filed in a court of competent jurisdiction in the Commonwealth during said six month period. If no claim is filed, or if the claim is for less than the entire security deposit, then the excess shall be refunded to the alien investor. If a claim is filed, then the security deposit, or remaining balance thereof, shall be transferred to the Clerk of Court and shall be held by the same until the matter is finally resolved.

(b) - (d) [unchanged]

**Source:** . . . (a) amended by PL 15-108 § 6.

**Commission Comment:** . . .

For more information regarding PL 15-108, effective on January 1, 2008, see comment to 3 CMC § 4401.

## Article 5. Foreign Investment Certificate.

**§ 5953. Foreign Investment Certificate; Application Process.**

(a) [unchanged]

(b) [deleted]

**Source:** . . . (b) deleted by PL 17-1 § 6(F)(1) (March 22, 2010).*

**Commission Comment:** . . .*PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

**§ 5957. Foreign Investment Certificate; Revocation of Certificate.**

(a)(1)-(6) [unchanged]

The secretary shall either take steps to secure correction of any insufficiency or non-compliance, or revoke the certificate of foreign investment, the alien investor shall be afforded a six-month grace period following termination or revocation of his certificate, in order to take steps necessary to liquidate, transfer or otherwise dispose of assets connected with the alien investor's approved investment activity. ~~The secretary shall inform the Secretary of Labor and Immigration in writing of his decision to revoke and/or deny renewal of the certificate of foreign investment, and compute the six-month's grace period date commencing from the date of denial and/or revocation. The alien investor's foreign investment visa (and any visas held by members of his immediate family) shall be valid up to and including the final day of the six-month grace period following termination of the certificate of foreign investment.~~

**Source:** . . . last paragraph amended by PL 17-1 § 6(F)(2) (March 22, 2010).*

**Commission Comment:** *PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

## CHAPTER 10. FOREIGN RETIREE INVESTMENT CERTIFICATE.

. . .

§ 50106. Reports. [Deleted by PL 17-1 § 6(G)(2)]

**§ 50103. Certification; Identification Card.**

After the alien applicant has submitted all documentation set forth in this Chapter, and fees as required, and is, based on a review of such documentation, determined by the secretary to be eligible for a foreign retiree investment certificate, the secretary shall issue an "Approval Letter" and identification card to the applicant which shall be evidence of a foreign retiree investment certificate. The secretary shall issue an identification card to each qualified dependent of a holder of a foreign retiree investment certificate; provided that the eligibility status of a dependent is subject to the eligibility status of the holder of a foreign retiree investment certificate, except as provided under 4 CMC § 50107. ~~The secretary shall certify to the director of immigration that the applicant is eligible for a foreign retiree investment visa.~~

**Source:** . . . PL 17-1 § 6(G)(1) (March 22, 2010).*

**Commission Comment:** . . .*PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

### § 50106. Reports. [Deleted by PL 17-1 § 6(G)(2)]

**Source:** . . . deleted by PL 17-1 § 6(G)(2) (March 22, 2010).*

**Commission Comment:** *PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

## CHAPTER 14. NORTHERN MARIANA ISLANDS FREE TRADE ZONE ACT.

### § 51109. Disclosure of Proprietary Information to Unauthorized Persons Prohibited.

Except with the consent of a licensee or as authorized by law, no officer, agent, consultant, employee or attorney of the Authority, or any customs ~~or immigration~~ officer assigned to a free trade zone shall disclose any proprietary information or business trade secrets to a third party that may have come to his knowledge in the course of his duty.

**Source:** . . . PL 17-1 § 6(H) (March 22, 2010).*

**Commission Comment:** *PL 17-1 contained the following section regarding the effective date of the law:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

## CHAPTER 18. STATUTORY LIENS. [New chapter]

### Article 1. Miscellaneous Provisions.

### § 51501. Definitions.

Unless the context otherwise requires, the words and terms defined in this chapter shall have the following meanings:

(a) *Commonwealth*. "Commonwealth" means Commonwealth of the Northern Mariana Islands.

(b) *Court*. "Court" means the Commonwealth of the Northern Mariana Islands Superior Court.

(c) *Lien*. "Lien" means a legal right or interest that a creditor has in another's property,

lasting usually until a debt or duty that is secured is satisfied.

(d) *Lien holder*. "Lienholder" means a person having or owning a lien.

(e) *Person*. "Person" means any individual, corporation, partnership, association, business trust, firm, company, joint venture company, or limited liability company.

**Source:** PL 15-117, § 2(51401).

**Commission Comment:** PL 15-117, enacted on November 29, 2007, included severability and savings provisions and the following:

Section 1. Short Title. This Act may be cited as the Statutory Liens Act of 2006.

Section 2. Findings and Purpose. The Legislature finds that many business establishments repair or perform work on jewelry, watches, appliances, equipment, instruments, and vehicles which are often abandoned and not paid for by the owners. As a result, these businesses are left with unwanted articles and unpaid invoices as well as the inability to sell such articles and vehicles to recover their losses.

The Legislature further finds that the Commonwealth hospitals, which comprise the Commonwealth Health Center, Tinian Health Center, and Rota Health Center are inundated with millions of dollars worth of unpaid medical bills and paid Medicaid expenses provided to individuals. Collection of such bills and expenses has been tedious and often unsuccessful. Establishing liens of hospitals and liens to recover benefits paid to Medicaid would assist the Commonwealth hospitals in collecting unpaid medical bills.

The purpose of this legislation is to establish statutory liens to assist businesses [to] recover losses stemming from unpaid repairs and work performed on articles and vehicles, and to assist the hospitals in the collection of unpaid medical bills and to recover benefits paid to Medicaid.

## Article 2. Jewelry, Watch, Appliance, Radio, Equipment, & Instrument Liens

### § 51502. Lien for Work and Material Furnished: Notice; Sale; Application of Proceeds; Lienholder may Waive Lien and Sue for Amount Due.

(a) Every person engaged in performing work upon any watch, clock or jewelry, major appliance, radio, electronic equipment, musical instrument, furniture, photograph, artwork, sports equipment and photography equipment, for a price, shall have a lien upon such article or articles for the amount of any account that may be due for the work done thereon. The lien shall also include the value or agreed price, if any, of all materials furnished by the lienholder in connection with the work.

(b) If any account for work done or materials furnished shall remain unpaid for one year after completing the work, the lienholder may, upon 30 days' notice in writing to the owner specifying the amount due and informing him that the payment of the amount due within 30 days will entitle him to redeem the property, sell any such article or articles at public or bona fide private sale to satisfy the account.

(c) The notice may be served by registered or certified mail with return receipt demanded, directed to the owner's last known address, or, if the owner or his address be unknown, it may be posted in two public places in the island where the property is located.

(d) The proceeds of the sale, after paying the expenses thereof, shall first be applied to liquidate the indebtedness secured by the lien, and the balance, if any, shall be paid over to the owner.

(e) Nothing contained in this section shall be construed as preventing the lienholder from waiving the lien herein provided for, and suing upon the amount if he elects to do so.

**Source:** PL 15-117, § 2(51402), modified.

**Commission Comment:** The commission removed figures that repeated words pursuant to 1 CMC

§ 3806(e).

**Article 3. Liens for Cleaning, Pressing, Glazing or Washing Garments, Clothing, Wearing Apparel or Household Goods.**

§ 51503. Lien upon Garments, Clothing, Wearing Apparel or Household Goods for Amount of Account Due; Lien to Include Value or Agreed Price of Materials Furnished.
§ 51504. Liens for Work Done and for Storage by Agreement; Exemption of Warehousemen.
§ 51505. Sales by Lienholders After Notice.
§ 51506. Service or Posting of Notice; Disposition of Proceeds of Sale.
§ 51507. Waiver of Lien; Action Upon Amount.
§ 51508. Notices to be Posted in Business Establishments.
§ 51510. Bureau of Motor Vehicles: Adoption of Regulations to Ensure Compliance with Laws Relating to Processing of Liens.

**§ 51503. Lien upon Garments, Clothing, Wearing Apparel or Household Goods for Amount of Account Due; Lien to Include Value or Agreed Price of Materials Furnished.**

Every person engaged in cleaning, pressing, glazing or washing garments, clothing, wearing apparel or household goods for a price shall have a lien upon the garments, clothing, wearing apparel or household goods for the amount of any account that may be due for the work done thereon, where such account is not paid for 90 days or more after completion of such work. The lien shall also include the value or agreed price, if any, of all materials furnished by the lienholder in connection with the work.

**Source:** PL 15-117, § 2(51403).

**§ 51504. Liens for Work Done and for Storage by Agreement; Exemption of Warehousemen.**

Every person, firm or corporation engaged in cleaning, pressing, glazing or washing garments, clothing, wearing apparel or household goods which are placed in storage by agreement shall have a lien upon the garments, clothing, wearing apparel or household goods for the amount of any account that may be due for the work done thereon, and for storage, where the account is not paid for 12 months or more after completion of such work. The lien shall also include the value or agreed price, if any, of all materials furnished by the lienholder in connection with the work. Persons operating as warehouses or warehousemen shall not be affected by this section.

**Source:** PL 15-117, § 2(51404), modified.

**Commission Comment:** The commission changed "person" to "persons" to correct a manifest error in the last sentence of this section pursuant to 1 CMC § 3806(g).

**§ 51505. Sales by Lienholders After Notice.**

If any account for work done or materials furnished remains unpaid for 90 days or more after completion of the work, or if the articles are placed in storage, and the charges for storage and for work done and materials furnished remain unpaid for 12 months or more, the lienholder may, upon 30 days notice in writing to the owner specifying the amount due and informing him that the payment of the

amount due within 30 days will entitle him to redeem the property, sell any such article or articles at public or bona fide private sale to satisfy the account.

**Source:** PL 15-117, § 2(51405).

**§ 51506. Service or Posting of Notice; Disposition of Proceeds of Sale.**

The notice may be served by registered or certified mail, with return receipt requested, directed to the owner's last known address, or, if the owner or his address is unknown, it may be posted in a prominent place in the receiving office of the person who is the lienholder. The proceeds of the sale, after paying the expenses thereof, shall first be applied to liquidate the indebtedness secured by the lien, and the balance, if any, shall be paid over to the owner of the property.

**Source:** PL 15-117, § 2(51406).

**§ 51507. Waiver of Lien; Action Upon Amount.**

Nothing contained in this article, shall be construed as preventing the lienholder from waiving the lien herein provided for, and suing upon the amount if he elects to do so.

**Source:** PL 15-117, § 2(51407).

**§ 51508. Notices to be Posted in Business Establishments.**

The following notices shall be posted in the business establishments of each person engaged in cleaning, pressing, glazing or washing garments, clothing, wearing apparel or household goods, and wishing to take advantage of this article in a prominent place in its receiving office at all times:

(a) "All articles cleaned, pressed, glazed, laundered, washed, altered or repaired which are not called for within 90 days will be sold to pay charges."

(b) "All articles stored by agreement, where charges have not been paid for 12 months, will be sold to pay charges."

**Source:** PL 15-117, § 2(51408).

**Article 4. Liens for Storage, Maintenance, Keeping or Repair of Vehicles or Trailers.**

§ 51509. Definitions.
§ 51510. Bureau of Motor Vehicles: Adoption of Regulations to Ensure Compliance with Laws Relating to Processing of Liens.
§ 51511. Lien for Labor, Materials, Storage or Services; Detention of Vehicle, Trailer, Equipment or Parts.
§ 51512. Notice.
§ 51513. Lienholder's Right Not Lost when Motor Vehicle, Heavy Equipment Vehicle, Motor Bus, Motor Carrier, Motorcycle, Moped, Motor Scooter, Motor Equipment, or Trailer Removed from his Control.
§ 51514. Priority of Lien.
§ 51515. Lien Does Not Deprive Claimant of Other Legal Remedies; Liability of Insurance Company for Cost of Repair and Towing of Vehicle Upon Notice.
§ 51516. Satisfaction of Lien; Sale by Auction; Disposition of Proceeds.
§ 51517. Payment of Lien and Expenses Before Sale; Delivery of Property.
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§ 51519. Liability of Claimant for Failure to Redeliver.

§ 51520. Validity of Lien May Be Contested; Liability of Claimant After Sale.
§ 51521. Administrative Fine for Violations of this Article, or Related Regulation; Deposit of Fines; Enforcement Proceedings.
§ 51522. Penalty for Incurring Bill Without Authority or by Misrepresentation.

**§ 51509. Definitions.**

Unless the context otherwise requires, the words and terms defined in this article shall have the following meanings:

(a) *Bureau*. "Bureau" means the Bureau of Motor Vehicles.

(b) *Heavy equipment vehicle*. "Heavy equipment vehicle" means any motor vehicle weighing over a gross weight of 2.5 tons and manufactured with an open area separate from the driver's compartment and designed primarily for the transportation of property.

(c) *Legal owner*. "Legal owner" means the person in whom the ownership or title of the property is vested or who has a legal right to possession of the property.

(d) *Moped*. "Moped" means a motor-driven vehicle designed to travel on not more than three wheels in contact with the ground, with or without pedals to permit propulsion by human power, and with a motor or engine size of less than 50 cubic centimeters.

(e) *Motor bus*. "Motor bus" means a motor vehicle operated for the carriage of passengers for hire or a school bus which is designed to carry more than eight passengers.

(f) *Motor carrier*. "Motor carrier" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:*

(g) *Motorcycle*. "Motorcycle" means a motor vehicle, other than a bicycle, moped, motor scooter, or tractor, designed to travel on not more than three wheels in contact with the ground with an engine size greater than 250 cubic centimeters.

(h) *Motor scooter*. "Motor Scooter" means a motor vehicle designed to travel on not more than three wheels in contact with the ground, with an engine size greater than 50 cubic centimeters but less than 250 cubic centimeters, and with a step-through frame.

(i) *Motor vehicle*. "Motor vehicle" means a device in, upon or by which any person or property is or may be propelled, moved or drawn upon a highway.

(j) *Registered owner*. "Registered owner" means a person whose name appears in the files of the Bureau of Motor Vehicles as the person to whom the vehicle or trailer is registered.

(k) *Trailer*. "Trailer" means a vehicle designed for carrying persons or property on its own structure and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon any other vehicle.

*As stated in original.

**Source:** PL 15-117, § 2(51409).

**§ 51510. Bureau of Motor Vehicles: Adoption of Regulations to Ensure Compliance with Laws Relating to Processing of Liens.**

The Bureau of Motor Vehicles may adopt such regulations as it deems necessary to ensure compliance with all applicable laws relating to the processing of liens for storing, maintaining, keeping or repairing vehicles required to be registered with the Bureau of Motor Vehicles.

**Source:** PL 15-117, § 2(51410).

**§ 51511. Lien for Labor, Materials, Storage or Services; Detention of Vehicle, Trailer,**

**Equipment or Parts.**

(a) A person engaged in the business of:

(1) Buying or selling vehicles; or

(2) Keeping a garage or place for the storage, maintenance, keeping or repair of motor vehicles, heavy equipment vehicle, motor bus, motor carrier, motorcycles, mopeds, motor scooters, motor equipment, or trailers;

And who in connection therewith stores, maintains, keeps or repairs any motor vehicle, heavy equipment vehicle, motor bus, motor carrier, motorcycle, moped, motor scooter, motor equipment, or trailer, or furnishes accessories, facilities, services or supplies therefor, at the request or with the consent of the owner or his representatives, or at the direction of any peace officer or other authorized person who orders the towing or storage of any vehicle through any action permitted by law, has a lien upon the motor vehicle, motorcycle, motor equipment, trailer, or any part or parts thereof for the sum due for the towing, storing, maintaining, keeping or repairing of the motor vehicle, heavy equipment vehicle, motor bus, motor carrier, motorcycle, moped, motor scooter, motor equipment, or trailer, or for labor furnished thereon, or for furnishing accessories, facilities, services or supplies therefor, and for all costs incurred in enforcing such a lien.

(b) Any person who is entitled to a lien as provided in subsection (a) may, without process of law, detain the motor vehicle, heavy equipment vehicle, motor bus, motor carrier, motorcycle, moped, motor scooter, motor equipment, or trailer at any time it is lawfully in his possession until the sum due to him is paid.

**Source:** PL 15-117, § 2(51411).

**§ 51512. Notice.**

(a) Except as otherwise provided in subsection (b), the notice of a lien must be given by delivery in person or by registered or certified letter addressed to the last known place of business or abode of:

(1) The legal owner and registered owner of the property.

(2) Each person who holds a security interest in the property.

If no address is known, the notice must be addressed to that person at the place where the lien claimant has his place of business.

(b) The notice must contain:

(1) An itemized statement of the claim, showing the sum due at the time of the notice and the date when it became due.

(2) A brief description of the motor vehicle, heavy equipment vehicle, motor bus, motor carrier, motorcycle, moped, motor scooter, motor equipment, or trailer against which the lien exists.

(3) A demand that the amount of the claim as stated in the notice, and of any further claim as may accrue, must be paid on or before a day mentioned.

(4) A statement that unless the claim is paid within the time specified the motor vehicle, heavy equipment vehicle, motor bus, motor carrier, motorcycle, moped, motor scooter, motor equipment, or trailer will be advertised for sale, and sold by auction at a specified time and place.

(c) The lienholder shall determine a day for the purposes of the demand in subsection (b)(3). The day mentioned must be:

(1) Not less than 10 days after the delivery of the notice if it is personally delivered; or

(2) Not less than 10 days after the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail.

**Source:** PL 15-117, § 2(51412).

**§ 51513. Lienholder's Right Not Lost when Motor Vehicle, Heavy Equipment Vehicle, Motor Bus, Motor Carrier, Motorcycle, Moped, Motor Scooter, Motor Equipment, or Trailer Removed from his Control.**

Any person who acquires a lien pursuant to 4 CMC § 51511 does not lose the lien by allowing the motor vehicle, heavy equipment vehicle, motor bus, motor carrier, motorcycle, moped, motor scooter, motor equipment, or trailer to be removed from control of the person having the lien.

**Source:** PL 15-117, § 2(51413), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(c).

**§ 51514. Priority of Lien.**

If property that is the subject of a lien which is acquired as provided in this article is the subject of a secured transaction in accordance with the laws of the Commonwealth, the lien:

(a) In the case of a lien on a motor vehicle, heavy equipment vehicle, motor bus, motor carrier, motorcycle, moped, or motor scooter for charges for towing, storing and any related administrative fees:

(1) For the first 30 days of the lien:

(i) If the amount of the lien does not exceed $1,000, is a first lien.

(ii) If the amount of the lien exceeds $1,000, is a second lien.

(2) After the first 30 days of the lien:

(i) If the amount of the lien does not exceed $2,500, is a first lien.

(ii) If the amount of the lien exceeds $2,500, is a second lien.

(b) In all other cases, if the amount of the lien:

(1) Does not exceed $1,000, is a first lien.

(2) Exceeds $1,000, is a second lien.

**Source:** PL 15-117, § 2(51414), modified.

**§ 51515. Lien Does Not Deprive Claimant of Other Legal Remedies; Liability of Insurance Company for Cost of Repair and Towing of Vehicle Upon Notice.**

(a) The lien created pursuant to 4 CMC § 51511 does not deprive the lien claimant of any remedy allowed by law to a creditor against his debtor for the collection of all charges and advances which he has made in connection with any work or services, or supplies, facilities or accessories furnished for, on or about any motor vehicle, heavy equipment vehicle, motor bus, motor carrier, motorcycle, moped, motor scooter, motor equipment, or trailer pursuant to an expressed or implied contract between the lien claimant and the owner, or the representative of the owner, of the motor vehicle, heavy equipment vehicle, motor bus, motor carrier, motorcycle, moped, motor scooter, motor equipment, or trailer.

(b) Any insurance company, having outstanding and in effect appropriate insurance coverage therefor, which has been given notice in writing of a debt or obligation incurred for the towing or repair of any motor vehicle damaged by an insured of the company for which the insured is legally responsible becomes, subject to the conditions and provisions of the insurance policy, indebted

to the claimant for such towing or repair services, for the reasonable expenses incurred for towing or repair of the vehicle, if the claimant has given notice to the company or its agent at least 3 days before the date of any settlement or award effected by the company in connection therewith.

(c) In determining the amount of the indebtedness for towing or repairing a damaged vehicle identified in subsection (b), the insurance company is not responsible for any sum of money over and above the sum of:

(1) The entire settlement or award; or

(2) The entire amount of the property damage coverage of the policy, whichever is less.

(d) Any payment made by the company pursuant to this section relieves the company from further liability in connection with towing or repairing of the damaged vehicle.

**Source:** PL 15-117, § 2(51415), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(c), (f) and (g). The commission changed a reference number to agree with the renumbered section, corrected manifest errors and changed capitalization. Specifically, the commission changed "§ 51411 this article not deprive" to "4 CMC § 51511 does not deprive."

**§ 51516. Satisfaction of Lien; Sale by Auction; Disposition of Proceeds.**

The lien created in 4 CMC § 51511 may be satisfied as follows:

(a) The lien claimant shall give written notice to the person on whose account the storing, maintaining, keeping, repairing, labor, fuel, supplies, facilities, services or accessories were made, done or given, and to any other person known to have or to claim an interest in the motor vehicle, heavy equipment vehicle, motor bus, motor carrier, motorcycle, moped, motor scooter, motor equipment, or trailer, upon which the lien is asserted, and to the Bureau of Motor Vehicles with regard to all other items included in this section.

(b) In accordance with the terms of a notice so given, a sale by auction may be held to satisfy any valid claim which has become a lien on the motor vehicle, heavy equipment vehicle, motor bus, motor carrier, motorcycle, moped, motor scooter, motor equipment, or trailer. The sale must be held in the place where the lien was acquired, or, if that place is manifestly unsuitable for the purpose, at the nearest suitable place.

(c) After the time for the payment of the claim specified in the notice has elapsed, an advertisement of the sale, describing the motor vehicle, heavy equipment vehicle, motor bus, motor carrier, motorcycle, moped, motor scooter, motor equipment, or trailer to be sold, and stating the name of the owner or person on whose account it is held, and the time and place of the sale, must be published once a week for 3 consecutive weeks in a newspaper published in the place where the sale is to be held, but if no newspaper is published in that place, then in a newspaper published in the Commonwealth that has a general circulation in that place. The sale must not be held less than 22 days after the time of the first publication.

(d) From the proceeds of the sale the lien claimant who furnished the services, labor, fuel, accessories, facilities or supplies shall satisfy his lien, including the reasonable charges of notice, advertisement and sale. The balance, if any, of the proceeds must be delivered, on demand, to the person to whom he would have been bound to deliver, or justified in delivering, the motor vehicle, heavy equipment vehicle, motor bus, motor carrier, motorcycle, moped, motor scooter, motor equipment, or trailer.

**Source:** PL 15-117, § 2(51416), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(c) by changing a reference number to agree with the renumbered section.

**§ 51517. Payment of Lien and Expenses Before Sale; Delivery of Property.**

At any time before the motor vehicle, heavy equipment vehicle, motor bus, motor carrier, motorcycle, moped, motor scooter, motor equipment, or trailer is so sold, any person claiming a right of property or possession therein may pay the lien claimant the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The lien claimant shall deliver the motor vehicle, heavy equipment vehicle, motor bus, motor carrier, motorcycle, moped, motor scooter, motor equipment, or trailer to the person making the payment if he is a person entitled to the possession of the property on payment of the charges thereon.

**Source:** PL 15-117, § 2(51417).

**§ 51518. Remedy for Enforcing Lien Does Not Preclude Other Remedies.**

The remedy for enforcing the lien pursuant to this article does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the lienholder's claim as is not paid by the proceeds of the sale of the property.

**Source:** PL 15-117, § 2(51418).

**§ 51519. Liability of Claimant for Failure to Redeliver.**

After goods have been lawfully sold to satisfy the lien created pursuant to this article, the lien claimant is not liable for failure to deliver the motor vehicle, motorcycle, motor equipment, or trailer.

**Source:** PL 15-117, § 2(51419).

**§ 51520. Validity of Lien May Be Contested; Liability of Claimant After Sale.**

Nothing contained in this article precludes:

(a) The owner of any motor vehicle, heavy equipment vehicle, motor bus, motor carrier, motorcycle, moped, motor scooter, motor equipment, or trailer; or

(b) Any other person having an interest or equity in the property,

From contesting the validity of the lien. All legal rights and remedies otherwise available to the person are reserved to and retained by him, except that, after a sale has been made to an innocent third party, the lien claimant is solely responsible for loss or damage occasioned the owner, or any other person having an interest or equity in the property, by reason of the invalidity of the lien, or by reason of failure of the lien claimant to proceed in the manner provided in those sections.

**Source:** PL 15-117, § 2(51420).

**§ 51521. Administrative Fine for Violations of this Article, or Related Regulation; Deposit of Fines; Enforcement Proceedings.**

(a) The Bureau may impose an administrative fine, not to exceed $2,500, for a violation of any provision of this article, relating to vehicles required to be registered with the Bureau or any regulation adopted by the Bureau pursuant thereto. The Bureau shall afford to any person so fined an opportunity for a hearing pursuant to the provisions of the Commonwealth Administrative Procedure Act, as set forth at 1 CMC §§ 9101 *et seq.*

(b) All administrative fines collected by the Bureau of Motor Vehicles pursuant to subsection (a) shall be deposited in the Commonwealth General Fund with the Division of Treasury.

(c) In addition to any other remedy provided by this article, the Bureau may compel compliance with this section and any provision of this article, relating to vehicles required to be registered with the Bureau, and any regulation adopted by the Bureau pursuant thereto, by injunction or other appropriate remedy and the Bureau may institute and maintain in the name of the Commonwealth any such enforcement proceedings.

**Source:** PL 15-117, § 2(51421).

**§ 51522. Penalty for Incurring Bill Without Authority or by Misrepresentation.**

Any person who incurs a bill upon a motor vehicle, heavy equipment vehicle, motor bus, motor carrier, motorcycle, moped, motor scooter, motor equipment, or trailer without the authority of the owner thereof, or by misrepresentation, is guilty of a misdemeanor punishable by imprisonment of not more than six months or a fine of not more than $500, or both.

**Source:** PL 15-117, § 2(51422).

**Article 5. Liens on Vessels and Watercrafts.**

§ 51523. Vessel Defined.
§ 51524. Extent of Lien; Detention of Vessel; Priority of Claims.
§ 51525. Right of Lienholder Not Lost When Vessel Removed from his Control; Seizure Without Process of Law.
§ 51526. Lien Does Not Deprive Lienholder of Other Remedy.
§ 51527. Satisfaction of Lien: Notice; Sale by Auction; Disposition of Proceeds.
§ 51528. Payment of Lien and Expenses Before Sale.
§ 51529. Remedy for Enforcing Lien Does Not Preclude Other Remedies.
§ 51530. Lawful Sale Releases Lienholder.
§ 51531. Validity of Lien May Be Contested; Responsibility of Lienholder to Owner After Sale to Third Person.
§ 51532. Penalty for Incurring Bill Without Authority or by Misrepresentation.

**§ 51523. Vessel Defined.**

"Vessel" includes every description of water-craft, other than a seaplane on the water, used or capable of being used as a means of transportation on the water.

**Source:** PL 15-117, § 2(51423).

**§ 51524. Extent of Lien; Detention of Vessel; Priority of Claims.**

(a) A vessel in the Commonwealth is subject to a lien for wages due to persons employed, for work done or services rendered on board the vessel.

(b) A person engaged in the business of buying or selling or keeping a shop or place for the storage, maintenance, keeping or repair of vessels or rental of spaces for vessels and who in connection therewith stores, maintains, keeps or repairs a vessel or furnishes accessories, facilities, services or supplies therefor, at the request or with the consent of the owner or his representative, or at the

direction of any peace officer or other authorized person who orders the towing or storage of a vessel through any action permitted by law, has a lien upon the vessel or any part or parts thereof for the sum due for towing, storing, maintaining, keeping or repairing the vessel or for labor furnished thereon, or for furnishing accessories, facilities, services or supplies therefor, and for all costs incurred in enforcing the lien.

(c) Any person entitled to a lien as provided in subsection (a) or (b) may, without process of law, detain the vessel at any time it is lawfully in his possession until the sum due to him is paid.

(d) The liens described in subsection (a) have priority over the liens described in subsection (b).

**Source:** PL 15-117, § 2(51424).

**§ 51525. Right of Lienholder Not Lost When Vessel Removed from his Control; Seizure Without Process of Law.**

(a) A holder of a lien pursuant to 4 CMC § 51524 does not lose his lien by reason of allowing the vessel to be removed from his control.

(b) In case a vessel is so removed, the lienholder may, without further process of law, seize the vessel wherever it may be found within the Commonwealth.

(c) Amount by which lien exceeds $1,000 is secondary to perfected security interest. To the extent that a lien or the aggregate of several liens acquired as provided in this article exceeds $1,000, it is secondary to a perfected security interest in the vessel.

**Source:** PL 15-117, § 2(51425), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(c) by changing a reference number to agree with the renumbered section.

**§ 51526. Lien Does Not Deprive Lienholder of Other Remedy.**

A lien created pursuant to 4 CMC § 51524, does not deprive the holder of any other remedy allowed by law for the collection of charges and advances which he has made in connection with work or services, or supplies, facilities or accessories furnished for, on or about a vessel pursuant to an express or implied contract between the lienholder and the owner, or a representative of the owner, of the vessel.

**Source:** PL 15-117, § 2(51426), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(c) by changing a reference number to agree with the renumbered section.

**§ 51527. Satisfaction of Lien: Notice; Sale by Auction; Disposition of Proceeds.**

A lien created pursuant to 4 CMC § 51524 may be satisfied as follows:

(a) The lienholder shall give written notice to the person on whose account the charges secured by the lien were incurred and to any other person known to have or claim an interest in the vessel upon which the lien is asserted.

(b) The notice must be given by delivery in person or by registered or certified letter addressed to the last known place of business or abode of the person or persons to be notified, and if no address is known then addressed to the person or persons at the place where the lienholder has his place of business.

(c) The notice must contain:

(1) A statement of the claim, showing the sum due at the time of the notice and the date or dates when it became due.

(2) A description of the vessel against which the lien exists.

(3) A demand that the amount of the claim as stated in the notice, and of such further claim as may accrue, must be paid on or before a day mentioned.

(4) A statement that unless the claim is paid within the time specified the vessel will be advertised for sale, and sold by auction at a specified time and place.

(d) The lienholder shall determine a day for the purposes of the demand in subsection (c)(3). The day mentioned must be:

(1) Not less than 10 days after the delivery of the notice if it is personally delivered; or

(2) Not less than 10 days after the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail.

(e) In accordance with the terms of a notice so given, a sale by auction may be held to satisfy any valid claim which has become a lien on the vessel. The sale must be held in the place where the lien was acquired, or, if the place is manifestly unsuitable for the purpose, at the nearest suitable place.

(f) After the time for the payment of the claim specified in the notice has elapsed, an advertisement of the sale, describing the boat or vessel to be sold, and stating the name of the owner or person on whose account the sale is held, and the time and place of the sale, must be published once a week for 3 consecutive weeks in a newspaper published in the place where the sale is to be held, but if no newspaper is published in that place then in a newspaper having a general circulation in that place. The sale must not be held less than 22 days from the time of the first publication.

(g) From the proceeds of the sale the lienholder shall satisfy his lien, including the reasonable charges of notice, advertisement and sale. The balance, if any, of the proceeds must be delivered, on demand, to the person to whom he would have been bound to deliver, or justified in delivering, the vessel.

**Source:** PL 15-117, § 2(51427), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(c) by changing a reference number to agree with the renumbered section.

**§ 51528. Payment of Lien and Expenses Before Sale.**

At any time before a vessel is so sold, any person claiming a right of property or possession therein may pay the lienholder the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of payment. The lienholder shall deliver the vessel to the person making payment, if he is a person entitled to the possession of the vessel, on payment of the charges thereon.

**Source:** PL 15-117, § 2(51428).

**§ 51529. Remedy for Enforcing Lien Does Not Preclude Other Remedies.**

The remedy for enforcing the lien pursuant to 4 CMC § 51524 does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the lienholder's claim as is not paid by the proceeds of the sale of the property.

**Source:** PL 15-117, § 2(51429), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(c) by changing a reference number to agree with the renumbered section.

**§ 51530. Lawful Sale Releases Lienholder.**

After a vessel has been lawfully sold to satisfy a lien created pursuant to 4 CMC § 51524 the lienholder is not liable for failure to deliver the vessel to a previous owner or claimant.

**Source:** PL 15-117, § 2(51430), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(c) by changing a reference number to agree with the renumbered section.

**§ 51531. Validity of Lien May Be Contested; Responsibility of Lienholder to Owner After Sale to Third Person.**

This article does not preclude the owner of a vessel, or preclude any other person having an interest or equity in the vessel, from contesting the validity of a lien, and for this purpose all legal rights and remedies that such a person would otherwise have are reserved to and retained by him; but after a sale has been made to an innocent third party the lienholder is solely responsible for loss or damage occasioned the owner, or any other person having an interest or equity in the property, by reason of the invalidity of the lien, or by reason of failure of the lienholder to proceed in the manner provided in those sections.

**Source:** PL 15-117, § 2(51431).

**§ 51532. Penalty for Incurring Bill Without Authority or by Misrepresentation.**

A person who incurs a bill upon a vessel without the authority of the owner thereof, or by misrepresentation, is guilty of a misdemeanor punishable by imprisonment of not more than one year or a fine of not more than $500, or both.

**Source:** PL 15-117, § 2(51432).

**Article 6. Liens of Owners of Facilities For Storage**.

§ 51533. Definitions.
§ 51534. Use of Facility for Residence Prohibited; Eviction; Nature of Facility; Effect of Issuance of Document of Title for Property.
§ 51535. Lien of Owner of Facility; Priority of Lien Created by Document of Title.
§ 51536. Contents of Rental Agreement.
§ 51537. Unpaid Charges: Termination of Occupant's Right to Use Space; Notice; Imposition of Lien.
§ 51538. Owner's Remedies Upon Nonpayment of Charges; Notice of Sale; Limit on Earliest Time for Sale.
§ 51539. Occupant's Declaration of Opposition to Sale.
§ 51540. Sale of Occupant's Property by Owner: Advertisement; Manner; Distribution of Proceeds.
§ 51541. Claim of Property Subject to Security Interest.

§ 51542. Satisfaction of Lien by Person Claiming Interest in Property.
§ 51543. Action to Enforce Lien; Enforcement of Judgment; Stay of Enforcement Pending Appeal.
§ 51544. Purchaser of Property at Sale to Satisfy Lien or Enforce Judgment Takes Free of Occupant's Interest.

**§ 51533. Definitions.**

Unless the context otherwise requires, the words and terms defined in this article shall have the following meanings:

(a) *Facility*. "Facility" means real property divided into individual spaces for storing personal property which are rented or leased to individual occupants and to which the individual occupant has access. The term does not include a garage or storage area in a private residence.

(b) *Occupant.* "Occupant" includes a person, his sublessee, successor or assignee who is entitled to the exclusive use of a space for storage at a facility pursuant to a rental agreement.

(c) *Owner.* "Owner" includes a lessor, operator or other person authorized by the owner to manage a facility, enter into rental agreements with occupants and collect rent from occupants.

(d) *Personal property*. "Personal property" means any property not affixed to land and includes goods, merchandise, furniture and household items.

(e) *Rental agreement*. "Rental agreement" means any written agreement or lease establishing or modifying the terms, conditions or rules concerning the use and occupancy of an individual space in a facility.

**Source:** PL 15-117, § 2(51433).

**§ 51534. Use of Facility for Residence Prohibited; Eviction; Nature of Facility; Effect of Issuance of Document of Title for Property.**

(a) A person shall not use a facility for a residence. The owner of such a facility shall evict any person who uses the facility as a residence.

(b) A facility shall not be deemed to be a warehouse or a public utility.

**Source:** PL 15-117, § 2(51434).

**§ 51535. Lien of Owner of Facility; Priority of Lien Created by Document of Title.**

(a) The owner of a facility and his heirs, assignees or successors have a lien on all personal property located at the facility for the rent, labor or other charges incurred by the owner pursuant to a rental agreement and for those expenses necessarily incurred by the owner to preserve, sell or otherwise dispose of the personal property.

(b) Any lien created by a document of title for a motor vehicle or vessel has priority over a lien attaching to that motor vehicle or boat pursuant to this article.

**Source:** PL 15-117, § 2(51435).

**§ 51536. Contents of Rental Agreement.**

(a) Each rental agreement must be in writing and must contain:

(1) A provision printed in a size equal to at least 10-point type that states, "IT IS UNLAWFUL TO USE THIS STORAGE FACILITY AS A RESIDENCE."

(2) A statement that the occupant's personal property will be subject to a claim for a

lien and may be sold to satisfy that lien if the rent or other charges described in the rental agreement remain unpaid for 14 consecutive days.

(b) If any provision of the rental agreement provides that an owner, lessor, operator, manager or employee of the facility, or any combination thereof, is not liable, jointly or severally, for any loss or theft of personal property stored in the facility, the provision is unenforceable unless:

(1) The rental agreement contains a statement advising the occupant to purchase insurance for his personal property stored in the facility and informing him that such insurance is available through most insurers;

(2) The provision and the statement are:

(i) Printed in all capital letters or, if the rental agreement is printed in all capital letters, printed in all capital letters and boldface type, italic type or underlined type; and

(ii) Printed in a size equal to at least 10-point type or, if the rental agreement is printed in 10-point type or larger, printed in type that is at least 2 points larger than the size of type used for other provisions of the rental agreement; and

(3) The provision is otherwise enforceable pursuant to the laws of this state.

(c) This article does not apply and the lien for charges for storage do not attach unless the rental agreement contains a space for the occupant to provide the name and address of an alternative person to whom the notices under those sections may be sent. The occupant's failure to provide an alternative address does not affect the owner's remedies under those sections.

(d) The parties may agree in the rental agreement to additional rights, obligations or remedies other than those provided by this article. The rights provided in those sections are in addition to any other rights of a creditor against his debtor.

**Source:** PL 15-117, § 2(51436).

**§ 51537. Unpaid Charges: Termination of Occupant's Right to Use Space; Notice; Imposition of Lien.**

(a) If any charges for rent or other items owed by the occupant remain unpaid for 14 days or more, the owner may terminate the occupant's right to use his individual space for storage at the facility not less than 14 days after sending a notice by certified mail to the occupant, at his last address and to the alternative address provided by the occupant in the rental agreement. The notice must contain:

(1) An itemized statement of the amount owed by the occupant at the time of the notice and the date when the amount became due;

(2) The name, address and telephone number of the owner or his agent;

(3) A statement that the occupant's right to use the space for storage will terminate on a specific date unless the occupant pays the amount owed to the owner; and

(4) A statement that upon the termination of the occupant's right to occupy the space and after the date specified in the notice, an owner's lien pursuant to 4 CMC § 51535, will be imposed.

(b) For the purposes of this section, "last known address" means the address provided by the occupant in the most recent rental agreement between the owner and occupant, or the address provided by the occupant in a written notice sent to the owner with a change of the occupant's address after the execution of the rental agreement.

**Source:** PL 15-117, § 2(51437), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(c) by changing a reference number to agree with the renumbered section.

**§ 51538. Owner's Remedies Upon Nonpayment of Charges; Notice of Sale; Limit on Earliest Time for Sale.**

(a) After the notice of the lien is mailed by the owner, if the occupant fails to pay the total amount due by the date specified in the notice, the owner may:

(1) Deny the occupant access to his space for storage; and

(2) Enter the space and remove the personal property within it to a safe place.

(b) The owner shall send the occupant a notice of a sale to satisfy the lien by certified mail to the occupant at his last known address and to the alternative address provided by the occupant in the rental agreement at least 14 days before the sale. The notice must contain:

(1) A statement that the occupant may no longer use the space for storage and no longer has access to his personal property stored therein;

(2) A statement that the personal property of the occupant is subject to a lien and the amount of the lien;

(3) A statement that the personal property will be sold to satisfy the lien on a date specified in the notice, unless the total amount of the lien is paid or the occupant executes and returns by certified mail, the declaration in opposition to the sale; and

(4) A statement of the provisions of subsection (c).

(c) Proceeds of the sale over the amount of the lien and the costs of the sale must be retained by the owner and may be reclaimed by the occupant or his authorized representative at any time up to 1 year from the date of the sale.

(d) The notice of the sale must also contain a blank copy of a declaration of opposition to the sale to be executed by the occupant if he wishes to do so.

**Source:** PL 15-117, § 2(51438).

**§ 51539. Occupant's Declaration of Opposition to Sale.**

The occupant may prevent a sale of the personal property to satisfy the lien if he executes a declaration of opposition to the sale under penalty of perjury and returns the declaration to the owner by certified mail. The declaration must contain the following:

(a) The name, address and signature of the occupant;

(b) The location of the personal property which is to be sold to satisfy a lien;

(c) The date the declaration was executed by the occupant; and

(d) A statement that:

(1) The occupant has received the notice of the sale to satisfy the lien;

(2) He opposes the sale of the property; and

(3) He understands that the owner may commence an action for the amount of the lien and the costs of the action.

**Source:** PL 15-117, § 2(51439).

**§ 51540. Sale of Occupant's Property by Owner: Advertisement; Manner; Distribution of Proceeds.**

(a) If the declaration in opposition to the lien sale executed by the occupant is not received by the date of the sale specified in the notice mailed to the occupant, the owner may sell the property.

(b) The owner shall advertise the sale once a week for 2 consecutive weeks immediately

preceding the date of the sale in a newspaper of general circulation in the judicial district where the sale is to be held. The advertisement must contain:

(1) A general description of the personal property to be sold;

(2) The name of the occupant;

(3) The number of the individual space for storage at the facility where the personal property was stored; and

(4) The name and address of the facility.

(c) If there is no newspaper of general circulation in the judicial district where the sale is to be held, the advertisement must be posted 10 days before the sale in at least six conspicuous places near the place of the sale.

(d) The sale must be conducted in a commercially reasonable manner. After deducting the amount of the lien and the costs of the sale, the owner shall retain any excess proceeds from the sale on the behalf of the occupant.

(e) The occupant or any person authorized by the occupant or by an order of the court, may claim the excess proceeds or the portion of the proceeds necessary to satisfy the person's claim at any time within 1 year after the date of the sale. After 1 year, the owner shall pay any proceeds remaining from the sale to the Commonwealth Treasurer for deposit in the general fund of the Commonwealth.

**Source:** PL 15-117, § 2(51440).

**§ 51541. Claim of Property Subject to Security Interest.**

(a) Any person who has a security interest in the personal property perfected may claim the personal property which is subject to the security interest and to the lien for storage charges by paying the amount due, as specified in the preliminary notice of the lien, for the storage of the property, if no declaration in opposition to the sale to satisfy the lien has been executed and returned by the occupant to the owner.

(b) Upon payment of the total amount due pursuant to this section, the owner shall deliver the personal property subject to the security interest to the person paying the amount of the owner's lien. The owner is not liable to any person for any action taken pursuant to this section if the owner complied with the provisions of this article.

**Source:** PL 15-117, § 2(51441).

**§ 51542. Satisfaction of Lien by Person Claiming Interest in Property.**

Before the sale to satisfy the lien, any person claiming an interest in the personal property may pay the amount necessary to satisfy the lien and the reasonable expenses incurred by the owner to protect his lien. If this is done, the personal property must not be sold, but the owner shall retain the property pending an order by a court which directs the disposition of the property.

**Source:** PL 15-117, § 2(51442).

**§ 51543. Action to Enforce Lien; Enforcement of Judgment; Stay of Enforcement Pending Appeal.**

(a) If the occupant signs, and returns to the owner, the declaration in opposition to the sale, the owner may commence an action in any court of competent jurisdiction to enforce his lien.

(b) If, after the action to enforce the lien, the owner obtains a judgment against the occupant for the amount of the lien, the owner may enforce the judgment by a sale of the property

conducted in a commercially reasonable manner more than 10 days after the notice of the entry of judgment has been filed with the court, unless within that time the occupant pays the amount of the judgment.

(c) The occupant may stay the enforcement of the judgment pending an appeal by posting with the court which entered the judgment, a bond in an amount equal to 1.5 times the amount of the judgment. If the occupant posts such a bond, the court may order the owner to return the personal property to the occupant.

**Source:** PL 15-117, § 2(51443).

**§ 51544. Purchaser of Property at Sale to Satisfy Lien or Enforce Judgment Takes Free of Occupant's Interest**.

Any person who purchases the personal property in good faith at a sale to satisfy the lien or a sale to enforce a judgment on a lien takes the property free of any interests of the occupant, even though the owner who conducted the sale may have failed to comply with the provisions of this article.

**Source:** PL 15-117, § 2(51444).

**Article 7. Lien of Proprietor of Hotel or Motel**.

§ 51545. Lien on Personal Property; Sale After 30 Days After Default.
§ 51546. Sale of Baggage or Property Left at Hotel, Motel, or Lodging House.
§ 51547. Sales at Public Auction: Notice; Disposition of Proceeds.

**§ 51545. Lien on Personal Property; Sale After 30 Days After Default.**

(a) Except as provided in subsection (b), every hotel, inn, motel, or lodging house proprietor or proprietors, or person who lets rooms to lodgers for hire, shall have a lien upon all property belonging to his patron, guest, boarder or tenant brought within the hotel, inn, motel, lodging house or rooms for the amount that may be due from any such person for lodging, rent or for money paid or advanced to him, and for such other extras as are furnished at his request, and is authorized to retain possession of such property until the innkeeper's lien and the cost of enforcing it are satisfied.

(b) Tools or implements necessary to carry on the trade or employment of, and required work uniforms belonging to, such patron, guest, boarder or tenant are exempt from the provisions of this section.

(c) At any time after 30 days after default made in the payment of a debt secured by a lien upon personal property as in this section provided, such lien may be foreclosed by sale of the property or some part thereof as provided in 4 CMC § 51547.

**Source:** PL 15-117, § 2(51445), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(g) by changing "§ 51546" to "4 CMC § 51547" to correct a manifest error.

**§ 51546. Sale of Baggage or Property Left at Hotel, Motel, or Lodging House.**

All baggage or property of whatever description left at a hotel, inn, motel, motor court, boardinghouse or lodging house for the period of 60 days may be sold at public auction by the proprietor or proprietors thereof as provided in 4 CMC § 51547.

**Source:** PL 15-117, § 2(51446), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(g) by changing "§ 51546" to "4 CMC § 51547" to correct a manifest error.

**§ 51547. Sales at Public Auction: Notice; Disposition of Proceeds.**

(a) All sales made under 4 CMC §§ 51545 and 51546 shall be made at public auction.

(b) No sale shall be valid unless notice of the sale is published at least once a week for 2 successive weeks prior to the sale, in some newspaper published in the county in which the sale is to take place, or, in case no newspaper is published therein, by posting notices at least 10 days prior to the sale in at least three public places in the county, two of which shall be in the township where the property is to be offered for sale.

(c) The notice shall:

(1) Give a description of the property to be sold.

(2) Give the time and place of the sale.

(3) Give the name of the hotel, inn, motel, or lodging house at which the property or baggage was left.

(4) Give the name of the owner of the property when known.

(5) Be signed by the person conducting the sale.

(d) If the name and residence of the owner of the property upon which the lien is to be foreclosed is known, a copy of the notice shall, at the time of the posting or publication, be delivered to him, if he resides in the county; otherwise, it shall be mailed to him at his last known place of residence.

(e) After paying all costs of keeping the property until the time of sale, the reasonable costs of the sale and the amount due the lien claimant, the remainder, if any, shall be paid to the county treasurer of the county in which the lien is foreclosed with a statement of the innkeeper's claim, the costs of enforcing it, a copy of the published or posted notice, and the amount received for the property sold at the sale. The residue shall be paid into the county school district fund, subject to a right of the guest or boarder, or his representative, to reclaim it within 6 months from the date of the deposit.

**Source:** PL 15-117, § 2(51447), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(g) by changing "§§ 51544 and 51545" to "4 CMC §§ 51545 and 51546" to correct manifest errors.

**Article 8. Liens of Hospitals.**

§ 51548. Definitions.
Part A. Lien on Judgment or Settlement.
§ 51549. Extent of Lien; Exception; Lien in Addition to Lien on Property.
§ 51550. Limitations on Extent of Lien.
§ 51551. Notice of Lien Required: Recording and Service.
§ 51552. Form of Notice.
§ 51553. Hospital Records: Examination; Copying.
§ 51554. Payment to Injured Person After Notice of Lien; Liability and Payment to Hospital.
§ 51555. Foreclosure of Lien.
Part B. Liens on Real Property.
§ 51556. Extent of Lien; Notice of Lien; Amendment of Notice.

§ 51557. Foreclosure: Manner; Limitations.
§ 51558. Release of Lien upon Payment; Demand by Owner that Hospital File Suit to Foreclose; Penalty for Failure to Release Lien.

**§ 51548. Definitions.**

Unless the context otherwise requires, the words and terms defined in this article shall have the following meanings:

(a) *Court.* "Court" means the CNMI Superior Court.

(b) *Hospital*. "Hospital" means the Commonwealth Health Center, Tinian Health Center, or the Rota Health Center.

**Source:** PL 15-117, § 2(51448).

**Part A. Lien on Judgment or Settlement.**

**§ 51549. Extent of lien; Exception; Lien in Addition to Lien on Property.**

(a) Whenever any person receives hospitalization on account of any injury, and he, or his personal representative after his death, claims damages from the person responsible for causing the injury, the hospital has a lien upon any sum awarded the injured person or his personal representative by judgment or obtained by a settlement or compromise to the extent of the amount due the hospital for the reasonable value of the hospitalization rendered before the date of judgment, settlement or compromise.

(b) The lien provided by this section is in addition to the lien provided by 4 CMC § 51556 of part B of this article.

**Source:** PL 15-117, § 2(51449), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(c) by changing references to agree with the renumbered sections.

**§ 51550. Limitations on Extent of Lien.**

(a) No rights or claims for liens under part A of this article, shall be allowed for hospitalization rendered an injured person after a settlement has been effected by or on behalf of the party causing the injury.

(b) No lien shall apply or be allowed against any sum incurred by the injured party for necessary attorney fees, costs and expenses incurred by the injured party in securing a settlement, compromise or recovering damages by an action at law.

**Source:** PL 15-117, § 2(51450).

**§ 51551. Notice of Lien Required: Recording and Service.**

In order to perfect the lien, the hospital or the owner or operator thereof shall:

(a) Before the payment of any money to the injured person or to his legal representative as compensation for injuries received, record a notice of lien, substantially in the form prescribed in 4 CMC § 51552, containing an itemized statement of the amount claimed. The notice of lien must be filed with:

(1) The Commonwealth Recorder's Office wherein the hospital is located; and

(2) The Commonwealth Recorder's Office wherein the injury was suffered, if the

injury was suffered in an island other than that wherein the hospital is located.

(b) Before the date of judgment, settlement or compromise, serve a certified copy of the notice of lien by registered or certified mail upon the person alleged to be responsible for causing the injury and liable for damages on account thereof and from which damages are claimed.

(c) Before the date of judgment, settlement or compromise, serve a certified copy of the notice of lien by registered or certified mail upon the insurance carrier, if known, which has insured against liability of the person alleged to be responsible for causing the injury and liable for damages on account thereof and from which damages are claimed.

**Source:** PL 15-117, § 2(51451), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(c) by changing references to agree with the renumbered sections.

### § 51552. Form of Notice.

The form of the notice required by 4 CMC § 51551 must be substantially as follows:

Notice is hereby given that ..... has rendered services in hospitalization for ....., a person who was injured on the ..... day of the month of ..... of the year ..... in the island of ....., Commonwealth of the Northern Mariana Islands, on or about the ..... day of the month of ..... of the year .....; and that ..... (name of claimant) hereby claims a lien upon any money due or owing or any claim for compensation, damages, contribution, settlement or judgment from ....., alleged to have caused the injuries, or any other person, corporation or association liable for the injury. The hospitalization was rendered to the injured person between the ..... day of the month of ..... of the year ..... and the ..... day of the month of ..... of the year .....

Itemized Statement

..... ..... .....

..... ..... .....

That 90 days have not elapsed since the termination of hospitalization; that the claimant's demands for such care or service is in the sum of $..... and that no part thereof has been paid except $.....; and that there is now due and owing and remaining unpaid of such sum, after deducting all credits and offsets, the sum of $....., in which amount lien is hereby claimed.

..... , Claimant.

Commonwealth of the Northern )
Mariana Islands )
) ss.
Island of ……..)

I, ....., being first duly sworn, on oath say:

That I am ....., named in the foregoing claim of lien; that I have read the same and know the contents thereof and believe the same to be true.

.....

Subscribed and sworn to before me
this ..... day of the month of ..... of the year .....

.....

Notary Public in and for the
Commonwealth of the Northern Mariana Islands

**Source:** PL 15-117, § 2(51452), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(g) by changing "§ 51548" to "4 CMC § 51551" to correct a manifest error.

**§ 51553. Hospital Records: Examination; Copying.**

Any party legally liable or against whom a claim shall be asserted for compensation or damages for injuries shall have a right to examine and make copies of all records of any hospital in reference to and connected with the hospitalization of such injured person.

**Source:** PL 15-117, § 2(51453).

**§ 51554. Payment to Injured Person After Notice of Lien; Liability and Payment to Hospital.**

(a) Any person or his insurer who, after the receipt of a certified copy of the notice of lien pursuant to 4 CMC § 51552, makes any payment to the injured person, his heirs, personal representatives or the attorney for any of them, as compensation for the injury suffered, without paying the hospital the reasonable value of hospitalization rendered to the injured person and claimed in its notice of lien or so much thereof as can be satisfied out of the money due under any final judgment, settlement or compromise, after paying the attorney's fees, costs and expenses incurred in connection therewith and any prior liens, is, for a period of 180 days after the date of that payment, liable to the hospital for the amount or part thereof which the hospital was entitled to receive. The hospital has, within that period, a cause of action or other claim for relief against the person or insurer making the payment, which may be prosecuted and maintained wherein the notice of lien was filed.

(b) The person or his insurer shall make the payment to the hospital by issuing to the hospital a separate check or other negotiable instrument.

**Source:** PL 15-117, § 2(51454), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(c) by changing references to agree with the renumbered sections.

**§ 51555. Foreclosure of Lien.**

(a) The lien described in 4 CMC § 51549 may be foreclosed by a lawsuit in the CNMI Superior Court.

(b) In any suit brought pursuant to the provisions of this article, upon entering a decree for the plaintiff the court shall allow as part of the costs and disbursements all moneys paid for the filing and recording of the notice of lien and reasonable attorney's fees.

**Source:** PL 15-117, § 2(51455), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(c) by changing references to agree with the renumbered sections.

## Part B. Liens on Real Property.

**§ 51556. Extent of Lien; Notice of Lien; Amendment of Notice.**

(a) Except as otherwise provided in subsection (b), a hospital has a lien upon the real property of a person for charges incurred and unpaid for the care of the owner of the property or a

person for whose support the owner is legally responsible.

(b) The notice of the lien must be served upon the owner by certified or registered mail and filed in the Commonwealth Recorder's Office where the real property is located not sooner than 90 days nor later than:

(1) Three years after the patient's discharge; or

(2) One year after the patient defaults on payments made pursuant to a written contract, whichever is later, except that the notice may be served and filed within 6 months after any default pursuant to a written contract.

(c) The notice of the lien must contain:

(1) The amount due;

(2) The name of the owner of record of the property; and

(3) A description of the property sufficient for identification.

(d) If the amount due as stated in the notice of lien is reduced by payments and any person listed in 4 CMC § 51557(b) gives written notice of that reduction to the hospital which recorded the lien, the hospital shall amend the notice of lien stating the amount then due, within 10 days after it receives the written notice.

**Source:** PL 15-117, § 2(51456), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(c) by changing references to agree with the renumbered sections.

**§ 51557. Foreclosure: Manner; Limitations.**

(a) A lien for charges owed to a hospital may be foreclosed by a lawsuit in the CNMI Superior Court in the same manner as an action for foreclosure of any other lien.

(b) The lien may not be foreclosed during the:

(1) Lifetime of the owner of the property, his spouse, his dependent adult child if that child is mentally or physically disabled or a joint tenant if he was a joint tenant at the time of the patient's discharge; or

(2) Minority of any child of the owner,

If the owner or joint tenant resides on the property, or his spouse, dependent or minor child resides on the property and has acquired title thereto.

(c) If the hospital does not file a suit to foreclose the lien within 2 years after the date the notice of lien is recorded by the hospital, the lien is extinguished.

**Source:** PL 15-117, § 2(51457), modified.

**§ 51558. Release of Lien upon Payment; Demand by Owner that Hospital File Suit to Foreclose; Penalty for Failure to Release Lien.**

(a) A hospital shall release its lien upon payment of the charges.

(b) If the amount or the validity of the charges owed or the validity of the lien is disputed by the owner of the property, the owner may give the hospital written notice of the dispute and demand that the hospital file a law suit to foreclose the lien within 90 days. If the hospital does not file suit within the 90-day period, the lien is extinguished. The hospital shall release its lien upon the expiration of the 90-day period.

(c) Any hospital that fails to release a lien pursuant to subsection (a) or (b) of this section when required is liable in a civil action for treble damages, if the plaintiff in the action gives the hospital at least 15 days' written notice of its failure to release the lien and the release has not been

recorded.

**Source:** PL 15-117, § 2(51458), modified.

**Article 9. Liens to Recover Benefits Paid for Medicaid.**

§ 51559. Definitions.
§ 51560. Imposition and Release of Lien on Property of Recipient of Medicaid.
§ 51561. Petition for Lien.
§ 51562. Signing and Filing Petition; Notice; Hearing; Duty of Secretary of Department of Public Health to File Notice of Pendency of Action and to Serve Notice of Lien; Contents of Notice of Lien; Amendment of Notice of Lien.
§ 51563. Foreclosure of Lien.

**§ 51559. Definitions.**

Unless the context otherwise requires, the words and terms defined in this article shall have the following meanings:

(a) *Department.* "Department" means the Department of Public Health.

(b) *Medicaid.* "Medicaid" means the program established pursuant to Title XIX of the Social Security Act (42 U.S.C. §§ 1396 *et seq*.) to provide assistance for part or all of the cost of medical care rendered on behalf of indigent persons.

(c) *Secretary.* "Secretary" means the Secretary of the Department of Public Health.

**Source:** PL 15-117, § 2(51459).

**§ 51560. Imposition and Release of Lien on Property of Recipient of Medicaid.**

(a) The Department of Public Health may, to the extent not prohibited by federal law, petition for the imposition of a lien pursuant to the provisions of 4 CMC § 51561 against real or personal property of a recipient of Medicaid as follows:

(1) The Department may obtain a lien against a recipient's property, both real or personal, before or after his death in the amount of assistance paid or to be paid on his behalf if the court determines that assistance was incorrectly paid for the recipient.

(2) The Department may seek a lien against the real property of a recipient at any age before his death in the amount of assistance paid or to be paid for him if he is an inpatient in a nursing facility, intermediate care facility for the mentally retarded or other medical institution and the Department determines, after notice and opportunity for a hearing in accordance with applicable regulations, that the recipient cannot reasonably be expected to be discharged and return home.

(b) No lien may be placed on a recipient's home pursuant to subsection (a)(2) for assistance correctly paid if:

(1) His spouse;

(2) His child who is under 21 years of age, blind or disabled as determined in accordance with 42 U.S.C. § 1382c; or

(3) His brother or sister who is an owner or part owner of the home and who was residing in the home for at least 1 year immediately before the date the recipient was admitted to the medical institution,

is lawfully residing in the home.

(c) Upon the death of a recipient, the Department may seek a lien upon the recipient's undivided estate.

(d) The Secretary shall release a lien pursuant to this section:

(1) Upon notice by the recipient or his representative to the Director that the recipient has been discharged from the medical institution and has returned home;

(2) If the lien was incorrectly determined; or

(3) Upon satisfaction of the claim of the Department.

**Source:** PL 15-117, § 2(51460), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(c) by changing references to agree with the renumbered sections.

**§ 51561. Petition for Lien.**

(a) A petition to the CNMI Superior Court for the imposition of a lien as described and limited in 4 CMC § 51560 to recover money owed to the Department of Public Health as a result of payment of benefits for Medicaid must set forth:

(1) The facts concerning the giving of assistance;

(2) The name and address of the person who is receiving or who received the benefits for Medicaid;

(3) A description of the property, sufficient for identification, and its estimated value;

(4) The names, ages, residences and relationship of all persons who are claiming an interest in the property or who are listed as having any interest in the property, so far as known to the petitioner; and

(5) An itemized list of the amount owed to the Department of Public Health as a result of payment of benefits for Medicaid.

(b) No defect of form or in the statement of facts actually existing voids the petition for the lien.

**Source:** PL 15-117, § 2(51461), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(c) by changing references to agree with the renumbered sections.

**§ 51562. Signing and Filing Petition; Notice; Hearing; Duty of Secretary of Department of Public Health to File Notice of Pendency of Action and to Serve Notice of Lien; Contents of Notice of Lien; Amendment of Notice of Lien.**

(a) A petition for the imposition of a lien must be signed by or on behalf of the Secretary or the Attorney General and filed with the clerk of the CNMI Superior Court, who shall set the petition for hearing.

(b) Notice of a petition for the imposition of a lien must be given by registered or certified mail, postage prepaid, at least 10 days before the date set for hearing or other action by the court. Each such notice must be addressed to the intended recipient at his last address known to the Secretary, receipt for delivery requested. The Secretary shall cause the notice to be published, at least once a week for 3 successive weeks, in one newspaper published in the county, and if there is no newspaper published in the county, then in such mode as the court may determine, notifying all persons claiming any interest in the property of the filing of the petition, the object and the location, date and time of the

hearing.

(c) Notice of a petition for the imposition of a lien must be given to:

(1) Each person who has requested notice;

(2) The person who is receiving or has received benefits for Medicaid;

(3) The legal guardian or representative of a person who is receiving or has received benefits for Medicaid, if any;

(4) Each executor, administrator or trustee of the estate of a decedent who received benefits for Medicaid, if any;

(5) The heirs of such a decedent known to the Secretary; and

(6) Each person who is claiming any interest in the property or who is listed as having any interest in the subject property,

And must state the filing of the petition, the object, and the time set for hearing.

(d) At the time appointed, or at any other time to which the hearing may be continued, upon proof being made by affidavit or otherwise to the satisfaction of the court that notice has been given as required by this article, the court shall proceed to hear the testimony in support of the petition. Each witness who appears and is sworn shall testify orally.

(e) The court shall make findings as to the appropriateness of the lien and the amount of the lien.

(f) At the time of the filing of the petition for imposition of a lien, the Secretary shall file a notice of pendency of the action.

(g) Upon imposition of the lien by the court, the Secretary shall serve the notice of lien upon the owner by certified or registered mail and file it with the Commonwealth Recorder's Office where real property subject to the lien is located.

(h) The notice of lien must contain:

(1) The amount due;

(2) The name of the owner of record of the property; and

(3) A description of the property sufficient for identification.

(i) If the amount due as stated in the notice of lien is reduced by a payment, the Director shall amend the notice of lien, stating the amount then due, within 20 days after receiving the payment.

**Source:** PL 15-117, § 2(51462).

**§ 51563. Foreclosure of Lien.**

The Secretary may, to the extent not prohibited by 42 U.S.C. § 1396b, foreclose upon a lien for money owed to the Department of Public Health as a result of the payment of benefits for Medicaid by action in the CNMI Superior Court in the same manner as for foreclosure of any other lien.

**Source:** PL 15-117, § 2(51463).

# DIVISION 6 BANKING AND FINANCIAL INSTITUTIONS

## CHAPTER 1. SHORT TITLE, DEFINITIONS AND ADMINISTRATION.

### § 6105. Director of Banking.

**Case Annotations:** *Bank of Saipan v. Atalig,* 2005 MP 3, 7 N.M.I. 126 (2005); *Bank of Saipan v. Superior Ct.,* 2004 MP 15, 7 N.M.I. 70 (2004).

### § 6106. Powers of the Director.

**Case Annotations:** *Bank of Saipan v. Atalig,* 2005 MP 3, 7 N.M.I. 126 (2005).

## CHAPTER 10. OTHER FINANCE COMPANIES.

### Article 1. General.

**§ 60101. Definitions.**

As used in this chapter:

(1) For open-end plans, "annual percentage rate" means the annual percentage rate determined under section 226.14(b) of Regulation Z. For all other loans, "annual percentage rate" means the annual percentage rate determined under section 226.22 of Regulation Z.

(2) "Automated loan machine" means a machine that can perform loan origination functions without the presence of an operator other than the borrower.

(3) "Commercial loan" means a loan that is not primarily for personal, family or household purposes, and, if made to a resident of the Commonwealth, is made to a person who has obtained a license to do business in the Commonwealth.

(4) "Department" means the Department of Commerce.

(5) "Finance charge" means finance charge determined under section 226.4 of Regulation Z.

(6) "Late Fee" means an amount charged after a payment is delinquent for a specified amount of time (the "grace period") as to which the licensee and borrower have agreed on the amount to be charged and the length of the grace period.

(7) "Licensee" means every person licensed under this chapter.

(8) "Open-end credit card plan" means an open-end loan plan under which:

(a) The licensee issues one or more cards, checks, letters of credit or other device to the borrower; and

(b) The borrower may obtain advances from the licensee, either directly or in connection with purchases of goods and services by using the card, check, letter of credit or other device.

(9) "Open-end loan plan" means a plan or agreement, the agreement for which expressly states that it is made pursuant to 4 CMC § 60152, under which loans are made, and under which:

(a) The licensee may permit the borrower to obtain advances of money from the licensee from time to time or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;

(b) The unpaid balances and interest, discount, consideration, finance charge and other charges are debited to an account;

(c) Interest is calculated on the unpaid balance in the borrower's account from time to time, which balance may include all advances made on behalf of the borrower and all interest, discount, consideration, finance charge and other charges authorized under 4 CMC § 60151.

(10) "Person" means an individual or a partnership, association or corporation.

(11) "Point" or "Points" means 1% or multiples of 1% of the face value of a loan, paid to the licensee by the borrower as a commitment or placement charge or fee when a loan is originated or subsequently extended.

(12) "Regulation Z" means Regulation Z issued by the Board of Governors of the Federal Reserve System (12 CFR Part 226) to implement the federal Truth in Lending Act (15 U.S.C. §1601 *et seq.*) as such regulation existed on October 1, 1999.

(13) "Secretary" means the Secretary of Commerce or his or her authorized designee.

(14) "Service Fees" means fixed periodic charges to which the licensee and borrower have agreed (and identified in a loan agreement as "Service Fees") to cover licensee's processing, accounting, postage, inspections and other administrative charges."

**Source:** . . . (3), (6), (11), and (14) added by PL 15-85, § 2 and former sections (3)-(10) were renumbered accordingly.

**Commission Comment:** . . . Public Law 15-85 was enacted on September 20, 2007. In addition to amendments, repealers and reenactments, severability and savings clause provisions, PL 15-85 contained the following:

Section 1. Purpose and Findings. The Legislature finds that the Regulated Loan Act of 2000 was intended to regulate finance companies, other than banks, in making loans. The amendments herein are intended to clarify that the Act is applicable to both consumer and commercial loans made by financing companies licensed under the Act.

## Article 4. Loans, Credit, Interest, and Other Charges.

### § 60151. Interest and Other Charges.

(1) [unchanged]

(2) Notwithstanding 4 CMC, division 5, chapter 10, or subsection (3) of this section, or any other provision of law, a licensee may charge and receive any interest (including compound interest), discount, consideration, finance charge, and other charges for loans, unsecured or secured by real property or personal property or both, as agreed upon by the licensee and the borrower; however, whether or not Regulation Z applies to the loan, the annual percentage rate for a loan may not exceed 34%. For the purpose of the restriction in this section 60151(2), points, service fees and late fees are "other charges" expressly permitted above, but shall not be considered in calculating the annual percentage rate.

(3) No action shall be maintained in any court of the Commonwealth to recover a higher rate of interest than 2 percent per month on the balance due upon any contract made by a licensee under this chapter. Points, service fees and late fees are not "interest" as used in this chapter.

(4)-(5) [unchanged]

**Source:** . . . (2) and (3) repealed and reenacted by PL 15-85, § 3, modified.

**Commission Comment:** The commission changed capitalization in this section pursuant to 1 CMC § 3806(f). See comment to 4 CMC § 60101 for more information regarding PL 15-85 (effective September 20, 2007).

### § 60155. Commercial Loans; Interest; Additional Charges. [new section]

A licensee may make commercial loans and may charge and receive interest (including compound interest), discount, consideration, finance charge, and other charges as provided in 4 CMC § 60151.

**Source:** PL 15-85, § 4, modified.

**Commission Comment:** The commission changed capitalization in this section pursuant to 1 CMC § 3806(f). See comment to 4 CMC § 60101 for more information regarding PL 15-85 (effective September 20, 2007).

# DIVISION 7: INSURANCE

## CHAPTER 3. INSURERS, AGENTS, BROKERS AND OTHERS.

### § 7305. Unauthorized Insurer (Uniform Unauthorized Insurers Act).

**Case Annotations:**

**INSURANCE**

**Insurer's Right to Defend Action**
An insurer cannot defend an action against it until it has either obtained a certificate of authority to transact insurance business in the CNMI or has posted an appropriate bond. 4 CMC § 7305(g)(1). *Bank of Saipan v. Superior Ct. (Attorney's Liab. Assurance Soc'y, Inc.)*, 2001 MP 5 ¶ 57, 6 N.M.I. 242, 254 (2001).

## CHAPTER 5. THE CONTRACT OF INSURANCE.

### § 7502. The Policy.

**Case Annotations:** . . .

**INSURANCE**

**Policies**

– **Direct Action**
To give the Direct Action Statute force and effect, the phrase whether or not the policy contains a provision forbidding the direct action must be read broadly and supersede terms and limits of the policy where those terms have the effect, directly or

indirectly, of precluding direct action. Any other result would render the statute a nullity since insurers would be free to word their way around the statute. 4 CMC § 7502(e). *Bank of Saipan v. Superior Ct. (Attorney's Liab. Assurance Soc'y, Inc.)*, 2001 MP 5 ¶ 19, 6 N.M.I. 242, 248 (2001).

As for the public policy behind the Direct Action Statute, 4 CMC § 7502(e), the Legislature wanted to regulate and control foreign insurers not registered in the CNMI. The Direct Action statute furthers the policy goals by attempting to provide convenient, direct relief for injured CNMI citizens. It is in the interest of the Commonwealth, and within the power of this Court, to uphold and interpret the legislative enactment to give force and effect to its underlying policy to protect the citizens of the Commonwealth. 4 CMC § 7502(e). *Bank of Saipan v. Superior Ct. (Attorney's Liab. Assurance Soc'y, Inc.)*, 2001 MP 5 ¶ 21, 6 N.M.I. 242, 248 (2001).

**JURISDICTION**

**Generally**

– **Requisites**
The contours of the CNMI direct action statute are defined by the requirements of due process. 4 CMC § 7502(e). *Waibel v. Farber*, 2006 MP 15 ¶ 14, 7 N.M.I. 322, 326 (2006).

### § 7505. Loss.

. . .

**Commission Comment:** See comment to 4 CMC § 7502 for more information regarding PL 14-70, which was enacted on June 10, 2005.

# DIVISION 8: UTILITIES

## CHAPTER 1. COMMONWEALTH UTILITIES CORPORATION.

### Article 1. General Provisions.

§ 8111. Short Title.
§ 8112. Definitions.
§ 8113. Bankruptcy Protection.

### § 8111. Short Title.

This chapter may be cited as the Commonwealth Utilities Corporation Act of 2008.

**Source:** . . . amended by EO No. 2006-04, § 4(8111); repealed and reenacted by PL 16-17 § 10(8111), modified.

**Commission Comment:** . . . The commission replaced "this act"with "this chapter" in this section pursuant to the authority granted by 1 CMC § 3806(d).

Executive Order No. 2006-04, which reorganized the Commonwealth Utilities Commission, took effect on July 4, 2006 (sixty after its submission to the Legislature on May 5, 2006, without disapproval or modification) and contained the following effective date provision in addition to severability and savings clauses.

7. Effective Date. In accord with Article III, Section 15 of the Commonwealth

Constitution, this Executive Order shall become effective 60 days after submission to the legislature, unless specifically modified or disapproved by a majority of the members of each house of the legislature.

Public 16-17 was enacted by override on October 1, 2008. In addition to the code amendments set forth in this chapter and the short title, findings and purpose, severability and savings clause provisions (see comment to 4 CMC § 8191), PL 16-17 contained the following:

Section 12. Transition. In order to provide for an orderly transition under this Act, the following provisions shall apply until their expiration by operation of law on January 1, 2009:

(a) For the first eight Board members appointed and confirmed only, the nominees shall be confirmed by a majority of the members of both houses of the Legislature. Thereafter, Board members shall be confirmed according to the process in § 8131 of Section 10 of this Act.

(b) The Executive Director of CUC shall remain in his position until a quorum of Board members is in place and shall serve thereafter at the pleasure of the Board. The Executive Director shall issue an invitation for bids pursuant to Section 3(e) and (f) of this Act within ninety (90) days of its effective date.

**§ 8112. Definitions.**

As used in this chapter, the following terms shall, unless the context clearly indicates otherwise, have the following meanings:

(a) "Board" means the Board of Directors of the Commonwealth Utilities Corporation;

(b) "Commonwealth" means the Commonwealth of the Northern Mariana Islands;

(c) "Commission," or "PUC," means the Commonwealth Public Utilities Commission;

(d) "Corporation," or "CUC," means the Commonwealth Utilities Corporation;

(e) "Immediate family member" means a spouse, parent, child, sibling, parent-in-law, sibling-in-law, child-in-law, or household member;

(f) "Utility service" means the delivery of electrical, water, and sewer services in the Commonwealth.

**Source:** . . . amended by EO No. 2006-04, § 4(8112); repealed and reenacted by PL 16-17 § 10(8112).

**Commission Comment:** *[Deleted]*

**§ 8113. Bankruptcy Protection.**

CUC is hereby granted the corporate power under 4 CMC § 8123 to seek bankruptcy protection consistent with its corporate purposes.

**Source:** PL 16-17 § 11.

**Article 2. Commonwealth Utilities Corporation Established.**

§ 8121. Commonwealth Utilities Corporation: Public Corporation.
§ 8122. Commonwealth Utilities Corporation: Duties.
§ 8123. Commonwealth Utilities Corporation: Powers.

**§ 8121. Commonwealth Utilities Corporation: Public Corporation.**

(a) There is in the Commonwealth government a Commonwealth Utilities Corporation (CUC), a public corporation.

(b) CUC is the successor to Commonwealth Utility Rate Commission for all legal purposes.

(c) CUC shall have the following divisions:
(1) Electrical power division;
(2) Water services division;
(3) Sewer division;
(4) Compliance division.

(d) If a service has been wholly or partially turned over to the private sector, CUC shall be reduced accordingly and CUC shall monitor the performance, rates, and contractual compliance of the private sector enterprise.

**Source:** . . . amended by EO No. 2006-04, § 4(8121); repealed and reenacted by PL 16-17 § 10(8121).

**Commission Comment:** See the comment to 4 CMC § 8111 for more information about PL 16-17.

**§ 8122. Commonwealth Utilities Corporation: Duties.**

(a) CUC shall supervise the construction, maintenance operations, and regulation of electric, water, and sewage services; provided that whenever feasible CUC shall contract with the private sector to assume its duties with respect to one or more of its divisions.

(b) CUC shall, within 90 days of the effective date of this chapter or upon achieving a quorum of board members, whichever is later, implement a plan by which CUC or its designee will establish rates, meter, bill, and collect fees in a fair and rational manner from all consumers of utility services it has not privatized so that the corporation will be financially independent of all appropriations by the Commonwealth Legislature by October 1, 2009, or as soon as possible thereafter.

(c) Notwithstanding 4 CMC § 8439 or any other provision of law, CUC may:
(1) Issue invitations for bids to privatize or transfer ownership, control, management, or operations, in whole or in part, of a utility service and the property relating to that utility service;
(2) Award any contract therefore, contingent upon the contractor obtaining from the Commission a certificate of public convenience and necessity as required under 4 CMC § 8441.

The Commission's review shall include a determination of whether the divestiture and the contractor's proposed rates, charges, assessments, and costs are consistent with the public interest. A business undertaking, licensed in the Commonwealth for at least eight years and engaged in a business closely related to the utility service for which CUC publishes a request for proposal or solicits bids, shall be permitted to submit a proposal upon the payment of the required fees and shall by operation of law pre-qualify as a responsible bidder or offeror for such request for proposal or bid.

(d) For the purposes of a deliberate and uninterrupted transition to regulation under the Public Utilities Commission, and notwithstanding 4 CMC §§ 8433, 8442 and any other provision of law, the Commonwealth Utilities Corporation's Executive Director's power and authority to set rates, fees, charges and rents shall take effect on January 27, 2006 and continue until such time as the Public Utilities Commission shall issue an order setting rates, fees, charges or rents for a utility service.

(e) CUC shall be responsible for the maintenance and operation of all water wells located on public school grounds to ensure that water wells comply or meet the Division of Environmental quality's Safe Drinking Water Quality Standards, including but not limited to the chlorination of water.

**Source:** . . . repealed and reenacted by PL 16-17 § 10(8122); (d) amended by PL 17-03 § 2 (May, 12, 2010).

**Commission Comment:** The commission added "4 CMC §§" before "8433, 8422" in

subsection (d) pursuant to 1 CMC § 3806(c). See the comment to 4 CMC §§ 8111and 8112 for more information about PL 16-17. ~~Further, references in subsections (a) and (c) to "telephone" services were deleted. See comment to 4 CMC § 8112.~~

. . .

Public Law 17-3 (effective May 12, 2010) included severability and savings clause provisions and the following:

Section 1. Findings and Purposes. The Legislature finds that the Commonwealth Supreme Court, in *Torres v. Commonwealth Utilities,* 2009 MP 14, determined that the Legislature, in enacting Public Laws 15-35 and 15-40, intended the laws to apply prospectively. However, the Legislature in enacting Public Laws 15-35 and 15-40, intended that the CUC increased rates, which sought to address a perilous shortfall in CUC's ability to pay for fuel and related costs of operations, would be retroactively recognized and retroactively effective.

It is therefore the purpose of this Act to clarify the ambiguity surrounding subsection (d) of Section 8122 of Title Four of the Commonwealth Code such that the rate decisions made by CUC's Executive Director are ratified, as was the original intent of the Legislature. The Legislature finds and declares that this Act is a proper use of the Legislative power granted by Article II section 1 of the Constitution of the Commonwealth of the Northern Mariana Islands.

. . .

Section 3. Applicability. This Act is intended to clarify the intent of the Legislature in passing Public Laws 15-35 and 15-40 on the dates of enactment. This Act and every modification or repealer herein shall constitute the law to be applied to any administrative proceeding in the Commonwealth or any case filed the courts of the Commonwealth which has not been reduced to final judgment as of the effective date of this act, regardless of when such proceeding or case was filed, as was originally intended.

**§ 8123. Commonwealth Utilities Corporation: Powers.**

Except as otherwise provided or limited in this division or by other law, in order to carry out its duties CUC shall have all of the powers conferred by law on a public corporation, and all the powers reasonably incidental to that purpose, including the power to:

(a) Prescribe, adopt, amend, and repeal by-laws;

(b) Receive and hold funds from contractors, consumers, lessees, the Commonwealth government, and other sources;

(c) Sue and be sued in its corporate name;

(d) Acquire and hold any interest allowed by law in any real or personal property, tangible or intangible, in connection with the activities of the corporation, and to sell, mortgage, or otherwise dispose of such interest;

(e) Borrow money from any public or private source, either within the Commonwealth or the United States, or in any other country, and to give security in connection with such borrowing, provided that any borrowing in excess of $500,000 shall be approved by law;

(f) Upon prior approval by joint resolution of the Legislature in conformity with the Commonwealth Development Authority Act (4 CMC § 10101 *et seq.*) as to each issue of bonds, to make and issue tax exempt bonds and other tax exempt obligations for sale to the general public;

(g) Pursuant to public notice and bidding wherever possible, to make contracts and execute all instruments necessary or convenient to exercise the powers of the corporation;

(h) Hire such employees as are necessary for the operation of the corporation and engage the services of independent experts, advisors, and other contractors as necessary to the fulfillment of the purposes of the corporation;

(i) Contract to transfer to private ownership or control the construction, management, and operation of the electrical power, water, and sewer systems in a public manner that is fair to the government, its employees, and utility service consumers;

(j) Assume existing contracts with respect to utility services;

(k) Regulate utility services to the extent permitted by federal law and contractual obligations of the Commonwealth government;

(1) Strengthen the existing system of metering, billing, and collecting fees for utility services;

(m) To the extent deemed lawful and necessary, and subject to the requirements of chapter 4 of this division, to review and establish utility rates and other fees for electrical power, water, and sewer, except that no fee for electrical power, water, or sewer shall be higher than the actual cost to the corporation to connect customers and provide the utility;

(n) Prepare and submit a budget as a government corporation pursuant to 1 CMC § 7206;

(o) Establish a system of rewards for persons other than government employees in the course of their official duties who furnish information that leads to a conviction of a criminal offense involving theft of utility materials or services;

(p) Effectuate the settlement of disputes between CUC and the Commonwealth Development Authority (CDA) as required by their Memorandum of Agreement. CUC may issue shares of cumulative, non-convertible, non-transferable preferred stock valued at $45,000,000.00 to CDA. CUC and CDA may provide by written agreement, subject to the terms and conditions of the Memorandum of Agreement, such terms and conditions being incorporated herein by reference, for

(1) Guaranteed annual dividends fixed and payable as agreed;

(2) Buy-back provisions;

(3) Default provisions;

(4) Preferred shareholders rights; and

(5) Consistent with Commonwealth law, such other rights and remedies as are typically found in shareholder and stock purchase agreements.

(q) Take such action as it deems necessary and proper to operate the corporation, further its purposes, administer its services, and perform its duties.

(r) The powers of the Corporation shall be subject to Public Law 15-35 as amended.

**Source:** . . . (e) amended by EO No. 2008-09, § 3(8123); repealed and reenacted by PL 16-17 § 10(8123), modified.

**Commission Comment:** The commission modified this section pursuant to the authority granted by 1 CMC § 3806(f) and (g). The commission changed capitalization and changed the second occurrence of "tangible" in subsection (d) to "intangible" to correct a manifest error. See the comment to 4 CMC §§ 8111and 8112 for more information about PL 16-17. Executive Order 2008-09 (Re-organization Plan No. 4 of 2008), signed July 30, 2008, amended subsection (e) of this section. 30 Com. Reg. 28773 (Sept. 25, 2008). Section 5 of Executive Order 08-09 notes that the Reorganization Plan "shall become effective sixty days after submission to the Legislature, unless specifically modified or disapproved by a majority of members of each house of the Legislature." 30 Com. Reg. 28774 (Sept. 25, 2008). ~~See comment to 4 CMC § 8111. Further, references in subsections (a) and (c) to "telephone" services were deleted. See comment to 4 CMC § 8112.~~

. . .

**§ 8124. CUC Power Privatization.**

The Commonwealth Utilities Corporation shall comply with the provisions of 4 CMC §§ 8521-8573 and any development to privatize the power division of the Commonwealth Utilities Corporation shall be consistent with and subject to the provisions of 4 CMC §§ 8521-8573.

**Source:** PL 15-87, § 3, modified.

**Commission Comment:** The commission replaced "this Act" with "4 CMC §§ 8521-8573" pursuant to 1 CMC § 3806(d). See the comment to 4 CMC § 8521 for more information regarding PL 15-87 (effective September 26, 2007).

**Article 3. Corporate Directors, Officers, and Employees.**

§ 8131. Board of Directors: Established.
§ 8132. Board of Directors: Meetings.
§ 8133. Officers and Staff of the Corporation.
§ 8134. Executive Director: Duties.

**§ 8131. Board of Directors: Established.**

(a) The Corporation shall be governed by a board of directors. The Board shall be composed of eight members. The Governor shall appoint the members with the advice and consent of the Senate; provided, however, that no employee or official of the Commonwealth government (including any agency, instrumentality, or political subdivision thereof) shall be appointed except as explicitly authorized by this section; provided, further, that no person shall be appointed who does not have at least an Associate of Arts degree from an accredited postsecondary educational institution. Except as explicitly provided by this section, Title 1, Division 2, Part 2 (1 CMC §2901 *et seq.*), is applicable to the Board. The Board shall be composed as follows:

(1) One member shall be the Chairman of the Board of Directors of the Commonwealth Development Authority;

(2) At least one member shall be from Tinian and at least one member shall be from Rota;

(3) At least two members shall be women;

(4) At least one member shall be from off-island with utility management experience; and

(5) At least five members shall possess a minimum of three years private sector business or professional background.

(b) The appointed members shall serve a term of four years. Vacancies shall be filled in the same manner as the original appointment. Any person appointed to fill a vacancy created prior to the expiration of the term of a member shall serve the remainder of the unexpired term. Any member may be reappointed to serve successive terms. No person may act as a member of the Board until confirmed by the Senate, except that reappointment to another term shall not affect the ability of an incumbent member to serve until the expiration of his or her term.

(c) The appointed members shall receive such compensation as is provided by law.

(d) The Board shall elect its officers from among its members and establish its rules of procedure.

(e) Appointed members shall be reimbursed for reasonable and necessary expenses at established Commonwealth government rates for meetings actually attended. Rules on travel and per diem rates shall be the same as those established for the Executive branch.

(f) The Governor may remove an appointed member for gross neglect or dereliction of duty, breach of fiduciary duty, conviction of a felony, or mental or physical incapacity. The Board may remove any member for missing three consecutive meetings or other frequent absences without the prior written approval of the chairman. Upon resignation, removal or expiration of the term of appointment, the member shall cease to sit on the Board and shall not be included in a quorum count.

**Source:** . . . amended by EO No. 2006-04, § 4(8131); repealed and reenacted by PL 16-17 § 10(8131).

**§ 8132. Board of Directors: Meetings.**

(a) Meetings of the Board shall be held within the Commonwealth at a time and place publicly designated by the Board at least once every month for its first two years of existence. Thereafter it shall meet at least quarterly. Special meetings may be called by the chairman or by the majority of the Board members.

(b) All meetings shall be open to the public, except where the Board finds that personal matters affecting the privacy of an individual or other confidential matters are to be considered. In such a case the Board may, or at the request of the individual involved shall, consider the matter in closed session; provided, that any opening of public bids, award of public bids, or other official action resulting from the meeting shall be acted upon in an open meeting.

(c) The presence of four members shall constitute a quorum for the transaction of business at any Board meeting.

**Source:** . . . amended by EO No. 2006-04, § 4(8132); repealed and reenacted by PL 16-17 § 10(8132).

**§ 8133. Officers and Staff of the Corporation.**

(a) Executive Director. The Board shall appoint an executive director to administer the operations of the corporation on behalf of the Board. The Executive Director shall have, in addition to such other qualifications as the Board may prescribe, a minimum of five years professional experience in public utility services, business management or finance and shall possess at least a bachelor's degree from an accredited university or college.

(b) Other corporate officers.

(1) The Executive Director shall appoint a corporate comptroller pursuant to 4 CMC § 8134(d) and (e).

(2) The Executive Director may hire assistant directors to be in charge of one or more divisions of the Corporation.

(c) Staff. The staff of the Corporation shall be exempt from the application of the Commonwealth Civil Service Act, Title 1, Division 8, Part 1 (1 CMC § 8101 *et seq.*), except that 1 CMC §§ 8142 and 8145(c) shall apply to the Corporation as if all employees of the corporation were members of the civil service, and employees of the Corporation shall enjoy the protections of 1 CMC §§ 8141, 8145(b), (d), (e) and (f), and 8151-8153 to the same extent and in the same manner as if they were members of the civil service. The Corporation shall develop, adopt, and administer a merit personnel system that rewards productivity and service, provides management flexibility, and includes provisions for employees to appeal serious disciplinary action. The Board shall establish rules and regulations governing the selection, promotion, performance evaluation, demotion, suspension, dismissal, and other disciplinary rules for employees of the corporation.

(1)(i) No recommendation of any person who applies for examination or appointment to any office or position within the Corporation which may be given by an elected official of the Commonwealth, except as to the ability or character of the applicant, shall be considered by any person in the giving of any examination or in the making of any appointment under the personnel system of the corporation.

(ii) No person shall make any false statement, certificate, mark, rating, or report with regard to any test, certification, or appointment made under the personnel system of the Corporation, nor commit or attempt to commit any fraud preventing the impartial execution of

any provision of the personnel system of the Corporation.

(iii) No person shall, directly or indirectly, give, pay, offer, solicit, or accept any money, service, or other thing of value to obtain any appointment, proposed appointment, promotion or proposed promotion to, or obtain any advantage in, a position within the Corporation.

(2) The Corporation may set its own compensation, wage and salary scales. The Corporation shall provide a copy of its wage and salary scales to the presiding officers of the Legislature upon adoption, and shall also so provide a copy of any changes to those scales as and when made from time to time. The Corporation shall submit an annual report to the Governor and the presiding officers of the Legislature no later than April 1 of each year detailing how the wage and salary scales in effect during the preceding calendar year compare with the wages and salaries paid by the Commonwealth and in the marketplace generally for positions requiring comparable education, training, or experience.

(3) Employees of the Corporation shall be eligible to participate in any Commonwealth health and life insurance plan, and shall accumulate leave time in accordance with applicable law and the personnel system of the corporation. The provisions of the Commonwealth Workers' Compensation Law, Division 9, Chapter 3 of this Title (4 CMC § 9301 *et seq.*), apply to employees of the Corporation, and compensation payments pursuant thereto unless otherwise secured shall be made from the Government Self-Insurance Fund (4 CMC § 9354), from appropriations by the Legislature for that purpose, or from funds otherwise available.

**Source:** . . . amended by EO No. 2006-04, § 4(8133); repealed and reenacted by PL 16-17 § 10(8133).

**Commission Comment:** . . . The commission changed capitalization for conformity pursuant to 1 CMC § 3806(f).

**§ 8134. Executive Director: Duties.**

(a) The Executive Director shall prepare an operating manual to implement the general operation and management policies established by this chapter and by the Board including all internal administration, metering, billing, and collection procedures, privatization plans, and other matters. The manual shall be transmitted to the Board for its approval.

(b) The Executive Director shall refer to the Board for review of all matters involving allocation of Corporation funds or property.

(c) The Executive Director shall:

(1) Monitor the progress toward the improvement of the financial status of utility services.

(2) Report to the Board at each Board meeting as to the activities of the Corporation.

(3) Prepare an annual report of the Corporation's operation and activities for each fiscal year within three months of the end of the fiscal year, including appropriate financial statements, and submit a draft of the report to the Board for approval.

(4) Prepare the annual administrative budget for review and approval by the Board and for submission to the Governor and the Legislature pursuant to 1 CMC § 7206.

(5) Hire such employees as the Board may delegate power to do so.

(6) Perform such other duties as the Board may require.

(d) The Executive Director shall hire a corporate comptroller who shall:

(1) Keep the official books and accounts of the Corporation.

(2) Prepare an annual report of the financial condition of the Corporation for the Board.

(3) Perform such other functions as the Executive Director or the Board may require.

(e) The comptroller shall hold at least a bachelor's degree in accounting and five years experience in governmental or financial accounting.

(f) The Executive Director, comptroller, and any other officer may be dismissed by affirmative vote of a majority of the authorized voting membership of the Board. Any officer subject to dismissal under this subsection may request a public hearing before the Board; and in the event of such a request, no dismissal shall be effective unless voted by the Board at the conclusion of or subsequent to such hearing.

**Source:** . . . amended by EO No. 2006-04, § 4(8134); repealed and reenacted by PL 16-17 § 10(8134).

**Commission Comment:** . . . The commission changed capitalization for conformity pursuant to 1 CMC § 3806(f).

**Article 4. General Corporate Operations.**

§ 8141. Management.
§ 8142. Rates and Charges; Public Hearings.
§ 8143. Metering and Billing.
§ 8144. Disconnecting of Utility Services.
§ 8145. Reconnection of Utility Services.
§ 8146. Electric Charges and Rates.
§ 8147. Metering.
§ 8148. Regulations.

**§ 8141. Management.**

(a) The Executive Director and Board shall manage the corporation in a business-like manner so as to provide the most efficient delivery of its services at the most reasonable cost to consumers.

(b) If the Board contracts with a private business to provide a utility service, the Board shall permit the business to adopt a utility rate and billing structure that provides a reasonable return on investment. The Board shall determine reasonableness by reference, in part, to the rate of return on investment earned by providers of similar utility services in other jurisdictions.

(c) Pursuant to 4 CMC § 1602, the Board shall adjust the utility services collection and rate structure so that within three complete fiscal years collections from a particular utility service are sufficient to recover the costs associated with the operation and delivery of the particular utility service. These costs shall include adequate financial reserves for debt service, if any, and the replacement costs of obsolete or damaged equipment.

(d) The Board's rate schedules may provide for separate utility service rates for different islands, residential, commercial, industrial or other categories of consumption. The rate schedule for each category of utility consumption shall be uniform within each island, except that the schedule may provide for increasing marginal rates as the consumption of a person increases. The Board may provide life-line utility services at lower rates for the benefit of low income consumers.

(e) The Board shall annually review and in its discretion may revise the rate schedules. The Board shall adopt procedures to permit consumers to contest their billings.

(f) The Board may finance the extension or improvement of utility services through tax exempt bonds or other tax exempt obligations issued by it in conjunction with the Commonwealth Development Authority.

(g) In the event the Board has not privatized a utility service, its consumer accounts receivable for the utility service shall not be more than 90 days past due, unless the consumer is actively contesting the billing. The Board shall cut off utility services to consumers who are not actively contesting their billing and who have accounts more than 90 days past due.

(h) Residential consumers may be given up to one year to pay in full any outstanding balance in their accounts.

**Source:** . . . amended by EO No. 2006-04, § 4(8141); (h) added by PL 15-97 § 2; repealed and reenacted by PL 16-17 § 10(8141), modified.

**Commission Comment:** . . . The commission changed capitalization for conformity pursuant to 1 CMC § 3806(f). See comments to 4 CMC §§ 8111 and 8112 for more information regarding PL 16-17. Public Law 15-97, effective on October 4, 2007, includes severability and savings clause provisions and the following:

Section 1. Findings and Purpose. The Legislature finds that the Commonwealth Utilities Corporation gives residential consumers up to three months to pay in full any outstanding balance in their accounts. This practice creates an undue burden on consumers and is unreasonable given the fact that residential consumers must pay for any outstanding balance on their account plus new charges at the same time. The Legislature finds that residential consumers need more than three months to pay off any outstanding balance plus new charges. Accordingly, the purpose of this legislation is to require the Commonwealth Utilities Corporation to give residential consumers up to one year to pay in full any outstanding balance in their accounts.

### § 8142. Rates and Charges; Public Hearing.

Before proposing any schedule affecting rates for services provided by the Corporation, the Board or its designee shall comply with any requirement regarding the holding of public hearings within the Commonwealth required by the PUC.

**Source:** . . . amended by EO No. 2006-04, § 4(8142); repealed and reenacted by PL 16-17 § 10(8142).

### § 8143. Metering and Billing.

(a) CUC shall accurately meter electricity and water and shall bill all consumers, including government consumers and all government buildings, for electrical power, water consumption, and sewer services by no later than October 1, 2007, at not less than the full cost of production, operation, and maintenance of those services; provided, however, that nothing in this section or any other provision of law shall preclude the immediate equitable increase in existing rate schedules prior to the accurate metering of all classes of consumers. The classes of consumers are commercial, residential, and governmental, or such other classes as the Corporation may determine appropriate.

(b) Residential security deposit. The Corporation shall collect from every residential customer account a one month security deposit upon submission of an application for utility services, provided that residential customers who had utilities connected when the security deposit requirement was not in place and are in good standing shall not be disconnected due to the absence of a security deposit. Deposits shall be placed in an interest-earning trust fund to be established by the Executive Director. Funds collected shall not be used for any other purpose. All residential security deposit

refunds shall be paid within thirty days after disconnection of utilities with earned interest.

(c) Residential disconnection. Residential customers who are receiving utility assistance from the Department of Community and Cultural Affairs (DCCA) shall not be disconnected due to the failure of DCCA to remit payments to CUC in a timely manner.

(d) CUC shall separate the electrical power, water consumption, and sewer services in its billing system. Consumers shall be permitted to pay for each utility service separately. CUC shall not disconnect a customer's water service for failure to pay for the electrical power portion of their bill. CUC shall allow customers to reconnect water or electrical power services upon payment of their water or electrical power consumption charges and reconnection fees.

(e) Fifty percent of the fees collected pursuant to subsection (b) shall be deposited into a special account within the General Fund and appropriated to the Commonwealth Utilities Corporation to pay for its fuel expenses.*

**Source:** . . . amended by EO No. 2006-04, § 4(8143); (b) and (c) added by PL 15-80, § 3; (a) and (b) amended by PL 15-123; (e) added and (b) amended by PL 16-2 §§ 8(d) and 6, respectively; repealed and reenacted by PL 16-17 § 10(8143), modified.

* Although PL 16-17, repealed and reenacted this section, the commission retained subsection (e), as enacted by PL 16-2. The last sentence of the findings and purpose section of PL 16-17 provides that "[t]he Legislature intends that this Act be read, to the fullest extent possible, consistently with Public Law 16-2."

**Commission Comment:** . . . PL 15-80 was enacted into law by override on August 17, 2007, and contained the following short title and findings and purpose in addition to severability and savings provisions.

Section 1. Short Title. This Act may be cited as the "CUC Security Deposit Fairness Act of 2007."

Section 2. Findings and Purpose. The Legislature finds that the Commonwealth Utilities Corporation's (CUC) current policy regarding security deposits to be exorbitant and unfair. The CUC currently charges a two-month security deposit for every customer which is simply unaffordable for many residents. In addition, the CUC refunds residential security deposits without regard to interest which is unfair considering that the CUC can hold security deposits for many years.

The CUC is a government-owned utility and should be sensitive to the needs of the community. Residents are struggling with increasing rates, surcharge fees, and an overall cost of living increase while their incomes are declining. Therefore, it is the duty of the CUC to hold these security deposits in a responsible and conscientious manner and to return such funds to residential customers with interest. Therefore, the purpose of this Act is to reduce CUC's residential customer security deposit to one month and to establish a trust account for these deposits.

The commission modified this section pursuant to 1 CMC § 3806(d), (e). For more information about PL 16-17, see the comment to 4 CMC § 8111 and § 8191. PL 16-2, enacted on May 3, 2008, contained severability and savings clause provisions and the following:

Section 1. Findings and Purpose. The Legislature finds that the Commonwealth is undergoing a power crisis due to dilapidated power plant engines at the Commonwealth Utilities Corporation (CUC) and the surging cost of fuel. The power rates have more than doubled in order to keep up with the continued rising cost of fuel and rolling blackouts occur to facilitate engine repairs or fuel conservation. The people of the Commonwealth are suffering with exorbitant power rates in addition to the surging cost of gas at the pumps and the increased cost of goods and commodities due to the implementation of shipping surcharges and other factors.

In order to assist CUC customers, the Legislature enacted Public Law 15-94 to reduce the power rates to a level that is affordable. However, the legislature finds that with the continuing rise in fuel costs and the implementation of electric charges and rates pursuant to

Public Law 15-94 the CUC faces a shortfall approaching $1 million each month for fuel alone. The CUC must be subsidized to pay for the shortfall of its fuel payments. Without these subsidies, compounded by the cost to rehabilitate, maintain and operate CUC's deteriorating generator engines, the CUC is placed in an untenable financial situation that will result in CUC being unable to purchase fuel and provide power, water, and sewer services to the people of the Commonwealth. The Commonwealth as a whole will likely suffer catastrophic, economic loss. Accordingly, this act intends to provide CUC with a fuel subsidy by suspending earmarked non-General Fund revenue and appropriating such funds to the Commonwealth Utilities Corporation to pay for its fuel expenses and amend Public Law 15-80 to allow CUC to use a portion of its customers security deposits to pay for its fuel expenses.

Additionally, to avert CUC's total failure to produce power, the Legislature finds it is in the public's best interest to suspend Public Law 15-94 up to December 31, 2008, pending the adoption of a permanent rate structure by the Public Utilities Commission (PUC), and temporarily restore the previous rate structure established by the Amendments to Part 24 of the Electric Service Regulations of the Commonwealth Utilities Corporation as set forth in 28 Com. Reg. [26156] *et seq.* (Sept. 27,2006), which became effective on October 27, 2006, to give CUC the needed flexibility, pending rate making action by the Commonwealth Public Utilities Commission.

Additionally, the Legislature finds that the PUC still has not realized its full compliment of Commissioners, and it is necessary to affirmatively state that, once three Commissioners have been nominated and confirmed, the PUC is to immediately begin operations. Further, it is necessary to set the quorum regulations in the event that a Commissioner resigns or retires when the PUC is not fully constituted with five Commissioners, and to clarify and/or establish the PUC's authority in case of an emergency to temporarily alter, amend or suspend any existing rate upon a showing of emergency need. The Legislature further finds that the Commonwealth Government continues to face financial challenges as a result of the economic downturn and revenue collection decline; therefore, several fiscal measures must be taken to ensure continued delivery of essential public services to the people of the Commonwealth. One such measure is to provide the Governor and other expenditure authorities with greater flexibility in reprogramming funds for the remainder of fiscal year 2008.

The Legislature further finds that the Commonwealth government is unable to pay its retirement employer contribution of eighteen percent (18%) due to the continued decline in revenue collection. Consistent with the foregoing measures, this Act also sets the government retirement contribution rate for the Defined Benefit plan at 11% for Fiscal Year 2008. This measure is necessary to ensure the government's personnel costs remain within the continuing appropriation authority levels set under Public Laws 15-28 and 15-71 and to provide a fuel cost subsidy for CUC with fifty percent of the savings from the employer retirement contribution.

Furthermore, the Legislature finds that many government services fees have remained stagnant for over a decade while the costs of providing such services have increased during the same period. Such increased costs of providing government services have burdened the general fund and prevented government agencies from expanding and enhancing services to the public. Therefore, it is necessary to increase the fees of various government services in order to cover the cost of providing such services.

PL 15-123 was enacted into law by override on December 3, 2007. PL 15-123 contained severability and savings provisions and the following:

Section 1. Findings. The Legislature finds that the Commonwealth Utilities Corporation's ("CUC") present billing system combines the charges for electrical power, water consumption, and sewer services into one bill each month. CUC does not separate a customer's utility payment according to the different applicable utilities under its present billing system. The billing system of CUC has resulted in the disconnection of water for many CUC consumers in addition to the disconnection of power.

The Legislature further finds that it is the practice of CUC to disconnect the water service, in addition to the power, of consumers who are delinquent in paying their power bill. This practice has created an unhealthy and unsanitary living environment for many

Commonwealth residents. Many Commonwealth residents are now living without power and water at home. They rely on water collection, which is not always clean and usually insufficient to sustain their daily water needs. Water is a basic necessity of life. Many people can live without power but cannot live without water. Moreover, Commonwealth residents cannot properly prepare and cook food, clean their homes, and wash their clothes without water. The lack of water in such households may lead to the spread of germs and diseases that could easily be avoided with the use of water.

The Legislature finds that CUC does not have any compelling interest in disconnecting a consumer's water service just because they cannot pay the power portion of their CUC bill. Consumers should be allowed to reconnect their water service upon payment of their consumption charges and reconnection fees. The purpose of this legislation is to require CUC to separate the electrical power, water consumption, and sewer services in its billing system, to allow consumers to pay their utility bills separately, and to permit consumers to reconnect water or power services upon payment of their outstanding consumption charges and reconnection fees.

**§ 8144. Disconnection of Utility Services. [new section]**

(a) Offset security deposit.

(1) Prior to the disconnection of utility services, the security deposit of a residential customer shall be used to offset amount past due for utility services.

(2) CUC shall establish by regulation procedures for the restoring, within a reasonable period of time, of security deposits, should such security deposits be used to offset a customer's past-due accounts.

(b) CUC shall not disconnect the utility services of a residential customer before the disconnection date.

(c) CUC shall not disconnect the utility services of a customer if the customer is actively disputing a billing statement.

(d) CUC shall not disconnect all utility services (electrical power, water, and sewer) of a residential customer if the customer is only delinquent in the payment of one utility service.

(e) CUC shall be liable for all reconnection fees and costs if the Corporation disconnects a residential customer in violation of any provision of this section.

**Source:** PL 15-122 § 2; repealed and reenacted by PL 16-17 § 10(8144).

**Commission Comment:** Public Law 15-122 enacted by override on December 5, 2007. PL 15-122 contained severability and savings clause provisions and the following:

Section 1. Findings and Purpose. The Legislature finds that the Commonwealth Utilities Corporation's ("CUC") present schedule of electric charges and rates has resulted in the disconnection of power of many residential consumers. The Legislature finds that many of CUC's disconnection, reconnection, and security deposit practices has created further hardships and undue burdens on residential consumers. For example, CUC has disconnected consumers: (1) without the benefit of offsetting their security deposits, (2) before the disconnection date, (3) who are disputing their billing statement, and (4) who are recipients of utility assistance from the Department of Community and Cultural Affairs. Even more egregious is that CUC has disconnected all utility services (water, power, and sewer) of some delinquent consumers even though a consumer is only delinquent in the payment of one particular utility.

The Legislature further finds that the present reconnection fees charged by CUC to their delinquent residential consumers may be unreasonable. The present reconnection fee of $75.00 for power has been in place since 1996. There have been numerous technological advances that should make reconnecting power to consumers very cost effective and economical. The reconnection fees charged by CUC should not be greater than the actual cost of reconnecting customers.

During these difficult times, the Legislature finds that CUC must be more flexible in its

business practices to the extent necessary to remove additional and unnecessary burdens on residential consumers. Therefore, the purpose of this legislation is to regulate the disconnection and reconnection of utility services by CUC.

. . .

Section 3. Enforcement. The Consumer Counsel designated within the Office of the Attorney General, as mandated by Public Law 6-46, shall be responsible for the enforcement of this Act.

**§ 8145. Reconnection of Utility Services. [new section]**

(a) Fees. CUC shall not charge a reconnection fee for utility services that is greater than the actual average cost incurred by the Corporation to reconnect a residential customer; provided that the reconnection fee does not exceed sixty dollars. Actual cost includes the average total labor hours, administrative costs, parts, transportation, and other costs necessary to reconnect a residential customer.

(b) Reconnection security deposit. CUC shall not require an additional security deposit to reconnect a residential customer's utility service that is greater than the security deposit required for new residential utility service applicants.

**Source:** PL 15-122 § 2; repealed and reenacted by PL 16-17 § 10(8145), modified.

**Commission Comment:** The commission removed numbers that repeated words pursuant to 1 CMC § 3806(e).

**§ 8146. Electric Charges and Rates. [new section]**

Notwithstanding any law or regulation to the contrary, the Commonwealth Utilities Corporation shall establish the following residential electric charges and rates:

**Commonwealth Utilities Corporation**
**Schedule of Electric Charges and Rates**

| Customer Classification | Monthly Customer Charges | Electric Non-fuel Rates | Electric Fuel Rates | Total Rates Per kWh |
|---|---|---|---|---|
| RESIDENTIAL | $3.50 | | | |
| First 1000 kWh | | $0.00 | $0.176 | $0.176 |
| Over 1000 kWh | | $0.044 | $0.176 | $0.220 |

The electric charges and rates in this section shall supersede and replace the residential rates established by the Amendments to Part 24 of the Electric Service Regulations of the Commonwealth Utilities Corporation as set forth in 28 Com. Reg. 26156 *et seq*. (Sept. 27, 2006), which became effective on October 27, 2006; provided that the electric fue1 rates may fluctuate depending on the actual cost of fuel. Any proposed change to the electric charges and rates by the Commonwealth Utilities Corporation or any privately-owned or operated public utility shall be reviewed and approved by the Commonwealth Public Utilities Commission before promulgation.

**Source:** PL 15-94 § 2; suspended until December 31, 2008 by PL 16-2 § 2.

**Commission Comment:** The commission changed "9, 26156" to "26156" to correct a manifest error pursuant to 1 CMC § 3806(g). PL 15-94 became law by override on October 4, 2007. In addition to amendments to this code, PL 15-94 contained severability and savings clause provisions and the following:

> Findings. The Legislature finds that the present schedule of electric charges and rates are exorbitant. Many of our residents earn wages below the United States poverty level and cannot afford to pay their increased power bills. Many residents, especially the indigent and the elderly, have been subjected to disconnection of electric service in their homes because they are unable to pay their power bills as well as other monthly costs and expenses. The Legislature finds that because electricity is such an essential part of life, the exorbitant electric rates have proven to be detrimental, and may eventually be disastrous to the CNMI community and economy as unemployment rates spike up and residents are displaced because they can no longer afford to live in our islands. Accordingly, the purpose of this legislation is to establish reasonable residential electric charges and rates for the Commonwealth Utilities Corporation.

PL 16-2, which took effect on May 3, 2008, suspended this section until December 31, 2008. See comment to 4 CMC § 8143 for more information about PL 16-2.

### § 8147. Metering.

Any new schedule of electrical fuel rates shall not apply until the subsequent scheduled monthly meter reading date after the effective date of Public Law 15-94. Meter reading estimates shall not exceed the average monthly billing amount for the previous three months. All metered accounts shall have a monthly billing cycle of no greater than 32 days, except that the month of February's billing cycle shall not be greater than 30 days.

**Source:** PL 15-94 § 3, modified.

**Commission Comment:** The commission changed "this act" to "Public Law 15-94" and removed numbers that repeated words pursuant to 1 CMC § 3806(d) and (e).

### § 8148. Regulations.

The Commonwealth Utilities Corporation shall promulgate rules and regulations necessary to implement the provisions of 4 CMC §§ 8146-8148 .

**Source:** PL 15-94 § 4, modified.

**Commission Comment:** The commission changed "this act" to "4 CMC §§ 8146-8148" pursuant to 1 CMC § 3806(d).

## Article 5. Miscellaneous.

§ 8151. Legal Counsel.
§ 8152. Audits.
§ 8153. Conflicts of Interest.
§ 8154. Civil and Criminal Penalties.
§ 8155. Funds Collected.
§ 8156. Energy Assistance.
§ 8157. Rules and Regulations.
§ 8158. Judicial Review.

**§ 8151. Legal Counsel.**

The Board may retain or engage private legal counsel. In addition, unless prevented by conflict from doing so, the Attorney General shall serve as legal counsel to the Corporation upon the request of the Board, providing representation of such scope as the Board may prescribe.

**Source:** . . . amended by EO No. 2006-04, § 4(8151); repealed and reenacted by PL 16-17 § 10(8151).

**§ 8152. Procurement and Audits.**

(a) The Public Auditor shall audit the operations, books, and records of the Corporation in accordance with 1 CMC § 7710(a) and P.L. 3-91. The final report of the audit shall be made public and shall be transmitted to the Board, the Executive Director, the Governor, and the presiding officers of the Legislature.

(b) Nothing in this section shall be construed as limiting the authority of the Board to employ, retain or engage auditors or a private auditing firm. Basic responsibility for the audit function belongs to the Board, which should appoint a certified public auditor with experience doing utility audits (which may be the Public Auditor) to conduct an annual audit and such other audits as the Board deems appropriate. The annual audit should be complete with a management letter, shall be a public document, and shall include a summary suitable for ready publication in newspapers of general circulation in the Commonwealth. Copies of the annual audits shall be provided to the Governor and the presiding officers of the Legislature. Audits by the Public Auditor do not relieve the Board of its overall responsibility for the audit function; the sufficiency of such audits shall be judged by the same standards as would apply in the case of private auditors retained or engaged by the Board.

**Source:** . . . amended by EO No. 2006-04, § 4(8152); repealed and reenacted by PL 16-17 § 10(8152), modified.

**Commission Comment:** . . . The commission corrected a manifest error in the spelling of "certified public auditor" in subsection (b) pursuant to 1 CMC § 3806(g).

**§ 8153. Conflicts of Interest.**

No member of the Board, officer, counsel, agent, or employee of the Corporation shall in any manner, directly or indirectly, participate in the determination of any question affecting his personal interest or the interests of any enterprise in which he or his immediate family member is directly or indirectly interested.

**Source:** . . . amended by EO No. 2006-04, § 4(8153); repealed and reenacted by PL 16-17 § 10(8153).

**§ 8154. Civil and Criminal Penalties.**

A member of the Board, officer, counsel, employee, or agent of the Corporation, or any other person who embezzles, abstracts, or willfully misapplies any money, funds, credits, or securities of the corporation, or who willfully makes any false entry in any book, report, or statement of the Corporation, or who does any other act with intent to injure or defraud the Corporation, or who accepts any unlawful consideration which relates to his duties under this chapter, or any individual who, with like intent, conspires with, aids, or abets any person in any violation of this section, shall be dismissed from employment, permanently barred from reemployment with the Corporation, civilly liable for any losses that their actions caused the corporation, fined not more than $2,000, or imprisoned for not more than five years, or both.

**Source:** . . . amended by EO No. 2006-04, § 4(8154); repealed and reenacted by PL 16-17 § 10(8154).

**§ 8155. Funds Collected.**
CUC shall deposit all funds received in insured or fully collateralized accounts.

**Source:** . . . amended by EO No. 2006-04, § 4(8155); repealed and reenacted by PL 16-17 § 10(8155).

**§ 8156. Energy Assistance.**
This chapter shall not affect any financial assistance for utility services provided under Public Law 1-22.

**Source:** . . . amended by EO No. 2006-04, § 4(8156); repealed and reenacted by PL 16-17 § 10(8156).

**§ 8157. Rules and Regulations.**
The Board is authorized to promulgate rules and regulations necessary to carry out the purposes of this chapter.

**Source:** . . . amended by EO No. 2006-04, § 4(8157); repealed and reenacted by PL 16-17 § 10(8157).

**§ 8158. Judicial Review.**
(a) A person aggrieved by an act or omission of the Corporation shall obtain review pursuant to 4 CMC § 8435.
(b) An appeal shall not stay the effective date of any schedule of utility rates.

**Source:** . . . amended by EO No. 2006-04, § 4(8158); (a) repealed and reenacted by PL 15-40, § 3(i); repealed and reenacted by PL 16-17 § 10(8158).

**Commission Comment:** . . .

**Article 9. Commonwealth Utility Commission Private Sector Partnership. [new article]**
§ 8191. Private Sector Assistance Agreement (PSAA) Procurement Process.
§ 8192. Private Sector Assistance Agreement Review.
§ 8193. Private Sector Procurement, Employment and Agency Status.
§ 8194. Title to Property; Easement Rights
§ 8195. Protection of Commonwealth Utility Corporation Employees Serving under Private Sector Assistance Agreement Management.
§ 8196. Renewable Energy Purchases from Commonwealth Utility Corporation Customers.

**§ 8191. Private Sector Assistance Agreement (PSAA) Procurement Process.**
(a) *Bids only*. The Commonwealth Utilities Corporation (herein "CUC") shall not enter into any form of performance management contract, franchise agreement, or private sector assistance agreement unless the agreement is awarded pursuant to an invitation to bid. No such contract shall be awarded pursuant to a request for proposals (RFP).
(b) *Public documents*. A CUC invitation to bid and its attachments, including any form of performance management contract or franchise agreement or private partnership for its services and

operations as described below, shall be and remain a public document and shall be posted for review and downloading, without charge, on a website maintained by CUC.

(c) *Private sector assistance agreements*. CUC may procure private sector assistance under a private sector assistance agreement ("PSAA"). A PSAA is limited to:

(1) A performance management contract (PMC) by which CUC may privatize the generation of its electrical power for a limited term not to exceed five years;

(2) A concession or franchise agreement by which CUC transfers a utility service, including the related required capital investment, to the private sector for a limited term not to exceed 25 years;

(3) A contract for a public utilities cooperative;

(4) A build/operate/transfer (BOT) contract;

(5) A contract for an independent power producer (IPP); or

(6) Full privatization of CUC as follows: notwithstanding any provision of law to the contrary, the full privatization of CUC's electric power generation operation is authorized; provided that any private entity that acquires CUC's electric power generation operation in full shall pay a total of not less than two hundred fifty million dollars ($250,000,000.00) in cash or in cash and equivalent infrastructure improvements in the form of aerial and underground power transmission lines and expanded renewable energy generation facilities to meet greater than 50% of demand; and provided further that any acquisition of the electric power generation operation shall be for a period of not less than forty years.

(d) *Authority*. CUC shall procure such private sector assistance under its procurement regulations (set forth in the Commonwealth Register, Volume 29, No. 06; June 18, 2007), as amended by CUC from time to time thereafter, and as modified by this article. No other procurement regulations shall apply.

(e) *Limitation of bid*. With respect to a PSAA procured pursuant to subsection (c)(l)-(6) of this section, CUC shall procure the services of a United States certified contractor experienced with CUC's facilities or other power generation facilities to draft a PSAA invitation for bids; provided that the invitation for bids shall include a condition that such PSAA shall establish a renewable energy portfolio standard of at least fifty percent of its net electricity sales within seven years of the PSAA, notwithstanding 6 CMC § 8522 as amended by Public Law 15-87.

(f) *Bid evaluation*. With respect to a PSAA procured pursuant to subsection (c)(l)-(6) of this section, CUC shall procure the services of a United States certified contractor to conduct the bid evaluation.

(g) *PUC review*.

(1) Any PSAA award shall not be final unless the Public Utilities Commission (herein "PUC") approves it under 4 CMC §§ 8439, 8440, or 8441 within 42 days.

(2) No contract to operate the power plant shall be awarded to any contractor who is not already permitted in a U.S. or international jurisdiction, or who has not operated a major source of emission in accordance with U.S. Environmental Protection Agency (EPA) regulations for at least five years.

(3) The involvement of PUC in a CUC PSAA under this article is limited to the process described in 4 CMC § 8192.

(h) *Scope of procurement*. Procurement under this article shall be exempt from 1 CMC § 7404 *et seq.*, as amended, and regulations promulgated pursuant to those sections.

**Source:** PL 16-17 §§ 3 and 6, modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(c), (d) and (e). Public 16-17 was enacted by override on October 1, 2008. In addition to the code amendments set forth in this chapter and severability, savings clause and transition provisions (see comment to 4 CMC § 8111), PL 16-17 contained the following:

Section 1. Short title. This Act may be cited as the "CUC Private Sector Partnership Act of 2008."

Section 2. Findings and purpose. The Sixteenth Northern Marianas Commonwealth Legislature finds that the people of the Commonwealth demand and deserve, at the earliest possible time, reliable power at affordable rates delivered by an efficient, well-managed utility service. To achieve this goal, the Commonwealth Utilities Corporation (CUC) requires an infusion of funds. A source of funding may be available through CUC's issuance of public utility revenue bonds or through the private sector and other funding sources that are independent of the depleted coffers of the Commonwealth government.

The Legislature further finds that Commonwealth ratepayers deserve a utility that delivers high quality power on a 24/7 basis at reasonable prices, whose operations are open and transparent, whose books are balanced, whose audits are clean, and whose operations are reviewed by an independent regulator. Further, Commonwealth investors deserve a utility that can and will meet their future power, water, and wastewater needs in a reliable manner with stable and affordable rates. Commonwealth employees deserve a utility run by skilled managers supervising a highly trained local workforce with good morale, competitive compensation, and excellent training opportunities for personnel enhancement and certification to ensure the availability of the skilled work force required for the operation and maintenance of the utilities. Commonwealth power consumers deserve a utility that can procure materials and supplies, including spare parts and professional services, in a flexible, timely, and cost-effective manner. Commonwealth citizens deserve an environmentally friendly utility service committed to cost effective green power generation. Finally, Commonwealth taxpayers deserve a utility whose operation does not require public subsidies, but rather one that enhances taxpayers' jobs, finances, and economic security.

The Legislature further finds that the Commonwealth and CUC are far from achieving these goals. Residents and businesses alike are suffering from outages, unreliable power and increasing rates. Tourists and investors are discouraged from pursuing their activities in the Commonwealth. The Commonwealth's economy is in a tailspin, and the current power crisis is accelerating that tailspin. The lack of affordable; reliable, and continuous power from a professionally managed utility creates an imminent threat to the health, safety, and welfare of the people of the Commonwealth. The water and waste treatment facilities, which require power, may fail to function safely and as needed; public safety facilities and equipment may not function when required; the healthcare facilities may become paralyzed; businesses, particularly those operating hi-tech equipment and those requiring air conditioning for their tourist customers, may be unable to operate efficiently or at all. Finally, large power consumers, such as hotels and shopping centers that ordinarily would buy power from CUC and contribute to the overall costs of the system, must generate their own power at a much higher cost per kilowatt hour.

The Legislature further finds that more than two-thirds of CUC's revenue (about $75 million per year of CNMI ratepayers' funds) goes directly offshore to pay for the foreign oil required to run CUC's generators, instead of flowing through the CNMI economy. The continuing problems with CUC's equipment and finances are causing a collapse of overburdened consumers' family finances and threaten to cause a collapse of the Islands' power, water, and sewer infrastructures-an emergency that the Commonwealth must avoid. Recovery is possible, but requires the assistance and support from the private sector. The Commonwealth and CUC must commit themselves to implementing successful models of public-private sector partnerships. These models range from privatization of management through performance management contracts, as undertaken in Guam, to privatization of an entire utility service regulated by a public utilities commission, as is common in the 50 states. By taking advantage of one or more of these

models, the Commonwealth and CUC can draw on outside financing and expertise from the private sector to meet – and resolve – the power crisis. Based on the foregoing, the Legislature finds and declares that this Act is a necessary and proper use of its legislative authority under Article II of the Commonwealth Constitution.

The Legislature further finds that the Board of CUC should be restored its normal managerial powers, as was the case prior to Executive Order 2006-4. Section 9 is a re-enactment of the CUC statute that takes into account numerous public laws passed beginning in the 13th Legislature.

The Legislature finally finds that CUC's previous efforts to privatize portions of its services or to procure alternative energy resources have been largely unsuccessful because CUC has failed to solicit these contracts through the process of sealed competitive bids from pre-qualified bidders. The use of the RFP system (requests for proposals) injects into the process an unacceptable element of subjectivity, and as a result participants in the process lack confidence in it and tend to file protests against the content of the requests or the procedures for evaluating them. These protests have been largely successful and have delayed the procurement of essential goods and services. This Act shall authorize the full privatization of CUC; provided that any private entity that acquires CUC shall pay a total of not less than two hundred fifty million dollars ($250,000,000.00) in cash or in a combination of cash and equivalent infrastructure improvements, and provided further that any acquisition shall be for a period of not less than forty (40) years.

The Legislature intends that this Act be read, to the fullest extent possible, consistently with Public Law 16-2.

**§ 8192. Private Sector Assistance Agreement Review.**

Notwithstanding 1 CMC § 9101 *et seq.*, 1 CMC § 7811 *et seq.*, 2 CMC § 2301 *et seq.*, or any other provision of law:

(a) Review of procurement decision in general.

(1) An aggrieved person may seek review of a CUC procurement for goods or services through a private sector assistance agreement (a "CUC PSAA procurement") by filing a protest.

(2) The protest shall be filed in writing with CUC within ten days after the aggrieved person knows, or by the exercise of reasonable diligence should know, of the decision of CUC, including but not limited to the awarding of a CUC PSAA.

(3) CUC shall respond in writing to the protest within ten days. The protest, CUC's response, and any reply by the aggrieved party shall be forwarded to PUC in the event that the protest is for an award of a CUC contract subject to PUC review and approval.

(4) PUC shall consider any protest filed in reaching its determination whether to approve or disapprove any given award subject to its review.

(5) An expedited procedure shall govern the review of a CUC PSAA procurement. Filings and document exchanges accomplished and distributed by electronic means shall be favored.

(6) Except as otherwise provided in this section, no person shall have standing to obtain review of a CUC PSAA procurement unless the person shall show actual prejudice from the decision.

(7) The Public Auditor shall have no involvement in a CUC PSAA procurement, nor jurisdiction over an appeal arising from such a procurement; provided that nothing in this subsection shall be construed to limit the authority of the Public Auditor set forth in article III, § 12 of the Constitution of the Northern Mariana Islands.

(8) In deciding whether to approve or disapprove a CUC award, PUC shall issue a written decision on any protest filed.

(9) CUC shall bear the costs of any PUC review of CUC's actions in any protest, rate case, or any other PUC action in which CUC's past, present or future courses of action are being reviewed or considered by PUC.

(b) PUC review.

(1) CUC shall file its final PSAA procurement decision with the PUC, including such supporting information as the PUC shall require, within seven days of reaching its decision.

(2) Upon CUC's filing, PUC shall immediately commence its review of a CUC PSAA procurement decision. PUC shall adopt procedures for an expedited review and for notice and participation of the person/s who participated in the CUC PSAA procurement.

(3) The following persons may participate by right before the PUC proceeding:

(i) CUC;

(ii) The Attorney General; and

(iii) The person/s in whose favor the procurement decision was entered. A person who participates by right shall file a timely notice of participation in lieu of an answer. The notice shall state the person's position regarding a CUC decision. Any other person shall petition for leave to intervene.

(4) Within 42 days of the date of CUC's filing, PUC shall complete its review proceedings and enter final orders adjudicating a protest, if any, and approving or disapproving CUC's decision. PUC's substantive review shall be pursuant to 4 CMC §§ 8439, 8440, or 8441.

(5) PUC's failure to enter an order shall constitute a final agency action dismissing the protest and approving the CUC PSAA.

(6) PUC's final action on a protest shall be subject to review pursuant to the Administrative Procedure Act (l CMC § 9101 *et seq.*), and this article.

(7) PUC's final action on a decision approving or disapproving a PSAA shall be subject to review pursuant to the Administrative Procedure Act (l CMC § 9101 *et seq.*), and this article.

(c) Superior Court: expedited review of PUC decision.

(1) The appeal of a PUC decision shall be an expedited appeal of an administrative agency decision to the Superior Court, and not an original action. Except as otherwise provided by this article, judicial review of the PUC decision shall be pursuant to the Administrative Procedure Act, under the standard of review set forth in 1 CMC § 9112(f). The facts shall not be subject to trial de novo.

(2) The following persons shall participate by right before the courts:

(i) The appellant;

(ii) CUC;

(iii) The Attorney General; and

(iv) The person in whose favor the procurement decision was entered. No answer shall be required. Each such person shall file a notice of participation stating the person's position regarding the appeal. Any other person shall petition for leave to intervene. The Court shall not grant the intervention unless the person shall clearly and convincingly demonstrate an interest in the CUC PSAA decision.

(3) A person who desires to appeal a PUC decision shall, within seven days following the date the PUC enters that decision, file its appeal with the Superior Court. This is a jurisdictional prerequisite. The appellant shall not have perfected the appeal until the appellant has served a copy on the Attorney General and CUC. The notice of appeal shall be accompanied by a legal memorandum and supporting materials demonstrating plainly why the

PUC decision should be reversed or modified.

(4) The Court shall conduct its review on an expedited basis. Within fourteen days following the filing of an appeal:

(i) A respondent shall file its notice of participation and legal memorandum;

(ii) An intervenor shall file its petition and supporting legal memorandum;

(iii) The Court shall issue its notice for a hearing, if any.

(5) There shall be no oral argument unless a party so requests or the Court orders oral argument.

(6) The Court shall issue its opinion expeditiously and enter judgment no later than seven days thereafter.

(d) Supreme Court: expedited review.

(1) A party may appeal the judgment of the Superior Court to the Supreme Court as in other cases, provided that:

(i) From the date of the entry of judgment, as a prerequisite for jurisdiction, a notice of appeal shall be filed within seven days;

(ii) The appellant's brief shall be filed within fourteen days of filing the notice of appeal;

(iii) The appellee's brief shall be filed within twenty-eight days of filing the notice of appeal;

(iv) A party may file a declaration and relevant materials in lieu of filing the record, in order to meet the expedited schedule; and

(v) There shall be no oral argument unless the Court shall, upon a party's request or its own motion, grant it.

(2) Unless the Supreme Court determines there is good cause for delay, the Court's judgment shall issue within forty-two days after the filing of a notice of appeal.

(3) No stay of a Superior Court decision shall be issued absent compelling evidence requiring immediate relief.

**Source:** PL 16-17 § 4, modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(d), (e) and (f).

**§ 8193. Private Sector Procurement, Employment and Agency Status.**

A business that is a party to a PSAA remains a private sector entity and shall not be subject to:

(a) Treatment as a public sector agency or instrumentality by virtue of its contract and scope of work; provided that CUC may by contract extend to it limited legal liability and immunity protections if such extension is approved by the Attorney General.

(b) CUC or CNMI procurement regulations, with respect to procurements undertaken by it within the scope of its work.

(c) Commonwealth employment laws and regulations that are applicable solely to the public sector, with respect to decisions made by it within the scope of its work.

**Source:** PL 16-17 § 5.

**§ 8194. Title to Property; Easement Rights**

(a) CUC is hereby granted, without further consideration, the right of perpetual access to and use of all easements held by the Commonwealth through any agency, entity, or other

instrumentality that allow for public utility services.

(b) CUC shall hold title to the property on which its facilities, buildings, improvements, fixtures, or other assets are permanently situated, except for lands owned by the Commonwealth Port Authority. The Department of Public Lands shall grant, as a ministerial act without further consideration, such titles to CUC within 28 days of a demand. A grant may be made subject to survey. The costs of any required survey shall be borne by the Department of Public Lands.

(c) Upon request, the Department of Public Lands shall assist CUC in identifying the location and acquiring:

(1) Easements that CUC determines it requires for a public purpose, and

(2) Titles to properties on which CUC may have located, or may propose to locate, future utility service facilities, buildings, improvements, or other assets.

**Source:** PL 16-17 § 7, modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(f).

**§ 8195. Protection of Commonwealth Utility Corporation Employees Serving under Private Sector Assistance Agreement Management.**

(a) CUC and PUC, as the case may be, shall ensure that a PSAA protects the jobs of current CUC employees by allowing such employees to continue serving the utility for a fixed number of years or for an indefinite duration.

(b) Additionally, CUC and PUC, as the case may be, shall ensure that a PSAA requires a contractor to engage in and provide training opportunities for certification to a largely resident worker labor force at competitive rates of compensation.

**Source:** PL 16-17 § 8.

**§ 8196. Renewable Energy Purchases from Commonwealth Utility Corporation Customers.**

(a) Pursuant to Public Law 15-87 [4 CMC §§ 8521-8573], a group of eligible customer-generators who aggregate their entitlements to sell renewable energy to the CUC power system and co-locate the generating equipment at a site that is remote from one or more of them shall have the same rights to sell renewable energy to CUC as does an individual eligible customer-generator.

(b) A contract entered into between CUC and an eligible customer-generator (or a group of such eligible customer-generators) under Public Law 15-87 shall not be deemed to be a contract for a utility service as described in 4 CMC §§ 8112 or 8141.

(c) A customer-generator, self-generator, performance management contractor, and an entity which sells power at wholesale to CUC shall not be included in the definition of public utilities under 4 CMC § 8402(f) (defining "public utility" under the Public Utilities Commission law (P.L. 15-35)).

**Source:** PL 16-17 § 9, modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(g). The commission inserted the bracketed citation and changed “§ 8402(e)” to “§ 8402(f)” in subsection (c) .

## CHAPTER 4. ~~COMMONWEALTH TELECOMMUNICATIONS ACT~~. PUBLIC UTILITIES COMMISSION. [Entire Chapter repealed, reenacted, and renamed by PL 15-35]

### Article 1. General Provisions.

**§ 8402. Definitions.**

As used in this chapter:

(a) - (b) [unchanged]

(c) [Expired September 30, 2010].

(d) "Just and reasonable" means that rate, charge or assessment cost which enables a public utility, telecommunications company, and cable television company an opportunity to finance its capital improvements needs, cover all its operating and debt expenses, and earn a reasonable rate of return on its investment in the Commonwealth.

(e) "Person" means any individual, corporation, partnership, association, business trust, company, joint venture company, limited liability company, government or government subdivision, corporation, or agency, or any other legal entity.

(f) "Public utility" means the Commonwealth Utilities Corporation and any duly licensed private contractor operating:

(1) A facility or subsystem of the community-wide water production and distribution system or electrical production and/or distribution system; or

(2) A facility or subsystem of the community-wide waste water disposal system, or both.

(g) "Regulated entity or entities" or "entity" means all persons regulated by the Commission, including public utilities, telecommunications companies and the cable television companies.

(h) "Telecommunications company" means any person or corporation that owns, controls, administers, operates, manages, provides or resells, in full or in part, directly or indirectly, any telecommunications line system or service in the Commonwealth.

(i) "Telecommunications service" means the transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received, for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

**Source:** . . . subsection (c) added and the remaining subsections redesignated accordingly by PL 16-9 § 2(a) ; subsection (e) (redesignated to (f)) amended by PL 16-9 § 2(b). [PL 16-9 amendments to this section expired on September 30, 2010].

**Commission Comment:** . . .Public Law 16-9 was enacted on August 1, 2008 and expires on September 30, 2010. The commission is charged with codifying laws of the CNMI that are of a permanent nature pursuant 1 CMC § 3805(b)(1). However, the 15th and 16th Legislatures passed several laws affecting CUC and power in the CNMI, which may result in confusion regarding the status of the law in this area. Therefore, the commission believes that including the PL 16-9 amendments with clearly marked expiration designations will assist the reader and the commission would be remiss in its duties to not include such amendments, albeit temporary (as defined by PL 3-90, § 10). PL 16-9 contains severability and savings clause provisions and the following:

Section 1. Findings and purpose. The Commonwealth Legislature finds that the Commonwealth Public Utilities Commission Act of 2006 must be amended to permit

the Commonwealth Utilities Commission (CUC) to procure emergency power during periods of declared power emergencies. The Legislature finds that the provisions of the Act, including but not limited to 4 CMC §§ 8402, 8409, 8439, and 8441, should not prevent CUC from entering into limited term contracts for emergency power without the approval of PUC.

. . .

Section 3. Retrospective Approval of Existing Contracts. The Governor may issue a retrospective declaration pursuant to 3 CMC § 5121 for any contract in existence on the effective date of this Act provided that the contract is for a term of two years or less and is for emergency wholesale power generation. Such contracts shall not be reviewable by PUC, and the wholesale provider shall not be considered a public utility under 4 CMC §8402(f) for the duration of the contract.

. . .

Section 7. Sunset Clause. This Act expires on September 30, 2010.

**§ 8407. Operation of Commission: Additional.**

(a) - (b) [unchanged]

(c) Notwithstanding any other provision of law or any provision of any executive order, once three Commissioners have been appointed and confirmed, the PUC is deemed organized and no further action shall be required for the Commission to begin its duties; the Commission shall commence operations immediately.

(d) Notwithstanding subsection (b), once three commissioners have been appointed and confirmed, any event, be it resignation, removal, or otherwise, which reduces the number of Commissioners below three shall not divest the Commission of its authority, and the PUC shall continue its duties shorthanded until such time as additional commissioners have been duly appointed and confirmed. If, for any reason, the Commission consists of only two Commissioners, then a quorum for the conduct of the PUC's business shall be two and decisions shall be unanimous until such time as an additional Commissioner or Commissioners shall be duly nominated and confirmed. If the Commission consists of a sole Commissioner, than a quorum for the conduct of the Commission's business shall be one, whose decisions, rules or orders shall be valid and effective for not more than 60 days, unless extended for an additional 30 days upon a finding that the extension is in best interest of the public.

**Source:** PL 15-35, § 2(8407), modified; (c) and (d) added by PL 16-2 § 12.

**Commission Comment:** The commission deleted figures that repeated words in subsection (b) above pursuant to 1 CMC § 3806. See comment to 4 CMC § 8143 for more information regarding PL 16-2.

## Article 2. General Powers and Duties.

**§ 8411. General Powers and Duties.**

The Commission shall have regulatory oversight supervision over each regulated entity as set forth in this Chapter and shall perform the duties and exercise the powers imposed or conferred upon it by this Chapter. The Commission in the discharge of any of its duties or the exercise of any of its powers, except a final determination affecting an entity, may act through one or more of its Commissioners designated by the Commission for this purpose. In addition to the powers and duties elsewhere conferred and imposed, the Commission shall:

(a) - (c) [unchanged]

(d) Review and approve or disapprove any divestiture of capital or contractual agreement which may increase rates and charges to the consumer.

(e) - (n) [unchanged]

(o) [Expired September 30, 2010].

**Source:** . . . subsection (d) amended and subsection (o) added by PL 16-9 § 2(c) and (d), respectively. [PL 16-9 amendments expired on September 30, 2010].

**Commission Comment:** . . . See comment to 4 CMC § 8402 for information regarding PL 16-9, which took effect on August 1, 2008, and its sunset clause.

**Article 7. General Miscellaneous Provisions.**

**§ 8444. Procedure for Implementing or Modifying, Rates, Charges or Rents.**

The following procedures shall apply when implementing or modifying changes in rates, charges, and rents for an entity's services unless the Commission determines that these should not apply to the formula or procedure established for determining rates, and adopt alternative procedures.

(a) - (e) [unchanged]

(f) *Emergency rates*. Notwithstanding any other provision of this act, or law, the Commission may order into effect emergency, interim rates, as follows, upon a finding that an emergency exists to the detriment of the public interest if such action to adjust rates is not taken; there has been a substantial increase in expenses or decrease in revenues of a regulated utility not attributable to circumstances reasonably within the control of the utility; the utility would be unable to continue to provide adequate and reliable service pending resolution of a permanent rate case; there is an imminent threat of insolvency or a liquidity crisis constituting an immediate and irreparable threat to the interests of the utility or the customers; or the regulated entity's current rates are obviously confiscatory. With respect to this subsection, and notwithstanding any other provision of this act, as amended, or other law, no prior public hearing or notice shall be required for the Commission's receipt of any proposed rate change or supporting documents, consideration, discussion or deliberation concerning the matters presented, the issuance of an order or the imposition of a rate, fee, charge or other requirement concerning a regulated entity imposed.

**Source:** . . . (f) added by PL 16-2 § 11(f).

**Commission Comment:** The commission deleted figures that repeated of words in subsections (a) and (d) above pursuant to its authority by 1 CMC § 3806 (e). See comment to 4 CMC § 8143 for more information regarding PL 16-2.

## CHAPTER 5. ENERGY [New chapter]

**Articles**

1. **High Performance Building Standards. (Reserved)**
2. **Renewable Portfolio Standards.**
3. **Net Energy Metering.**
4. **Reserved.**
5. **Government Use of Energy Efficient Products.**

**6. Energy Efficient Policy.**
**7. Clean Energy Transportation.**
**8. Renewable Energy Technologies; Tax Treatment; Tax Credits. (Reserved)**

**Article 1. High Performance Building Standards. (Reserved)**

**Article 2. Renewable Portfolio Standards.**
§ 8521. Definitions.
§ 8522. Renewable Portfolio Standard.
§ 8523. Achieving Portfolio Standard.
§ 8524. Waivers, Extensions and Incentives.
§ 8525. Renewable Portfolio Standards Study.

**§ 8521. Definitions.**

As used in this chapter, the following words and phrases shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(a) "Cost-effective" shall mean the ability to produce or purchase electric energy or firm capacity, or both, from renewable energy resources at or below avoided costs.

(b) "Electric utility" shall mean the Commonwealth Utilities Corporation and/or its successor in interest ("CUC") and any other provider of retail electric service in the Commonwealth.

(c) "Regulator" shall mean the Commonwealth Public Utilities Commission, or its successor in interest, or if no such commission exists, the Board of the government-owned utility.

(d) "Renewable energy" shall mean:

(1) Electrical energy produced by wind, solar energy, hydropower, landfill gas, waste to energy, geothermal resources, ocean thermal energy conversion, ocean wave or current energy, biomass, including municipal solid waste, biofuels, or fuels derived from organic sources (other than coal, oil or gas), hydrogen fuels derived from renewable energy, or fuel cells where the fuel is derived from renewable sources; and/or

(2) Electrical energy savings brought about by the use of:

(i) Solar or heat pump water heating,

(ii) Seawater air-conditioning district cooling systems,

(iii) Solar air-conditioning and ice storage,

(iv) Quantifiable energy efficiency and energy conservation measures, including insulation in excess of the standards required in the Commonwealth's Building Code,

(v) Use of rejected heat from co-generation, and

(vi) Combined heat and power systems, but excluding:

(A) Fossil-fueled qualifying facilities that sell electricity to electric utility companies, and

(B) Central station power projects.

(3) Where bio fuels, hydrogen, or fuel cell fuels are produced by a combination of renewable and nonrenewable means, the proportion attributable to the renewable means shall be credited as renewable energy.

(4) Where fossil and renewable fuels are co-fired in the same generating unit, the unit shall be considered to produce renewable electricity in direct proportion to the percentage of the total heat value represented by the heat value of the renewable fuels.

(e) "Renewable portfolio standard" shall mean the required percentage of electrical energy sales that is represented by renewable energy:

(1) Produced by facilities which the electric utility owns or controls; or

(2) Which the utility has a right to receive by contract with an independent power producer.

**Source:** PL 15-23, § 2(8621); amended by PL 15-87 § 2(8621), modified.

**Commission Comment:** The commission assigned a different numbering scheme to the above and subsequent sections than what was specified in the original text of Public Laws 15-23 and 15-87 pursuant to 1 CMC § 3806. The commission changed capitalization pursuant to 1 CMC § 3806(f). PL 15-87, effective September 26, 2007, contained severability and savings provisions and the following:

Section 1. Findings and Purpose. The Legislature finds that Public Law 15-23 established incentives for producing electricity using alternative or renewable energy. However, Public Law 15-23 limits the scope in which a customer-generator or a private power producer could produce and sell electricity produced by renewable energy to the Commonwealth Utilities Corporation or a utility company.

The Legislature further finds that with the cost of fuel still on the rise, it is imperative that the Commonwealth utilize electricity produced by renewable energy on a large scale basis, if possible. Moreover, flooding the power grid with electricity produced by renewable energy would drive down the price of fossil fuel. Accordingly, the purpose of this legislation is to amend Public Law 15-23 to allow customer-generator or private power producers to produce and sell electricity produced by renewable energy to the Commonwealth Utilities Corporation on a large scale basis and to provide for incentives for the production of renewable energy in the Commonwealth.

It is the intent of the Legislature that the Commonwealth Utilities Corporation integrate the use of renewable energy into its power system as soon as feasible so as to alleviate the cost of purchasing fuel each month for its diesel generators. Although this Act includes specific deadlines for establishing renewable portfolio standards, the Commonwealth Utilities Corporation should not delay the implementation of the renewable portfolio standards until the occasion of such deadlines. Utilizing renewable energy to produce power today would significantly reduce the cost of producing electricity, thereby decreasing the cost of purchasing electricity for the people of the Commonwealth.

PL 15-23 was enacted on August 10, 2006, and contained the following findings and purpose in addition to severability and savings provisions:

Section 1. Findings and Purpose. The Legislature finds that the Commonwealth must find ways to conserve energy and explore alternative energy sources. Rising world oil prices have had a profound effect on the Commonwealth most notably with regard to public utilities. The Legislature further finds that the CNMI must reduce its dependence on fossil fuels and move toward the use of renewable energy while setting realistic deadlines for meeting that goal. Estimates are that the world economy will have to suffice with only a fraction of the current supply some time this century. The world's supply of fossil fuel is estimated to be economically depleted at some point in the future. Therefore, it is the purpose of this act to provide incentives for alternative energy.

## § 8522. Renewable Portfolio Standard.

Each electric utility shall establish a renewable portfolio standard of:

(a) Ten percent of its net electricity sales on or before December 31, 2008;

(b) Twenty percent of its net electricity sales on or before December 31, 2010;

(c) Forty percent of its net electricity sales on or before December 31, 2012;

(d) Eighty percent of its net electricity sales on or before December 31, 2014.

**Source:** PL 15-23, § 2(8622); amended by PL 15-87 § 2(8622), modified.

**Commission Comment:** The commission changed a semi-colon at the end of subsection (a)(4) to a period to correct a manifest error pursuant to 1 CMC § 3806(g).

**§ 8523. Achieving Portfolio Standard.**

The electric utilities may aggregate their renewable portfolios in order to achieve the renewable portfolio standard. If requested, the regulator shall determine on an evidentiary record if an electric utility company is unable to meet the renewable portfolio standards in a cost-effective manner, or as a result of circumstances beyond its control which could not have been reasonably anticipated or ameliorated. If this determination is made, the electric utility company shall be relieved of some or all of its responsibility for meeting the renewable portfolio standard for the period of time that it is unable to meet the standard.

**Source:** PL 15-23, § 2(8623); reenacted without change by PL 15-87 § 2(8623).

**§ 8524. Waivers, Extensions and Incentives.**

(a) An electric utility company not meeting the renewable portfolio standard shall report to the regulator in writing within 30 days following the goal date established in 4 CMC § 8522 and provide a detailed explanation for not meeting the renewable portfolio standard.

(b) The regulator, after public notice and an evidentiary hearing, may:

(1) Grant a waiver from the renewable portfolio standard;

(2) Grant an extension for meeting the prescribed standard;

(3) Levy a civil fine of up to $10,000 per day for failure to meet the standard;

(4) Provide incentives to encourage electric utility companies to exceed their renewable portfolio standards or to meet their renewable portfolio standards ahead of time, or both.

**Source:** PL 15-23, § 2(8624); amended by PL 15-87 § 2(8624), modified.

**Commission Comment:** The commission changed capitalization and changed references to agree with renumbered sections pursuant to 1 CMC § 3806.

**§ 8525. Renewable Portfolio Standards Study.**

The regulator shall:

(a) By December 31, 2008, develop and implement a utility rate structure and independent power producer contract standards, which may include but is not limited to,

(1) Performance-based ratemaking to provide incentives that encourage the Commonwealth's electric utilities to use cost-effective renewable energy resources found in the Commonwealth,

(2) In order to meet the renewable portfolio standards established in this chapter,

(3) While allowing for deviation from the standards in the event that the standards cannot be met in a cost-effective manner, or as a result of circumstances beyond the control of an electric utility which could not have been reasonably anticipated or ameliorated;

(b) By December 31, 2008, conduct a study and publish its findings and conclusions to:

(1) Determine the extent to which any proposed utility rate structure or independent power producer contract would impact electric utility companies' profit margins, and how to avoid cutting profits solely by reason of the proposed rate structure;

(2) Determine the capability of the Commonwealth's electric utility utilities to

achieve renewable portfolio standards in a cost-effective manner;

(3) Assess factors such as the impact on consumer rates, utility system reliability and stability, costs and availability of appropriate renewable energy resources and technologies, permitting approvals, impacts on the economy, culture, community, and environment;

(4) Evaluate tax incentives and other strategies to attract independent power producers who would use renewable sources of energy; and

(5) To assess whether the renewable portfolio standards should be reset.

**Source:** PL 15-23, § 2(8625); amended by PL 15-87 § 2(8625), modified.

**Commission Comment:** The commission substituted "this chapter" for "this Act,"changed capitalization, and deleted the word "and" at the end of subsection (a)(3) pursuant to 1 CMC § 3806(d), (f), and (g).

**Article 3. Net Energy Metering.**

§ 8531. Definitions.
§ 8532. Net Energy Metering to be Provided to Eligible Customer.
§ 8533. Maximum Capacity of Eligible Customer-Generator.
§ 8534. Standard Contract or Tariff; Rate Structure.
§ 8535. Limits on Additional Customer Generators.
§ 8536. Calculation of Net Charges/Benefits.
§ 8537. Billing Periods; 12-Month Reconciliation.
§ 8538. Net Electricity Consumers.
§ 8539. Net Electricity Producers; Excess Electricity Credits and Credit Carry Over.
§ 8540. Net Electricity Consumption or Production Information.
§ 8541. Termination of Eligible Customer-Generators.
§ 8542. Safety and Performance Standards.
§ 8543. Business and Tax Effects.

**§ 8531. Definitions.**

As used in this article, the following words and phrases shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(a) "Available capacity" shall mean the capacity available to the electric utility's system after factoring nameplate rating, times efficiency factor, times demonstrable hours of operation divided by total 8760 hours per year.

(b) "Control area" shall mean each of the islands which the electric utility serves.

(c) "Electric utility" shall mean the Commonwealth Utilities Corporation and/or its successor in interest ("CUC") and any other provider of retail electric service in the Commonwealth.

(d) "Eligible customer-generator" shall include any independent power producers ("IPP") and shall mean an electric utility's metered residential or commercial customer, or contracted generation station including a government entity, who owns and operates, or will own and operate, a renewable energy system to generate electricity that is:

(1) Located on the customer's premises or a remote station;

(2) Operated in parallel with the utility's transmission and distribution facilities;

(3) In conformance with the utility's reasonable and lawful interconnection requirements; and

(4) Intended primarily to offset part or all of the customer's own electrical requirements, or

(5) Intended primarily to fulfill an electric contract to sell power to the utility or a third party customer.

(e) "Energy service company" or "ESCO" is a business that develops, installs, and finances projects designed to improve the energy efficiency and maintenance costs for facilities over a seven-to ten year time period, which project expenses, capital investments and fees are bundled into the project's cost and are repaid through a portion of the dollar savings generated. The ESCO is a business which generally acts as a project developer for a wide range of tasks and assumes the technical and performance risk associated with the project. Typically, the ESCO offers the following services: develop, design, and finance energy efficiency projects; install and maintain the energy efficient equipment involved; measure, monitor, and verify the project's energy savings; and assume the risk that the project will save the amount of energy guaranteed.

(f) "Energy service contract" shall mean a contract between a facilities owner or manager, including the government, and an energy service company or an independent power producer.

(g) "Independent Power Producer" shall mean an entity which generates electricity for public or private use solely through its ownership of a private energy power production facility; provided it is not a public utility, or a holding company or subsidiary of a public utility.

(h) "Net energy metering" shall mean measuring with a mechanical and/or electronic device the difference between the electricity supplied through the electric grid and the electricity generated by an eligible customer-generator and fed back to the electric grid over a monthly billing period; provided that:

(1) Net energy metering shall be accomplished using a single meter capable of registering the flow of electricity in two directions;

(2) An additional meter or meters to monitor the flow of electricity in each direction may be installed with the consent of the customer-generator, at the expense of the electric utility, and the additional metering shall be used only to provide the information necessary to accurately bill or credit the customer-generator, or to collect renewable energy generating system performance information for research purposes;

(3) If the existing electric meter of an eligible customer-generator is not capable of measuring the flow of electricity in two directions, the electric utility shall be responsible for all expenses involved in purchasing and installing a meter that is able to measure electricity flow in two directions;

(4) If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a single two-directional meter; and

(i) "Net electricity consumer" shall mean an eligible customer-generator who, at the end of each monthly billing period, has consumed electricity where:

(1) The electric utility's delivery of electricity to the customer exceeds

(2) The sum of:

(i) The electricity generated by the eligible customer-generator during that same period; and

(ii) Unused credits for excess electricity from the eligible customer-generator carried over from prior months since the last renewable energy-month reconciliation period.

(j) "Net electricity producer" shall mean the eligible customer-generator who, at the end of each monthly billing period, has generated electricity during the month in an amount which exceeds

the electricity supplied by the electric utility during that same period.

(k) "Regulator" shall mean the Commonwealth Public Utilities Commission, or its successor in interest, or if no such commission exists, the Board of the government-owned utility.

(l) "Renewable energy system" shall mean a generating system that uses a renewable energy source as defined in this chapter, or a hybrid system consisting of two or more of these facilities.

**Source:** PL 15-23, § 2(8631); amended by PL 15-87 § 2(8631), modified.

**Commission Comment:** The commission changed capitalization and corrected manifest errors in this section pursuant to 1 CMC § 3806(f) and (g). The commission changed "who" to "which" in subsection (g) and inserted the closing quotation marks in subsections (i)-(l).

**§ 8532. Net Energy Metering to Be Provided to Eligible Customer.**

An eligible customer-generator shall be entitled to receive net energy metering service in accordance with this article.

**Source:** PL 15-23, § 2(8632); reenacted without change by PL 15-87 § 2(8632).

**Commission Comment:** The commission changed capitalization in this section pursuant to 1 CMC § 3806(f).

**§ 8533. Maximum Capacity of Eligible Customer-Generator.**

A customer shall be eligible for net energy metering for not more than ten megawatts of available capacity of a renewable energy system; provided that the regulator shall increase the maximum qualifying capacity by regulation or order upon a showing that the larger system will not unduly interfere with the electric utility's ability to properly manage its control area and that the financial impact of the service will not unduly harm the electric utility, or by order upon a showing that the increase will benefit the public by providing incentives to independent power producers.

**Source:** PL 15-23, § 2(8633); amended by PL 15-87 § 2(8633).

**§ 8534. Standard Contract or Tariff; Rate Structure.**

(a) The electric utility shall develop a standard contract or tariff providing for net energy metering and shall make this contract or tariff available to eligible customer-generators, upon request, on a first-come-first-served basis until the time that the total available capacity produced by eligible customer-generators equals 30 percent of the electric utility's system peak demand; provided that, on good cause shown, the regulator may increase, by rule or order, this percentage amount up to 120 percent of the electric utility's system peak demand.

(b) Each net energy metering contract or tariff shall be identical, with respect to rate structure and other charges and fees, to the contract or tariff to which the same customer would be assigned if the customer were not an eligible customer-generator. The charges for all retail rate components for eligible customer-generators shall be based exclusively on the eligible customer-generator's net kilowatt-hour consumption over a monthly billing period. Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or other charge that would increase an eligible customer-generator's costs beyond those of other customers in the rate class to which the eligible customer-generator would otherwise be assigned are contrary to the intent of this section, shall not be charged and shall not form a part of a net energy metering contract or tariff.

(c) Subject to the constraints of this section, the regulator may amend the rate structure, standard contract or tariff by rule or order.

**Source:** PL 15-23, § 2(8634); amended by PL 15-87 § 2(8633), modified.

**Commission Comment:** The commission changed capitalization in this section pursuant to 1 CMC § 3806(f).

**§ 8535. Limits on Additional Customer Generators.**

Notwithstanding the requirements of this chapter, an electric utility shall not be obligated to provide net energy metering to additional customer-generators in a control area when the combined total peak available capacity of all eligible customer-generators in the control area equals 30 percent of the system peak demand of the control area; provided that the regulator may increase, by rule or order, this percentage amount, when it finds that no undue harm will likely come to the utility's ability to meet load by increasing the percentage.

**Source:** PL 15-23, § 2(8635), modified; amended by PL 15-87 § 2(8635).

**Commission Comment:** The commission substituted "this chapter" for "this Act"and changed capitalization pursuant to 1 CMC § 3806(c) and (f).

**§ 8536. Calculation of Net Charges/Benefits.**

The net energy metering calculation shall be made by measuring the difference between the electricity which the electric utility delivered to the eligible customer-generator and the sum of:

(a) The electricity generated by the eligible customer-generator and fed back to the electric grid over a monthly billing period; and

(b) Any unused credits for excess electricity from the eligible customer-generator carried over from previous months since the last 12-month reconciliation period.

**Source:** PL 15-23, § 2(8636), modified; reenacted without change by PL 15-87 § 2(8636).

**§ 8537. Billing Periods; 12-month Reconciliation.**

(a) Billing of net energy metering customers shall be on a monthly basis; provided that the last monthly bill for each 12-month period shall reconcile for that 12-month period the net electricity provided by the electric utility with:

(1) The electricity generated by the eligible customer-generator and fed back to the electric grid over the monthly billing period; and

(2) Any unused credits for excess electricity from the eligible customer-generator carried over from prior months since the last 12-month reconciliation period.

(b) Credits for excess electricity from the eligible customer-generator that remain unused after each 12-month reconciliation period may not be carried over to the next 12-month period, but shall be compensated as provided in this article.

(c) Independent power producers engaged in an electric contract with the electric utility may be compensated monthly as provided in this article.

**Source:** PL 15-23, § 2(8637), modified; amended by PL 15-87 § 2(8637).

**Commission Comment:** The commission changed capitalization in this section pursuant to 1 CMC § 3806(f).

**§ 8538. Net Electricity Consumers.**

The net electricity consumer shall owe the electric utility for the customer's consumption in excess of the customer's production and credits. The eligible customer shall owe the electric utility for the excess monthly kilowatt hour consumption calculated at the retail rate of the rate class the customer is normally assigned to. The eligible customer shall be responsible for all other charges and fees generally applicable to the customer's rate class.

**Source:** PL 15-23, § 2(8638), modified; reenacted without change by PL 15-87 § 2(8638).

**§ 8539. Net Electricity Producers; Excess Electricity Credits and Credit Carry Over.**

(a) The intent of this article is that, for the 12-month billing period, the eligible customer-generator shall be fully compensated for his/her consumption through the production offset and credit calculations, and for the electric utility to buy the customer's excess production at 50% of the net energy metering rate or at the rate provided in an electric contract with an independent power producer which shall at no time exceed 50% of the fuel component cost required to produce the same power from fossil fuel or bio-fuels when available.

(b) Except as provided in an electric contract with an independent power producer, for a net electricity producer, the electric utility shall not ordinarily pay the customer monthly, but it may use the customer's excess electricity generated during the monthly billing period; and

(c) Except as provided in an electric contract with an independent power producer, the net electricity producer's monthly excess electricity production shall be carried over to the next billing month as a monetary value to the credit of the customer; and

(d) Except as provided in an electric contract with an independent power producer, monthly unused credits shall accumulate and be used to offset the compensation owed the electric utility for the customer's net kilowatt-hour consumption for succeeding months within each 12-month period; and

(e) The electric utility shall reconcile the eligible customer-generator's electricity production and consumption for each 12-month period as set forth in this article, so that the aggregate credits shall be netted against the aggregate consumption charges for the 12-month period.

(f) Payment.

(1) Except as provided in an electric contract with an independent power producer, if the eligible customer-generator has paid during the 12-month period more than the 12-month reconciliation supports, the electric utility shall credit the customer for the overpayment on the next bill. If the customer leaves the system, the utility shall pay the customer the credit amount within the next billing month.

(2) Except as provided in an electric contract with an independent power producer, if the eligible customer-generator has, for the 12-month period, generated a net excess of electricity, the electric utility shall buy the excess at 50% of the rate applicable to the net energy metering calculation, or for such higher rate to which the parties have agreed in a purchase agreement for excess electricity production. The utility shall pay the customer within the next billing month.

**Source:** PL 15-23, § 2(8639), modified; amended by PL 15-87 § 2(8639).

**Commission Comment:** The commission changed capitalization in this section pursuant to 1 CMC § 3806(f).

**§ 8540. Net Electricity Consumption or Production Information.**

The electric utility shall provide every eligible customer-generator and independent power producer with net electricity consumption or production information with each regular monthly bill, which shall include:

(a) The current monetary balance owed the electric utility for net electricity consumed;

(b) The net electricity produced since the end of the last monthly billing period; and

(c) An accounting of the credits for excess electricity produced by the eligible customer-generator since the last 12-month reconciliation period, which shows credits applied to the monthly billing period and any balance of unused credits.

(d) Any accounting required or monthly payments due according to an electric contract with an independent power producer.

**Source:** PL 15-23, § 2(8640), modified; amended by PL 15-87 § 2(8640).

**§ 8541. Termination of Eligible Customer-Generators.**

If an eligible customer-generator relationship with the electric utility terminates, the electric utility shall reconcile for the 12-month period the eligible customer-generator's consumption and production of electricity, including any unused credits for excess electricity from the eligible customer-generator carried over since the last 12-month reconciliation.

**Source:** PL 15-23, § 2(8641), modified; reenacted without change by PL 15-87 § 2(8641).

**§ 8542. Safety and Performance Standards.**

(a) A renewable energy system used by an eligible customer-generator shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as the Underwriters Laboratories and, properly promulgated rules and regulations of the regulator regarding safety and reliability.

(b) An eligible customer-generator whose renewable energy system meets the standards and rules under subsection (a) of this section shall not be required to install additional controls, perform or pay for additional tests, or purchase additional liability insurance.

(c) If a regulator seeks to promulgate additional rules or regulations regarding safety and reliability, it shall bear a substantial burden to prove on an evidentiary record that any of the following are necessary on the part of the eligible customer-generator: install additional controls, perform or pay for additional tests, or purchase additional liability insurance. Nothing herein shall be interpreted to prevent the electric utility from, at its own expense, installing additional controls, performing or securing tests, or securing liability insurance.

**Source:** PL 15-23, § 2(8642), modified; reenacted without change by PL 15-87 § 2(8642).

**§ 8543. Business and Tax Effects.**

(a) Business effects.

(1) No business license shall be required solely by reason of the treatment of customer-generated electricity under this chapter except as provided in paragraph (2) of this subsection.

(2) Independent power producers with an electric contract shall be required to hold a valid business license. The business license fee for independent power producers shall be $1,000 per calendar year.

(b) Tax effects.

**Source:** PL 15-23, § 2(8643); amended by PL 15-87 § 2(8643), modified.

**Commission Comment:** The commission substituted "this chapter" for "this Act" pursuant to 1 CMC § 3806(d).

## Article 4. Reserved.

## Article 5. Government Use of Energy Efficient Products.

§ 8551. Energy Efficient Products and Services.
§ 8552. Energy Efficient Purchases.
§ 8553. Environment Management System Purchasing.

### § 8551. Energy Efficient Products and Services.

(a) The Department of Finance's Division of Procurement and Supply shall require all government agencies to select, where life-cycle cost-effective, products given the ENERGY STAR rating, or other equally-or -better energy efficient products, when acquiring energy-using products. For product groups where ENERGY STAR labels are not yet available, agencies may select products that are in the upper twenty-five percent of energy efficiency as designated by the United States Department of Energy, Office of Energy Efficiency and Renewable Energy, Federal Energy Management Program, or its successor agency.

(b) Agency procurements shall incorporate energy efficient criteria consistent with designated energy efficiency levels into all guide specifications and project specifications developed for new construction and renovation, as well as into product specification language developed for purchasing. Such criteria shall be designed to attain at least LEED silver ratings and procure equipment at least as energy efficient as ENERGY STAR-rated equipment.

**Source:** PL 15-23, § 2(8651); reenacted without change by PL 15-87 § 2(8651), modified.

**Commission Comment:** The commission changed "per cent" to "percent" in subsection (a) to correct a manifest error pursuant to 1 CMC § 3806(g).

### § 8552. Energy Efficient Purchases.

(a) If an agency determines that initial costs render an otherwise cost-effective energy efficient purchase unaffordable, it shall request that the Department of Finance, Division of Procurement and Supply, solicit the provision of financing agreements with private sector suppliers to provide private funding to offset the higher up-front costs.

(b) Government agencies shall strive to meet the ENERGY STAR building criteria for energy performance and indoor environmental quality in their eligible facilities to the maximum extent practicable by June 30, 2007. Agencies may use private- or public-sector energy-savings performance contracts, utility energy-efficiency service contracts, or other similar financing and delivery means to conduct evaluations and make improvements to facilities. Facilities that rank in the top twenty-five percent in energy efficiency relative to comparable commercial and state buildings shall receive the ENERGY STAR building label or its equivalent as determined by the Secretary of the Department of Public Works.

(c) Agencies shall have the power and authority, subject to lawful procurement, to use energy-savings performance contracts, private sector energy service contracts with energy service

companies, or utility energy-service contracts to aid them in constructing, renovating and/or managing facilities.

(d) Government agencies entering into leases, including the renegotiation or extension of existing leases, shall incorporate lease provisions that require energy and water efficiency wherever life-cycle cost-effective. Build-to-suit lease solicitations shall contain criteria encouraging sustainable design and development, energy efficiency, and verification of facility performance. The requirements of this subsection shall conform to the U.S. Green Building Council's LEED rating system, silver level.

(e) All agencies' procurements shall include a preference for facilities having an ENERGY STAR building label in their selection criteria for acquiring leased facilities.

(f) All agencies shall encourage lessors to apply for an ENERGY STAR building label, or the U.S. Green Building Council's LEED rating system, silver level, or its equivalent, for used facilities, and to further explore and implement projects that will reduce costs to the Commonwealth, including projects carried out through the lessors' energy-savings performance contracts or utility energy-efficiency service contracts. Each lease, including lease renewals, shall contain an attachment that explicitly addresses the requirements of this subsection.

(g) All agencies, in their procurements for office space, air conditioning equipment, installed lighting, pumps, motors, or vehicles, shall seek to use renewable energy systems, as defined in this chapter, to power their operations. They shall certify their efforts to the Governor, with an explanation why, or why not, they secured renewable energy.

**Source:** PL 15-23, § 2(8652); reenacted without change by PL 15-87 § 2(8652), modified.

**Commission Comment:** The commission changed "per cent" to "percent" in subsection (b) above and changed "subsections" to "subsection" in the last sentence of subsection (d) above to correct manifest errors pursuant to 1 CMC § 3806(g). The commission substituted "this chapter" for "this Act" in subsection (g) pursuant to 1 CMC § 3806(d).

### § 8553. Environmental Management System Purchasing.

The Department of Finance, Division of Procurement and Supply, shall deliver to the Governor by December 31, 2006, a recommended Environmental Management Purchasing System ("EMS"). The EMS shall draw on the federal government's EMS, issued pursuant to Executive Order 13101, as described in EPA publication 742-R-05-001 (Apr. 2005). The Division shall work closely with the following agencies to develop the EMS: DEQ, Attorney General's Office, and Department of Public Works.

**Source:** PL 15-23, § 2(8653); reenacted without change by PL 15-87 § 2(8653).

## Article 6. Energy Efficient Policy.

§ 8561. Policy to Encourage Energy Efficiency.
§ 8562. Government Agencies to Employ Energy Efficiency.
§ 8563. CUC to Promote Energy Efficiency.
§ 8564. CUC Energy Service Company.
§ 8565. Governmental Support of Private Sector Efforts.
§ 8566. Annual Report.

### § 8561. Policy to Encourage Energy Efficiency.

It shall be the policy of the Commonwealth to use energy as efficiently and cost-effectively, taking into account short-run and the long-term costs and benefits which can be quantified.

**Source:** PL 15-23, § 2(8661); reenacted without change by PL 15-87 § 2(8661).

**§ 8562. Government Agencies to Employ Energy Efficiency.**

All Commonwealth agencies shall use energy cost-effectively. All Commonwealth contracts must explicitly require the installation of and the use of life-cycle, cost-effective energy efficiency technology, including but not limited to the following:

(a) For capital projects, the construction of and/or additions to buildings which meet or exceed the standards required for the certification of the construction as LEED-certified, "silver," pursuant to the U.S. Green Building Council's most recent published standards.

(b) For operations and maintenance, energy efficient equipment and supplies that meet EPA Energy Star standards, including high efficiency fluorescent lighting, high efficiency air conditioning, heating and ventilating equipment, double or triple pane coated glass, tightly caulked and sealed wall penetrations, including windows, doors and vents.

**Source:** PL 15-23, § 2(8662); reenacted without change by PL 15-87 § 2(8662); subsection (a) suspended for one year by PL 16-35 § 2.

**Commission Comment:** Public Law 16-35, effective on March 27, 2009, contained findings and purpose, severability and savings clause provisions and the following:

Section 2. Suspension. Subsection 8662(a) of Section 2 of Public Law No. 15-23, as amended by Public Law No. 15-87, is hereby suspended for a period of one year from the date that this Act becomes law or until the Department of Public Works obtains a LEED certified professional, whichever comes first.

**§ 8563. CUC to Promote Energy Efficiency.**

The CUC, or its successor in interest, shall assist and promote its customers' use of energy efficiency, energy efficient building techniques and energy saving devices. CUC shall report to the Legislature by December 31, 2006, the programs which it has created or which it intends to create to advance this requirement.

**Source:** PL 15-23, § 2(8663); reenacted without change by PL 15-87 § 2(8663).

**§ 8564. CUC Energy Service Company.**

CUC shall encourage the activities of private sector energy service companies and independent power producers. CUC shall have the power and authority to provide energy service company services to its customers. CUC may, subject to the approval of a regulator, place into rate base part or all of its investment in customer premises material and equipment installed as part of an energy service contract. The regulator, as a condition for approval, shall determine the extent to which the effect of the energy service contract investment will reduce CUC's need to buy oil to provide the same quality of service to the customer.

**Source:** PL 15-23, § 2(8664); amended by PL 15-87 § 2(8664).

**§ 8565. Governmental Support of Private Sector Efforts.**

The regulator and the government-owned utility shall facilitate the private sector's development of renewable energy projects by supporting the private sector's attainment of renewable portfolio

standards.

(a) The Departments of Land and Natural Resources and Public Lands and the Zoning Board shall:

(1) Develop and publish in hard copy or electronically a catalog by December 31, 2006, and every two years thereafter, of potential sites for the development of renewable energy; and

(2) Work with the electric utilities and other renewable energy developers on all applicable planning and permitting processes to expedite the development of renewable energy resources.

(b) The Department of Commerce and the Department of Public Works shall:

(1) Develop a program to maximize the use of renewable energy and cost-effective conservation measures by Commonwealth government agencies, including but not limited to each Department, the CPA, the Public School System and Northern Marianas College;

(2) Work with federal agencies to develop as much research, development and demonstration funding, and technical assistance as possible to support the Commonwealth in its efforts to achieve the renewable portfolio standards.

**Source:** PL 15-23, § 2(8665); amended by PL 15-87 § 2(8665).

**§ 8566. Annual Report.**

The regulator, with the assistance of each relevant agency and the CUC, or its successor in interest, shall publish in hard copy or electronically a public report annually, beginning in January 2007, which shall explain to the public, the governor and the legislature, in quantifiable, businesslike terms: a report of electric utility loads and capabilities, including the total rated generating capacity produced by eligible net energy metering customer-generators that are customers of each utility in the utility's service area; goals for saving energy, the reduction in oil use, and the money associated with the savings; measurable, annual objectives which are intended to lead to the energy saving goals; the strategies for achieving the measurable objectives, and their costs and benefits; and the progress made in and through the reporting period in meeting the objectives.

**Source:** PL 15-23, § 2(8666); amended by PL 15-87 § 2(8666).

**Article 7. Clean Energy Transportation.**

§ 8571. Policy to Encourage Clean Energy Transportation and Reduce Diesel and Gasoline Engine Emissions.
§ 8572. CUC to Offer Electric Charging Stations.
§ 8573. Commercial Buses to Meet Clean Energy Standards. [Reserved]

**§ 8571. Policy to Encourage Clean Energy Transportation and Reduce Diesel and Gasoline Engine Emissions.**

It is the policy of the CNMI to encourage the use of clean-running commercial sector buses, including mini-buses. It is the policy of the CNMI to substitute for gasoline and diesel fuel the following fuels: electricity which has been generated by clean-burning fossil power plants and renewable resources; and bio-diesel fuel, including fuel made from used cooking oils and grown to produce ethanol.

**Source:** PL 15-23, § 2(8671); amended by PL 15-87 § 2(8671).

**§ 8572. CUC to Offer Electric Charging Stations.**

The CUC, or by contract with an independent power producer, shall offer sufficient electric vehicle charging stations, in at least two locations easily available to users, to power electric buses and minivans on a 24/7 basis. Such stations shall be deployed in concert with the importation and use in the CNMI of chargeable electric vehicles. The CUC shall offer sufficient quick-charge and trickle charge capacity to meet 80% of the reasonable estimated current load. Electricity sold through electric charging stations shall be provided for the first five years at rates which are competitive with the costs of owning and operating a diesel- or gasoline-powered vehicle.

**Source:** PL 15-23, § 2(8672); amended by PL 15-87 § 2(8672).

**§ 8573. Commercial Buses to Meet Clean Energy Standards.**

Reserved.

**Source:** PL 15-23, § 2(8673); reenacted without change by PL 15-87 § 2(8673).

**Article 8. Renewable Energy Technologies; Tax Treatment; Tax Credits. (Reserved)**

# DIVISION 9: LABOR

## CHAPTER 2. MINIMUM WAGE AND HOUR ACT.

### Article 1. General Provisions.

**§ 9211. Short Title.**

**Case Annotations:** *Falcon v. McCue,* 2005 MP 7, 7 N.M.I. 149 (2005).

## CHAPTER 3. WORKERS' COMPENSATION LAW.

### Article 1. General Provisions.

**§ 9303. Coverage.**

**Case Annotations:** *Santos v. Public Sch. Sys.,* 2002 MP 12, 6 N.M.I. 422 (2002).

### Article 2. Procedures for Claims.

### § 9329. Presumption.

**Case Annotations:**

**ADMINISTRATIVE LAW**

**Workers' Compensation Regulations**

– **Twenty-Four Hour Rule**
Section 9329 of Title 4 of the Commonwealth Code creates a statutory presumption that a workers claim comes within the purview of the workers compensation statutes. This is a clear expression of the legislature's intention to provide coverage in close cases. 4 CMC § 9329. *Santos v. Public Sch. Sys.*, 2002 MP 12 ¶ 29, 6 N.M.I. 422, 430 (2002).

## Article 5. Workers' Compensation Commission and Miscellaneous.

### § 9351. Administration.

**ADMINISTRATIVE LAW**

**Regulations**

– **Adoption, Generally**
The Workers Compensation Commission may make any rule needed to administer the workers compensation system, under the authority granted by 4 CMC § 9351, unless the legislature has specifically provided otherwise. 4 CMC § 9351. *Santos v. Public Sch. Sys.*, 2002 MP 12 ¶ 24, 6 N.M.I. 422, 429 (2002).

### § 9353. Special Disability Fund.

(a) - (c) [unchanged]

(d) The Commonwealth Treasurer shall deposit any monies paid into the fund into such depository banks as the commission may direct. The commission may invest any portion of the funds which is not needed for current requirements in

(1) investment grade U.S. fixed income securities;

(2) unrated securities of the U.S. Treasury and U.S. government agencies; and

(3) common stock and convertible securities of corporations listed on the NYSE, AMEX or NASDAQ that have a market capitalization, at the time of purchase, that falls within the range of market capitalization of corporations comprising the Russell 1000 Index;

(4) bonds or notes of the United States or Commonwealth or of any insured Commonwealth bank.

(e) - (h) [unchanged]

**Source:** . . . (d) amended by PL 15-99, § 1.

**Commission Comment:** Public Law 15-99, effective on October 19, 2007, contained severability and savings clause provisions in addition to the amendment of subsection (d).

## CHAPTER 5. CITIZEN OR PERMANENT RESIDENT WORKERS FAIR

## COMPENSATION ACT.
**[renamed chapter by global amendment PL 15-108, § 5]**

**§ 9503. Compensatory Payment.**

All benefits mandated by law to be given to ~~non-resident~~ foreign national workers, including, but not limited to subsidized food, housing, local transportation, health insurance, or medical expenses must also be given to citizen or permanent resident workers as provided herein. These benefits may be provided in the form of in-kind benefits or in a cash equivalent, at the option of the citizen or permanent resident worker. Such in-kind benefits or cash equivalent shall be provided to all citizen or permanent resident workers in jobs where the standard hourly wage is less than $5.15, or the prevailing United States Federal minimum wage, whichever is higher. Any cash compensation benefit shall be added to citizen or permanent resident worker's base wages or salary.

**Source:** . . . amended by global amendment PL 15-108, § 5.

**§ 9504. Regulation.**

The Secretary of Labor ~~and Immigration~~ shall promulgate regulations to implement the provisions of this chapter within 30 days of November 16, 1995.

**Source:** . . . PL 17-1 § 6(B) (March 22, 2010).*

**Commission Comment:** . . .The commission corrected a manifest error pursuant to 1 CMC § 3806(g) while codifying this section. PL 17-1 § 6(B) provides for the amendment of Division 5 (Business Regulation), Chapter 5, § 9504. However, this section falls under Division 9 (Labor). The section number and language indicates that this is the section that PL 17-1 § 6(B) intended to amend.
*PL 17-1 contained the following section regarding the effective date of the law:
Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

## CHAPTER 6. WAGE REVIEW COMMITTEES.

**§ 9602. Special Industry Committees for the Commonwealth of the Northern Mariana Islands.**

(a) [unchanged]

(b) Composition of committees.

(1) Each industry committee shall be subject to the board composition requirements of 1 CMC § 2901(g) and shall consist of the following nine members:

(i) [unchanged]

(ii) Three persons representing employees in the industry one of whom may be a ~~nonresident~~ foreign national worker as defined in 3 CMC § 4412(i)* and at least two of whom shall be citizen or permanent resident workers as defined in 3 CMC § 4412(n),* appointed by the Governor;

(iii)-(v) [unchanged]

(2)-(3) [unchanged]

(c)-(f) [unchanged]

**Source:** . . . (b)(1)(ii) amended by global amendment PL 15-108, § 5.

**Commission Comment:** . . .
*The commission changed references in subsection (b)(1)(ii)(B) from "resident worker" to "citizen or permanent resident worker" and from "non-resident worker" to "foreign national worker" as required by PL 108, § 5. However, the commission notes that 3 CMC § 4412 was repealed by PL 108, § 4. Following the codification of PL 15-108, "permanent resident" is defined in 3 CMC § 4511(j).

## CHAPTER 7. MISCELLANEOUS.

### Article 1. Volunteer Protection.

#### § 9701. Major Disaster Volunteer Protection.

(a) Definitions. In this section, the following words have the following meanings, unless the context clearly requires a different meaning:

(1) "respond to an emergency" means the mobilization and distribution of rescue relief and rebuilding efforts in response to a typhoon, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, volcanic eruption, landslide, mudslide, drought, fire or other catastrophe in any part of the United States of America, which in the determination of the President of the United States, causes damage of sufficient severity and magnitude to warrant major disaster assistance under U.S. Disaster Relief Act (42 U.S.C. § 5121 *et seq.*) or the mobilization and distribution of rescue relief and rebuilding efforts in response to a "disaster,""emergency" or "major disaster" as defined by 3 CMC § 5114.

(2) "volunteer member of an emergency management agency" means a volunteer firefighter, rescue squad member, emergency medical technician, law enforcement officer, or a member of the American Red Cross, and Federal Emergency Management Agency (FEMA) certified field personnel.

(b) No employer shall terminate an employee who is a volunteer member of an emergency management agency because that employee, when acting as a volunteer member of an emergency management agency, is absent for a period of no more than two months from the employee's employment in order to respond to an emergency.

(c) An employer may request an employee who loses time from the employee's employment to respond to an emergency to provide the employer with a written statement from the supervisor or acting supervisor of the volunteer fire department, rescue squad, emergency medical services agency, law enforcement agency, or the director of the emergency management agency stating that the employee responded to an emergency and listing the time and date of the emergency.

(d) No employer shall terminate an employee who is a volunteer member of an emergency management agency who is absent for a period of no more than twelve months from the employee's employment because of injuries incurred in the line of duty or service while responding to an emergency. The volunteer member of an emergency management agency shall provide, at the request of his or her employer:

(1) A written statement from the supervisor, acting supervisor, or director of the volunteer fire department, rescue squad, emergency medical services agency, law enforcement agency, or emergency management agency under whose command the employee was on active duty and on assignment with that fire department, rescue squad, emergency medical services

agency, law enforcement agency, or emergency management agency when the injury occurred; and

(2) A written statement from at least one licensed and practicing physician stating that the volunteer firefighter, rescue squad member, emergency medical technician, peace officer, or member of an emergency management agency is injured and a date for the employee's return to work.

(e) Withholding of Pay. An employer may reduce an employee's regular pay for any time that the employee is absent from the employee's employment for the purpose of responding to an emergency.

(f) Any employee that is terminated in violation of the provisions of this section may bring a civil action against his or her employer. The employee may seek reinstatement to the employee's former position, payment of back wages, reinstatement of fringe benefits, and where seniority rights are granted, the reinstatement of seniority rights. In order to recover, the employee shall file this action within two years of the date of the violation of this section.

**Source:** PL 15-93 § 2.

**Commission Comment:** The commission removed numbers that repeated words in this section pursuant to 1 CMC § 3806(e). Public Law 15-93, enacted by override on October 4, 2007, contained severability and savings clause provisions and the following:

Section 1. Findings and Intent. The Legislature finds and declares that those who volunteer to help victims of major disasters in any part of the United States of America or disasters, emergencies, or major disasters within the Commonwealth put themselves at great risk to help others during a time of crisis. While many worry only of themselves, certain volunteers render aid by offering their time and talent to complete strangers. This is done to the volunteers' financial detriment, as time off from work must be taken to travel to (and from) the disaster site, and extraordinary efforts must be rendered while at the site such that the volunteer must miss work for extended periods of time. The Legislature finds and declares that these volunteers should be free from the worry of having to choose between rendering services to their fellow man during a time of crisis and possibly losing their job in the Commonwealth. Accordingly, it is the intent of the Legislature to provide job protection to volunteer members of an emergency management agency. This act is necessary and is a proper use of the Legislative power granted by Art. II sec. 1 of the Constitution of the Commonwealth of the Northern Mariana Islands.

# DIVISION 10 COMMONWEALTH DEVELOPMENT AUTHORITY

## CHAPTER 1. GENERAL PROVISIONS.

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### § 10102. Purpose.

**Case Annotations:** *Comm. Dev. Auth. v. Tenorio,* 2004 MP 22, 7 N.M.I. 97 (2004).

## CHAPTER 2. POWERS OF THE AUTHORITY.

### § 10203. Powers and Restrictions.

**Case Annotations:** *Comm. Dev. Auth. v. Tenorio,* 2004 MP 22, 7 N.M.I. 97 (2004).

## CHAPTER 3. BOARD OF DIRECTORS.

### § 10305. Board of Directors: Duties and Powers of the Board.

**Case Annotations:** *Comm. Dev. Auth. v. Tenorio,* 2004 MP 22, 7 N.M.I. 97 (2004).

## CHAPTER 4. FINANCES AND MANAGEMENT.

### § 10403. Financial Prudence.

**Case Annotations:** *Comm. Dev. Auth. v. Tenorio,* 2004 MP 22, 7 N.M.I. 97 (2004).

### § 10406. Project Supervision.

**Case Annotations:** *Comm. Dev. Auth. v. Tenorio,* 2004 MP 22, 7 N.M.I. 97 (2004).