

# SENATE BILL 849

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HB 902/07 – HGO

8lr3095  
CF HB 1411

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By: **Senator Rosapepe**

Introduced and read first time: February 11, 2008

Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Fitness and Athletics Equity for Students with Disabilities Act**

3 FOR the purpose of requiring county school systems to ensure the participation of  
4 students with disabilities in certain physical education and athletic programs;  
5 requiring county school systems to provide certain accommodations; requiring  
6 county school systems to develop certain programs, policies, and procedures;  
7 requiring county school systems to provide opportunities meeting certain  
8 criteria to students; requiring county school systems to designate a certain  
9 employee to handle certain duties and responsibilities; requiring each county  
10 school system to provide notice of certain information to certain individuals;  
11 requiring each county school system to adopt and publish grievance procedures  
12 meeting certain criteria; requiring the State Department of Education to  
13 monitor compliance by county school systems with certain requirements;  
14 authorizing the Department to investigate and take or require certain action in  
15 response to certain complaints; authorizing the Department to make certain  
16 determinations; authorizing the State Board of Education to take certain  
17 actions; requiring county school systems and the Department to provide certain  
18 reports; requiring the Department to adopt certain regulations; clarifying the  
19 availability of certain legal remedies; providing for the availability of certain  
20 legal action for noncompliance with certain provisions; defining certain terms;  
21 providing for a deadline for local school system compliance with certain  
22 provisions; providing for the construction of this Act; and generally relating to  
23 access to physical education and athletic programs in public schools by students  
24 with disabilities.

25 BY adding to

26 Article – Education

27 Section 7–4B–01 through 7–4B–07 to be under the new subtitle “Subtitle 4B.  
28 Physical Education and Athletic Programs for Students with Disabilities”

29 Annotated Code of Maryland

30 (2006 Replacement Volume and 2007 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



## 1 Preamble

2 WHEREAS, The Rehabilitation Act of 1973 provides that exclusion and  
3 segregation of individuals with disabilities by recipients of federal funds is prohibited  
4 discrimination; and

5 WHEREAS, The Americans with Disabilities Act, signed into law in 1990,  
6 provides that no qualified individual with a disability shall, by reason of such  
7 disability, be excluded from participation in or be denied the benefits of the services,  
8 programs, or activities of a public entity, or be subjected to discrimination by any such  
9 entity; and

10 WHEREAS, Maryland public schools offer a variety of physical education and  
11 athletic opportunities to students that provide numerous educational benefits,  
12 including greater academic success, better physical and psychological health,  
13 responsible social behaviors, and enhanced interpersonal skills; and

14 WHEREAS, Sports participation is an effective intervention in combating  
15 obesity; and

16 WHEREAS, The aforementioned benefits and opportunities are particularly  
17 significant for students with disabilities; and

18 WHEREAS, Approximately 56 million people in the United States have  
19 documented disabilities; and

20 WHEREAS, Studies indicate that 56% of people with disabilities do not engage  
21 in any physical activity, compared to 36% of people without disabilities, and only 23%  
22 of people with disabilities are active for 30 minutes three or more times per week; and

23 WHEREAS, Childhood obesity is a national health concern, and physical  
24 activity can help prevent secondary health problems related to disabilities; and

25 WHEREAS, Students with disabilities have historically been underserved by  
26 school physical education and physical activity programs, such as athletics; and

27 WHEREAS, Including students with disabilities in mainstream physical  
28 education and athletic programs and adapted programs can provide students with  
29 disabilities with the opportunity to realize the full benefits of such programs; now,  
30 therefore,

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

33 **Article – Education**

**SUBTITLE 4B. PHYSICAL EDUCATION AND ATHLETIC PROGRAMS FOR  
STUDENTS WITH DISABILITIES.**

**7-4B-01.**

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

(B) “ADAPTED PROGRAM” MEANS A PROGRAM THAT IS SPECIFICALLY DEVELOPED FOR A STUDENT WITH A DISABILITY.

(C) “ALLIED SPORTS OR UNIFIED PROGRAM” MEANS A PROGRAM THAT IS SPECIFICALLY DESIGNED TO COMBINE GROUPS OF STUDENTS WITH AND WITHOUT DISABILITIES TOGETHER IN PHYSICAL ACTIVITY.

(D) “MAINSTREAM PHYSICAL EDUCATION AND ATHLETIC PROGRAM” MEANS A SCHOOL-BASED ACTIVITY THAT IS DEVELOPED AND OFFERED TO ALL STUDENTS.

(E) “PHYSICAL EDUCATION AND ATHLETIC PROGRAM” MEANS A PHYSICAL EDUCATION OR ATHLETIC ACTIVITY HELD ON THE PREMISES OF OR SPONSORED BY A PUBLIC SCHOOL.

(F) “STUDENT WITH A DISABILITY” MEANS A STUDENT WHO MEETS THE DEFINITION OF A “HANDICAPPED PERSON” AS DEFINED IN 45 C.F.R. § 84.3(J).

**7-4B-02.**

(A) THE DEPARTMENT AND EACH COUNTY SCHOOL SYSTEM SHALL:

(1) ENSURE THE PARTICIPATION OF STUDENTS WITH DISABILITIES INTO PHYSICAL EDUCATION AND ATHLETIC PROGRAMS FOR STUDENTS WITHOUT DISABILITIES TO THE MAXIMUM EXTENT POSSIBLE;

(2) ENSURE THE PROVISION OF REASONABLE ACCOMMODATIONS NECESSARY TO PROVIDE STUDENTS WITH DISABILITIES EQUAL OPPORTUNITY TO PARTICIPATE, TO THE FULLEST EXTENT POSSIBLE, IN MAINSTREAM PHYSICAL EDUCATION AND ATHLETIC PROGRAMS; AND

(3) ENSURE THAT ADAPTED, ALLIED, OR UNIFIED PHYSICAL EDUCATION AND ATHLETIC PROGRAMS FOR STUDENTS WITH DISABILITIES ARE DEVELOPED TO PROVIDE STUDENTS WITH DISABILITIES WITH A PHYSICAL EDUCATION OR ATHLETIC PROGRAM THAT IS AS EFFECTIVE AS PROGRAMS PROVIDED TO STUDENTS WITHOUT DISABILITIES.

1           **(B) AN EXCEPTION TO THE REQUIREMENT UNDER SUBSECTION (A)(1)**  
2 **OF THIS SECTION MAY BE MADE WHEN THE INCLUSION OF A STUDENT:**

3           **(1) PRESENTS AN OBJECTIVE SAFETY RISK TO THE STUDENT OR**  
4 **TO OTHERS, BASED ON AN INDIVIDUALIZED ASSESSMENT OF THE STUDENT; OR**

5           **(2) FUNDAMENTALLY ALTERS THE NATURE OF THE SCHOOL'S**  
6 **ATHLETIC OR PHYSICAL EDUCATION PROGRAM.**

7           **(C) (1) A COUNTY SCHOOL SYSTEM SHALL CONSIDER DEVELOPING**  
8 **SINGLE-SEX COMPETITIVE TEAMS FOR STUDENTS WITH DISABILITIES IN PUBLIC**  
9 **SECONDARY SCHOOLS.**

10           **(2) A PROGRAM DEVELOPED UNDER THIS SUBSECTION SHALL**  
11 **CONSIDER THE INTERESTS OF THE STUDENTS FOR WHOM THE PROGRAMS ARE**  
12 **BEING DEVELOPED AND THE INTERESTS OF THE SCHOOL SYSTEM IN**  
13 **DEVELOPING A SPECTRUM OF ATHLETIC EXPERIENCES TO STUDENTS.**

14           **(3) COUNTY SCHOOL SYSTEMS SHALL:**

15           **(I) ENCOURAGE FEMALE STUDENTS WITH DISABILITIES TO**  
16 **PARTICIPATE IN ADAPTED PROGRAMS; AND**

17           **(II) ENSURE THAT FEMALE STUDENTS WITH DISABILITIES**  
18 **ARE ADEQUATELY REPRESENTED IN ADAPTED PROGRAMS.**

19           **(4) A COUNTY SCHOOL SYSTEM MAY INCLUDE STUDENTS OF BOTH**  
20 **SEXES IN A PROGRAM DEVELOPED UNDER THIS SUBSECTION IF THE SCHOOL**  
21 **SYSTEM CAN DEMONSTRATE THAT THE PROGRAM HAS BEEN DEVELOPED TO**  
22 **PROVIDE EQUAL OPPORTUNITIES TO BOTH SEXES AND THE SCHOOL SYSTEM**  
23 **HAS CONSIDERED THE SYSTEM'S CAPACITY TO PROVIDE SINGLE-SEX**  
24 **COMPETITIVE TEAMS.**

25           **(D) THE PROVISION OF ADAPTED, ALLIED, OR UNIFIED PROGRAMS FOR**  
26 **STUDENTS WITH DISABILITIES DOES NOT MITIGATE THE DUTY OF A COUNTY**  
27 **SCHOOL SYSTEM TO PROVIDE AN INDIVIDUAL STUDENT WITH A DISABILITY AN**  
28 **EQUAL OPPORTUNITY TO BE FULLY INCLUDED IN MAINSTREAM PHYSICAL**  
29 **EDUCATION AND ATHLETIC PROGRAMS AVAILABLE TO STUDENTS WITHOUT**  
30 **DISABILITIES.**

31 **7-4B-03.**

32           **(A) A COUNTY SCHOOL SYSTEM SHALL:**

1           **(1) DEVELOP POLICIES AND PROCEDURES TO PROMOTE AND**  
2 **PROTECT THE INCLUSION OF STUDENTS WITH DISABILITIES INTO PHYSICAL**  
3 **EDUCATION AND ATHLETIC PROGRAMS; AND**

4           **(2) PROVIDE THE OPPORTUNITY FOR STUDENTS WITH AND**  
5 **WITHOUT DISABILITIES TO PARTICIPATE IN EXTRACURRICULAR OR**  
6 **INTERSCHOLASTIC COMPETITION, AS DEMONSTRATED BY:**

7                   **(I) EQUIVALENT OPPORTUNITIES FOR PARTICIPATION IN**  
8 **EXTRACURRICULAR OR INTERSCHOLASTIC ATHLETIC PROGRAMS FOR**  
9 **STUDENTS WITH DISABILITIES AND STUDENTS WITHOUT DISABILITIES IN**  
10 **NUMBERS SUBSTANTIALLY PROPORTIONATE TO THEIR RESPECTIVE**  
11 **ENROLLMENTS; AND**

12                   **(II) EVIDENCE INDICATING THAT THE INTERESTS AND**  
13 **ABILITIES OF STUDENTS WITH DISABILITIES HAVE BEEN FULLY AND**  
14 **EFFECTIVELY ACCOMMODATED BY THE SCHOOL SYSTEM'S IMPLEMENTED**  
15 **PROGRAMS; AND**

16           **(3) PROVIDE STUDENTS WITH DISABILITIES WITH BENEFITS AND**  
17 **OPPORTUNITIES EQUIVALENT TO THOSE PROVIDED TO STUDENTS WITHOUT**  
18 **DISABILITIES IN THE FOLLOWING AREAS:**

19                   **(I) PROVISION AND MAINTENANCE OF EQUIPMENT AND**  
20 **SUPPLIES;**

21                   **(II) PROVISION OF THE OPPORTUNITY TO ACTIVELY**  
22 **PARTICIPATE AND BE RECOGNIZED AS AN ATHLETE OR TEAM MEMBER;**

23                   **(III) SCHEDULING OF ATHLETIC ACTIVITIES, INCLUDING**  
24 **GAMES AND PRACTICE TIMES;**

25                   **(IV) PROVISION OF FACILITIES, INCLUDING LOCKER ROOMS;**

26                   **(V) ACCESSIBLE TRAVEL AND ACCOMMODATIONS;**

27                   **(VI) OPPORTUNITY TO RECEIVE COACHING;**

28                   **(VII) PUBLICITY AND SUPPORT SERVICES; AND**

29                   **(VIII) ADMINISTRATIVE SUPPORT.**

30 **7-4B-04.**

1           (A) EACH COUNTY SCHOOL SYSTEM SHALL DESIGNATE AT LEAST ONE  
2 QUALIFIED EMPLOYEE TO COORDINATE ITS EFFORTS TO COMPLY WITH AND  
3 CARRY OUT THE SYSTEM'S RESPONSIBILITIES UNDER THIS SUBTITLE,  
4 INCLUDING THE INVESTIGATION OF ANY COMPLAINT ALLEGING  
5 NONCOMPLIANCE WITH THE PROVISIONS OF THIS SUBTITLE.

6           (B) (1) EACH COUNTY SCHOOL SYSTEM SHALL ANNUALLY NOTIFY  
7 ALL STUDENTS, PARENTS, OR GUARDIANS OF THE NAME, OFFICE ADDRESS, AND  
8 OFFICE TELEPHONE NUMBER OF THE EMPLOYEE OR EMPLOYEES DESIGNATED  
9 UNDER SUBSECTION (A) OF THIS SECTION.

10           (2) (I) EACH COUNTY SCHOOL SYSTEM SHALL NOTIFY ALL  
11 STUDENTS, PARENTS, AND GUARDIANS OF THE RIGHTS OF STUDENTS WITH  
12 DISABILITIES UNDER THIS SUBTITLE NO LATER THAN THE FIRST WEEK OF A  
13 NEW ACADEMIC YEAR OR AT REGISTRATION.

14                       (II) THE RIGHTS OF STUDENTS WITH DISABILITIES UNDER  
15 THIS SUBTITLE SHALL BE PUBLISHED IN ANY STUDENT HANDBOOK OR  
16 PUBLICATION DESCRIBING SCHOOL ATHLETIC OFFERINGS.

17           (C) (1) EACH COUNTY SCHOOL SYSTEM SHALL ADOPT AND PUBLISH  
18 GRIEVANCE PROCEDURES PROVIDING FOR PROMPT AND EQUITABLE  
19 RESOLUTION OF WRITTEN STUDENT COMPLAINTS, INCLUDING COMPLAINTS  
20 BROUGHT BY A PARENT, GUARDIAN, OR LEGAL REPRESENTATIVE OF A STUDENT  
21 WHO IS ALLEGING ANY ACTION THAT WOULD BE A VIOLATION OF THE  
22 PROVISIONS OF THIS SUBTITLE.

23           (2) THE FILING OF A COMPLAINT WITH A COUNTY SCHOOL  
24 SYSTEM DOES NOT LIMIT THE RIGHT OF A STUDENT, PARENT, OR GUARDIAN TO  
25 PURSUE ANY AVAILABLE LEGAL REMEDIES.

26 **7-4B-05.**

27           (A) THE DEPARTMENT SHALL MONITOR THE COMPLIANCE OF COUNTY  
28 SCHOOL SYSTEMS WITH THE PROVISIONS OF THIS SUBTITLE.

29           (B) THE DEPARTMENT MAY:

30                       (1) INVESTIGATE AND TAKE CORRECTIVE ACTION IN RESPONSE  
31 TO COMPLAINTS FROM PARENTS, GUARDIANS, OR LEGAL REPRESENTATIVES OF  
32 STUDENTS WITH DISABILITIES WHO ALLEGE A VIOLATION OF THE PROVISIONS  
33 OF THIS SUBTITLE; AND

1           **(2) REQUIRE CORRECTIVE ACTION PLANS FROM SCHOOLS OR**  
2 **COUNTY SCHOOL SYSTEMS TO EFFECTUATE COMPLIANCE WITH THE**  
3 **PROVISIONS OF THIS SUBTITLE.**

4           **(C) IF, AFTER PROVIDING A REASONABLE TIME FOR COMPLIANCE, THE**  
5 **DEPARTMENT DETERMINES THAT A SCHOOL OR COUNTY SCHOOL SYSTEM HAS**  
6 **FAILED TO IMPLEMENT A CORRECTIVE ACTION PLAN OR HAS OTHERWISE**  
7 **FAILED TO COMPLY WITH THE PROVISIONS OF THIS SUBTITLE, THE STATE**  
8 **BOARD, ON RECOMMENDATION FROM THE DEPARTMENT, MAY:**

9           **(1) ORDER THAT AN ATHLETIC TEAM OR TEAMS WITHIN THE**  
10 **APPLICABLE SCHOOL OR SCHOOL SYSTEM SHALL NOT PARTICIPATE IN OR**  
11 **SHALL BE DISQUALIFIED FROM INTERSCHOLASTIC ATHLETIC COMPETITION,**  
12 **INCLUDING POSTSEASON ATHLETIC CONTESTS FOR STUDENTS WITHOUT**  
13 **DISABILITIES; OR**

14           **(2) WITHHOLD FUNDS IN AN AMOUNT THAT THE STATE BOARD**  
15 **DETERMINES IS SUFFICIENT TO SECURE THE SCHOOL OR SCHOOL SYSTEM'S**  
16 **COMPLIANCE WITH THE PROVISIONS OF THIS SUBTITLE.**

17           **(D) ANY FUNDS WITHHELD BY THE STATE BOARD UNDER THIS**  
18 **SUBSECTION MAY BE ALLOTTED TO THE APPLICABLE SCHOOL OR SCHOOL**  
19 **SYSTEM UPON THE STATE BOARD'S DETERMINATION THAT THE APPLICABLE**  
20 **SCHOOL OR SCHOOL SYSTEM IS IN COMPLIANCE WITH THE PROVISIONS OF THIS**  
21 **SUBTITLE.**

22 **7-4B-06.**

23           **(A) ON OR BEFORE OCTOBER 1 OF EACH YEAR, EACH COUNTY BOARD**  
24 **SHALL SUBMIT TO THE DEPARTMENT A REPORT OF THE SCHOOL SYSTEM'S**  
25 **COMPLIANCE WITH THE PROVISIONS OF THIS SUBTITLE.**

26           **(B) THE FIRST ANNUAL REPORT COMPLETED BY A COUNTY BOARD IN**  
27 **ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION SHALL INCLUDE:**

28           **(1) AN ASSESSMENT OF HOW MANY STUDENTS WITH DISABILITIES**  
29 **PARTICIPATE IN THE SCHOOL SYSTEM'S PHYSICAL EDUCATION OR ATHLETIC**  
30 **PROGRAMS;**

31           **(2) THE TYPES OF DISABILITIES POSSESSED BY STUDENTS WITH**  
32 **DISABILITIES WHO PARTICIPATE IN THE SCHOOL SYSTEM'S PHYSICAL**  
33 **EDUCATION OR ATHLETIC PROGRAMS;**

1           **(3) A LIST OF ACCOMMODATIONS PROVIDED BY THE SCHOOL**  
2 **SYSTEM TO ENSURE PARTICIPATION BY STUDENTS WITH DISABILITIES IN**  
3 **SCHOOL SYSTEM PHYSICAL EDUCATION OR ATHLETIC PROGRAMS; AND**

4           **(4) A DESCRIPTION OF PLANS BY THE SCHOOL SYSTEM TO**  
5 **AFFIRMATIVELY ENGAGE STUDENTS WITH DISABILITIES IN PHYSICAL**  
6 **EDUCATION OR ATHLETIC PROGRAMS.**

7           **(C) REPORTS SUBMITTED BY A COUNTY SCHOOL SYSTEM SUBSEQUENT**  
8 **TO THE REPORT SUBMITTED UNDER SUBSECTION (B) OF THIS SECTION SHALL**  
9 **INCLUDE:**

10           **(1) THE NUMBER OF STUDENTS WITH DISABILITIES WHO HAVE**  
11 **BEEN INCLUDED IN MAINSTREAM PHYSICAL EDUCATION AND ATHLETIC**  
12 **PROGRAMS;**

13           **(2) THE NUMBER AND TYPE OF ACCOMMODATIONS THAT HAVE**  
14 **BEEN PROVIDED FOR PHYSICAL EDUCATION AND ATHLETIC PROGRAMS TO**  
15 **ENSURE PARTICIPATION BY STUDENTS WITH DISABILITIES;**

16           **(3) THE ADAPTED PROGRAMS THAT HAVE BEEN DEVELOPED TO**  
17 **PROVIDE OPPORTUNITIES FOR STUDENTS WITH DISABILITIES TO PARTICIPATE**  
18 **IN PHYSICAL EDUCATION AND ATHLETIC PROGRAMS;**

19           **(4) THE NUMBER OF STUDENTS WITH DISABILITIES WHO**  
20 **PARTICIPATED IN ADAPTED PROGRAMS; AND**

21           **(5) A LIST OF EFFORTS MADE BY THE SCHOOL SYSTEM TO**  
22 **ENCOURAGE THE PARTICIPATION OF STUDENTS WITH DISABILITIES IN**  
23 **PHYSICAL EDUCATION AND ATHLETIC PROGRAMS.**

24           **(D) THE DEPARTMENT SHALL DIRECT A COUNTY BOARD OF EDUCATION**  
25 **THAT HAS FAILED TO SUBMIT A REPORT REQUIRED UNDER THIS SECTION TO**  
26 **TAKE THOSE STEPS NECESSARY FOR THE SCHOOL SYSTEM TO COMPLY WITH**  
27 **THE REPORTING REQUIREMENTS OF THIS SECTION.**

28           **(E) ON OR BEFORE DECEMBER 31 OF EACH YEAR, THE DEPARTMENT**  
29 **SHALL, SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE, SUBMIT**  
30 **TO THE GENERAL ASSEMBLY A REPORT OF COUNTY SCHOOL SYSTEM**  
31 **COMPLIANCE WITH THE PROVISIONS OF THIS SUBTITLE.**

32 **7-4B-07.**



1           **(A) THE DEPARTMENT SHALL ADOPT REGULATIONS AS NECESSARY TO**  
2 **IMPLEMENT THIS SUBTITLE.**

3           **(B) THE DEPARTMENT SHALL PROVIDE TECHNICAL ASSISTANCE TO**  
4 **COUNTY SCHOOL SYSTEMS CONCERNING THE PROVISIONS OF THIS SUBTITLE.**

5           **(C) (1) THE RIGHTS, REMEDIES, AND PROHIBITIONS PROVIDED**  
6 **UNDER THIS SUBTITLE SHALL BE IN ADDITION TO AND CUMULATIVE OF ANY**  
7 **OTHER RIGHT, REMEDY, OR PROHIBITION PROVIDED UNDER COMMON LAW,**  
8 **FEDERAL LAW, ANY OTHER LAWS OF THIS STATE, A CONSENT DECREE, OR ANY**  
9 **OTHER SETTLEMENT AGREEMENT ENTERED INTO BY A LOCAL OR STATE**  
10 **GOVERNMENTAL AGENCY TO ADDRESS EQUITY FOR INDIVIDUALS WITH**  
11 **DISABILITIES IN PHYSICAL EDUCATION OR ATHLETIC PROGRAMS.**

12           **(2) THIS SUBTITLE MAY NOT BE CONSTRUED TO DENY,**  
13 **ABROGATE, OR IMPAIR ANY SUCH FEDERAL OR STATE COMMON-LAW OR**  
14 **STATUTORY RIGHT, REMEDY, OR PROHIBITION.**

15           **(D) THE PROVISIONS OF THIS SUBTITLE MAY BE ENFORCED AGAINST**  
16 **THE STATE BOARD OR A COUNTY SCHOOL SYSTEM BY A CIVIL ACTION FOR ANY**  
17 **AVAILABLE RELIEF, INCLUDING INJUNCTIVE RELIEF OR DAMAGES, OR BOTH,**  
18 **WHICH SHALL BE INDEPENDENT OF ANY OTHER RIGHTS AND REMEDIES AND**  
19 **SHALL INCLUDE A RIGHT TO ATTORNEYS' FEES.**

20           SECTION 2. AND BE IT FURTHER ENACTED, That any county school system  
21 subject to the provisions of this Act shall be in compliance with the provisions of this  
22 Act as expeditiously as possible, but no later than 3 years from the effective date of  
23 this Act.

24           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
25 July 1, 2008.