

3432

2009-2010 Regular Sessions

I N S E N A T E

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Introduced by Sens. MAZIARZ, MORAHAN, STACHOWSKI -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the education law, in relation to a safe patient handling policy for health care facilities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Article 29-D of the public health law is amended by adding  
2 a new title 4 to read as follows:

3 TITLE 4

4 SAFE PATIENT HANDLING POLICY

5 SECTION 2999-G. LEGISLATIVE INTENT.

6 2999-H. DEFINITIONS.

7 2999-I. NEW YORK STATE SAFE PATIENT HANDLING TASK FORCE.

8 2999-J. STATEWIDE SAFE PATIENT HANDLING POLICY.

9 2999-K. HEALTH CARE FACILITY SAFE PATIENT HANDLING COMMITTEES.

10 2999-L. ENFORCEMENT.

11 S 2999-G. LEGISLATIVE INTENT. THE LEGISLATURE HEREBY FINDS AND  
12 DECLARES THAT IT IS IN THE PUBLIC INTEREST TO ENACT A STATEWIDE SAFE  
13 PATIENT HANDLING POLICY FOR HEALTH CARE FACILITIES IN NEW YORK STATE.  
14 WITHOUT SAFE PATIENT HANDLING LEGISLATION, IT IS PREDICTED THAT THE  
15 DEMAND FOR NURSING SERVICES WILL EXCEED THE SUPPLY BY NEARLY THIRTY  
16 PERCENT BY THE YEAR TWO THOUSAND TWENTY THUS DECREASING THE QUALITY OF  
17 HEALTH CARE IN NEW YORK STATE. THERE ARE MANY BENEFITS THAT CAN BE  
18 DERIVED FROM SAFE PATIENT HANDLING PROGRAMS. PATIENTS BENEFIT THROUGH  
19 IMPROVED QUALITY OF CARE AND QUALITY OF LIFE BY REDUCING THE RISK OF  
20 FALLS, BEING DROPPED, FRICTION BURNS, SKIN TEARS AND BRUISES. CAREGIVERS  
21 BENEFIT FROM THE REDUCED RISK OF CAREER ENDING AND DEBILITATING INJURIES  
22 LEADING TO INCREASED MORALE, IMPROVED JOB SATISFACTION AND LONGEVITY IN  
23 THE PROFESSION. HEALTH CARE FACILITIES REALIZE A QUICK RETURN ON THEIR  
24 INVESTMENT THROUGH REDUCED WORKERS' COMPENSATION MEDICAL AND INDEMNITY

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 COSTS, REDUCED LOST WORKDAYS AND IMPROVED RECRUITMENT AND RETENTION OF  
2 CAREGIVERS. ALL OF THIS WILL LEAD TO FISCAL IMPROVEMENT IN HEALTH CARE  
3 IN NEW YORK STATE.

4 S 2999-H. DEFINITIONS. FOR THE PURPOSES OF THIS TITLE:

5 1. "HEALTH CARE FACILITY" SHALL MEAN ANY INDIVIDUAL, PARTNERSHIP,  
6 ASSOCIATION, CORPORATION, LIMITED LIABILITY COMPANY OR ANY PERSON OR  
7 GROUP OF PERSONS ACTING DIRECTLY OR INDIRECTLY ON BEHALF OF OR IN THE  
8 INTEREST OF THE EMPLOYER, WHICH PROVIDES HEALTH CARE SERVICES IN A  
9 FACILITY LICENSED OR OPERATED PURSUANT TO ARTICLE TWENTY-EIGHT, TWENTY-  
10 EIGHT-A OR THIRTY-SIX OF THIS CHAPTER, OR THE MENTAL HYGIENE LAW, THE  
11 EDUCATION LAW OR THE CORRECTION LAW, INCLUDING ANY FACILITY OPERATED BY  
12 THE STATE, A POLITICAL SUBDIVISION OR A PUBLIC BENEFIT CORPORATION AS  
13 DEFINED BY SECTION SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW.

14 2. "NURSE" SHALL MEAN A REGISTERED PROFESSIONAL NURSE OR A LICENSED  
15 PRACTICAL NURSE AS DEFINED BY ARTICLE ONE HUNDRED THIRTY-NINE OF THE  
16 EDUCATION LAW.

17 3. "DIRECT CARE WORKER" SHALL MEAN ANY EMPLOYEE OF A HEALTH CARE  
18 FACILITY THAT IS RESPONSIBLE FOR PATIENT HANDLING OR PATIENT ASSESSMENT  
19 AS A REGULAR OR INCIDENTAL PART OF THEIR EMPLOYMENT, INCLUDING ANY  
20 LICENSED OR UNLICENSED HEALTH CARE WORKER.

21 4. "EMPLOYEE REPRESENTATIVE" SHALL MEAN THE RECOGNIZED OR CERTIFIED  
22 COLLECTIVE BARGAINING AGENT FOR NURSES OR DIRECT CARE WORKERS OF A  
23 HEALTHCARE FACILITY.

24 5. "SAFE PATIENT HANDLING" SHALL MEAN THE USE OF ENGINEERING CONTROLS,  
25 LIFTING AND TRANSFER AIDS, OR ASSISTIVE DEVICES, BY NURSES OR DIRECT  
26 CARE WORKERS, INSTEAD OF MANUAL LIFTING TO PERFORM THE ACTS OF LIFTING,  
27 TRANSFERRING AND REPOSITIONING OF HEALTH CARE PATIENTS AND RESIDENTS.

28 6. "SAFE PATIENT HANDLING PROGRAM" SHALL INCLUDE:

29 (A) A WRITTEN POLICY STATEMENT; AND

30 (B) MANAGEMENT COMMITMENT AND EMPLOYEE INVOLVEMENT; AND

31 (C) COMMITTEES; AND

32 (D) RISK ASSESSMENTS; AND

33 (E) INCIDENT INVESTIGATION; AND

34 (F) PROCUREMENT OF ENGINEERING CONTROLS, LIFTING AND TRANSFER AIDS OR  
35 ASSISTIVE DEVICES TO ENSURE SAFE PATIENT HANDLING; AND

36 (G) EMPLOYEE TRAINING AND EDUCATION ON SAFE PATIENT HANDLING; AND

37 (H) PROGRAM EVALUATION AND MODIFICATION.

38 S 2999-I. NEW YORK STATE SAFE PATIENT HANDLING TASK FORCE. 1. A NEW  
39 YORK STATE SAFE PATIENT HANDLING TASK FORCE IS HEREBY CREATED WITHIN THE  
40 DEPARTMENT. SUCH TASK FORCE SHALL CONSIST OF A TOTAL OF ELEVEN MEMBERS  
41 AND SHALL INCLUDE THE COMMISSIONER OR HIS OR HER DESIGNEE; THE COMMIS-  
42 SIONER OF LABOR OR HIS OR HER DESIGNEE; THREE MEMBERS APPOINTED BY THE  
43 GOVERNOR, TWO SUCH MEMBERS SHALL BE REPRESENTATIVES OF HEALTH CARE  
44 ORGANIZATIONS, ONE SUCH MEMBER SHALL BE FROM AN EMPLOYEE ORGANIZATION  
45 REPRESENTING NURSES AND ONE SUCH MEMBER SHALL BE FROM AN EMPLOYEE ORGAN-  
46 IZATION REPRESENTING DIRECT CARE WORKERS; TWO SUCH MEMBERS SHALL BE  
47 CERTIFIED ERGONOMIST EVALUATION SPECIALISTS; TWO MEMBERS TO BE APPOINTED  
48 BY THE TEMPORARY PRESIDENT OF THE SENATE, WHO SHALL HAVE EXPERTISE IN  
49 FIELDS OR DISCIPLINE RELATED TO HEALTH CARE OR OCCUPATIONAL SAFETY AND  
50 ONE SUCH APPOINTEE MUST BE FROM AN ORGANIZATION REPRESENTING EITHER A  
51 NURSE OR DIRECT CARE WORKER; TWO MEMBERS TO BE APPOINTED BY THE SPEAKER  
52 OF THE ASSEMBLY, WHO SHALL HAVE EXPERTISE IN FIELDS OR DISCIPLINE  
53 RELATED TO HEALTH CARE OR OCCUPATIONAL SAFETY AND ONE SUCH APPOINTEE  
54 MUST BE FROM AN ORGANIZATION REPRESENTING EITHER A NURSE OR DIRECT CARE  
55 WORKER; ONE MEMBER TO BE APPOINTED BY THE MINORITY LEADER OF THE SENATE,  
56 WHO SHALL HAVE EXPERTISE IN FIELDS OR DISCIPLINE RELATED TO HEALTH CARE

1 OR OCCUPATIONAL SAFETY; AND ONE MEMBER APPOINTED BY THE MINORITY LEADER  
2 OF THE ASSEMBLY, WHO SHALL HAVE EXPERTISE IN FIELDS OR DISCIPLINE  
3 RELATED TO HEALTH CARE OR OCCUPATIONAL SAFETY.

4 2. TASK FORCE MEMBERS SHALL RECEIVE NO COMPENSATION FOR THEIR  
5 SERVICES, BUT SHALL BE REIMBURSED FOR ACTUAL AND NECESSARY EXPENSES  
6 INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

7 3. THE TASK FORCE SHALL BE APPOINTED NO LATER THAN JULY FIRST, TWO  
8 THOUSAND TEN AND SHALL SERVE FOR A PERIOD OF TWO YEARS; ANY VACANCIES ON  
9 THE TASK FORCE SHALL BE FILLED IN THE MANNER PROVIDED FOR IN THE INITIAL  
10 APPOINTMENT.

11 4. THE CHAIRPERSON OF THE TASK FORCE SHALL BE THE COMMISSIONER OR HIS  
12 OR HER DESIGNEE.

13 5. THE TASK FORCE SHALL MEET NO LESS THAN THREE TIMES A YEAR.

14 6. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A MAJORITY OF THE  
15 MEMBERS OF THE TASK FORCE THEN IN OFFICE SHALL CONSTITUTE A QUORUM FOR  
16 THE TRANSACTION OF BUSINESS OR THE EXERCISE OF POWER OR FUNCTION OF THE  
17 TASK FORCE. AN ACT, DETERMINATION OR DECISION OF THE MAJORITY OF THE  
18 MEMBERS OF THE TASK FORCE SHALL BE HELD TO BE THE ACT, DETERMINATION OR  
19 DECISION OF THE TASK FORCE.

20 7. POWERS AND DUTIES. THE TASK FORCE ACT SHALL:

21 (A) PREPARE A POLICY STATEMENT REQUIRING A COMPREHENSIVE SAFE PATIENT  
22 HANDLING PROGRAM TO BE IMPLEMENTED AT ALL HEALTH CARE FACILITIES, AS  
23 DEFINED IN SUBDIVISION ONE OF SECTION TWENTY-NINE HUNDRED NINETY-NINE-H  
24 OF THIS TITLE. THE POLICY STATEMENT SHALL INCLUDE THE REQUIREMENTS FOR  
25 DEVELOPING AND IMPLEMENTING AN EFFECTIVE SAFE PATIENT HANDLING PROGRAM  
26 THAT SHALL INCLUDE ALL ELEMENTS SPECIFIED IN SUBDIVISION SIX OF SECTION  
27 TWENTY-NINE HUNDRED NINETY-NINE-H OF THIS TITLE;

28 (B) REVIEW EXISTING SAFE PATIENT HANDLING PROGRAMS OR POLICIES,  
29 INCLUDING DEMONSTRATION PROGRAMS PREVIOUSLY AUTHORIZED BY CHAPTER SEVEN  
30 HUNDRED THIRTY-EIGHT OF THE LAWS OF TWO THOUSAND FIVE;

31 (C) CONSULT WITH ANY ORGANIZATION, EDUCATIONAL INSTITUTION, OTHER  
32 GOVERNMENT ENTITY OR AGENCY OR PERSON;

33 (D) CONDUCT PUBLIC HEARINGS, AS IT DEEMS NECESSARY;

34 (E) IDENTIFY OR DEVELOP TRAINING MATERIALS AND PROCEDURES WITH REGARD  
35 TO THE EQUIPMENT OR TECHNOLOGY REQUIRED BY THE STATEWIDE POLICY;

36 (F) REVIEW RULES AND REGULATIONS PRIOR TO ADOPTION BY THE DEPARTMENT;

37 (G) REVIEW AND UPDATE THE POLICY STATEMENT ON A BI-ANNUAL BASIS;

38 (H) ALL STATE DEPARTMENTS, COMMISSIONS, AGENCIES OR PUBLIC AUTHORITIES  
39 SHALL PROVIDE AND ADVISE IN A TIMELY MANNER AND OTHERWISE ASSIST THE  
40 TASK FORCE WITH ITS WORK; AND

41 (I) SUBMIT A REPORT IDENTIFYING SAFE PATIENT HANDLING PROGRAM ELEMENTS  
42 AND RECOMMENDATIONS OF SAFE PATIENT LIFTING EQUIPMENT, TECHNIQUES OR  
43 DEVICES TO THE COMMISSIONER BY JULY FIRST, TWO THOUSAND ELEVEN.

44 S 2999-J. STATEWIDE SAFE PATIENT HANDLING POLICY. 1. THE COMMISSIONER,  
45 IN CONSULTATION WITH THE TASK FORCE, SHALL PROMULGATE RULES AND REGU-  
46 LATIONS FOR A STATEWIDE SAFE PATIENT HANDLING POLICY FOR HEALTH CARE  
47 FACILITIES COVERED BY THIS TITLE. SUCH POLICY SHALL BE MADE AVAILABLE TO  
48 ALL FACILITIES COVERED BY THIS TITLE ON OR BEFORE JANUARY FIRST, TWO  
49 THOUSAND TWELVE.

50 2. THE STATEWIDE SAFE PATIENT HANDLING POLICY SHALL INCLUDE STANDARDS  
51 WITH REGARD TO:

52 (A) THE EQUIPMENT, DEVICES OR TECHNOLOGY TO BE USED BY A NURSE OR  
53 DIRECT CARE WORKER WHO IS ENGAGED IN PATIENT HANDLING;

54 (B) THE RATIO OF SUCH EQUIPMENT OR TECHNOLOGY BASED UPON THE TYPE OF  
55 FACILITY, THE NUMBER OF BEDS IN A FACILITY, THE NUMBER OF PATIENT-HAN-

1 DLING TASKS, TYPES OF CARE UNITS, PATIENT POPULATIONS, AND PATIENT CARE  
2 AREAS;

3 (C) THE MINIMUM NUMBER OF DEVICES TO ENSURE THAT CURRENT ASSESSED  
4 HAZARDS ARE ELIMINATED OR MITIGATED;

5 (D) ESTABLISHING PROCEDURES FOR THE SUBMISSION AND REPORTING OF  
6 COMPLIANCE BY EACH HEALTH CARE FACILITY COVERED BY THIS TITLE; AND

7 (E) ESTABLISHING PROCEDURES FOR COMPLAINTS OR VIOLATIONS, INCLUDING  
8 THE FILING PROCESS, REVIEW, AND EVALUATION AND CORRECTIVE ACTION OF SUCH  
9 COMPLAINTS.

10 3. FACILITIES COVERED UNDER THIS TITLE SHALL FILE A PLAN WITH THE  
11 DEPARTMENT BY JULY FIRST, TWO THOUSAND TWELVE DETAILING THEIR POLICY TO  
12 BE IN COMPLIANCE WITH THE RULES AND REGULATIONS OF THE STATEWIDE SAFE  
13 PATIENT HANDLING POLICY THAT MUST BE ACCEPTED BY THE DEPARTMENT BY JULY  
14 FIRST, TWO THOUSAND THIRTEEN.

15 S 2999-K. HEALTH CARE FACILITY SAFE PATIENT HANDLING COMMITTEES. 1.  
16 EACH HEALTH CARE FACILITY MUST ESTABLISH A SAFE PATIENT HANDLING COMMIT-  
17 TEE EITHER BY CREATING A NEW COMMITTEE OR ASSIGNING THE POWERS AND  
18 DUTIES TO AN EXISTING COMMITTEE. AT LEAST ONE-HALF OF THE MEMBERS OF  
19 THE SAFE PATIENT HANDLING COMMITTEE SHALL BE FRONTLINE NON-MANAGERIAL  
20 NURSES OR DIRECT CARE WORKERS. AT LEAST ONE NON-MANAGERIAL NURSE AND ONE  
21 NON-MANAGERIAL DIRECT CARE WORKER MUST BE ON THE SAFE PATIENT HANDLING  
22 COMMITTEE. THE COMMITTEE SHALL HAVE CO-CHAIRS WITH ONE FROM MANAGEMENT  
23 AND ONE FRONTLINE NON-MANAGERIAL NURSE OR DIRECT CARE WORKER.

24 2. THE SAFE PATIENT HANDLING COMMITTEE SHALL: (A) SET CRITERIA FOR  
25 EVALUATION OF PATIENTS AND/OR RESIDENTS TO DETERMINE WHICH LIFT AND/OR  
26 REPOSITIONING EQUIPMENT, DEVICES OR TECHNOLOGY ARE TO BE USED AND TO  
27 PERFORM RISK ASSESSMENTS OF THE ENVIRONMENT, JOB TASKS AND PATIENT  
28 NEEDS;

29 (B) ENSURE LIFT AND/OR REPOSITIONING EQUIPMENT IS SET UP, USED AND  
30 MAINTAINED ACCORDING TO MANUFACTURER'S INSTRUCTIONS;

31 (C) PROVIDE INITIAL AND ON-GOING YEARLY TRAINING AND EDUCATION ON SAFE  
32 PATIENT HANDLING FOR CURRENT EMPLOYEES AND NEW HIRES. ENSURE RETRAINING  
33 FOR THOSE FOUND TO BE DEFICIENT IS SCHEDULED AS NEEDED AND DOES NOT  
34 AFFECT CURRENT EMPLOYMENT STATUS OF THE AFFECTED EMPLOYEE OR EMPLOYEES;

35 (D) SET UP AND UTILIZE A PROCESS FOR INCIDENT INVESTIGATION AND AFTER  
36 ACTION REVIEW WHICH INCLUDES A PLAN OF CORRECTION AND IMPLEMENTATION OF  
37 CONTROLS;

38 (E) MAKE RECOMMENDATIONS FOR THE ACQUISITION OF EQUIPMENT OR PROCE-  
39 DURES BEYOND THE MINIMUM STATE RECOMMENDATIONS; AND

40 (F) PERFORM, AT MINIMUM, AN ANNUAL PROGRAM ASSESSMENT AND EVALUATION.

41 S 2999-L. ENFORCEMENT. 1. ANY NURSE OR DIRECT CARE WORKER OR EMPLOYEE  
42 REPRESENTATIVE WHO BELIEVES THE FACILITY HAS NOT MET THE STANDARDS SET  
43 FORTH IN THIS TITLE SHALL BRING THE MATTER TO THE ATTENTION OF A SUPER-  
44 VISOR IN THE FORM OF A WRITTEN NOTICE AND SHALL AFFORD THE HEALTH CARE  
45 FACILITY A REASONABLE OPPORTUNITY TO CORRECT SUCH DEFICIENCIES.

46 2. SUCH COMPLAINT SHALL NOT APPLY WHERE IMMINENT DANGER OR THREAT  
47 EXISTS TO THE SAFETY OF A SPECIFIC NURSE OR DIRECT CARE WORKER OR TO THE  
48 GENERAL HEALTH OF A SPECIFIC PATIENT AND WHEN THE NURSE OR DIRECT CARE  
49 WORKER OR EMPLOYEE REPRESENTATIVE BELIEVES IN GOOD FAITH THAT REPORTING  
50 WILL NOT RESULT IN CORRECTIVE ACTION.

51 3. IN THE EVENT THE HEALTH CARE FACILITY DOES NOT TAKE CORRECTIVE  
52 ACTION WITHIN SIXTY DAYS OR IN THE EVENT SUCH NURSE OR DIRECT CARE WORK-  
53 ER BELIEVES THAT AN IMMEDIATE DANGER OR THREAT EXISTS TO SUCH EMPLOYEE  
54 OR TO THE GENERAL HEALTH OF A SPECIFIC PATIENT, SUCH EMPLOYEE SHALL HAVE  
55 THE RIGHT TO REFUSE TO ENGAGE IN PATIENT HANDLING UNTIL THE HEALTH CARE  
56 FACILITY HAS ADEQUATELY ADDRESSED THE SPECIFIC IMMEDIATE DANGER OR

1 THREAT TO SUCH EMPLOYEE OR PATIENT. UPON REFUSAL, THE NURSE, DIRECT CARE  
2 WORKER OR EMPLOYEE REPRESENTATIVE SHALL FILE A COMPLAINT TO THE DEPART-  
3 MENT IN THE MANNER SET FORTH IN THE STATEWIDE SAFE PATIENT HANDLING  
4 POLICY.

5 4. NO EMPLOYER SHALL TAKE RETALIATORY ACTION AGAINST ANY NURSE OR  
6 DIRECT CARE WORKER FOR RAISING CONCERNS OR ISSUES REGARDING SAFE PATIENT  
7 HANDLING, FILING A COMPLAINT OR REFUSING TO ENGAGE IN PATIENT HANDLING.

8 5. NURSES AND DIRECT CARE WORKERS, AS DEFINED IN SECTION TWENTY-NINE  
9 HUNDRED NINETY-NINE-H OF THIS TITLE SHALL BE CONSIDERED EMPLOYEES FOR  
10 THE PURPOSES OF SECTION SEVEN HUNDRED FORTY-ONE OF THE LABOR LAW.

11 6. THE DEPARTMENT AND THE DEPARTMENT OF LABOR SHALL PUBLISH AND MAKE  
12 PUBLIC WHICH HEALTH CARE FACILITIES ARE IN COMPLIANCE WITH THE STATEWIDE  
13 SAFE PATIENT HANDLING POLICY.

14 S 2. The education law is amended by adding a new section 6510-f to  
15 read as follows:

16 S 6510-F. STATE SAFE PATIENT HANDLING POLICY. 1. THE REFUSAL OF A  
17 LICENSED PRACTICAL NURSE OR A REGISTERED NURSE TO COMPLY WITH THE STATE  
18 SAFE PATIENT HANDLING POLICY OR A FACILITY'S SAFE PATIENT HANDLING POLI-  
19 CY SHALL NOT BE CONSIDERED PROFESSIONAL MISCONDUCT. THE REFUSAL OF A  
20 LICENSED PRACTICAL NURSE OR A REGISTERED NURSE TO ENGAGE IN PATIENT  
21 HANDLING SHALL NOT CONSTITUTE PATIENT ABANDONMENT OR NEGLECT IF SUCH  
22 NURSE, HAS IN A MANNER CONSISTENT WITH THE RULES AND REGULATIONS PROMUL-  
23 GATED BY TITLE FOUR OF ARTICLE TWENTY-NINE-D OF THE PUBLIC HEALTH LAW,  
24 REFUSED A PATIENT HANDLING ASSIGNMENT AND FILED A COMPLAINT WITH THE  
25 DEPARTMENT.

26 2. THE REFUSAL OF A LICENSED OR UNLICENSED HEALTH CARE WORKER TO  
27 ENGAGE IN PATIENT HANDLING NOT CONSISTENT WITH THE STATE SAFE PATIENT  
28 HANDLING POLICY OR A FACILITY'S SAFE PATIENT HANDLING POLICY SHALL NOT  
29 BE CONSIDERED PROFESSIONAL MISCONDUCT. THE REFUSAL OF A LICENSED OR  
30 UNLICENSED HEALTH CARE WORKER TO ENGAGE IN PATIENT HANDLING SHALL NOT  
31 CONSTITUTE PATIENT ABANDONMENT OR NEGLECT IF SUCH WORKER, HAS IN A  
32 MANNER CONSISTENT WITH THE RULES AND REGULATIONS PROMULGATED BY TITLE  
33 FOUR OF ARTICLE TWENTY-NINE-D OF THE PUBLIC HEALTH LAW, REFUSED A  
34 PATIENT HANDLING ASSIGNMENT AND FILED A COMPLAINT WITH THE DEPARTMENT.

35 S 3. This act shall take effect on the ninetieth day after it shall  
36 have become a law.