

AMERICAN BAR ASSOCIATION
SECTION OF BUSINESS LAW
TASK FORCE ON HUMAN TRAFFICKING
DELAWARE STATE BAR ASSOCIATION
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
SECTION OF CRIMINAL JUSTICE
SECTION OF ENVIRONMENT, ENERGY AND RESOURCES
SECTION OF PUBLIC CONTRACT LAW
COMMISSION ON YOUTH AT RISK

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association adopts the black letter *ABA Model*
2 *Business and Supplier Policies on Labor Trafficking and Child Labor*, dated February 2014.

3
4 FURTHER RESOLVED, That the American Bar Association urges businesses to adopt
5 and implement their own business and supplier policies on labor trafficking and child labor that
6 are consistent with the black letter *ABA Model Business and Supplier Policies on Labor*
7 *Trafficking and Child Labor*, dated February 2014.

1 **ABA MODEL BUSINESS AND SUPPLIER POLICIES ON LABOR**
2 **TRAFFICKING AND CHILD LABOR**
3 **FEBRUARY 2014**
4

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PART I. INTRODUCTION

(Please see the Glossary for an explanation of the capitalized terms used throughout this Introduction)

These Model Business and Supplier Policies address two specific human rights issues that potentially arise in the Operations of a business enterprise: Labor Trafficking and Child Labor.

The UN Guiding Principles on Business and Human Rights (Guiding Principles) are the globally recognized guidelines on the roles of States and business enterprises in addressing human rights issues.¹ The Guiding Principles are grounded in the recognition that (1) States have existing obligations to respect, protect and fulfill human rights and fundamental freedoms; (2) business enterprises, including suppliers, are required to comply with all applicable laws and respect human rights; and (3) there is a need for rights and obligations to be matched to appropriate and effective remedies when breached.²

The International Labour Organization (ILO) estimates that 20.9 million men, women and children are subject to forced labor around the world,³ with 68% (14 million) involved in forced labor exploitation in economic activities, such as agriculture, construction, domestic work or manufacturing.⁴ 22% (4.5 million) are involved in forced sexual exploitation, and 10% are involved in State-imposed forced labor.⁵ On child labor, the ILO reports that the number of children in situations of child labor has declined by one-third since 2000, but still stands at 168 million, with 60% (98 million) found in agriculture and more than half (85 million) involved in hazardous work.⁶ Despite the positive trend, 168 million children is more than ½ of the entire population of the United States. As former UN Secretary-General Kofi Anan stated about Child Labor, “[f]ew human rights abuses are so widely condemned, yet so widely practiced.”⁷

Consequently, Labor Trafficking and Child Labor increasingly have become—or are becoming—the subject of laws criminalizing such conduct, imposing civil liability based upon that conduct, and requiring public disclosure of efforts taken to address Labor Trafficking and Child Labor.⁸ In addition, ethical principles related to business enterprises are recognized in the Guiding Principles when they state:

The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfill their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights. Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation. Business enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations.⁹

Therefore, business enterprises around the world have recognized the importance of addressing Labor Trafficking and Child Labor in their Operations. Toward that end, the American Bar Association (ABA), through its Business Law Section and its Task Force on Human Trafficking,

offer the following Model Business and Supplier Policies for business enterprises to use as guidelines for review of their own policies and practices.

The Model Policies adopt a risk-based approach to ensure that measures to address issues of Labor Trafficking and Child Labor are commensurate with the risks identified, so that the sources of the greatest risk receive the most attention, thereby facilitating efficient allocation of resources. The business enterprises that adopt and implement a form of these Model Policies should identify general areas where the risk of Labor Trafficking or Child Labor is more significant so they can prioritize those for greater Due Diligence, Monitoring, Verification or appropriate action under a given Model Policy.

This approach is facilitated by Risk Assessments conducted by a Business or Supplier to ascertain whether or not in a given circumstance there is a risk of Labor Trafficking or Child Labor. Risk Assessments are part of Due Diligence, the scope of which may appropriately vary depending on the Risk Assessment conducted in a given circumstance. Similarly, the scope of Monitoring and Verification and the decision on utilizing either specially-trained Employees or Qualified Independent Third Party Monitors to conduct them, may appropriately vary depending on the Risk Assessment conducted in a given case. The Risk Assessment considers factors such as the type of business being conducted, where the business will be conducted, the history of Labor Trafficking or Child Labor in an industry or sector, operating context, the particular Operations, products or services involved, and any other factors a Business or Supplier deems relevant.

These Model Policies are specifically intended to apply to only the Business and its first tier Suppliers, unless:

1. After conducting a Risk Assessment, or upon receipt of other credible information as a result of Monitoring, Due Diligence, Verification or other activities, the Business or Supplier determines that there is a material risk of Labor Trafficking or Child Labor with a specific Supplier, or elsewhere in the Supply Chain; and
2. Taking appropriate action (e.g. Monitoring, Verification, or Remediation) with respect to the finding of a material risk of Labor Trafficking or Child Labor is practicable and not cost prohibitive in comparison to the value of the materials purchased from those Suppliers. This could also be done through broader industry initiatives; and
3. The product or service involved is material to the Business, Supplier or their Operations.

However, consistent with UN Guiding Principle 19, even if the Business or Supplier does not have an obligation under these Model Policies to cause a business enterprise lower in the Supply Chain to Remedy a Labor Trafficking or Child Labor impact, the Business or Supplier should still use whatever leverage it does have with that business enterprise or others dealing with this enterprise to encourage the business enterprise that caused the impact to Remedy the impact.

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The Model Policies are intended to be of assistance both to Businesses and Suppliers that do not currently have policies relating to Labor Trafficking and Child Labor, as well as to Businesses and Suppliers that have adopted policies but wish to consider possible modification of those policies to reflect evolving practices. As such, these Model Policies are intended to be adopted as, or be adapted and incorporated into, the Businesses' and Suppliers' codes of conduct or policies relating to Labor Trafficking and Child Labor. The Model Policies are designed as a resource for companies seeking to put in place their own policies and should be adapted by the Businesses and Suppliers based on their particular facts and circumstances. For example, while sex trafficking is not the focus of the Model Policies, where forced commercial sex is supplied by the Business, Supplier or their employees or agents as a condition of employment or otherwise, it is the subject of these Model Policies and a Business or Supplier may adapt these Model Policies as necessary to better address it within its specific operating context.

These Model Policies are not intended to be viewed as prescriptive, and failure of a Business or Supplier to adopt the Model Policies as written – or to comply with them once adopted – is not intended to be the basis for criminal or civil liability. Rather, these Model Policies are intended to assist Businesses and Suppliers in developing their own policies to guard against Labor Trafficking and Child Labor. The ABA, through its Business Law Section, also is developing a Database of Resources to supplement the Model Policies to further assist Businesses and Suppliers in this regard. In addition, we encourage each Business or Supplier to use these resources to address the specific Labor Trafficking and Child Labor issues facing the business enterprise. These Model Policies also recognize that business enterprises have varying resources and that some business enterprises may be in a better position to implement and ensure compliance with the Model Policies than others due to size or capacity. The Model Policies are intended to be relevant for all business enterprises regardless of size, sector and location. However, various aspects of the Model Policies may be inappropriate to certain Businesses or Suppliers based upon their particular circumstances or Operations. Nevertheless, these Model Policies are designed to be a starting point or guide for those Businesses that choose to adopt policies, and their respective Suppliers, in order to effectively address issues of Labor Trafficking and Child Labor in their Operations.

The Model Policies are presented in ways that provide options to a business enterprise that wishes to develop its own policies based in part on the Model Policies. These range from adopting only general business and supplier policies based on the Model Principles—or modifying existing policies to be consistent with those Model Principles (See Part II) to a more comprehensive approach of adopting more detailed business and supplier policies—or modifying existing detailed policies—in a manner consistent with the Model Principles and the related Commentary and Guidance applicable to each (See Parts III and IV), together with the soon-to-be-provided Database of Resources. In either case, the business enterprise is encouraged to adapt the Model Policies to fit its operating environment.

PART II. THE MODEL PRINCIPLES

A. MODEL BUSINESS PRINCIPLES

Principle 1—The Business will Prohibit Labor Trafficking and Child Labor in its Operations.

Principle 2—The Business will Conduct a Risk Assessment of the Risk of Labor Trafficking and Child Labor and Continually Monitor Implementation of this Policy.

Principle 3—The Business should: (i) Train Relevant Employees, (ii) Engage in Continuous Improvement, and (iii) Maintain Effective Communications Mechanisms with its Suppliers.

Principle 4—The Business will Devise a Remediation Policy and Plan that Addresses Remediation for Labor Trafficking or Child Labor in its Operations.

B. MODEL SUPPLIER PRINCIPLES

Principle 1—The Supplier will Prohibit Labor Trafficking and Child Labor in its Operations.

Principle 2—The Supplier will Conduct a Risk Assessment of the Risk of Labor Trafficking and Child Labor and Continually Monitor Implementation of this Policy.

Principle 3—The Supplier should: (i) Train Relevant Employees, (ii) Engage in Continuous Improvement, and (iii) Maintain Effective Communications Mechanisms with its Suppliers.

Principle 4 —The Supplier will Devise a Remediation Policy and Plan that Addresses Remediation for Labor Trafficking or Child Labor in its Operations.

178 **PART III. MODEL BUSINESS POLICY**179 **Principle 1—The Business will Prohibit Labor Trafficking and Child Labor in**
180 **its Operations.**181
182 **Commentary and Guidance on Principle 1:**183
184 A. The Business will:

- 185 1. Adopt a policy prohibiting the use of Labor Trafficking and Child Labor in its
- 186 Operations;
- 187 2. Not knowingly tolerate any Labor Trafficking or Child Labor in its Operations; and
- 188 3. Comply with the laws regarding Labor Trafficking and Child Labor in the country or
- 189 countries in which the Business has Operations.

190 B. The remaining Commentary and Guidance on this Principle are provisions that the Business may
191 want to adopt depending on the results of the Risk Assessment.

192 C. The Business should encourage and, where appropriate, require that its first tier Suppliers adopt
193 the Model Supplier Policy set forth in Part IV.

194 D. The Business should include a provision in its supply contracts that the Business's policies,
195 including this Policy, are essential to the contract and that Supplier agrees to indemnify the
196 Business and hold it harmless with respect to any violation of relevant laws and regulations, or
197 for any civil or criminal liability arising from the contravention of the Business's Policies by
198 Supplier or any of its Suppliers, including, but not limited to, indemnification for Remedies paid
199 to any victim or any other Remediation hereunder. In the event that the Business determines that
200 Supplier has not made a good faith effort to Remedy or Remediate the potential violation or
201 contravention in order to comply with the law and/or the Business's Policy, then the Business
202 may terminate its Supplier contract immediately, and such termination will be with cause. In the
203 event that the Business determines that Supplier has acted in good faith but has nonetheless failed
204 to Remedy or Remediate the potential violation or contravention, the Business may execute any
205 other appropriate remedy, including but not limited to the training and capacity building called
206 for in Principle 3.

207 **Principle 2—The Business will Conduct a Risk Assessment of the Risk of**
208 **Labor Trafficking and Child Labor and Continually Monitor Implementation**
209 **of this Policy.**

210
211 **Commentary and Guidance on Principle 2:**212
213 A. The Business will:

- 214 1. Conduct ongoing Risk Assessments of the risk of Labor Trafficking and Child Labor in
- 215 its Operations. In conducting Risk Assessments, the Business should identify general
- 216 areas where the risk of Labor Trafficking and Child Labor is more significant in terms of
- 217 severity, scale, or probability and prioritize those for greater Due Diligence, Monitoring,
- 218 Verification or other appropriate action under a given Principle, and

2. Require its Suppliers to conduct ongoing Risk Assessments.
- B. The remaining Commentary and Guidance on this Principle are provisions that the Business may want to adopt depending on the results of the Risk Assessment.
- C. The Business should draw on internal or external human rights expertise and, as appropriate to the size of the Business and the nature and context of its Operations, engage relevant Stakeholders in conducting all Risk Assessments.
- D. Based on the result of the Risk Assessment, the Business should examine areas of Business's Operations, its Suppliers and other parts of the Supply Chain with a material risk of Labor Trafficking and Child Labor to identify the extent to which it should:
 1. Monitor its Suppliers' implementation of this Policy;
 2. Perform Due Diligence on Suppliers; and
 3. Adopt a Verification program to ensure its own implementation of this Policy with appropriate executive oversight based on its governance structure.

Principle 3—The Business should: (i) Train Relevant Employees, (ii) Engage in Continuous Improvement, and (iii) Maintain Effective Communications Mechanisms with its Suppliers.

Commentary and Guidance on Principle 3:

- A. The remaining Commentary and Guidance on this Principle are provisions that the Business may want to adopt depending on the results of the Risk Assessment.
- B. The Business should train relevant employees, engage in continuous improvement¹⁰, and maintain effective communication mechanisms with its Suppliers.
- C. The Business should communicate this Policy to key Stakeholders, including:
 1. Employees, including managers, supervisors, and other staff with Supply Chain oversight;
 2. Suppliers or agents, if applicable; and
 3. Labor brokers, recruiters, and employment agencies, if used by the Business.
- D. The Business should also publish this Policy or otherwise make it available to the public such as by posting this Policy on the Business's website so that it is available to relevant Stakeholders.
- E. The Business should implement a system that allows Employees, and Employee representatives where applicable, to raise issues regarding Labor Trafficking and Child Labor acts with the Business anonymously, without fear of reprisal, and in accordance with applicable privacy laws. In addition to establishing this system, the Business should publicize the availability of the system, such as by posting it on its website and requiring its prominent display at the workplace so that it is readily available to Supplier Employees at all levels.

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Principle 4—The Business will Devise a Remediation Policy and Plan that Addresses Remediation for Labor Trafficking or Child Labor in its Operations.

Commentary and Guidance on Principle 4:

- A. The Business should consult with relevant Stakeholders to devise a Remediation policy and plan that addresses:
 - 1. Remedies for individual victims where the Business itself directly caused the Labor Trafficking or Child Labor; and
 - 2. Remediation of broader patterns of non-conformance with the Model Policy caused by deficiencies in the Business's systems or processes.
- B. The remediation policy and plan may appropriately vary depending on the Risk Assessment conducted in a given case.
- C. The Remediation policy and plan of the Business should take into consideration all findings reported through Monitoring, Due Diligence, and Verification efforts or other sources.
- D. Remediation for individual victims should include protocols for appropriate immediate action to eliminate the Labor Trafficking and Child Labor and resources for reasonable and appropriate victim services designed to offset the harm experienced.
 - 1. The business enterprise immediately responsible for the Labor Trafficking or Child Labor should remediate any harm to the individual victims.
 - 2. To the extent that the responsible business enterprise is unwilling or unable to provide such Remediation, then the Business may choose to do so itself in coordination with a number of others including:
 - a. the Supplier and other business enterprises in the Supply Chain;
 - b. other Businesses that utilize the responsible business enterprise; and
 - c. local government, NGOs and other Stakeholders.
 - 3. If the Business chooses to provide all or part of the victim Remediation, then it may be able to rely on the indemnification recommended in Principle 1 for reimbursement.

PART IV. MODEL SUPPLIER POLICY

Principle 1—The Supplier will Prohibit Labor Trafficking and Child Labor in its Operations.

Commentary and Guidance on Principle 1:

- A. The Supplier should:
 - 1. Adopt a policy prohibiting the use of Labor Trafficking and Child Labor in its Operations;
 - 2. Not knowingly tolerate any Labor Trafficking or Child Labor in its Operations; and
 - 3. Certify to the Business that the product or service provided to the Business complies with

- the laws regarding Labor Trafficking and Child Labor of the country or countries in which the Business and Supplier has Operations relating to the products or services being provided by the Supplier to the Business.
- B. The Supplier should notify the Business immediately if it learns of instances of Labor Trafficking or Child Labor.
 - C. The remaining Commentary and Guidance on this Principle are provisions that the Supplier may want to adopt depending on the results of the Risk Assessment.
 - D. The Supplier should encourage and, where appropriate, require its first-tier Suppliers to adopt the Model Supplier Policy set forth in this Part IV.
 - E. Where part of a supplier contract, the Supplier agrees that failure to comply with the relevant provisions is grounds for immediate termination of the contract.
 - F. The Supplier agrees to indemnify the Business and hold it harmless with respect to any violation of relevant laws and regulations, or for any civil or criminal liability arising from the contravention of the Business's Policy by Supplier or any of its Suppliers of goods or services, including, but not limited to, any Remediation. Supplier also agrees that, in the event that the Business determines that a violation or contravention of relevant laws and regulations or the Business's Policies may have occurred, the Business shall notify Supplier and Supplier shall immediately Remedy or Remediate or cause to be Remedied or Remediated, the potential violation or contravention. In the event that the Business determines that Supplier has not made a good faith effort to Remedy or Remediate the potential violation or contravention in order to comply with the law and/or the Business's Policies, then the Business may terminate its Supplier contract immediately, and such termination will be with cause. In the event that the Business determines that Supplier has acted in good faith but has nonetheless failed to Remedy or Remediate the potential violation or contravention, the Business may execute any other appropriate remedy, including but not limited to the training and capacity building called for in Principle 3.

Principle 2—The Supplier will Conduct a Risk Assessment of the Risk of Labor Trafficking and Child Labor and Continually Monitor Implementation of this Policy.

Commentary and Guidance on Principle 2:

- A. The Supplier will:
 - 1. Conduct ongoing Risk Assessments of the risk of Labor Trafficking and Child Labor in its Operations. In conducting Risk Assessments, the Supplier should identify general areas where the risk of Labor Trafficking and Child Labor is more significant in terms of severity, scale, or probability and prioritize those for greater Due Diligence, Monitoring, Verification or other appropriate action under a given Policy; and
 - 2. Require its Suppliers to conduct ongoing Risk Assessments.
- B. The remaining Commentary and Guidance on this Principle are provisions that the Supplier may want to adopt depending on the results of the Risk Assessment.
- C. The Supplier should draw on internal or external human rights expertise and, as appropriate to the

- size of the Business and the nature and context of its Operations, engage relevant Stakeholders in conducting all Risk Assessments.
- D. Based on the Result of the Risk Assessment, the Supplier should examine areas of the Supplier's Operations, its Suppliers and other parts of the Supply Chain with a material risk of Labor Trafficking and Child Labor to identify the extent to which it should:
1. Monitor its Suppliers' implementation of this Policy;
 2. Perform Due Diligence on Suppliers; and
 3. Adopt a Verification program to ensure its own implementation of this Policy with appropriate executive oversight based on its governance structure.
 4. The Supplier will cooperate fully in providing reasonable access to the Business and Qualified Independent Third-Party Monitors engaged in Due Diligence or Monitoring activities. The scope of Due Diligence, Monitoring, and the decision to use either specially trained Employees or Qualified Independent Third-Party Monitors, may appropriately vary depending on the Risk Assessment conducted in a given case.

Principle 3—The Supplier should: (i) Train Relevant Employees, (ii) Engage in Continuous Improvement, and (iii) Maintain Effective Communications Mechanisms with its Suppliers.

Commentary and Guidance on Principle 3:

- A. The remaining Commentary and Guidance on this Principle are provisions that the Supplier may want to adopt depending on the results of the Risk Assessment.
- B. The Supplier should train relevant employees, engage in continuous improvement¹¹, and maintain effective communication mechanisms.
- C. The Supplier should communicate the Policy to key Stakeholders, including:
1. Employees, including managers, supervisors, and other staff with Supply Chain oversight;
 2. Suppliers or agents, if applicable; and
 3. Labor brokers, recruiters, and employment agencies, if used by the Supplier.
- D. The Supplier should also publish this Policy or otherwise make it available to the public such as by posting this Policy on the Supplier's website so that it is available to relevant Stakeholders.
- E. The Supplier should implement a system that allows Employees, and Employee representatives where applicable, to raise issues regarding Labor Trafficking or Child Labor with the Business anonymously, without fear of reprisal, and in accordance with applicable privacy laws. In addition to establishing this system, the Business should publicize the availability of the system, such as by posting it on its website and requiring its prominent display at the workplace so that it is readily available to Business and Supplier Employees at all levels.

Principle 4 —The Supplier will Devise a Remediation Policy and Plan that Addresses Remediation for Labor Trafficking or Child Labor in its Operations.

Commentary and Guidance on Principle 4:

- A. The Supplier should consult with relevant Stakeholders to devise a Remediation policy and plan that addresses:
 1. Remediation for individual victims where the Supplier itself directly caused the Labor Trafficking or Child Labor; and
 2. Remediation of broader patterns of non-conformance with this Policy caused by deficiencies in the Supplier's systems or processes.
 3. The Remediation policy and plan may appropriately vary depending on the Risk Assessment conducted in a given case.
- B. The Remediation policy and plan of the Supplier should take into consideration all findings reported through Monitoring, Due Diligence, and Verification efforts or other sources.
- C. Remediation for harm to individual victims should include protocols for appropriate immediate action to eliminate the Labor Trafficking and Child Labor and resources for reasonable and appropriate victim services designed to offset the harm experienced.
 1. The business enterprise immediately responsible for the Labor Trafficking or Child Labor should remediate any harm to the individual victims.
 2. To the extent that the responsible business enterprise is unwilling or unable to provide such Remediation, then the Supplier may choose to do so itself in coordination with a number of others including:
 - a. the Supplier and other business enterprises in the Supply Chain;
 - b. other Businesses that utilize the responsible business enterprise; and
 - c. local government, NGOs and other Stakeholders.
 3. If the Supplier chooses to provide all or part of the victim Remediation, then it may be able to rely on the indemnification recommended in Principle 1 for reimbursement.

PART V. MODEL GLOSSARY

“Business” - [name of Business or Supplier adopting these Policies].¹² The term “business enterprises” refers to businesses generically.

“Child Labor” - Work performed by a person who is under the minimum legal working age to be employed as determined by (i) a Business's or Supplier's policy, (ii) the law of the jurisdiction in which the work will be performed, or (iii) the International Labor Organization Minimum Age Convention No. 138 - whichever indicates the higher minimum age requirement.¹³

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421 **“Due Diligence”** - The ongoing process of investigating the facilities, policies, and labor
422 practices of potential and contracted Suppliers to help confirm that no Supplier engaging in
423 Labor Trafficking or Child Labor enters the Business’s Supply Chain.

424 **“Labor Trafficking”** - The act of recruiting, harboring, transporting, providing, or obtaining a
425 person for involuntary labor or services by means of force or physical threats, fraud or deception,
426 or other forms of coercion.¹⁴ Labor trafficking shall also include:

- 427 • **“Trafficking-Related Activities”** – All activities that directly support or promote Labor
428 Trafficking or Child Labor, including but not limited to: (i) using misleading or
429 fraudulent recruitment practices during the recruitment of employees, such as failing to
430 disclose basic information or making material misrepresentations regarding the key terms
431 and conditions of employment, including wages and fringe benefits, the location of work,
432 living conditions and housing (if employer-provided or employer-arranged), any
433 significant costs to be charged to the employee, and, if applicable, the hazardous nature
434 of the work; (ii) charging employees recruitment fees; and (iii) destroying, concealing,
435 confiscating, or otherwise denying access by an employee to the employee's identity
436 documents, such as passports or drivers' licenses.¹⁵

437 **“Monitoring”** - The process of investigating and evaluating the implementation of these Policies
438 by the Supplier(s) of the Business or Supplier through announced and unannounced visits
439 conducted on randomly selected Suppliers and carried out by (i) specially trained Employees of
440 the Business or Supplier or (ii) Qualified Independent Third-Party Monitors.

441 **“Operations”** – Activities involved in the day-to-day functions of the business conducted for the
442 purpose of generating profits, including, but not limited to, its employment-related and Supply
443 Chain practices.

444 **“Qualified Independent Third-Party Monitors”** – An organization with no affiliation with the
445 Business Supplier or their Employees, that has a demonstrated expertise in conducting
446 qualitative and quantitative reviews of potential Labor Trafficking and Child Labor within the
447 Operations of Business or Supplier.

448 **“Remediation”** - Activities, systems policies or procedures that the Business or Supplier
449 establishes to address and remedy confirmed instances of Labor Trafficking or Child Labor in its
450 operations.

451 **“Remedies”** - Financial or nonfinancial compensation awarded to victims of Labor Trafficking
452 or Child Labor.

453 **“Risk Assessment”** - An ongoing analysis conducted by a Business to ascertain whether or not
454 in a given circumstance there is a significant risk of Labor Trafficking or Child Labor by
455 considering such factors as the type and location of the business being conducted, the history of
456 Labor Trafficking and Child Labor in the industry or sector, the Operating context, the particular
457 products or services involved, and other relevant factors.

458

459 **“Stakeholder”** - Any individual or entity having an interest in the Business developing and
460 maintaining a Supply Chain free of Labor Trafficking or Child Labor including but not limited to
461 Employees, labor service intermediaries, non-governmental organizations and governments.

462 **“Supplier”** - Organizations and individuals in the Business’s Supply Chain who contracts
463 directly with the Business or a Supplier.

464 **“Supply Chain”** - Any organizations or individuals involved in providing services to the
465 Business or producing, processing, or distributing the Business’s products from the product’s
466 point of origin to the Business or point of sale, as applicable.

467 **“Verification”** - Process by which the Business or Supplier evaluates itself or is evaluated by a
468 Qualified Independent Third-Party to determine its degree of success in implementing and
469 enforcing this Policy. This includes an evaluation of (1) data gathered through Monitoring
470 activities to ensure results are reliable, objective and obtained via a credible process; and (2)
471 whether any Remediation has been implemented, and if so, if such Remediation is objective and
472 effective. The scope of Verification may appropriately vary depending on the Risk Assessment
473 conducted in a given case.

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475 **PART VI. ENDNOTES**
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¹ Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy Framework,” A/HRC/17/31, 21 March 2011. The ABA endorsed this approach in February 2012. See ABA Report & Recommendation on UN Guiding Principles on Business & Human Rights: http://www.americanbar.org/content/dam/aba/directories/policy/2012_hod_midyear_meeting_109.doc

² Id.

³ International Labour Organization, Forced Labour Global Estimate, http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_181961/lang--en/index.htm which has been commended by the US Department of Labor http://www.ilo.org/sapfl/News/WCMS_182302/lang--en/index.htm.

⁴ Id.

⁵ Id.

⁶ International Labour Organization: International Program on the Elimination of Child Labour: <http://www.ilo.org/global/topics/child-labour/lang--en/index.htm#a2>.

⁷ United Nations Resources for Speakers on Global Issues, <http://www.un.org/en/globalissues/briefingpapers/childlabour/quotes.shtml>.

⁸ See for example Section 1502 of the Dodd Frank Act relating to conflict minerals; the 2008 amendments to the Trafficking Victims Protection Act relating to Fraud in Foreign Labor Contracting and Benefiting Financially from Peonage, Slavery, and Trafficking in Persons; the California Transparency in Supply Chains Act—SB 657; and President Obama’s Executive Order 13627 and the National Defense Authorization Act for Fiscal Year 2013.

⁹ Commentary to Paragraph II (a) 11, UN Guiding Principles on Business and Human Rights.

¹⁰ A framework for the training and continuous improvement activities referred to in this Model Principle 3 will be found in the Database of Resources to be provided. For now, please refer to the Department of Labor’s ILAB Toolkit at <http://www.dol.gov/ilab/child-forced-labor/step4/index.htm>.

¹¹ Id.

¹² The definition of “Business” is intended to include: United States businesses, formed under the laws of the United States, doing business domestically and abroad, as well as foreign businesses, formed under the laws of countries other than the United States doing business in the United States, without distinction between size, industry and/or regulated or non-regulated status. The definition of “Business” for purposes of these Policies means any sole proprietorship, partnership, corporation, limited liability company, limited partnership, limited liability limited partnership and other forms of business organizations as may be defined under the laws of any country and includes all affiliates, subsidiaries, divisions, other business units of a Business; provided, however, that a subsidiary may adopt the Policies even if its parent has not done so.

¹³ Child Labor is subject to numerous definitions. Child Labor definitions vary both in terms of the applicable ages and the work permitted to be performed by children. Notwithstanding these varied definitions, the International Labor Organization (ILO) provides helpful guidance. The ILO notes that “[o]ne of the most effective methods of

ensuring that children do not start working too young is to set the age at which children can legally be employed or otherwise work.” ILO Minimum Age Convention 138, which separately has been endorsed by the ABA, generally sets 15 as the youngest age that children can work. However, the possible exceptions in Articles 6 and 7, as well as variations for qualifying developing countries (as defined by the ILO), could allow 12 to 14 year-olds to work. For hazardous work, 18 is the youngest acceptable age, although 16 and 17 year-olds can work “under strict conditions.” Many Business policies referring to Child Labor incorporate the ILO definitions and indicate age limitations varying from 14 to 16 years of age, subject to local child labor law, which in some cases could permit a child younger than 14 to work. Therefore the Model Policies definition adopts, as a minimum legal working age, the age permitted by ILO Minimum Age Convention 138 under the particular circumstances the However child employment, which under the ILO Minimum Age convention may be permissible, becomes Labor Trafficking when the employer maintains control over the child through the use of force, fraud, and/or coercion and this control results in the child's belief that he or she has no other choice but to continue to work for this employer. It does not matter whether the child is over the minimum of age or not. If the child believes that he or she has no other option, i.e., cannot attend school, through the use of force, fraud and/or coercion then the actions of the employer rise to the level of Labor Trafficking, irrespective of ILO Minimum Age Convention 138.

¹⁴ Labor Trafficking has no single definition. Those entities that have sought to address it – including governments, international organizations, and members of civil society – have defined Labor Trafficking differently, reflecting the variety of activities that may constitute such conduct. Nevertheless, these definition share common elements that may prove helpful in guiding a Business or Supplier in its efforts to address Labor Trafficking in its operations. The Database of Resources will contain the U.S. and international legal definitions of labor trafficking, as well as domestic and international definitions of related concepts, such as human trafficking, trafficking in persons and forced labor. Like labor trafficking, all of these terms are defined differently by various entities but also have many common elements. Forms of Labor Trafficking can include forced labor in underground markets and sweatshops, as well as in legitimate businesses, including those in the manufacturing, travel, entertainment, hospitality, agricultural, service, and extractive industries. Movement of persons is not required for Labor Trafficking to exist; i.e., Labor Trafficking can occur without the victim leaving his or her hometown. People may be considered victims of Labor Trafficking regardless of whether they were born into a state of servitude, were transported to the exploitative situation, previously consented to work for a the individual controlling them, or participated in a crime as a direct result of being trafficked, including the use of illegal substances. These facts become irrelevant once a person is compelled to work by force, fraud, or coercion, which can occur at any point within the employment cycle.

¹⁵ Trafficking Related Activities, refer to those actions, usually employed by labor brokers, to facilitate Labor Trafficking and Child Labor. These Model Policies use the definition contained in Executive Order 13627 issued by President Obama on September 25, 2012.

REPORT

At the request of ABA President Laurel Bellows, who served as the Association’s President from 2012-2013 and devoted much of her term to fighting the scourge of human trafficking, the Section of Business Law has prepared the *ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor* (the “Policies”). While certain businesses have adopted and implemented codes of business conduct to address labor trafficking and child labor in their operations, other businesses have not done so and there currently are no standard business conduct codes that have been widely adopted by businesses formed under the laws of the United States. In addition, even businesses with codes in place can benefit from the review of policies intended to reflect best evolving practices.

As noted in the Introduction to the *Policies*, the UN Guiding Principles on Business and Human Rights (the “Guiding Principles”) are the globally recognized guidelines on the roles of States and business enterprises in addressing human rights issues. The Guiding Principles are grounded in the recognition that (1) States have existing obligations to respect, protect and fulfill human rights and fundamental freedoms; (2) business enterprises, including suppliers, are required to comply with all applicable laws and respect human rights; and (3) there is a need for rights and obligations to be matched to appropriate and effective remedies when breached.

The International Labour Organization (the “ILO”) estimates that 20.9 million men, women and children are subject to forced labor around the world, with 68% (14 million) involved in forced labor for labor exploitation in economic activities, such as agriculture, construction, domestic work or manufacturing. Twenty-two percent 22% (4.5 million) are involved in forced labor for sexual exploitation, and 10% are involved in State-imposed forced labor. On child labor, the ILO reports that the number of children in situations of child labor has declined by one-third since 2000, but still stands at 168 million, with 60% (98 million) found in agriculture and more than half (85 million) involved in hazardous work. Despite the positive trend, 168 million children is more than one-half of the entire population of the United States. As former UN Secretary-General Kofi Anan stated regarding child labor, “[f]ew human rights abuses are so widely condemned, yet so widely practiced.”

Consequently, labor trafficking and child labor increasingly have become—or are becoming—the subject of laws criminalizing such conduct, imposing civil liability based upon that conduct, and requiring public disclosure of efforts taken to address labor trafficking and child labor. In addition, ethical principles related to business enterprises are recognized in the Guiding Principles, which state:

The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfill their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights. Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation. Business enterprises may undertake other commitments or activities to

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support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations.

Therefore, business enterprises around the world have recognized the importance of addressing labor trafficking and child labor in their operations. Toward that end, the ABA, through its Section of Business Law and its Task Force on Human Trafficking, offer *Model Business and Supplier Policies* for business enterprises to use as guidelines for review of their own policies and practices.

The *Model Policies* adopt a risk-based approach to ensure that measures to address issues of labor trafficking and child labor are commensurate with the risks identified, so that the sources of the greatest risk receive the most attention, thereby facilitating efficient allocation of resources. The business enterprises that adopt and implement a form of these *Model Policies* should identify general areas where the risk of labor trafficking or child labor is more significant so they can prioritize those for greater due diligence, monitoring, verification or appropriate action under a given *Model Policy*.

The four black letter Principles contained in the *Model Business Policy* portion of the *Policies* are: (1) the business will prohibit labor trafficking and child labor in its operations; (2) the business will conduct a risk assessment of the risk of labor trafficking and child labor and continually monitor implementation of this *Policy*; (3) the business should: (i) train relevant employees, (ii) engage in continuous improvement, and (iii) maintain effective communications mechanisms with its suppliers, and; (4) the business will devise a remediation policy and plan that addresses remediation for labor trafficking or child labor in its operations.

The four black letter Principles contained in the *Model Supplier Policy* portion of the *Policies* are: (1) the supplier will prohibit labor trafficking and child labor in its operations; (2) the supplier will conduct a risk assessment of the risk of labor trafficking and child labor and continually monitor implementation of this *Policy*; (3) the supplier should: (i) train relevant employees, (ii) engage in continuous improvement, and (iii) maintain effective communications mechanisms with its suppliers; and (4) the supplier will devise a remediation policy and plan that addresses remediation for labor trafficking or child labor in its operations.

Also included in the *Policies* are an “Introduction,” a “Model Glossary,” “Commentary and Guidance” in connection with each of the eight black letter Principles, and endnotes.

The first Resolved clause in the proposed Resolution reflects the American Bar Association’s adoption, as a matter of ABA policy, of the “black letter *ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor*, dated February 2014,” which consists of only the Principles and applicable portions of the Model Glossary that define terms used in the Principles. The second Resolved clause in the proposed Resolution urges businesses to adopt and implement their own business and supplier policies on labor trafficking and child labor that are consistent with the black letter aspects of the *Policies* to assist them in identifying and addressing issues of labor trafficking and child labor in their operations.

The drafters do not intend that the *Policies* should be viewed as prescriptive. Nor do they intend that failure to comply with the *Policies* can or should serve as a basis for criminal or civil liability. Rather, the drafters hope that adoption and implementation of the black letter *Policies* may assist businesses in guarding against labor trafficking and child labor in their operations.

Respectfully submitted,

Dixie L. Johnson, Chair
Section of Business Law
February 2014

GENERAL INFORMATION FORM

Submitting Entity: Section of Business Law

Submitted By: Dixie L. Johnson, Chair

1. Summary of Resolution(s):

The *ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor* include eight black letter Principles, with an “Introduction,” a “Model Glossary,” “Commentary and Guidance” in connection with each of the Principles, and endnotes. The *Policies* are intended to assist businesses in identifying and addressing issues of labor trafficking and child labor in their operations.

The four black letter Principles contained in the *Model Business Policy* portion of the *Policies* are: (1) the business will prohibit labor trafficking and child labor in its operations; (2) the business will conduct a risk assessment of the risk of labor trafficking and child labor and continually monitor implementation of this *Policy*; (3) the business should: (i) train relevant employees, (ii) engage in continuous improvement, and (iii) maintain effective communications mechanisms with its suppliers, and; (4) the business will devise a remediation policy and plan that addresses remediation for labor trafficking or child labor in its operations.

The four black letter Principles contained in the *Model Supplier Policy* portion of the *Policies* are: (1) the supplier will prohibit labor trafficking and child labor in its operations; (2) the supplier will conduct a risk assessment of the risk of labor trafficking and child labor and continually monitor implementation of this *Policy*; (3) the supplier should: (i) train relevant employees, (ii) engage in continuous improvement, and (iii) maintain effective communications mechanisms with its suppliers; and (4) the supplier will devise a remediation policy and plan that addresses remediation for labor trafficking or child labor in its operations.

The first Resolved clause in the proposed Resolution reflects the American Bar Association’s adoption, as a matter of ABA policy, of the “black letter *ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor*, dated February 2014,” which consists of only the Principles and applicable portions of the Model Glossary that define terms used in the Principles. The second Resolved clause in the proposed Resolution urges businesses to adopt and implement their own business and supplier policies on labor trafficking and child labor that are consistent with the black letter *Policies* to assist them in identifying and addressing issues of labor trafficking and child labor in their operations.

2. Approval by Submitting Entity.

August 10, 2013

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

In 2007, the House of Delegates adopted a general policy urging corporate adherence to international human rights principles in the conduct of business activities (*see* Resolution 110B, adopted August 2007). The ABA subsequently adopted a resolution in 2012 endorsing the United Nations Framework for Business and Human Rights, its companion Guiding Principles on Business and Human Rights, and the “Human Rights” provisions of the OECD Guidelines for Multinational Enterprises (*see* Resolution 109, adopted February 2012). Resolution 109 also urged governments, the private sector and the legal community to integrate those principles into their respective operations and practices, including the principle that enterprises should “have a policy commitment to respect human rights.” (*Id.* at 1 and 11).

From 1996-2011, the House of Delegates adopted seven policies relating specifically to combating human trafficking. In particular, the House adopted resolutions: urging federal, state, and other governments to pass legislation that protects and assists human trafficking victims and bolsters prevention efforts (*see* Resolution 110C, adopted August 2007); urging state and other legislatures to enact legislation that aids minors who are victims of human trafficking in various ways (*see* Resolution 103A, adopted August 2011); urging federal and state governments to enact legislation protecting unaccompanied and undocumented immigrant children in various ways, including proper screening to determine if they are victims of trafficking, abuse, or abandonment that could be a basis for immigration relief (*see* Resolution 103D, adopted August 2011); and urging federal, state, and other governments to enact laws and regulations and develop policies assuring that those identified as victims of human trafficking should not be prosecuted for non-violent crimes directly related to their status as human trafficking victims (*see* Resolution 104F, adopted February 2013).

The House of Delegates also has adopted resolutions: supporting legislation that would allow human trafficking victims charged with prostitution or other non-violent crimes directly relating to their status as victims of human trafficking to assert an affirmative defense (*see* Resolution 104G, adopted February 2013); urging federal, state and other governments to aid human trafficking victims by enacting laws permitting the victims to vacate their prostitution and other non-violent crimes directly related to their trafficking victimization and providing funding for those programs, and urging bars, law school clinics, and other legal assistance providers to develop pro bono programs and provide pro bono representation to help victims to vacate those offenses (*see* Resolution 104H, adopted February 2013).

In addition, the House of Delegates has adopted a resolution urging federal, state, local and other bar associations to work with judges, lawyers and other professionals with human trafficking expertise to develop and implement training programs for judges, prosecutors,

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defense counsel, law enforcement officers, immigration officials, civil attorneys and other investigators to enable them to identify and help human trafficking victims in various ways (*see* Resolution 104I, adopted February 2013).

The proposed Resolution adopting the black letter *ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor* and urging businesses to consider adopting and implementing their own policies that are consistent with the black letter *ABA Model Policies* is consistent with, and would complement, each of the above-described existing ABA policies by providing another useful and practical tool for business enterprises to help address issues of labor trafficking and child labor in their operations.

5. What urgency exists which requires action at this meeting of the House?

There currently are no standard business conduct codes for combatting labor trafficking, child labor, and trafficking-related activities. At the same time, businesses are expected to operate in an environment of increased societal knowledge and concern regarding human labor trafficking and child labor. And an increasing number of international, federal, and state laws are affecting businesses in addressing labor trafficking and child labor, with laws criminalizing such conduct, imposing civil liability, and requiring public disclosure of efforts taken to guard against labor trafficking and child labor. The *ABA Model Policies* are designed to assist businesses that do not currently have codes of conduct in place, as well as those businesses that have adopted codes but wish to modify them to reflect best evolving practices, in order to promote public trust and confidence in the businesses' attention to corporate social responsibility.

6. Status of Legislation. (If applicable)

While there are a number of pending bills in Congress that contain provisions regarding prevention of human trafficking and protection and assistance for victims of trafficking, none specifically addresses the issue of business and supplier conduct policies.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The Section plans to publish the *ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor* widely, post them on its website, and work with the ABA Task Force on Human Trafficking and other entities within and outside the ABA in promoting awareness of the *Policies* and encouraging businesses to adopt and implement (or revise) their own business and supplier policies on labor trafficking and child labor that are consistent with the black letter *ABA Model Policies*.

8. Cost to the Association. (Both direct and indirect costs)

None.

9. Disclosure of Interest. (If applicable)

Not applicable.

10. Referrals.

This resolution has been sent to the following ABA entities, requesting support, or co-sponsorship (where appropriate under the current *Instructions for Filing Resolutions with Reports and Informational Reports to the House of Delegates*):

Task Force on Human Trafficking
 Delaware State Bar Association
 Section of Individual Rights and Responsibilities
 Section of Criminal Justice
 Section of Environment, Energy and Resources
 Section of International Law
 Section of Labor and Employment Law
 Law Student Division
 Section of Litigation
 Section of Public Contract Law
 Senior Lawyers Division
 Section of Tort Trial and Insurance Practice
 Young Lawyers Division
 Section of Science & Technology Law
 Center on Children and the Law
 Center for Human Rights
 Commission on Domestic & Sexual Violence
 Commission on Youth at Risk

Referral also was made to the following Affiliated Organizations:

Conference of Chief Justices
 National Association of Attorneys General
 National Conference of Commissioners on Uniform State Laws

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

William D. Johnston, Esquire
 Secretary, Section of Business Law
 Young Conaway Stargatt & Taylor, LLP
 Rodney Square
 1000 N. King Street
 Wilmington, DE 19801
 Phone: (302) 571-6679
 E-mail: wjohnston@ycst.com

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12. Contact Name and Address Information. (Who will present the report to the House?
Please include name, address, telephone number, cell phone number and e-mail address.)

William D. Johnston, Esquire
Secretary, Section of Business Law
Young Conaway Stargatt & Taylor, LLP
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Cell phone: (302) 530-8697
E-mail: wjohnston@ycst.com

EXECUTIVE SUMMARY

1. Summary of the Resolution

The *ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor* include eight black letter Principles, with an “Introduction,” a “Model Glossary,” “Commentary and Guidance” in connection with each of the Principles, and endnotes. The *Policies* are intended to assist businesses in identifying and addressing issues of labor trafficking and child labor in their operations.

The four black letter Principles contained in the *Model Business Policy* portion of the *Policies* are: (1) the business will prohibit labor trafficking and child labor in its operations; (2) the business will conduct a risk assessment of the risk of labor trafficking and child labor and continually monitor implementation of this *Policy*; (3) the business should: (i) train relevant employees, (ii) engage in continuous improvement, and (iii) maintain effective communications mechanisms with its suppliers, and; (4) the business will devise a remediation policy and plan that addresses remediation for labor trafficking or child labor in its operations.

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The first Resolved clause in the proposed Resolution reflects the American Bar Association’s adoption, as a matter of ABA policy, of the “black letter *ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor*, dated February 2014,” which consists of only the Principles and applicable portions of the Model Glossary that define terms used in the Principles. The second Resolved clause in the proposed Resolution urges businesses to adopt and implement their own business and supplier policies on labor trafficking and child labor that are consistent with the black letter *Policies* to assist them in identifying and addressing issues of labor trafficking and child labor in their operations.

2. Summary of the Issue that the Resolution addresses

There currently are no standard business conduct codes that have been widely adopted by businesses formed under the laws of the United States for combating human labor trafficking, child labor, and trafficking-related activities. At the same time, businesses are expected to operate in an environment of increased societal knowledge and concern regarding human labor trafficking and child labor. And an increasing number of international, federal, and state laws are affecting businesses in addressing those concerns.

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3. Please Explain How the Proposed Policy Position Will Address the Issue

The *ABA Model Business and Supplier Policies* are designed to assist businesses that do not currently have codes of conduct in place, as well as those businesses that have adopted codes but wish to modify them to reflect best evolving practices, in order to promote public trust and confidence in the businesses' attention to corporate social responsibility.

4. Summary of Minority Views

We are not aware of any minority views (or of any opposition) on the part of any ABA entities or Affiliated Organizations.