Suggested State Legislation

The Council of State Governments

SENATE — HOUSE

February 19, 1988

IN SENATE — Introduced by Senator KIRK — read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation — committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee.

IN ASSEMBLY — Introduced by J. of WILLIAM, TURNER, ALLEN — read once and referred to the Committee on Environmental Conservation — reported and referred to the Committee on Ways and Means — committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee.

AN ACT to amend the environmental conservation law and the transportation law, in relation to the storage, treatment, disposal and transportation of infectious waste.

The People of the State of New York, represented in Senate and House, do enact as follows:

1. Section 1. Article twenty-seven of the environmental conservation law is amended by adding a new title fifteen to read as follows:

1989 VOLUME 48

The Council of State Governments
SUGGESTED STATE LEGISLATION.

1989
Volume 48

The Council of State Governments

Developed by the Committee on Suggested State Legislation

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FOREWORD

The Council of State Governments is pleased to publish this 48th volume of Suggested State Legislation, the latest in a long and valued series of compilations of draft legislation on topics of current interest and importance to the states. The draft legislation found in this volume represents thousands of hours of work by legislators and legislative staff across the country — both in the states of origin of the bills, and in the Council’s Committee on Suggested State Legislation.

These draft items were selected from hundreds of submissions, and most are based on existing state statutes. Neither the Council nor the Committee seeks to influence the enactment of state legislation; throughout the years, however, both have found that the experiences of one state may prove beneficial to others. It is in this spirit that these proposals are presented.

October 1988
Lexington, Kentucky

Carl W. Stenberg
Executive Director
The Council of State Governments
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INTRODUCTION

“A single state's experience in a new field frequently leads to the adoption of similar action in other states, if the problem is general, the approach is well conceived, and other states can be made aware of the action.”

That statement is a simple one, but it remains as true today as it did when it first appeared 20 years ago in the introduction to the 28th volume of *Suggested State Legislation*.

For close to 50 years, The Council of State Governments' *Suggested State Legislation* program has informed state policymakers on a broad range of legislative issues, and its national Committee on *Suggested State Legislation* has been an archetype of interstate dialogue, one successfully imitated in a variety of ways.

The Committee on *Suggested State Legislation* originated as a group of state and federal officials who first met in August of 1940 to review state laws relating to internal security. The result was a program of suggested state legislation published as *A Legislative Program for Defense*. The Committee reconvened following the nation’s entry into World War II in order to develop a general program of state war legislation. By 1946, the volumes of *Suggested State War Legislation* and *Suggested State Post-War Legislation* gave way to a volume simply titled *Suggested State Legislation*, an annual volume of draft legislation on topics of major governmental interest.

Today, SSL Committee members represent all regions of the country and many of the major functional areas of state government. They include legislators, legislative staff and other state governmental officials who contribute their time and efforts to assisting the states in the identification of timely and innovative state legislation.

The items in this, the 48th compilation of *Suggested State Legislation*, represent the culmination of a year-long process in which legislation submitted by state officials from all over the country was received and reviewed by members of the SSL Committee.

During this process, members of the SSL Subcommittee on Scope and Agenda met on two separate occasions: first, in December 1987 in Boston, Massachusetts, to assess and evaluate the SSL program and its future direction and mission for the states; and again, in April 1988 in Rapid City, South Dakota, to screen and recommend legislation for final consideration by the full SSL Committee. At their annual meeting in July 1988 in Juneau, Alaska, the members of the full Committee examined the proposals referred by the Subcommittee on Scope and Agenda and selected the items that appear in this volume.

Although these items are published here as suggested legislation, neither The Council of State Governments nor the SSL Committee are in the position of advocating their enactment. Instead, the entries are offered as an aid to state officials interested in drafting legislation in a specific area, and can be looked upon as a guide to areas of broad current interest in the states.
In fact, throughout the SSL solicitation, review and selection processes, members of the Committee employ a specific set of criteria to determine which items will appear in the volume:

- Is the issue a significant one currently facing state governments?
- Does the issue have national or regional significance?
- Are fresh and innovative approaches available to address the issue?
- Is the issue of sufficient complexity that a bill drafter would benefit from having a comprehensive draft available?
- Does the bill represent a practical approach to the problem?
- Does the bill represent a comprehensive approach to the problem or is it tied to a narrow approach that may have limited relevance for many states?
- Is the structure of the bill logically consistent?
- Are the language and style of the bill clear and unambiguous?

All items selected for publication in the annual volume are presented in a standard format as shown in the Suggested State Legislation Style Manual and Sample Act which follow on pages xv and xvi. Revisions in the headings and numbering and other modifications may be necessary in order to conform to local practices, and decisions must be made regarding optional sections and provisions.

A “Statement,” in lieu of a draft act, may appear in the volume when the SSL Committee has reviewed and approved a piece of legislation, but its length and/or complexity preclude its publication in whole or in the standard SSL format. “Notes” also may be used when the Committee is particularly interested in highlighting and summarizing a variety of legislative actions undertaken by the states in a particular area. In this volume, for example, there is a note on recent state legislative activity in the area of Acquired Immunodeficiency Syndrome — AIDS, one of the nation’s most serious public health concerns.

Although a formal solicitation of the states is conducted annually to gather legislation for consideration by the SSL Committee, state officials are encouraged to submit — at any time — legislation which is likely to be of interest and relevance to other states. In order to facilitate the selection process and review of the items, it is particularly helpful for respondents to provide information on the current status of the legislation, an enumeration of other states with similar provisions, and any summaries or analyses of the legislation that may have been undertaken.

Legislation and accompanying materials should be submitted to the Suggested State Legislation Program, Division of Policy Analysis Services, The Council of State Governments, P.O. Box 11910, Iron Works Pike, Lexington, Kentucky 40578-9989, (606) 252-2291.
Suggested State Legislation Style

Style is the custom or plan followed in typographic arrangement or display. This means that style is arbitrary. The style used in Suggested State Legislation produces an internally consistent publication, expressing ideas concisely and clearly. A sample act follows the discussion below.

Introductory Matter

The first item in a draft proposal is its name. This is to be followed with a brief description stating why such an act is necessary, summarizing the contents of the act, and the person or group which drafted the act.

Next is the title, enacting clause, etc. This should not be expanded since there is diversity among the states as to what must be contained in these elements.

Standardized Sections

Section 1 is the “Short Title” and states how the act may be cited, and Section 2 usually concerns itself with definitions, if necessary.

At the end of the act there are usually three sections: “Severability” (if needed), “Repealer,” and “Effective Date.”

Form

Every line of the act is numbered. The line numbers begin anew with each section. Every section has a title, in brackets, which pinpoints the subject of the section.

One significant item which has many variations is the enumeration of paragraphs within a section. If there is only one subsection to a section, it runs into the section heading and is not enumerated. If there are two or more subsections, each subsection begins on a new line and is enumerated. The enumerations for subsections, in order, are (a), (b), (c), etc., while the enumerations for paragraphs within a subsection, in order, are (1), (i), and (A).

Often it is necessary in draft legislation to indicate a state alternative to the name of an agency, the number of members on a committee, punishment for an offense, etc. In these cases brackets are used instead of parentheses.

To avoid an abundance of capitalization, which can prove distracting, most words are lower cased. For example, “director,” “commissioner” and “agency” are not capitalized.

“Comment” sections are used instead of footnotes.
Sample Act
Criminal Rehabilitation Research Act

This draft act enables a state to facilitate research, including controlled experiments, in criminal sentencing and rehabilitation methods in order to determine the most effective and humane means of deterring crime and rehabilitating delinquent and criminal offenders.

The criminal justice system neither deters nor rehabilitates as effectively as possible. Sentencing and treatment decisions continue to be handicapped by lack of scientific experience. New treatment programs are developed haphazardly, if at all, and their relative effectiveness is rarely evaluated. The results are wasted lives, needless public expenditures, and increased crime. Dissatisfaction with existing correctional institutions has increased and the demand for reform has intensified, but reform to be meaningful must be based on facts.

This draft legislation was developed by the Criminal Sentencing Project of Yale Legislative Services. A comprehensive report on Criminal Rehabilitation, including a detailed commentary to the suggested legislation, can be obtained from Yale Legislative Services, Yale Law School, New Haven, Connecticut 06520.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the [state] Criminal Rehabilitation Research Act.

Section 2. [Definitions.] As used in this act:
(1) "Commission" means the [rehabilitation research commission].
(2) "Commissioner" means a member of the [rehabilitation research commission].
(3) "Offender" means a person adjudicated delinquent or convicted of a criminal offense under the laws and ordinances of the state and its political subdivisions.

* * *

Section 4. [Rehabilitation Research Commission.]
(a) A [rehabilitation research commission] is established to review, approve, and facilitate research directed at the rehabilitation of delinquent and criminal offenders and to disseminate the results of that research to correctional officials and other interested individuals and agencies.
(b) The commission shall consist of [10] members appointed by the governor [with the advice and consent of the senate].

COMMENT: It is suggested that some commission members be ex-offenders.
Freshwater Wetlands Protection Act
(Statement)

This freshwater wetlands protection legislation was enacted by the state of New Jersey in 1987. In lieu of presenting this item in the standard format, the Committee on Suggested State Legislation approved the inclusion of the following, adapted from the New Jersey Senate Energy and Environment Committee Statement (June 25, 1987) summarizing the provisions of the legislation.

Readers interested in the text should consult New Jersey P.L. 1987, Ch. 156 or contact the Division of Policy Analysis Services, The Council of State Governments, Iron Works Pike, P.O. Box 11910, Lexington, Kentucky 40578-9989, (606) 252-2201, for a copy of the complete text.

Statement

This act establishes a comprehensive program designed to regulate development activities in freshwater wetlands and in areas adjacent to environmentally sensitive freshwater wetlands. The intent of this legislation is to protect and preserve freshwater wetlands, which serve important water purification, flood control, water storage and wildlife preservation functions. The program established by this act and implemented by the state's department of environmental protection requires that any person proposing to undertake a development activity in a freshwater wetland, or in a transition area adjacent to an environmentally sensitive freshwater wetland, apply for and receive a permit from the department.

This act is intended to provide the state with the statutory authority necessary to assume the implementation of the federal wetlands protection program, which is currently implemented by the U.S. Army Corps of Engineers pursuant to Section 404 of the federal Clean Water Act. Accordingly, the legislation includes provisions the U.S. Environmental Protection Agency (EPA), which oversees the transfer of the federal wetlands program to the states, has deemed necessary for the state to assume the implementation of the federal program.

The act establishes a freshwater wetlands regulatory program that is in most respects consistent with the existing federal program. In two key areas, however, the program established in this legislation is more stringent than the federal program: the act regulates more development activities in the freshwater wetlands than are regulated under the federal program, and also regulates development in transition areas adjacent to certain freshwater wetlands.

Freshwater Wetlands Permits

This act requires any person to apply for and obtain a permit from the department before commencing any of the following activities in a freshwater wetland: soil excavation; drainage activities; filling activities;
pile driving; placement of obstructions; or any activity which would destroy plant life. An applicant for such a permit is required to submit the proposed project to a number of tests. If the proposed project is “water-dependent” (i.e., it requires access to the freshwater wetland as a central element of its basic function), the applicant is required to show that there is no alternative site for the project that would not involve a freshwater wetland. If the proposed project is not water-dependent, the applicant is required to rebut a presumption that there is a practicable alternative to the project which would not involve a freshwater wetland. To rebut this presumption, an applicant is required to show that the project cannot be accomplished at another site not in a wetland, that a scaled-down project that would have a less adverse impact on the wetlands would not accomplish the basic purpose of the project, and that reasonable attempts have been made to accommodate zoning restrictions governing other possible sites for the project. Additionally, if the project involves a freshwater wetland of exceptional resource value (discussed below), the applicant is required to demonstrate a compelling public need for the project. Applicants also are required to demonstrate that a proposed project (either a water-dependent or nonwater-dependent project) would be in the public interest, would result in minimal alteration of the aquatic ecosystem, and would not jeopardize any threatened or endangered species, cause a violation of a water quality or discharge standard, or degrade surface or ground water.

**Transition Areas/Classification of Wetlands**

This legislation also requires that transition areas adjacent to freshwater wetlands be established, and that a permit, or transition area waiver, be secured from the department for undertaking certain development activities in these areas. The transition area is an integral component of the wetlands ecosystem, providing a habitat for plants and animals, and a sediment and storm water control zone for reducing the impacts of development on wetlands and wetlands species. The following activities in a transition area require a transition area waiver from the department: soil excavation; filling; erection of structures (except temporary structures of less than 150 square feet); paving; or destruction of plant life. A transition area waiver is not required for routine and temporary construction activities or for routine maintenance. The department will issue a transition area waiver only upon a determination that the proposed activity would have no substantial environmental impact on the freshwater wetland, or that denial would impose substantial hardship on the applicant.

The size of a transition area is to be determined by the department on the basis of the resource value of the specific wetland. The act establishes three categories of freshwater wetlands: exceptional resource value, intermediate resource value and ordinary resource value. A freshwater wetland can be classified as an exceptional resource value wetland if it discharges into trout production streams or tributaries (which are the most pristine water in the state), or is the present or former and
documented habitat of a threatened or endangered species. A transition area of 75 to 150 feet is required for an exceptional resource value wetland. Wetlands of ordinary resource value are isolated wetlands, man-made drainage ditches, swales or detention facilities. Wetlands of intermediate resource value are wetlands that are neither "exceptional" nor "ordinary." A transition area of 25 to 50 feet is required for a wetland of intermediate resource value. No transition area is required for a wetland of ordinary resource value. This act also permits an applicant for a transition area waiver to alter the dimensions of a required transition area by receiving departmental approval of a transition area averaging plan. Under a transition area averaging plan the required extent of the transition area for a portion of a site could be reduced if the transition area for another portion of the site was proportionally extended. An averaging plan altering the configuration of a transition area would be approved if the resulting transition area fulfills the basic ecological function of a transition area.

**Letters of Interpretation**

Prior to applying to the department for a permit to conduct a development activity in a wetland, or for a transition area waiver, a person may request a letter of interpretation from the department confirming that a site of proposed development is or is not in a freshwater wetland or a transition area. In general, the department is required to issue a letter of interpretation within 30 days of a request, but this deadline can be extended by 45 days if the department requires or conducts an onsite inspection to delineate a wetlands or transition area boundary line. Any letter of interpretation issued by the department stating that a site is not in a freshwater wetland is subject to modification or revocation by the EPA.

**Mitigation**

This act authorizes the department to require the creation or restoration of wetlands to compensate for any wetlands destroyed as a result of a project in a freshwater wetland permitted by the department. The department’s evaluation of a mitigation project, however, is to be conducted independently of its evaluation of the application for a wetlands permit and in consultation with the EPA. If the department requires an applicant for a wetlands permit to create or restore a wetland as a condition of a permit, it may also permit the applicant to contribute to the Wetlands Mitigation Bank (established in this act) in lieu of restoring or creating a wetland. The bank is administered by a seven-member Wetlands Mitigation Council appointed by the governor with the advice and consent of the Senate. The council is responsible for financing freshwater restoration and creation projects with funds contributed to the bank.
Exemptions

Three geographical areas of the state already subject to state land use regulation generally are exempt from the provisions of this act. This exemption is not absolute, however, because development activities in these areas are required to meet the criteria of the federal wetlands program as implemented by either the U.S. Army Corps of Engineers or the department (after assumption of the federal program). In addition, farming, ranching and forestry activities are not subject to the provisions of this act, nor are projects that have received preliminary local approvals prior to the effective date of this act, projects for which a preliminary site plan was submitted for local approval prior to June 8, 1987 (the date of Executive Order 175 of 1987 imposing a moratorium on development in freshwater wetlands), and projects for which a federal freshwater wetlands permit was received from the U.S. Army Corps of Engineers prior to the effective date of this legislation.

General and Emergency Permits

This legislation authorizes the state department of environmental protection to issue general permits for certain categories of activities that would have minimal adverse environmental impact on freshwater wetlands. A person proposing to conduct an activity covered under a general permit would normally be required only to give the department 30 days notice of intent to conduct the activity. The department is authorized to issue general permits for: activities that involve one acre or less of an isolated wetland, or one acre or less of a man-made drainage ditch or swale; maintenance of roads, public utilities and stormwater management facilities; maintenance, reconstruction and moderate size improvements to existing dwellings; mosquito management activities; and state or federally funded roads permitted by the Army Corps of Engineers. The department retains authority to review any activity conducted under a general permit, and requires an application for an individual permit if warranted by the specific nature of the activity.

This act also authorizes the department to issue emergency permits for activities in a freshwater wetland if an unacceptable threat to life or a severe loss of property would otherwise result. These emergency permits would generally be valid for 90 days.

Implementation Schedule

The freshwater wetlands regulatory program established in this act is to be phased in over a two-year period. The legislation is effective one year after enactment, with several important exceptions. The sections of the act imposing the transition area requirements are not effective until two years after enactment. Also, the department is directed to complete two key activities within nine months of enactment (i.e., three months prior to the effective date): the adoption of the rules and regulations necessary to implement the act, and the adoption of a list of
vegetative species to be used to identify freshwater wetlands. Also, within six months of enactment (i.e., six months prior to the effective date) the department is required to transmit to each municipality in the state copies of the appropriate U.S. Fish and Wildlife Service wetlands maps, for use by the municipality in identifying wetlands areas. This act also requires the department to make an initial application to the FPA for assumption of the federal wetlands program within one year of enactment, and to implement the state wetlands program in close coordination with Army Corps of Engineers, during the period between the effective date and the assumption of the federal program. To avoid duplicative wetlands regulations within the state, this act, on its effective date, preempts any local ordinance enacted prior to that date, and prohibits the adoption of any local wetlands ordinance after the effective date.

Miscellaneous Provisions

This act permits any person to request an administrative hearing on any decision by the state's department of environmental protection to approve or deny a freshwater wetlands permit. The hearing is to be conducted by the state office of administrative law, with the department retaining the right to affirm, reject or modify the decision of the administrative law judge. The act also directs the department to consolidate all wetlands regulatory programs. It permits any person with property affected by the wetlands program to initiate legal action to determine if a decision made by the department in implementing the program constitutes a taking of property without just compensation. The legislation provides penalties for violations of its provisions that are comparable to the penalties for violations of the “Water Pollution Control Act,” P.L. 1977, c. 74 (C. 58:10A-1 et seq.), and authorizes the department to enter any premises or property to determine compliance with the provisions of the act. The act appropriates $60,000 to the department to prepare for its implementation on the effective date.
Radon Gas Study, Monitoring, Information and Certification Program Acts

Radon, a colorless, odorless, radioactive gas, is formed as a result of the natural decay of low grade uranium and radium which occurs in various types of soils and bedrock throughout the country. When radon decays, its by-products are solid, radioactive isotopes which, when inhaled, can damage sensitive lung tissue and may, over time, lead to lung cancer.

A few years ago, it was estimated that unsafe levels of radon existed in six million houses across the country. However, according to an August 1987 report by the Office of Radiation Programs of the U.S. Environmental Protection Agency and Conference of Radiation Control Program Directors, there are regional differences in the factors contributing to the origins of state radon programs, and subsequently, the approaches taken by the states in developing their programs.

For example, western states that have uranium mining learned about radon and its health risks in the 1950s and 1960s when studies showed a high incidence of lung cancer among uranium miners. State radon programs in the East developed under different circumstances. The 1984 discovery of highly-elevated radon levels in homes on the Reading Prong, a geological formation, prompted Pennsylvania, New York and New Jersey to quickly develop radon programs. A different set of factors, however, influenced program development in Maine, where radon in well water is an issue.

With the exception of Florida, where the problem is elevated radon levels in homes built on reclaimed phosphate mining lands, many of the southeastern states have moved slowly in developing programs because the available geologic data on the soil does not indicate an obvious potential to create a radon problem.

The two acts presented here are based on New Jersey legislation approved in 1986. The first act directs various state agencies to conduct studies or establish programs related to radon gas and radon progeny contamination. It authorizes the state department of environmental protection to identify the potential sources of contamination and the areas subject to an actual or potential danger or threat of contamination, and to develop a cost-effective strategy for testing. The act further directs the state department of health to conduct an epidemiologic study of cancer and the presence of radon gas in residential dwellings and maintain a voluntary registry of persons at risk of radiogenic lung cancer. The departments are directed to coordinate their efforts in establishing a public information and education program on the potential health effects.

The second act authorizes the state department of environmental protection to establish programs for the certification of persons who test for the presence of radon gas and progeny in buildings and persons who...
mitigate and safeguard buildings from the presence of same. It also provides that health data relating to individuals and data related to radon gas and progeny contamination gathered pursuant to this act and to the aforementioned act, shall not be deemed public records. All such information is to be destroyed at the end of five years from the date on which the data were collected.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Radon Gas Study, Monitoring and Information Program Act.

Section 2. [Study of Radon Gas Dangers.] The [department of environmental protection] shall prepare and transmit to the governor and legislature a study concerning the dangers posed to the public health, safety and welfare by the presence of radon gas and radon progeny in residential dwellings, schools and public buildings in the state. The study shall identify the potential sources of contamination in the state, identify demographic, geologic, and geographic areas subject to an actual or potential threat or danger of contamination, and develop a cost-effective strategy for radon gas and radon progeny contamination testing. The study shall include recommendations for private actions to solve or alleviate potential health problems and any legislative or executive action that should be taken. The [department] shall prepare and transmit to the governor and the [insert appropriate legislative committees] interim reports on its progress in implementing this section. The [department] shall transmit its first report on [insert date] and subsequent reports every [six months] thereafter.

Section 3. [Epidemiologic Study of Cancer.] The [department of health] shall conduct an epidemiologic study of cancer and the presence of radon gas and radon progeny in residential dwellings and shall maintain a voluntary registry of persons at risk of radiogenic lung cancer. The [department] shall communicate promptly to persons on the registry new techniques for the prevention of mortality from the disease.

Section 4. [Monitoring Program.] The [department of environmental protection and the department of health] shall coordinate to establish a program of confirmatory monitoring of the presence of radon gas and radon progeny in residential dwellings utilizing local health officers and the [department of environmental protection] personnel.

Section 5. [Public Information and Education Program.] The [departments of environmental protection and health] shall also coordinate to establish a public information and education program to inform the public of the potential health effects of the presence of radon gas and
Suggested State Legislation

radon progeny in residential dwellings and the geographic areas in the
state subject to an actual or potential threat of danger and the measures
which can be taken to protect the health, safety and welfare of the
citizens of the state. This public information and education program
shall include:

(1) A cooperative program with [county and local health departments]
to facilitate health education in response to requests from the public; and
(2) A toll-free public telephone information service within the [department
of environmental protection] to answer questions from residents
of the state concerning radon gas and radon progeny contamination. The
availability of the public telephone information service shall be pub-
lished in the major newspapers circulated in the geographic areas of this
state subject to an actual or potential threat of danger from radon gas
or radon progeny contamination.

Section 6. [Appropriations.] [Insert appropriation amounts.]

Section 7. [Effective Date.] [Insert effective date.]

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Radon Gas Cer-
tification Program Act.

Section 2. [Establishment of Certification Programs.]
(a) The [department of environmental protection] shall within [180]
days of the enactment of this act establish a program for the certifica-
tion of persons who test for the presence of radon gas and radon progeny
in buildings.
(b) The [department of environmental protection] shall within [180]
days of the enactment of this act establish a program for the certifica-
tion of persons who mitigate, and safeguard buildings from, the presence
of radon gas and radon progeny.

Section 3. [Effective Date of Certification Programs.] Beginning [90]
days after the establishment of the certification programs by the [department
of environmental protection] pursuant to Section 2 of this act, no
person who is not certified pursuant to Section 2 of this act shall test
for, or mitigate or safeguard a building from, the presence of radon gas
and radon progeny. The provisions of this section shall not apply to a per-
son performing this testing or mitigation on a building which he owns,
or to a person performing testing or mitigation without remuneration.

Section 4. [Confidentiality of Information.]
(a) No person shall disclose to any person, except to the [department
of environmental protection] or the [department of health], the address
or owner of a nonpublic building that the person tested or treated for
the presence of radon gas and radon progeny, unless the owner of the
building waives, in writing, this right of confidentiality.
(b) The provisions of this section shall not apply to a person perform-
ing testing or treatment on a building which he owns, or to instances
where disclosure is necessary to contract for further testing or to con-
tract for the mitigating and safeguarding of a building from the presence
of radon gas and radon progeny. In the case of a prospective sale of a
building which has been tested for radon gas and radon progeny, the
seller shall provide the buyer, at the time the contract of sale is entered
into, with a copy of the results of that test and evidence of any subse-
quent mitigation or treatment, and any prospective buyer who contracts
for the testing shall have the right to receive the results of that testing.

Section 5. [Disclosure of Service Information to Appropriate Agencies.]
A person certified pursuant to Section 2 of this act to provide testing or
mitigation services shall, within [30] days of the provision of those ser-
dies, disclose to the [department of environmental protection] the ad-
dress or location of the building, the name of the owner of the building
where the services were provided, and the results of any tests performed.
The [department of environmental protection] shall provide to the
[department of health] this information upon the request of the [depart-
ment of health].

Section 6. [Fee Schedule.] The [department] shall establish a fee
schedule to cover the costs of the certification programs established pur-
suant to Section 2 of this act.

Section 7. [Adoption of Rules and Regulations.] The [department] shall,
pursuant to the [insert citation for state administrative procedures act],
adopt rules and regulations to implement the provisions of this act.

Section 8. [Penalty.] A person who violates the provisions of sections
3, 4 or 5 of this act, or any rule or regulation adopted pursuant thereto,
is guilty of a crime of the [third degree].

Section 9. [Data Not Public Records.] For the purposes of [insert ap-
propriate state statute], health data relating to individuals and data
relating to radon gas and radon progeny contamination at specific prop-
erties, including residential dwellings, gathered pursuant to the provi-
sions of this act and the provisions of [Insert appropriate state statute]
shall not be deemed to be public records. The [departments of health and
environmental protection] shall destroy all information in their posses-
sion relating to the names and addresses of persons owning properties
on which data were collected relating to radon gas and radon progeny
contamination at the end of [five] years from the date on which the data
were collected.
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Section 10. [Employment of Appropriate Personnel.] The [departments of environmental protection and health] are authorized to employ persons with specialized scientific training necessary to implement the provisions of [insert appropriate state statute].

Section 11. [Testing for Dwellings Under Construction.] The [department of community affairs] is authorized to enter into an agreement with a public or private agency to carry out testing for radon gas and radon progeny at the sites of residential dwellings, the construction of which is in progress or commences on or after the effective date of this act, and to provide funding for that testing, provided that each [one] dollar is matched by [one] dollar from other public or private sources.

Section 12. [Appropriations.] [Insert appropriation amounts.]

Section 13. [Effective Date.] [Insert effective date.]
Underground Storage Tank Fund Acts — Alternatives for the States

The 1987 edition of Suggested State Legislation (volume 46, pp. 15-22) offered states a draft Underground Storage Tank Act. That act, based on 1985 Delaware legislation, outlined a program to regulate the installation, operation, retrofitting and abandonment of underground storage tanks containing hazardous substances to prevent leaks, and where leaks occur, to detect them at the earliest possible stage to minimize groundwater contamination. It also authorized the department to explore the feasibility of creating a response fund to provide cleanup costs directly attributable to leaks for which tank owners or operators cannot be identified or for which the cleanup costs and damages exceed the owner's and/or operator's financial capability.

Since that time, the states have been looking at various options for such funding mechanisms. Recognizing that the states will have to develop mechanisms to suit their individual needs, the SSL Committee chose to offer three state alternatives for consideration in this volume. The three presented here are based on the funding options developed by the states of Virginia, Tennessee and Illinois in response to this specific need. The 1987 Virginia legislation was considered particularly significant in that it was the first to address the use of state funds for the cleanup of leaks and to determine who is financially responsible for those leaks using language consistent with the changes in federal directives.

Alternative I

This act, based on 1987 Virginia legislation, establishes the state’s underground petroleum storage tank fund as a nonlapsing revolving fund administered by the state water control board. Fund use is restricted to costs for corrective action, compensation of third parties, costs for immediate corrective action to protect human health or the environment and administrative costs of the board. The board is required to seek recovery of money from the owner up to the minimum financial responsibility requirements. The act grants rights of subrogation to the board; mandates the adoption of regulations to maintain evidence of financial responsibility of not less than $100,000 per occurrence for corrective action and $300,000 liability for compensation of third parties by any one or combination of the following: insurance, guarantee, surety bond, letter of credit or qualification as a self-insurer; and authorizes the establishment of an insurance pool to meet financial responsibilities.

Suggested Legislation

(Title, enacting clause, etc.)
Section 1. [Short Title.] This act may be cited as the [state] Underground Petroleum Storage Tank Fund Act.

Section 2. [Definitions.] As used in this act:

(1) "Fund" means the [state] Underground Petroleum Storage Tank Fund.

(2) "Operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

(3) "Owner" means:

(i) In the case of an underground storage tank in use or brought into use on or after November 8, 1984, any person who owns an underground storage tank used for the storage, use or dispensing of regulated substances; and

(ii) In the case of an underground storage tank in use before November 8, 1984, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.

(4) "Person" means any corporation, association, or partnership, one or more individuals or any governmental unit or agency thereof.

(5) "Regulated substance" means an element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health or welfare or the environment. The term "regulated substance" includes:

(i) Any substance defined in sec. 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not any substance regulated as a hazardous waste under subtitle C thereof;

or

(ii) Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(6) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an underground storage tank in groundwater, surface water or subsurface soils.

(7) "Underground storage tank" means any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground connecting pipes, is 10 percent or more beneath the surface of the ground. Exemptions from this definition include:

(i) Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;

(ii) Tanks used for storing heating oil for consumption on the premises where stored, except for tanks having a capacity of more than 5,000 gallons;

(iii) Septic tanks;

(iv) Pipeline facilities, including gathering lines, regulated under: (A) the Natural Gas Pipeline Safety Act of 1968, (B) the Hazardous Liquid Pipeline Safety Act of 1979, or (C) any intrastate pipeline facility regulated under state laws comparable to the provisions of law in (A) or (B) of this definition;

(v) Surface impoundments, pits, ponds or lagoons;
(vi) Storm water or waste water collection systems;
(vii) Flow-through process tanks;
(viii) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and
(ix) Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft or tunnel if the storage tank is situated upon or above the surface or the floor.

Section 3. [Underground Petroleum Storage Tank Fund]

(a) The [state] underground petroleum storage tank fund is hereby established as a nonlapsing revolving fund to be used by the [state water control board] for administering the state regulatory program for underground storage tanks as provided for by applicable provisions of federal law. All expenses, costs and judgments recovered pursuant to this act, and all moneys received as reimbursement in accordance with applicable provisions of federal law, shall be and hereby are appropriated to the fund. Interest earned on the fund shall be credited to the fund.

No moneys shall be credited to the balance in the fund until they have been received by the fund. The fund shall be established on the books of the [comptroller] and any funds remaining in such fund at the end of the [biennium] shall not revert to the general fund but shall remain in the fund.

The fund shall be administered by the [board] consistent with the provisions of [insert appropriate citation for solid waste disposal statute], any approved state underground storage tank program and in accordance with the following provisions:

(1) The fund shall be maintained in a separate account. An accounting of moneys received and disbursed shall be kept, and furnished upon request to the governor or the legislature.

(2) Disbursements from the fund may be made only for the following purposes:

(i) Costs incurred in taking corrective action for any release of petroleum into the environment from an underground storage tank which are in excess of the minimum financial responsibility requirement imposed in Section 4, up to [one million] dollars.

(ii) Costs incurred in compensating third parties, including payment of judgments, for bodily injury and property damage caused by release of petroleum into the environment from an underground storage tank, up to [one million] dollars.

(iii) Costs incurred in taking immediate corrective action to contain or mitigate the effects of any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the [board], to protect human health and the environment.

(iv) Costs of corrective action up to [one million] dollars for any release of petroleum into the environment from underground storage tanks: (A) whose owner or operator cannot be determined by the [board] within [90] days; or (B) whose owner or operator is incapable, in the judgment of the [board], of carrying out such corrective action properly.
(v) Costs of corrective action for any release of petroleum into the environment from underground storage tanks which are otherwise specifically listed in exemptions (I) through (IX) of the definition of an underground storage tank herein.

(vi) The "cost share" of corrective action with respect to any release of petroleum into the environment from underground storage tanks undertaken under a cooperative agreement with the administrator of the United States Environmental Protection Agency, as determined by the administrator of the United States Environmental Protection Agency in accordance with the provisions of sec. 9003(h)(7)(B) of the United States Public Law 98-616 (as amended in 1986 by United States Public Law 99-662).

(vii) Administrative costs incurred by the [board] in carrying out the provisions of a state underground storage tank regulatory program up to but not to exceed [250,000] dollars each year.

(b) The [board] shall seek recovery of moneys expended from the fund for corrective action under this section where the owner or operator has violated substantive environmental protection rules and regulations pertaining to underground storage tanks which have been promulgated by the [board]:

(1) For costs incurred for corrective action as authorized in subparagraph (a)(2)(i) above, the [board] shall seek recovery of moneys from the owner or operator up to the minimum financial responsibility requirement imposed on the owner or operator in Section 4, or seek recovery of such costs incurred from any available federal government funds.

(2) For costs incurred for corrective action taken resulting from a release from tanks specified in subparagraph (a)(2)(iv) above, the [board] shall seek recovery of moneys from the owner or operator up to the minimum financial responsibility requirement imposed on the owner or operator in Section 4, or seek recovery of such costs incurred from any available federal government funds.

(c) The [board] shall have the right of subrogation for moneys expended from the fund as compensation for personal injury, death or property damage against any person who is liable for such injury, death or damage.

Section 4. [Financial Responsibility.]

(a) The [board] shall adopt requirements for maintaining evidence of financial responsibility for taking corrective action by all owners and operators, in an amount of not less than [100,000] dollars per occurrence, and for compensating third parties for bodily injury and property damage by all owners and operators, in an amount of not less than [300,000] dollars per occurrence, in cases of accidental releases arising from operating an underground storage tank. Financial responsibility may be established in accordance with regulations promulgated by the [board] by any one or any combination of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer.

Any claim arising out of conduct for which evidence of financial respon-
sibility must be provided under this section may be asserted directly
against the person guaranteeing or providing evidence of financial
responsibility. In such a case, the person against whom the claim is made
shall be entitled to invoke all rights and defenses which would have been
available to the owner or operator.

This section shall not limit any other state or federal statutory, con-
tractual, or common law liability of the guarantor for bad faith in
negotiating or in the failing to negotiate the settlement of any claim.
This section does not diminish the liability of any person under sec. 107
or sec. 111 of the Comprehensive Environmental Response, Compen-
sation and Liability Act of 1980, or other applicable law.

(b) Owners and operators of underground storage tanks who are unable
to demonstrate financial responsibility in the minimum amounts
specified in subsection (a) may establish an insurance pool in order to
demonstrate such financial responsibility. Any contract establishing
such an insurance pool shall provide:

1. For election by pool members of a governing authority for the pool,
which may be a board of directors, a majority of whom shall be elected
or appointed officials of pool members.
2. A financial plan setting forth in general terms:
   (i) The insurance coverages to be offered by the insurance pool, ap-
       plicable deductible levels, and the maximum level of claims which the
       pool will self-insure;
   (ii) The amount of cash reserves to be set aside for the payment of
       claims;
   (iii) The amount of insurance to be purchased by the pool to pro-
         vide coverage over and above the claims which are not to be satisfied
         directly from the pool's resources; and
   (iv) The amount, if any, of aggregate excess insurance coverage to
       be purchased and maintained in the event that the insurance pool's
       resources are exhausted in a given fiscal period.
3. A plan of management which provides for all of the following:
   (i) The means of establishing the governing authority of the pool;
   (ii) The responsibility of the governing authority for fixing con-
       tributions to the pool, maintaining reserves, levying and collecting
       assessments for deficiencies, disposing of surpluses, and administration
       of the pool in the event of termination or solvency;
   (iii) The basis upon which new members may be admitted to, and
       existing members may leave, the pool;
   (iv) The identification of funds and reserves by exposure areas; and
   (v) Such other provisions as are necessary or desirable for the opera-
       tion of the pool.
4. The formation and operation of an insurance pool under this sec-
   tion shall be subject to approval by the [state corporation commission]
   which may, after notice and hearing, establish reasonable requirements
   and regulations for the approval and monitoring of such pools, including
   prior approval of pool administrators and provisions for periodic ex-
   aminations of financial conditions.

The [state corporation commission] may disapprove an application for
Suggested State Legislation

62 the formation of an insurance pool, and may suspend or withdraw such
63 approval whenever it finds that such applicant or pool:
64 (1) Has refused to submit its books, papers, accounts or affairs to the
65 reasonable inspection of the [commission] or its representative;
66 (2) Has refused, or its officers or agents have refused, to furnish
67 satisfactory evidence of its financial and business standing or solvency;
68 (3) Is solvent, or is in such condition that its further transaction of
69 business in the state is hazardous to its members and creditors in this
70 state, and to the public;
71 (4) Has refused or neglected to pay a valid final judgment against
72 it within [60] days after its rendition;
73 (5) Has violated any law of this state or has violated or exceeded the
74 powers granted by its members;
75 (6) Has failed to pay any fees, taxes or charges imposed in this state
76 within [60] days after they are due and payable, or within [60] days after
77 final disposition of any legal contest with respect to liability therefor; or
78 (7) Has been found insolvent by a court of any other state, or by the
79 [insurance commissioner] or other proper officer or agency of any other
80 state, and has been prohibited from doing business in such state.

1 Section 5. [Effective Date.] [Insert effective date.]

Alternative II

This act is based on portions of 1988 Tennessee legislation relating
to the establishment of a petroleum underground storage tank fund. It
provides that the initial owner/operator financial responsibility for
cleanup will never be less than $50,000 nor more than $100,000 for any
petroleum site for an occurrence [the first year the act is effective, the
initial owner/operator financial responsibility is $75,000]. The fund is
to be responsible for cleanup costs above the entry level to the fund up
to $1 million. The initial owner/operator financial responsibility require-
ment for third party claims is never to be less than $150,000 nor more
than $300,000. The underground storage tank board established in the
act may collect annual fees from the tank owners/operators in an amount
not to exceed $100 per tank.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This act may be cited as the [state] Petroleum
2 Underground Storage Tank Fund Act.

1 Section 2. [Exemptions.] Exempted from the provisions of this act are:
2 (1) Septic tanks;
3 (2) Farm or residential tanks of 1,100 gallons or less used for storing
motor fuel for non-commercial purposes;
(3) Tanks used for storing heating oil for consumption on the premises
where stored;
(4) Pipeline facilities (including gathering lines) regulated under:
   et. seq.)
   2001, et. seq.) or
   (iii) State laws comparable to the provisions of the law referred to
in item (i) or (ii) of this subparagraph if it is an intrastate pipeline;
(5) Surface impoundments, pits, ponds or lagoons;
(6) Storm water or waste water collection systems;
(7) Flow through process tanks;
(8) Liquid traps or associated gathering lines directly related to oil or
    gas production and gathering operations;
(9) Petroleum storage tanks situated in an underground area (such as
    a basement, cellar, mineworking, drift, shaft or tunnel) if the storage
    tank is situated upon or above the surface of the floor; and
(10) Pipes or connections connected to exempted tanks.

Section 3. [Definitions.] As used in this act:
(1) “Board” means the [petroleum underground storage tank board]
established in this act;
(2) “Commissioner” means the [commissioner] of the [state department
of health and environment], his authorized representatives, or in the
event of his absence or a vacancy in the [commissioner’s] office, the
[deputy commissioner];
(3) “Department” means the [state department of health and environ-
ment];
(4) “Flow through process tank” means a tank whose principal use is
not for storage but is primarily used in the manufacture of a product or
in a treatment process;
(5) “Inactive petroleum site” means a site that is no longer in opera-
tion, is abandoned, or the responsible party has filed a bankruptcy
petition;
(6) “Occurrence” means the discovery of environmental contamination
at a specific time and date, due to the release of petroleum products from
petroleum underground storage tanks;
(7) “Operator” means any person in control of, or having responsi-
    bility for, the daily operation of the petroleum underground storage tank;
(8) “Owner” means:
   (i) For petroleum storage tanks in use or brought into use on or after
November 8, 1984, any person who owns a petroleum underground
storage tank used for the storage, use or dispensing of petroleum
products;
   (ii) For petroleum underground storage tanks used prior to November
6, 1984, but no longer in use after that date, the person who last owned
the petroleum underground storage tank used for storage, use or dispens-
ing of petroleum immediately before discontinuation of its use;
(9) "Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, state and federal agencies, municipalities or political subdivisions, or officers thereof, departments, agencies or instrumentalities, or public or private corporations or officers thereof, organized or existing under the laws of this or any other state or country;

(10) "Petroleum" means crude oil or any fraction of crude oil which is a liquid at standard temperature and pressure (60 degrees and 14.7 pounds per square inch absolute);

(11) "Petroleum site" means any site or area where a petroleum underground storage tank is located;

(12) "Petroleum underground storage tank fund" means the fund established by this act to provide for the cleanup of releases from petroleum underground storage tanks and assist with the financial responsibilities of owner/operators of petroleum underground storage tanks;

(13) "Release" means any spilling, overfilling, leaking, emitting, discharging, escaping, leaching or disposing of a petroleum substance from a petroleum underground storage tank or its associated piping into groundwater, surface water or subsurface soils;

(14) "Responsible party" means:

(i) The owner and/or operator of a petroleum site; or

(ii) Any person who at the time of the release which caused the contamination was an owner and/or operator of a petroleum underground storage tank;

(15) "State" means the state of [insert state name];

(16) "Tank" means a stationary device, designed to contain an accumulation of petroleum substances which is constructed primarily of non-earth materials (e.g., wood, concrete, steel, Fiberglas) which provide structural support;

(17) "Petroleum underground storage tank" means any one or combination of tanks (including the volume of the underground lines connected thereto) which are used or have been used to contain an accumulation of petroleum substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. The term, "petroleum underground storage tank", does not include any tank exempted from this act pursuant to Section 2.

Section 4. [Petroleum Underground Storage Tank Board.]

(a) There is created a petroleum underground storage tank board which shall be composed of [nine] members as follows:

(1)[One] person who is employed by a private business concern with experience in management of petroleum to be appointed by the governor from a list of [three] names submitted by the [insert appropriate organization];

(2)[One] person who is employed by a private petroleum concern with experience in the management of petroleum to be appointed by the governor from a list of [three] names submitted by the [insert appropriate
(3) [One] person who is employed by a private petroleum concern with experience in the management of petroleum to be appointed by the governor from a list of [three] names submitted by the [insert appropriate organization];

(4) [One] person who is employed by a private petroleum concern with experience in the management of petroleum to be appointed by the governor from a list of [three] names submitted by the [insert appropriate organization];

(5) [One] person who is a representative of environmental interests knowledgeable of the management of petroleum products and/or hazardous substances to be appointed by the governor from a list of [three] names submitted by the [insert appropriate organization];

(6) [One] person who is to be appointed by the governor from a list of [three] names submitted by the [insert appropriate organization];

COMMENT: (Paragraphs (1) to (6)) Tennessee legislation provides for lists of names submitted by Tennessee Association of Business; Tennessee Petroleum Council; Tennessee Oil Marketers Association; Tennessee Retail Gasoline Dealers Association; Tennessee Environmental Council; and Tennessee Municipal League.

(7) [One] person shall be an ex-officio member and shall be the [commissioner of the department of health and environment] or his designee;

(8) [Two] citizens, to be appointed by the governor, who are consumers of petroleum products and are not affiliated with the [insert names of organizations stated in paragraphs (1) to (6)].

(9) The [director], or his designee, of the division designated as responsible for the petroleum underground storage tank program shall serve as the technical secretary of the board but shall have no vote at board meetings;

(10) If the governor does not choose to appoint one of the persons recommended to him under the terms of paragraphs (1), (2), (3), (4), (5) or (6) the appropriate organization(s) shall submit new lists until such appointment is made.

(b) The members appointed by the governor shall serve [four] year terms and until their successors are appointed, provided, however, that the first appointments shall be as follows: the representatives named in subsections (a)(2) and (a)(6) shall be appointed for a term of [one] year; the representatives named in subsections (a)(3) and (a)(5) shall be appointed for a term of [two] years; the representative named in subsection (a)(4) shall be appointed for a term of [three] years; and the representative named in subsection (a)(1) shall be appointed for a term of [four] years. The members named in subsection (a)(8) shall be appointed for a term of [three] years.

(c) All vacancies in appointed positions shall be filled by the governor from the recommendations of the appropriate organizations in the same manner as the original appointment to serve the remainder of the unexpired term.
Section 5. [Fees.]
   (a) The board shall levy and collect annual fees from the owners and/or
operators of petroleum underground storage tanks containing petroleum
substances. The board shall promulgate regulations stipulating which
petroleum underground storage tanks are subject to fees, the due date
of such fees, and the amount of such fees, annually in an amount not to
exceed [100] dollars per tank. The fee for each petroleum underground
storage tank shall be [100] dollars per tank the first year this act is ef-
fective. This fee shall be paid by the party designated in an agreement
between the owner and the operator of the petroleum underground
storage tank.
   (b) The board shall promulgate and adopt rules and regulations pro-
viding for a fee based upon the financial requirements to operate the
petroleum underground storage tank fund established pursuant to this
act. The fee may be reviewed and revised as needed by the board based
on changes in anticipated fee collections and projected program or fund
expenditures.
   (c) Upon failure or refusal of an owner and/or operator of a petroleum
underground storage tank subject to fees by regulation to pay a fee
lawfully levied within a reasonable time allowed by the commissioner,
the commissioner may proceed in the appropriate court of
jurisdiction to obtain judgment and seek execution of such judgment.
   (d) Any person who fails or refuses to pay a lawfully levied fee or any
part of that fee by its due date shall be assessed a penalty of [5] percent
of the amount due which shall accrue on the first day of delinquency and
be added thereto. Thereafter, on the last day of each month during which
any part of any fee or any prior accrued penalty remains unpaid, an ad-
ditional [5] percent of the then unpaid balance, shall accrue and be add-
ited thereto. Nothing in this section shall be construed as requiring the
issuance of a commissioner’s order for the payment of a fee or a late
payment penalty.

Section 6. [Establishment of Petroleum Underground Storage Tank
Fund.]
   (a) There is hereby established within the general fund a special agen-
cy account to be known as the “petroleum underground storage tank
fund” referred to in this act as the “fund.”
   (b) All fees, civil penalties and damages collected pursuant to this act
shall be deposited in the fund.
   (c) Any unencumbered funds and any unexpected balance of the fund
remaining at the end of any fiscal year shall not revert to the general
fund but shall be carried forward until expended in accordance with the
provisions of this act.
   (d) Interest accruing on investments and deposits of the fund shall be
returned to the fund and remain a part of the fund.
   (e) For fiscal years subsequent to [insert year], the board shall, by
regulation, adjust underground storage tank fees to a level necessary
to maintain a minimum unobligated balance of [two million] dollars and
a maximum unobligated balance of [five million] dollars in the fund.
(f) There is hereby appropriated, subject to revenues provided pursuant to section 5(a), the sum of [insert amount] dollars for fiscal year [insert year]; and for fiscal years thereafter, there is appropriated a sum sufficient from the fund to provide for the administrative costs of the underground storage tank program.

(g) Moneys in the account shall be invested by the [state treasurer] for the benefit of the fund pursuant to [insert appropriate section of state code]. The fund shall be administered by the [commissioner of health and environment].

Section 7. [Use of Fund.]

(a) The fund shall be available to the board and the [commissioner] for expenditures for the purposes of providing for the investigation, identification, and for the reasonable and safe cleanup, including monitoring and maintenance of petroleum sites within the state as provided in this act.

(b) The fund may also be used by the [commissioner] as a source of federal matching funds for the state in the petroleum underground storage tank program.

(c) The [commissioner] may enter into contracts and use the fund for those purposes directly associated with identification, investigation, containment and cleanup, including monitoring and maintenance prescribed above including:

(1) Hiring consultants and personnel;

(2) Purchase, lease or rental of necessary equipment; and

(3) Other necessary expenses.

(d) Such fund may be used to provide funding of at least [insert amount] dollars for the administrative costs of the underground storage tank program including [insert number] new positions, equipment, laboratory costs and other expenses as reasonably incurred by the program for fiscal year [insert year]. Funding levels in subsequent years shall be subject to review of the board and shall be included in the [department's] budget request to the legislature.

(e) Such fund may be used to provide a mechanism to assist with the financial responsibility requirements for owners and/or operators of petroleum underground storage tanks including clean up of contamination and third party claims due to bodily injury and/or property damage caused by leaking petroleum underground storage tanks:

(1) The fund shall provide for cleanup of contamination caused by leaking petroleum underground storage tanks whose owners and/or operators have paid the required petroleum underground storage tank fee. The board shall promulgate and adopt rules and regulations stipulating the initial owner and/or operator financial responsibility requirements for cleanup before the owner and/or operator is eligible to receive financial assistance from the fund. The initial owner and/or operator financial responsibility for cleanup shall never be less than [50,000] dollars nor more than [100,000] dollars for any petroleum site for an occurrence. The board shall review the entry level into the fund annually and will act the entry level based on the average cost of cleanup
of contamination due to leaking petroleum underground storage tanks in [insert state name]. The fund shall be responsible for cleanup costs above the entry level to the fund in an amount not to exceed [one million] dollars. The first year this act is effective the initial owner and/or operator financial responsibility requirement for cleanup shall be [75,000] dollars. The fund shall be responsible for cleanup of contamination due to leaking petroleum underground storage tanks on a per site per occurrence basis;

(2) The fund shall provide coverage for third party claims involving bodily injury and/or property damage caused by leaking petroleum underground storage tanks whose owners and/or operators have paid the required petroleum underground storage tank fee. The board shall promulgate and adopt rules and regulations stipulating the initial owner and/or operator financial responsibility requirements for third party claims involving bodily injury and/or property damage before the owner and/or operator is eligible to receive expenditures from the fund. The initial owner and/or operator financial responsibility requirement for third party claims shall never be less than [150,000] dollars nor more than [300,000] dollars for any petroleum site for any occurrence. The board shall review the entry level to the fund annually and will set the entry level based on the median award for settlement of third party claims involving bodily injury and/or property damage caused by leaking petroleum underground storage tanks in [insert state name]. The fund shall be responsible for court awards involving third party claims above the entry level into the fund in an amount not to exceed [one million] dollars. The first year this act is effective the initial owner and/or operator financial responsibility requirement for third party claims involving bodily injury or property damage shall be [150,000] dollars. The fund shall be responsible for third party claims involving bodily injury and/or property damage caused by leaking petroleum underground storage tanks on a per site per occurrence basis. All claims against the fund for third party damages must have been awarded in a court of suitable jurisdiction; and

(3) Neither the fund nor the initial level of owner and/or operator financial responsibility for cleanup shall be used for the repair, replacement or maintenance of petroleum underground storage tanks or property improvement on which the petroleum underground storage tanks are located including but not limited to:

(i) Underground storage tank repair;
(ii) Underground storage tank replacement;
(iii) Repair or maintenance of associated lines; and
(iv) Replacement of asphalt or concrete.

Section 8. [Board Procedures, Restrictions.]
(a) Reasonable notice of any public hearing shall be given before the date of such hearing and shall state the date, time, place of hearing and subject of the hearing. Any person who desires to be heard relative to petroleum underground storage tank matters at any such public hearing shall give notice thereof in writing to the board on or before the first
The board is authorized to set reasonable time limits for the oral presentation of views by any person at any such public hearing.

(b) After opportunity for notice and comment, the board shall promulgate rules and regulations governing petroleum underground storage tanks and shall make such modifications or amendments as the board deems necessary. It shall also be the duty of the board to act as a board of appeals as provided in this act.

(c) The board shall hold at least [two] regular meetings each calendar year at a place and time to be fixed by the board. The board shall also meet at the request of the [commissioner of health and environment] or of the chairman of the board, or upon a written request of [three] members of the board. [Five] members constitute a quorum, and a quorum may act for the board in all matters. The board shall select a chairman from its members annually. The [department of health and environment] shall provide all necessary staff for the board.

(d) Each member of the board other than the ex-officio member, shall be entitled to be paid [50] dollars for each day actually and necessarily employed in the discharge of official duties, and each member shall be entitled to receive the amount of his travel and other necessary expenses actually incurred while engaged in the performance of any official duties when so authorized by the board. Such expenses shall be reimbursed in accordance with the comprehensive state travel regulations promulgated by the [commissioner of finance and administration] and approved by the [attorney general].

(e) No member of the board shall participate in making any decision on a certificate or upon a case in which the municipality or firm, which that member represents, or by which that member is employed, or in which that member has a direct substantial financial interest, is involved.

Section 9. [Order for Correction.]

(a) When the [commissioner] finds upon investigation that any provisions of this act are not being carried out, and that effective measures are not being taken to comply with provisions of this act, he may issue an order for correction to the responsible person, and this order shall be complied with within the time limit specified in the order. Such order shall be made by personal service or shall be sent by certified mail. Investigations made in accordance with this section may be made on the initiative of the [commissioner] including any violation of this act or regulations promulgated pursuant to this act. Prior to the issuance of any order or the execution of any other enforcement action, the [commissioner] or his designee, may request the presence of an alleged violator of this act to a meeting to show cause why enforcement action ought not to be taken by the [department]. Any person may request a meeting with the [department] to discuss matters pertaining to petroleum underground storage tanks.

(b) Responsible parties shall be liable to the state for costs of investigation, identification, containment and cleanup, including monitoring and
maintenance, as provided herein. Owners and/or operators of petroleum underground storage tanks who have paid the required fees shall be liable for all costs up to entry level into the fund. All other owners and/or operators of petroleum underground storage tanks shall be liable for all costs.

Section 10. [Cost Recovery]
(a) Making use of any and all appropriate existing state legal remedies, the [commissioner] may commence court action to recover the amount expended by the state from any and all responsible parties for each site investigated, identified, contained or cleaned up, including up to the limits of financial responsibility for owners and/or operators of petroleum underground storage tanks covered by the fund and the entire amount from owners and/or operators of petroleum underground storage tanks not covered by the fund.
(b) In any action under this act or any other law, no responsible party shall be liable for more than that party’s apportioned share of the amount expended from the fund for such site. The responsible party has the burden of proving his apportioned share. Such apportioned share shall be based solely on the liable party’s portion of the total volume of the petroleum at the petroleum site at the time of action under this act. Any expenditures required by the provisions of this act made by a responsible party (before or after suit) shall be credited toward any such apportioned share.
(c) In no event shall the total moneys recovered from the responsible party or parties exceed the total expenditure from the fund for each site.
(d) Any party found liable for any costs or expenditures recoverable under this act who establishes by a preponderance of evidence that only a portion of such costs or expenditures are attributable to his or her actions shall be required to pay only for such portion.
(e) If the trier of the fact finds evidence insufficient to establish such party’s portion of costs or expenditures in such a cost recovery, the court shall apportion such costs or expenditures among the defendants, to the extent practicable, according to equitable principles.

Section 11. [Liability to State] Any responsible party who fails without sufficient cause to properly provide for removal of petroleum or remedial action upon order of the [commissioner] pursuant to this act may be liable to the state for a penalty in an amount equal to [150] percent of the amount of any costs incurred by the fund as a result of such failure to take proper action. The [commissioner] may recover this penalty in an action commenced under Section 10 of this act or in a separate civil action, and such penalty shall be in addition to any costs recovered from such responsible party pursuant to this act. Any penalty awarded pursuant to this section shall be deposited into the fund.

Section 12. [Liability.] No person shall be liable under this act for damages as a result of actions taken or omitted in the course of rendering care, assistance or advice at the direction of an on-scene coordinator
appointed by the [commissioner], with respect to an incident creating
a danger to the public health or welfare or the environment as a result
of any release of petroleum substances or the threat thereof. This sec-
tion shall not preclude liability for damages as the result of gross
negligence or intentional misconduct on the part of such person or for
reckless, willful or wanton misconduct.

Section 13. [Compliance.] Each department, agency or instrumentality
of the executive, legislative and judicial branches of the federal govern-
ment and the state government shall be subject to, and comply with, this
act in the same manner and to the same extent, both procedurally and
substantively, as any non-governmental entity including liability under
sections 9 through 12.

Section 14. [Petitions.]
(a)(1) Any person against whom an order is issued may secure a review
of such order by filing with the [commissioner] a written petition, setting
forth the grounds and reasons for his objections and asking for a
hearing in the matter involved before the board. Any such order shall
become final and not subject to review unless the person or persons
therein file such petition for hearing before the board no later than [30]
days after the date such order is served.

(2) Any owner of an underground storage tank certificate revoked
by the [commissioner], in any manner other than that for summary
suspension under [insert appropriate section of state code], may secure
a review of the [commissioner’s] revocation by filing with the [commiss-
ioner] a written petition setting forth the grounds and reasons for his
objections to the [commissioner’s] revocation and requesting a hearing
before the board. Any revocation of a certificate, other than a summary
suspension, shall become final and not subject to review unless such peti-
tion for a hearing before the board is filed no later than [30] days after
notice of revocation is served.

(b) The hearing before the board shall be in accordance with the rules
and procedures adopted by the board pursuant to [insert appropriate sec-
tion of state code].

(c) An appeal may be taken from any final order or other final deter-
mination of the board by any party, including the [department], who is
or may be adversely affected thereby to the [insert appropriate court of
jurisdiction]. The [insert court] shall have exclusive original jurisdiction
of all review proceedings instituted under the authority and provisions
of this act; provided that the judicial review of any final decision of the
board shall be made pursuant to the procedures established and set forth
in [insert appropriate section of state code].

Section 15. Notwithstanding any other provisions of law to the con-
trary, the [state] comprehensive underground storage tank fund shall
not be considered an insurance company or insurer under the laws of
this state and shall not be a member of nor be entitled to claim against
the [insert state insurance guaranty association and appropriate sec-
Suggested State Legislation

Section 16. [Severability.] [Insert severability clause.]

Section 17. [Effective date.] [Insert effective date.]

Alternative III

This act, based on portions of 1988 Illinois legislation, also establishes an underground storage tank fund. It holds the owner/operator of an underground storage tank liable for all costs of preventive, corrective and enforcement action as a result of a release or threat of release up to $100,000 if total fund expenditures are less than $1 million. If the total fund expenditures are greater than $1 million, the owner/operator is liable for up to $900,000. There is no cap on the fund. Each owner/operator required to register a tank with the state fire marshal pays a one-time $500 tank registration fee and an annual $100 tank fee.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the [state] Underground Petroleum Storage Tank Fund Act.

Section 2. [Definitions.] As used in this act:

1. “Agency” means the state [environmental protection agency].
2. “Board” means the state [pollution control board].
3. “Office” means the [office of the state fire marshal].

Section 3. [Agency Authorization.] (a) The [agency] shall have authority to:

1. Provide notice to the owner or operator, or both, of an underground storage tank whenever there is a release or substantial threat of a release of petroleum from such tank. Such notice shall include the identified response action and an opportunity for the owner or operator, or both, to perform the response action; or
(2) Undertake preventive or corrective action whenever there is a release or a substantial threat of a release of petroleum from an underground storage tank.

(b) If notice has been provided under subsection (a)(1), the agency shall have the authority to require the owner or operator, or both, of an underground storage tank to undertake preventive or corrective action whenever there is a release or substantial threat of a release of petroleum from such tank.

(c) The preventive or corrective action undertaken or required under this section shall be such as may be necessary or appropriate to protect human health and the environment.

Section 4. [Establishment of Underground Storage Tank Fund.]
(a) There is hereby created in the state treasury a special fund to be known as the underground storage tank fund. There shall be deposited into such fund all moneys received by the [office of state fire marshal] as fees for underground storage tanks pursuant to sections 6 and 7. Moneys in such fund, pursuant to appropriation, may be used by the [agency] for the following purposes:
(1) to take action authorized under Section 3 or to recover costs under Section 5; and
(2) to assist in the reduction and mitigation of damage caused by leaks from underground storage tanks, including, but not limited to, providing alternative water supplies to persons whose drinking water has become contaminated as a result of such leaks.

(b) Moneys in the underground storage tank fund may, pursuant to appropriation, be used by the [office of state fire marshal] to take whatever emergency action is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release or substantial threat of a release of petroleum from an underground storage tank.

Section 5. [Liability for Costs.]
(a) Notwithstanding any other provision or rule or law, except as provided otherwise in subsection (b), the owner or operator, or both, of an underground storage tank shall be liable for all costs of preventive action, corrective action and enforcement action incurred by the state of [insert state name] as a result of a release or a substantial threat of a release of petroleum from an underground storage tank.

(b) Until [December 31, 1991], if the owner or operator of the underground storage tank from which there is a release or a substantial threat of a release of petroleum has
(1) registered the tank in accordance with Section 6; and
(2) paid into the underground storage tank fund all fees required for the tank in accordance with sections 6 and 7, and regulations adopted by the [office of state fire marshal]:
(i) If the total amount of moneys spent from the underground storage tank fund for the preventive action, corrective action and enforcement action is less than or equal to [one million] dollars, the owner or operator, or both, shall be liable under subsection (a) for such fund.
moneys in an amount equal to the total fund moneys spent by the state
of [insert state name] for such actions or the amount of [100,000] dollars,
whichever is less.
(ii) If the total amount of moneys spent from the underground
storage tank fund for the preventive action, corrective action and enforce-
ment action is greater than [one million] dollars, the owner or operator,
or both, shall be liable under subsection (a) for such fund moneys in an
amount equal to the total fund moneys spent by the state of [insert state
name] for such actions less the amount of [900,000] dollars.
(iii) Nothing in this subsection (b) shall affect or modify in any way:
   (A) The obligations or liability of any person under any other pro-
   vision of this act or state or federal law, including common law, for
   damages, injury or loss resulting from a release or substantial threat
   of a release of petroleum from the underground storage tank; or
   (B) The liability of any person under subsection (a) for costs in-
   curred by the state of [insert state name] for preventive action, correc-
   tive action and enforcement action that are not paid with moneys from
   the underground storage tank fund.
   (c)(1) The owner or operator, or both, of an underground storage tank
may be liable to the state of [insert state name] for punitive damages
in an amount at least equal to, and not more than [three] times, the
amount of any costs incurred by the state as a result of the state's
response to a release or a substantial threat of a release of petroleum
from the underground storage tank if the owner or operator:
   (i) Failed, without sufficient cause, to respond to a release or a
   substantial threat of a release of petroleum from the underground
   storage tank upon, or in accordance with, a notice issued by the [agency]
   under Section 3; and
   (ii) During the period between the effective date of this act and
   [December 31, 1991], failed to perform any one or both of the following:
      (A) Register the underground storage tank in accordance with
Section 6, and
      (B) Pay into the underground storage tank fund all fees required
for the underground storage tank in accordance with sections 6 and 7,
and regulations adopted by the [office of state fire marshal].
(2) The punitive damages imposed under this subsection shall be in
addition to any costs recovered from such person pursuant to this sec-
tion and in addition to any other penalty or relief provided by this act
or any other law.
(d) The costs and damages provided for in this section may be imposed
by the [board] in an action brought before the [board]. Costs recovered
pursuant to this section shall be deposited in the fund from where the
moneys were expended. Damages recovered pursuant to this section shall
be deposited in the underground storage tank fund.

Section 6. [Registration with State Fire Marshal.]
(a) In cooperation with the [state environmental protection agency],
the [office of the state fire marshal] shall administer the [state under-
ground storage tank program].
Underground Storage Tank Fund Acts

(b)(1) The owner of an underground storage tank, which at any time between [January 1, 1974], and the effective date of this act contained petroleum or petroleum products or hazardous substances, with the exception of hazardous wastes, shall register the tank with the [office of the state fire marshal] by [December 31, 1987].

(2) The owner of an underground storage tank who registered the tank with the [office of the state fire marshal] prior to the effective date of this act shall be deemed to have registered the tank under paragraph (1).

(3) Each person required to register an underground storage tank under paragraph (1) shall pay the [office of the state fire marshal] a registration fee of [500] dollars for each tank registered, to be deposited in the underground storage tank fund. No registration fee shall be due under this paragraph for underground storage tanks deemed registered pursuant to paragraph (2).

Section 7. [Annual Fees.]

(a) On and after [January 1, 1988], and until and through [December 31, 1991], the [office of the state fire marshal] shall assess and collect from each owner of an underground petroleum storage tank an annual fee of [100] dollars for each such tank. The receipts from such fees shall be deposited in the underground storage tank fund.

(b) The [office of state fire marshal] shall establish procedures relating to the collection of the fees authorized by subsection (a). Such procedures shall include, but need not be limited to, the time and manner of payment to the [office of state fire marshal], which shall not be more often than annually.

(c) Moneys in such fund, pursuant to appropriation, may be used by the [office of state fire marshal] for the purposes set forth in Section 4.

Section 8. [Effective Date] [Insert effective date.]
Infectious Waste Storage, Treatment and Disposal Acts

With the growing concern over AIDS, infectious waste from hospitals and laboratories is receiving more attention from the media and government authorities. States are responding quickly to create or revamp regulatory programs in the area. According to The Council of State Governments’ survey conducted early in 1988, 11 states have new or amended infectious waste statutes or have promulgated regulations since the United States Environmental Protection Agency published its 1986 Guidance. In addition, 25 states have initiated processes that could result in changes to their requirements for infectious waste handling, transportation and disposal.

The two acts presented here are based on New York legislation enacted in 1987. The first act applies to persons engaged in the storage, containment, treatment, disposal or transfer of infectious waste. Containment must be in a manner and location which affords protection from the environment and limits exposure to the public. Containers for infectious waste, red bags impervious to moisture, must contain warning signs. Prior to transporting, waste must be placed into disposable or reusable containers which are leakproof and have tight-fitting covers. Infectious waste must be disposed of by incineration approved by the state department of environmental conservation under permit, by discharging to a sewage system, sterilization or other method approved in writing by the state health commissioner. Persons transporting more than 100 kilograms of infectious waste per month must obtain a permit from the department.

The second act applies to the producers of infectious waste—hospitals, residential care facilities and clinical laboratories—by amending the existing state public health law. Producers of large quantities of infectious waste can only have them transported off premises by registered haulers who are capable of segregating such waste.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Infectious Waste Storage, Treatment and Disposal Act.

Section 2. [Definitions.] As used in this act:

(1) “Infectious waste” means the following:

(i) Surgical waste which consists of materials discarded from surgical procedures involving the treatment of a patient on isolation, other than patients on reverse or protective isolation;

(ii) Obstetrical waste, which consists of materials discarded from obstetrical procedures involving the treatment of a patient on isolation,
other than patients on reverse or protective isolation;

(iii) Pathological waste, which consists of discarded human tissues
and anatomical parts which are discarded from surgery, obstetrical pro-
cedures, autopsy and laboratory procedures;

(iv) Biological waste, which consists of discarded excretions, exudates,
secretions, suctionings, and disposable medical supplies which have
come in contact with these substances that cannot be discarded direct-
ly into a sewer and that emanate from the treatment of a patient on isol-
ation, other than patients on reverse or protective isolation;

(v) Discarded materials soiled with blood emanating from the treat-
ment of a patient on isolation, other than patients on reverse or pro-
ective isolation;

(vi) All waste being discarded from renal dialysis, including tubing
and needles;

(vii) Discarded serums and vaccines that have not been autoclaved
or returned to the manufacturer or point of origin;

(viii) Discarded laboratory waste which has come in contact with
pathogenic organisms and which has not been rendered non-infectious
by autoclaving or other sterilization techniques;

(ix) Animal carcasses exposed to pathogens in research, their bed-
ing and other waste from such animals that is discarded; and

(x) Other articles that are being discarded that are infectious and
that might cause punctures or cuts including intravenous tubing with
needles attached, that have not been autoclaved or subjected to a similar
decomposition technique and crushed or otherwise rendered in-
capable of causing punctures or cuts;

(3) "Person" means individual, trust, firm, joint stock company, cor-
poration (including a government corporation), partnership, association,
state or federal government and any agency thereof, municipality, com-
mission, political subdivision of a state, or any interstate body.

(3) "Storage" means the containment of infectious waste in such a man-
er as not to constitute disposal of such waste.

(4) "Transport" means the movement of infectious waste from the point
of generation to any intermediate points and finally to the point of
ultimate storage or disposal. For the purposes of this act, the point of
generation with regard to facilities that are producers of infectious waste
shall be the point at which the infectious waste leaves the producing
facility site.

(5) "Treatment" means any method, technique or process designed to
change the character or composition of any infectious waste so as to
either neutralize such waste or to render such waste not infectious, safer
for transport, amenable for recovery, amenable for storage or reduced
in volume.

(6) "Department" means the [department of environmental conserva-
tion].

(7) "Commissioner" means the [commissioner of environmental
conservation].

Section 3 [Applicability] All the requirements of this act shall apply
Section 4. [Storage and Containment of Infectious Waste.]
(a) Containment of infectious waste shall be in a manner and location which affords protection from the environment and limits exposure to the public.
(b) Infectious waste shall be separated from other waste as soon as practicable in the producing facility.
(c) Unless otherwise approved by the [department], infectious waste shall be contained at the producing facility and at any other location off the site of the producing facility only for such periods and under such conditions pursuant to rules and regulations adopted in furtherance of this act.
(d) Containment of infectious waste shall be separate from other wastes. Containers used for the containment of infectious waste shall be marked with prominent warning signs on the containers with the word “infectious.”
(e) Infectious waste, except for material defined in section 2(1)(x) of this act, shall be contained in bags which are impervious to moisture and have a strength sufficient to resist ripping, tearing or bursting under normal conditions of usage and of handling. The bags shall be secured so as to prevent leakage during storage, handling or transport. All bags used for containment and disposal of infectious wastes shall be red in color.
(f) Material defined in section 2(1)(x) of this act shall be contained for disposal in leakproof, rigid, puncture-resistant containers which are secured to preclude loss of the contents. Such containers shall be red in color or shall be conspicuously labeled with the word “infectious.”
(g) Before infectious waste is transported from the producing facility, infectious waste contained in disposable containers shall be placed for storage or handling in disposable or reusable pails, cartons, drums or portable bins. The containment system shall be leakproof, have tight-fitting covers and be kept clean and in good repair. The containers may be of any color and shall be conspicuously labeled with the word “infectious.”
(h) Reusable containers for infectious waste shall be thoroughly washed and decontaminated each time they are emptied, unless the surfaces of the containers have been completely protected from contamination by disposable liners, bags or other devices removed with the waste.
(i) Reusable pails, drums or bins used for containment of infectious waste shall not be used for containment of waste to be disposed of as noninfectious waste or for other purposes except after being decontaminated.
(j) Trash chutes shall not be used to transfer infectious waste between locations where it is contained.
Section 5. [Treatment and Disposal of Infectious Waste.]
(a) Treatment or disposal of infectious waste shall be by one of the following methods:
(1) By incineration in an infectious waste incineration facility approved and under permit pursuant to [insert appropriate citation] which provides complete combustion of the waste to carbonized or mineralized ash. Infectious waste so rendered noninfectious shall be disposable as nonhazardous waste provided it is not an otherwise hazardous waste.
(2) By discharge to sewageage system if the waste is liquid or semi-liquid except as specifically prohibited by the [commissioner of health].
(3) By sterilization by heating in a steam sterilizer, or by other decontamination technique approved by the [department].
(4) By other method approved in writing by the [commissioner of health].
(b) Infectious wastes consisting of recognizable human anatomical remains shall not be disposed of by burial at a landfill disposal facility, but shall be disposed of by incineration or interment.

Section 6. [Transfer of Infectious Waste to Off-Site Treatment and Disposal Facilities.]
(a) No person shall transport more than [100 kilograms] of infectious waste per month unless registered as an infectious waste hauler by the [department]. A person is exempt from the requirements for registration of such haulers of infectious waste in order to haul a quantity of not greater than [100 kilograms] of infectious waste during any one month.
(b) Infectious waste shall be transported to an off-site treatment or disposal facility in a leakproof, fully enclosed container or vehicle compartment.
(c) Infectious waste shall not be transported in the same vehicle with other waste unless the infectious waste is separately contained in rigid reusable containers or kept separate by barriers from other waste, or unless all of the waste is to be treated or disposed of as infectious waste in accordance with the requirements of this act.
(d) Infectious waste shall be delivered for treatment or disposal only to a facility to which delivery of such waste is authorized pursuant to this act.
(e) Persons manually loading or unloading containers of infectious waste on or from transport vehicles shall be provided by their employer with, and required to wear protective gloves. Other protective clothing may be required by the [department].
(f) Surfaces of transport vehicles that have contacted spilled or leaked infectious waste shall be decontaminated by procedures approved by the [commissioner].
(g) Vehicles transporting more than [100 kilograms] of infectious waste shall be identified on each side of the vehicle with the name or trademark of the hauler and with conspicuously displayed signs or decals with the word “infectious.”

Section 7. [Standards Applicable to Transporter of Infectious Waste.]
(a) The [commissioner] shall promulgate regulations establishing such
standards as shall be applicable to transporters of infectious waste iden-
tified or listed under this act, as may be necessary to protect human
health and the environment. Such standards shall include, but need not
be limited to, requirements respecting:
(1) Record keeping practices that accurately identify the infectious
wastes transported, their sources and delivery points;
(2) Transportation of all such infectious waste only to the facility or
facilities approved by the [department]; and
(3) Proof of ownership and inspection of vehicles used in transport-
ing infectious waste, proof of liability insurance or other form of finan-
cial security deemed sufficient by the [commissioner] to meet all respon-
sibilities in case of release of such waste causing damage as a condition
to the issuance of a permit to a transporter as required by this section.
(b) No person shall engage in the transportation of infectious wastes
without first complying with the requirements of standards promulgated
by the [commissioner] pursuant to subdivision (a) of this section and ob-
taining a permit issued by the [department]. The [commissioner] shall
assure that permits authorizing infectious waste transportation are not
held by unqualified or unsuitable persons pursuant to [insert ap-
propriate citation].

(1) The [commissioner] may, after consultation with the [commissi-
oner of health], exempt a person from permit requirements of this sec-
tion upon a showing by such person that compliance with such re-
quirements would create a hardship on his own business activities. The
[commissioner] shall promulgate guidelines for the purpose of determi-
ning the circumstances under which such exemption may be granted.
Such exemption shall be reviewed periodically as specified by the [com-
missioner] but at least once every [two] years. Any exemption granted
hereunder may be revoked after due notice and opportunity for hearing
for a violation of any provision of this act or other applicable laws, rules
or regulations relating to the transportation of regulated wastes or upon
a showing that the exempted person no longer meets the requisite
guidelines for exemption.

(2) A producer of infectious waste may obtain a permit pursuant to
this act to transport his own waste or, if he contracts with another per-
son, to remove, transport or dispose of regulated wastes. If a producer
obtains such a permit, a person engaged in the removal, transportation
or disposal of his waste shall not be required to obtain a permit pursuant
to this act for the transportation of such wastes.

(3) The [department] may make rules and regulations implementing
this section in order to carry out and enforce the intent and purposes
thereof. Such rules and regulations and [insert other provisions] and
rules and regulations adopted thereunder shall govern permit applica-
tions, permit conditions, renewals, modifications, suspensions and revo-
cations under this section. The responsibility for the issuance and review
of permits and the enforcement of the provisions of this section may be
delegated to regional, district or county offices of the [state department
of health], or to local health departments where their jurisdiction may
(4) Application filed pursuant to this section shall indicate the mechanical and other equipment, holding tanks and vehicles and any place of temporary storage used or to be used by the applicant and the place or places where and the manner in which the applicant will finally dispose of the infectious wastes, and such other information as the [department] deems necessary. If the [department] determines that the proposed method of transportation, the place or manner in which the waste product is to be treated, stored or disposed of or the method or location of temporary storage will be detrimental to the protection of public health or substantially damage or pollute the environment or natural resources of the state, it may deny the permit or may impose such permit conditions as may be necessary.

(5) As a condition for the permit or the exemption therefrom, the [department] shall require the transporter to make an annual report to the [department], indicating the number and type of producers served, the volume and nature of waste products disposed of, the place and manner in which such waste products were finally disposed, and such other information as the [department] may require.

(6) Such permit shall be renewed [annually]. The fees for such permit or renewal shall be those established by regulation promulgated pursuant to [insert appropriate provision]. A renewal may be denied by the [department] for failure of the applicant to properly report as provided in paragraph (5) of this subsection.

(7) The [department] may suspend or revoke any permit upon proof that the permittee has been found guilty of a violation of the provisions of this section as provided in [insert appropriate citation], or if the [department] determines that the permittee has violated the provisions of this section, the rules and regulations implementing it or the rules and regulations adopted to implement [insert appropriate provision].

(c) A transporter of infectious waste who has been granted a permit by the [department] for such activity shall notify the [department] within 30 days of the following occurrences:

(1) The transporter changes majority ownership, name or location.

(2) Ownership or control of a vehicle or container certified by the [department] is changed.

(3) A truck, trailer, semitrailer, vacuum tank, cargo tank, or container certified by the [department] is involved in any spill, or in an accident which renders or may have rendered the vehicle or container in noncompliance with the requirements of this section.

Section 8. [Requirements for Infectious Waste Treatment, Storage and Disposal Facility.]

(a) Any person who operates a facility for the treatment, storage or disposal of infectious waste shall have a valid and appropriate solid waste management facility permit issued by the [department]; except that a solid waste management facility permit shall not be required for operation of a facility that is operated by a health care facility licensed pursuant to the [state public health law] that is utilized to treat, store or
Suggested State Legislation

9 disposable of infectious waste of the health care facility or of other producers
10 of infectious waste, pursuant to written agreements with or among such
11 other producers that shall be filed with the [department of health].
12 (b) The operator of any facility used for the treatment, storage or
13 disposal of infectious waste not in a category specified in subsection (a)
14 of this section shall have and shall adhere to an operation plan for the
15 handling and disposal of infectious waste approved by the [department].
16 The operation plan shall include the following:
17 (1) A method of receiving wastes which ensures that infectious
18 wastes are handled separately from other wastes until treatment or
19 disposal is accomplished and which prevents unauthorized persons from
20 having access to or contact with the waste.
21 (2) A method of unloading and processing of infectious wastes which
22 limits the number of persons handling the wastes and minimizes the
23 possibility of exposure of employees and the public using or visiting the
24 facility to infectious waste.
25 (3) A method of decontaminating emptied reusable infectious waste
26 containers, transport vehicles or facility equipment which are known
27 or believed to be contaminated with infectious waste.
28 (4) The provision and required use of gloves and other protective
29 clothing as shall be required by the [department].
30 (5) The means of decontamination of any person having had bodily
31 contact with infectious waste while transporting the waste to the treat-
32 ment or disposal site or while handling or disposing of the waste at the
33 site.
34 (6) A quantification of the maximum amount of infectious waste to
35 be treated, stored or disposed of per month.
36 (c) A new or revised operation plan for treatment, storage or disposal
37 of infectious waste shall be prepared whenever there is an increase of
38 more than 25 percent in the maximum quantity of infectious waste
39 receiving treatment, storage or disposal per month by the facility or
40 when changes are otherwise made in an existing operation plan.
41 (d) Approval for acceptance of infectious waste at a treatment, storage
42 or disposal facility may be withdrawn by the [department] for non-
43 compliance with the operation plan.
44 (e) As a condition of approval for such permit, any person who operates
45 a facility for the treatment, storage and disposal of infectious waste shall
46 provide proof of liability insurance or other form of financial security
47 deemed sufficient by the [commissioner] to meet all responsibilities in
48 case of release of such waste causing damage.

Section 9. [Rules and Regulations.] The [commissioner] shall pro-
2 mulgate rules and regulations in conformity with the standards for
3 storage, containment, decontamination, transportation, treatment and
4 disposal of infectious waste, pursuant to the provisions of this act.

Section 10. [Penalties.]
(a) Any person who violates any of the provisions of, or who fails to per-
form any duty imposed by this act or any rule or regulation promulgated
pursuant thereto, or any term or condition of any certificate or permit
issued pursuant thereto, or any final determination or order of the [com-
mmissioner] made pursuant to this act shall be liable for a civil penalty
not to exceed [2,500] dollars for each such violation and an additional
penalty of not more than [1,000] dollars for each day during which such
violation continues, to be assessed by the [commissioner] after an oppor-
tunity to be heard pursuant to the provisions of [insert appropriate cita-
tion], or by the court in any action or proceeding pursuant to [insert ap-
propriate citation], and, in addition thereto, such person may by similar
process be enjoined from continuing such violation and any permit or
certificate issued to such person may be revoked or suspended or a pend-
ing renewal application denied.

(b) Any person who, having any of the culpable mental states defined
in [insert appropriate section of the state penal law], shall violate any
of the provisions of or who fails to perform any duty imposed by this act,
or any rules and regulations promulgated thereto, or any final deter-
mination or order of the [commissioner] made pursuant to this act shall
be guilty of a violation and, upon conviction thereof, shall be punished
by a fine of not less than [1,000] dollars nor more than [2,500] dollars
per day of violation.

Section 11. [Effective Date.] [Insert effective date.]

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Infectious Waste
Producers Regulation Act.

Section 2. [Purpose.] The legislature finds that the improper disposal
of biological and infectious wastes from hospital facilities can and does
pose a public health and environmental hazard, in addition, disposal of
such wastes at solid waste management facilities poses potential severe
hazards to sanitation workers. The legislature finds that current regula-
tion of the disposal of such wastes is inadequate to ensure compliance
by hospital facilities. In order to ensure the protection of persons who
reside nearby disposal facilities and that of the workers on-site, the
legislature finds it in the best interests of the state to establish a firm
regulatory framework to govern the disposal of hospital wastes.

Section 3. [Definitions.] As used in this act:

(1) "Infectious waste" means the following:
   (i) Surgical waste, which consists of materials discarded from surgical
       procedures involving the treatment of a patient on isolation, other than
       patients on reverse or protective isolation;
   (ii) Obstetrical waste, which consists of materials discarded from
obstetrical procedures involving the treatment of a patient on isolation;

(iii) Pathological waste, which consists of discarded human tissues
and anatomical parts which are discarded from surgery, obstetrical pro-
cedures, autopsies, and laboratory procedures;

(iv) Biological waste, which consists of discarded excretions, exudates,
secretions, suctionings, and disposable medical supplies which have
come in contact with these substances that cannot be discarded directly
into a sewer and that emanate from the treatment of a patient on isolation,
other than patients on reverse or protective isolation;

(v) Discarded materials soiled with blood emanating from the treatment
of a patient on isolation, other than patients on reverse or protective
isolation;

(vi) All waste being discarded from renal dialysis, including tubing
and needles;

(vii) Discarded serums and vaccines that have not been autoclaved
or returned to the manufacturer or point of origin;

(viii) Discarded laboratory waste which has come in contact with
pathogenic organisms and which has not been rendered noninfectious
by autoclaving or other sterilization techniques;

(ix) Animal carcasses exposed to pathogens in research, their bed-
ding and other waste from such animals that is discarded; and

(x) Other articles that are being discarded that are potentially in-
fec tious and that might cause punctures or cuts, including intravenous
tubing with needles attached, that have not been autoclaved or subjected
to a similar decontamination technique and crushed or otherwise ren-
dered incapable of causing punctures or cuts.

(2) “Storage” means the containment of infectious waste in such a man-
ner as not to constitute disposal of such waste.

(3) “Transport” means the movement of infectious waste from the point
of generation to any intermediate points and finally to the point of
ultimate storage or disposal.

(4) “Treatment” means any method, technique or process designed to
change the character or composition of any infectious waste so as to
either neutralize such waste or to render such waste not infectious, safer
for transport, amenable for recovery, amenable for storage or reduced
in volume.

(5) “Department” means the [department of environmental
conservation].

(6) “Commissioner” means the [commissioner of environmental
conservation].

Section 4. [Requirements for Producers of Infectious Waste.] All the
requirements of this act shall apply to hospitals as defined in [insert ap-
propriate citation] and to residential health care facilities as defined in
[insert appropriate citation] and clinical laboratories as defined in [in-
sert appropriate citation].

Section 5. [Storage and Containment of Infectious Waste.]
(a) Containment of infectious waste shall be in a manner and location
which affords protection from the environment and limits exposure to
the public.
(b) Infectious waste shall be separated from other waste as soon as prac-
ticable in the producing facility.
(c) Unless otherwise approved by the [department], infectious waste
shall be contained at the producing facility and at any other location
off the site of the producing facility only for such periods and under such
conditions pursuant to rules and regulations adopted in furtherance of
this act.
(d) Containment of infectious waste shall be separate from other
wastes. Containers used for the containment of infectious waste shall
be marked with prominent warning signs on the containers with the
word "infectious."
(e) Infectious waste, except for material defined in section 3(1)(X) of this
act, shall be contained in bags which are impervious to moisture and
have a strength sufficient to resist ripping, tearing or bursting under
normal conditions of usage and of handling. The bags shall be secured
so as to prevent leakage during storage, handling or transport. All bags
used for containment and disposal of infectious wastes shall be red in
color.
(f) Material defined in section 3(1)(x) of this act shall be contained for
disposal in leakproof, rigid puncture-resistant containers which are
secured to preclude loss of the contents. Such containers shall be red in
color or shall be conspicuously labeled with the word “infectious.”
(g) Before infectious waste is transported from the producing facility,
infectious waste contained in disposable containers shall be placed for
storage or handling in disposable or reusable pails, cartons, drums,
dumpsters or portable bins. The containment system shall be leakproof,
have tight-fitting covers and be kept clean and in good repair. The con-
tainers may be of any color and shall be conspicuously labeled with the
word “infectious.”
(h) Reusable containers for infectious waste shall be thoroughly
washed and decontaminated each time they are emptied unless the sur-
faces of the containers have been completely protected from contamina-
tion by disposable liners, bags or other devices removed with the waste.
(i) Reusable pails, drums, dumpsters or bins used for containment of
infectious waste shall not be used for containment of waste to be disposed
of as noninfectious waste or for other purposes except after being decon-
taminated.
(j) Trash chute(s) shall not be used to transfer infectious waste between
locations where it is contained.

Section 6. [Treatment and Disposal of Infectious Waste.]
(a) Treatment or disposal of infectious waste shall be by one of the
following methods:
(1) By incineration in an infectious waste incineration facility ap-
proved and under permit pursuant to [insert appropriate citation], which
provides complete combustion of the waste to carbonized or mineralized
ash. Infectious waste so rendered noninfectious shall be disposed as
nonhazardous waste provided it is not an otherwise hazardous waste.

(2) By discharge to sewerage system if the waste is liquid or semi-

(3) By sterilization by heating in a steam sterilizer, or by other decon-

tamination technique approved by the [department], so as to render the

waste noninfected. Infectious waste so rendered noninfected shall

be disposable as nonhazardous waste provided it is not an otherwise

hazardous waste.

(4) By other method approved by the [commissioner].

(b) Infectious wastes consisting of recognizable human anatomical re-

mains shall not be disposed of by burial at a landfill disposal facility,

but shall be disposed of by incineration or interment unless burial at

a landfill is specifically approved by the [department of environmental

conservation].

Section 7. [Transfer of Infectious Waste to Off-Site Treatment and
Disposal Facilities.]

(a) Any producer of more than [100] kilograms of infectious waste per

month shall transfer custody of the waste only to a hauler who is regis-
tered as an infectious waste hauler by the [department of environmen-
tal conservation].

(b) Infectious waste shall be transported to an off-site treatment or

disposal facility in a leakproof, fully enclosed container or vehicle com-
partment.

(c) Infectious waste shall not be transported in the same vehicle with

other waste unless the infectious waste is separately contained in rigid

reusable containers or kept separate by barriers from other waste, or

unless all of the waste is to be treated or disposed of as infectious waste

in accordance with the requirements of this act.

Section 8. [Rules and Regulations.] The [commissioner] shall pro-
mulgate rules and regulations in conformity with the standards for pro-
ducers of infectious waste, and the storage, containment, treatment and

disposal of infectious waste found in this act.

Section 9. [Penalties.]

(a) Notwithstanding any other provision of this act, any person who

violates any of the provisions of, or fails to perform any duty imposed

by this act or any rule or regulation promulgated pursuant thereto, or

any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the [commissioner] made

pursuant to this act shall be liable in the case of a first violation for a

civil penalty not to exceed [2,500] dollars and an additional penalty of

not more than [1,000] dollars for each day during which such violation

continues, to be assessed by the [commissioner] after an opportunity to

be heard pursuant to the provisions of this act or by the court in any ac-
tion or proceeding pursuant to this act. And, in addition thereto, such

person may by similar process be enjoined from continuing such viola-
tion and any permit or certificate issued to such person may be revoked
or suspended or a pending renewal application denied. In the case of a second and any further violation, the liability shall be for a civil penalty not to exceed [5,000] dollars for each such violation and an additional penalty not to exceed [2,500] dollars for each day during which such violation continues.

(b) No penalty assessed or imposed pursuant to the provisions of this act shall be paid from medicaid or medicare funds.

Section 10. [Statewide Infectious Waste Disposal and Treatment Plan.]
The [commissioner of health], in consultation with affected health care facilities and the [commissioner of environmental conservation] and subject to the approval of the [state hospital review and planning council], shall prepare and adopt by [insert date], a statewide infectious waste disposal and treatment plan, which shall include but shall not be limited to the following:

(1) An inventory of existing infectious waste disposal and treatment capacity, including those disposal and treatment facilities that satisfy the provisions, when fully effective, of this act and [insert citation for infectious waste storage, treatment and disposal act] and regulations promulgated thereunder;

(2) Specific recommendations for the development of sufficient infectious waste disposal and treatment facilities on a regional basis to ensure the safe and appropriate disposal of the infectious waste generated by the state's health care institutions; and

(3) Recommendations of other policies and procedures that will ensure sufficient and timely reimbursement to meet the operating and capital costs associated with such facilities and that will encourage the establishment of joint operation or utilization of such facilities where appropriate and cost-effective.

Notwithstanding the provision of any law to the contrary, any proposal by a health care facility to establish infectious waste facilities in accordance with the plan adopted by the [commissioner of health] shall have a presumption of need in any subsequent review by the [department of health], which shall act upon the proposal within [180] days of its submission.

Section 11. [Effective Date.] [Insert effective date.]
License Plate Impoundment for Repeat DWI Violations

This act, based on 1988 Minnesota legislation, provides for the mandatory impoundment of the license plates and vehicle registration of any vehicle owned or jointly owned by a driver charged with driving while intoxicated (DWI) for the third time within five years or a fourth or subsequent time within ten years. It also provides for the impoundment of plates and registration of any vehicle driven but not owned by the violator under those circumstances if the vehicle owner was a passenger at the time of the violation and knew or should have known of the revocation. The act allows for the issuance of special license plates for persons with limited licenses or in cases where other family members require the use of the motor vehicle.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the License Plate Impoundment for Repeat DWI Violations Act.

Section 2. [Definitions.] As used in this act:

1. "Commissioner" means the [state commissioner of public safety].
2. "Registrar" means the [state registrar of motor vehicles].
3. "Rental motor vehicle" means a passenger vehicle, truck, motorcycle or motorized bicycle that is:
   (i) involved in a violation under Section 3, leased in the name of the violator or leased jointly in the name of the violator and the violator's spouse; and
   (ii) one of a fleet of [two] or more vehicles rented for periods of [30] days or less.

Section 3. [Impoundment Order.]

(a) If a person's driver's license or driving privileges are revoked pursuant to a [third] violation of [insert appropriate citations for DWI-related statutes] within [five] years, or a [fourth] or subsequent violation of [insert appropriate citations for DWI-related statutes] within [10] years, the court shall issue an impoundment order requiring the surrender of the registration plates and registration certificate of any motor vehicle owned by, registered or leased in the name of the violator, including vehicles registered or leased jointly in the name of the violator and the violator's spouse and any vehicle involved in the violation if the vehicle owner was a passenger at the time of the violation and knew or should have known of the revocation. This requirement does not apply to rental motor vehicles.

(b) An impoundment order must be issued under this section when the driver appears in court on a criminal charge or civil driver's license
matter arising out of the incident resulting in the most recent license
revocation, whichever hearing occurs first. If no criminal charge or civil
license matter is initiated in court, the [attorney general] may request
an impoundment order under this section in [municipal or county court],
or the [district court] in the jurisdiction where the violation of [insert
appropriate citations for DWI-related statutes] occurred.
(c) In determining whether to issue an impoundment order, the court
may rely on the following:
(1) certified or uncertified copies of the violator's driving record;
(2) certified or uncertified copies of vehicle registration records; and
(3) other relevant documentation.

Section 4. [Surrender of Registration Plates.] If the court issues an im-
poundment order, the registration plates and certificates must be surre-
rrendered to the court either [three] days after the order is issued or on
the date specified by the court, whichever date is later. The court shall
forward surrendered registration certificates to the [registrar of motor
vehicles] within [seven] days after their surrender. The court may destroy
the surrendered registration plates. Except as provided in sections 5, 6
or 7, no new registration plates may be issued to the violator or owner
until the driver's license of the violator has been reissued or reinstated.
The court shall notify the [commissioner of public safety] within [10] days
after issuing an impoundment order.

Section 5. [Rescission of Impoundment Order.] If the driver's license
revocation that is the basis for an impoundment order is rescinded, the
[registrar of motor vehicles] shall issue new registration plates and a
registration certificate for the vehicle at no cost, when the [registrar]
receives an application that includes a copy of the order rescinding the
driver's license revocation.

Section 6. [Issuance of Special Registration Plates.]
(a) A violator or owner may apply to the [commissioner] for new
registration plates, which must bear a special series of numbers or let-
ters so as to be readily identified by traffic law enforcement officers. The
[commissioner] may authorize the issuance of special plates if a member
of the violator's household has a valid driver's license, the violator or
owner has a limited license issued under [insert appropriate citation],
or the owner is not the violator and the owner has a valid or limited
license or a member of the owner's household has a valid driver's license.
The [commissioner] may issue special plates on payment of a [25] dollar
fee for each vehicle for which special plates are requested. The [commiss-
sioner] may not authorize the issuance of special plates unless the court
that impounded the vehicle's plates gives written approval for the is-
suance of the special plates.
(b) Until the driver's license of the violator is reinstated or reissued,
the violator shall inform the [commissioner] that an impoundment order
is in effect when requesting any new registration plates.
Section 7. [Transfer of Motor Vehicle Title.]
(a) An owner may not sell a motor vehicle during the time its registration plates and registration certificate have been ordered surrendered or during the time its registration plates bear a special series number, unless the owner applies to the court that impounded the plates and certificate, for consent to transfer title to the motor vehicle. If the court is satisfied that the proposed sale is in good faith and for a valid consideration, that the owner will be deprived of the custody and control of the motor vehicle, and that the sale is not for the purpose of circumventing the provisions of this act, it may certify its consent to the [registrar of motor vehicles]. The [registrar] shall then transfer the registration certificate to the new owner upon proper application and issue new registration plates.
(b) After the registration plates and registration certificate have been ordered surrendered to the court under this act, if the title to the motor vehicle is transferred by the foreclosure of a chattel mortgage, the cancellation of a conditional sales contract, a sale upon execution or by decree or order of a court of competent jurisdiction, the court shall order the registration certificate surrendered to the new owner. The [registrar of motor vehicles] shall then transfer the registration certificate and issue new registration plates to the new owner.

Section 8. [No Effect on Motor Vehicle Taxation.] Nothing contained in this act is intended to change or modify any provision with respect to the taxation of motor vehicles or the time within which motor vehicle taxes must be paid.

Section 9. [Penalty.] A person who fails to surrender any registration plates or a registration certificate to the court upon demand under this act, who operates a motor vehicle on a street or highway at a time when a court has ordered the surrender of its registration plate and registration certificate, or who fails to comply with section 6(b), is guilty of a misdemeanor.

Section 10. [Administrative Review.]
(a) At any time during the period of revocation imposed under this act a person may request in writing a review of the order of revocation by the [commissioner of public safety]. Upon receiving a request, the [commissioner] or the [commissioner's] designee shall review the order, the evidence upon which the order was based, and any other material information brought to the attention of the [commissioner], and determine whether sufficient cause exists to sustain the order. Within 15 days of receiving the request the [commissioner] shall report in writing the results of the review. The review provided in this section is not subject to the contested case provisions of the [state administrative procedure act].
(b) The availability of administrative review for an order of revocation has no effect upon the availability of judicial review under this section.
Section 11. [Reinstatement of Driving Privileges.]
(a) Upon expiration of a period of revocation under [insert appropriate citations for DWI-related statutes], the [commissioner of public safety] shall notify the person of the terms upon which driving privileges can be reinstated, and new registration plates issued, which terms are:
(1) successful completion of a driving test and proof of compliance with any terms of alcohol treatment or counseling previously prescribed, if any; and
(2) any other requirements imposed by the [commissioner] and applicable to that particular case.
(b) The [commissioner] shall notify the owner of a motor vehicle subject to an impoundment order under this act as a result of the violation of the procedures for obtaining new registration plates, if the owner is not the violator. The [commissioner] shall also notify the person that if driving is resumed without reinstatement of driving privileges or without valid registration plates and registration certificate, the person will be subject to criminal penalties.

Section 12. [Compliance.] A person whose license has been revoked under [insert appropriate citations for DWI-related statutes] may not be issued another license at the end of the revocation period unless the person has complied with all applicable registration plate impoundment provisions of this act.

Section 13. [Effective Date.] [Insert effective date.]
Model Veterinary Drug Code

This model code from the Association of Food and Drug Officials (AFDO) is designed to regulate distributors of veterinary drugs conducting business with a given state; provide for the registration of such distributors by a system of permits; provide for the inspection of the establishments of such distributors; and require records on prescription veterinary drug distribution.

According to AFDO, the purpose of the model code is to address drug residues in food animal tissues which may cause allergic reactions in the consumer and drug resistant organisms in man and animals resulting from an indiscriminate use of drugs and antibiotics in food animals by some veterinary practitioners and lay persons.

The AFDO Laws and Regulations Committee had been involved in the development of the model code for three years. It was approved by the Association on June 24, 1987.

Chapter 1
General Provisions

Section 1. [Intent.] The [insert proper authority] hereby finds and declares it is in the interest of public health, safety and welfare that a uniform state code is needed to regulate distributors of veterinary drugs conducting business within the state of [insert state name]; to provide for registration of such distributors by a system of permits; to provide for the inspection of the establishments of such distributors; and to require records on prescription veterinary drug distribution.

The intent of this code is to assure proper distribution of veterinary drugs to prevent adulteration of the food supply with illegal drug residues through misuse of drugs on food producing animals, and to promote the health of treated animals.

Section 2. [Definitions.] For the purpose of this code:
(1) "Client" means the owner or caretaker of animal(s) who arranges for their veterinary care.
(2) "Veterinary drug retailer" means and includes every person, authorized by law, other than a veterinarian or a pharmacist, who delivers a veterinary drug to a client or a client's agent.
(3) "Distributor" means and includes "manufacturers," "wholesalers," "veterinarians," "pharmacists" and "veterinary drug retailers."
(4) "Enforcement agency" means [insert proper state and/or local authority] having responsibility for enforcing this code.
(5) "Extra-label use" means the actual or intended use of a human or veterinary drug in a food-producing animal in a manner that is not in accordance with the drug's labeling.
(6) "Manufacturer" means a person engaged in the production, preparation, propagation, compounding or processing of a drug or other substance or the packaging or repackaging of such substance, or the labeling or relabeling of the commercial container of such substance, but
does not include the activities of a veterinarian or pharmacist who, as
an incident to the administration or dispensing such substance in the
course of professional practice, prepares, compounds, packages or labels
such substance.
(7) "Patient" means any animal in which a prescription veterinary
drug is used or intended to be used.
(8) "Person" means any individual, or a firm, partnership, company,
corporation, trustee, association, agency or any other public or private
entity.
(9) "Pharmacist" means an individual with currently valid license
issued by the state of [insert state name] to practice pharmacy.
(10) "Prescription" means an order from a veterinarian to a pharmacist
authorizing the dispensing of a prescription veterinary drug to a client
for use on or in a patient.
(11) "Prescription veterinary drug" means a veterinary drug which,
because of toxicity or other potential for harmful effect, or the method
of its use, is not safe for animal use except under the supervision of a
veterinarian, and therefore is required by federal law to be labeled with
the statement: "Caution: federal law restricts this drug to use by or on
the order of a licensed veterinarian"; and those veterinary drugs, re-
quired by state law to be dispensed only upon order or prescription of
a licensed veterinarian.
(12) "Veterinarian" means an individual with a currently valid license
issued by the state of [insert state name] to practice veterinary medicine.
(13) "Veterinarian/client/patient relationship" means a relationship
where all of the following conditions have been met:
(i) The veterinarian has assumed the responsibility for making
medical judgments regarding the health of the animal(s) and the need
for medical treatment, and the client has agreed to follow the instruc-
tions of the veterinarian;
(ii) The veterinarian has sufficient knowledge of the animal(s) to in-
nitiate at least a general or preliminary (e.g., tentative) diagnosis of the
medical condition of the animal(s). This means that the veterinarian has
recently seen and is personally acquainted with the keeping and care
of the animal(s), and/or by medically appropriate and timely visits to the
premises where the animal(s) are kept;
(iii) The veterinarian is readily available for follow-up in case of
adverse reactions or failure of the regimen of therapy;
(iv) The veterinarian maintains records which document patient
visits, diagnosis, treatment and other relevant information.
(14) "Veterinary drug" means:
(i) Articles for animal use recognized in the official United States
Pharmacopoeia/National Formulary of the United States;
(ii) Articles intended for use in the diagnosis, cure, mitigation, treat-
ment or prevention of disease in animals;
(iii) Articles (other than feed or medicated feed) intended to affect
the structure or any function of the body of animals; and
(iv) Articles intended for use as a component of any article in clause
(i), (ii) or (iii) but does not include devices or their components, parts or
accessories.

(15) "Wholesaler" means a person who acts as a wholesale merchant, jobber or agent, who sells for resale, or negotiates for distribution (other than to the consumer or patient) of any veterinary drug.

**COMMENT:** A provision for "other order" may be necessary or desirable by some states. For those states that include "other order," the following definition will apply: "other order" means a direction from a veterinarian to a person other than a pharmacist authorizing the dispensing of a prescription veterinary drug to a client for use on or in a patient.

Section 3. **[Implementation.]** The [insert state enforcement agency] has the power to make reasonable rules and regulations to implement all chapters of this code.

### Chapter 2
**Issuance of Permits**

Section 1. **[General.]** Any person who is a distributor of veterinary drugs within the state of [insert state name] must possess a valid permit issued annually by the [insert state enforcement agency].

Section 2. **[Application for Permit.]** Any person desiring to be a distributor of veterinary drugs shall make written application for a permit on forms provided by the [insert state enforcement agency]. Such application shall include:

1. All names used by the applicant to do business.
2. The post office address of the applicant.
3. The name of the owner or operator of the business.
4. The street address of the business.
5. In the case of a partnership, the name and address of each and every partner.
6. In the case of a corporation, the name, title and address of each corporation officer or director.

Section 3. **[Permit Fees.]** The fee for the annual issuance of a permit shall be established by [insert state enforcement agency].

Section 4. **[Posting of Permit.]** A valid permit shall be prominently posted in each premise where veterinary drugs are distributed; and, where such distribution is allowed, in or on the vehicle of a mobile veterinary drug distributor.

Section 5. **[Implementation.]** Any veterinary drug distributor intending to operate in the state of [insert state name] after the effective date of this code shall be required to have a permit before commencing operations, except any distributor already operating on the effective date of this code shall apply for a permit within [insert number] days after adoption of the code. Pending receipt of a permit or denial of a permit under
Section 6 of this chapter such operations may continue.

Section 6. [Denial of Permit.] A permit may be denied for any of the following:
1. The applicant has failed to file a complete permit application or the application contains material false information.
2. The applicant is not qualified by [insert criteria established by the jurisdiction, e.g., education, experience].
3. The applicant has previously had a permit revoked.
4. The applicant has failed to pay the annual fee.
5. The applicant has previously been convicted of a violation of law connected with the practice of veterinary medicine or the distribution of drugs.

When a permit is denied, the [insert state enforcement agency] will cite the reasons for denial, and the applicant may request a hearing as provided by Section 2 of Chapter 7.

Chapter 3
Packaging, Prescriptions, Labels and Records

Section 1. [Packaging.] A veterinary drug retailer shall deliver veterinary drugs to a client or client’s agent only in the original manufacturer’s package.

Section 2. [Prescription.]
(a) A prescription is required for the dispensing of a prescription veterinary drug to any client, except that a prescription is not required for a veterinarian to dispense a prescription veterinary drug directly to his client. A prescription may be refilled in accord with the veterinarian’s instructions for up to three months. A prescription is not required for wholesale transactions between distributors, provided that the person ordering prescription veterinary drugs shall furnish a permit number, a pharmacy license number, or veterinarian license number, and this number shall be recorded on the sales invoice for the transaction.
(b) A veterinarian may issue a prescription in writing, by oral communication to the dispenser, by computer connection, or other means. When the prescription is not in writing, the dispenser shall reduce the veterinarian’s prescription to writing and include this record in the prescription files.
(c) The prescription must include: the name, address, and if written, the signature of the prescriber; the name and address of the patient/client; species for which prescribed; the name, strength and quantity of the drug; the date of issue; directions for use, withdrawal time, and cautionary statements.

Section 3. [Prescription Files.] Dispensers shall maintain on file all prescriptions filled, and shall assign and record on the prescription a consecutive prescription number. The original date of filling of the prescription, the date of any refilling of the prescription, and the initials
of the person(s) dispensing the drug shall be recorded on either the face
or the back of the prescription.

Section 4. [Label of Dispensed Veterinary Drugs.] Every veterinary
drug dispensed pursuant to a prescription shall bear a label containing
the name and address of the dispenser, prescription number, date of fill-
ing, name of the veterinarian, species of patient, name and strength of
drug, directions for use, withdrawal time, and cautionary statements,
if any, appropriate for such prescription. Labels of veterinary drugs
dispensed by a veterinarian shall comply with this section except for the
prescription number.

Section 5. [Records on Veterinary Drug Transactions.] Complete
records shall be maintained by distributors of receipt and distribution
of each veterinary drug. The records may be kept in the form of sales
invoices, shipping records, prescription files or of record or log established
solely to satisfy the requirements of this section. Records shall include
all of the following information:
(1) The name of the drug, including dosage form and strength.
(2) The name and address of the person from whom the drug was re-
ceived and the date and quantity received.
(3) The name and address of the person to whom the drug was
distributed and the date and quantity shipped or otherwise distributed.

Section 6. [Record Retention.] Records required by this chapter shall
be maintained for not less than two years after distribution of the drug
has been completed.

Chapter 4
Inspections and Samples

Section 1. [General.] For purposes of enforcement of this code authoriz-
ing representatives of the [insert state enforcement agency], upon present-
ing appropriate credentials to the owner, operator, or agent in charge,
are authorized:
(1) to enter, at reasonable times, any premises in which veterinary
drugs are held for distribution in the state of [insert state name];
(2) to inspect at reasonable times and within reasonable limits in a
reasonable manner, such premises and all pertinent records, equipment,
materials, containers, and facilities bearing on whether such veterinary
drugs are in compliance with this code; and
(3) to collect samples.
No inspection authorized by the preceding sentence shall extend to
financial information, sales information (other than shipment informa-
tion), pricing information, personnel information (other than informa-
tion as to qualifications of technical and professional personnel perform-
ing functions subject to this code). Each such inspection shall be com-
menced and completed with reasonable promptness.
Chapter 5
Extra-Label Use

Section 1. [General.] The extra-label use of any veterinary drug in or on a food producing animal by any person other than a veterinarian or a person working under the control of a veterinarian is a prohibited act. Extra-label use of such drugs by or on the order of a veterinarian is not prohibited provided all the following conditions are met:

1. A careful medical diagnosis is made by the veterinarian within the context of a valid veterinarian/client/patient relationship.
2. A determination is made by the veterinarian that there is no marketed drug specifically labeled to treat the condition diagnosed, or that drug therapy as recommended by the labeling has been found to be clinically ineffective in the animal(s) to be treated.
3. Procedures are instituted to assure that the identity of the treated animal is carefully maintained.
4. A significantly extended time period is assigned for drug withdrawal prior to marketing meat, milk or eggs; steps are taken to assure that the recommended withdrawal times are met; and no illegal residues occur as determined by [insert appropriate authority.]

Chapter 6
Prohibited Acts

Section 1. [General.] The following acts and the causing thereof are hereby prohibited:

1. The distribution within the state of [insert state name] of a veterinary drug without a valid permit.
2. The distribution of a prescription veterinary drug to, or its possession by, any person other than the following:
   i. A person holding a permit required by Section 1 of Chapter 2 of this code.
   ii. A veterinarian's client or his agent, provided that the drug is dispensed by or on the prescription of the veterinarian.
3. The failure to keep records on distribution and receipt of veterinary drugs as required by Chapter 3 of this code.
4. The use of a code or euphemism on record, required by Section 3 of Chapter 3 of this code, which causes the true nature of a veterinary drug to be concealed.
5. The refusal to permit entry or inspection and collection of samples as authorized by Chapter 4 of this code, or to produce for examination the records required to be kept by Chapter 3 of this code.
6. The extra-label use of a veterinary drug by any person except as provided by Chapter 5 of this code.
7. The removal or other unauthorized disposition of a drug while under detention as provided by Chapter 7 of this code.
8. The failure to have a valid permit posted as described in Section 4 of Chapter 2 of this code.
Chapter 7
Remedies

COMMENT: Most states and other jurisdictions have Administrative Procedure Acts or other statutes which would cover items in this chapter. The following is provided for information and guidance. The provisions in this chapter should comply with state and local requirements.

Suspension or Revocation of Permits

Section 1. [General.] Whenever the [insert state enforcement agency] has reason to believe that a permit holder is engaging or has engaged in a prohibited act, it may notify the permit holder in writing, specifying the violation in question and advising of its intent to suspend or revoke the permit. The permit holder may make written response within 15 days of such notification to request a hearing. If no written request for a hearing is filed within the 15 day period, the suspension or revocation of the permit becomes final.

Section 2. [Hearings.] After prior notice to the permit holder or to the applicant denied a permit, who requested a hearing, such hearing shall be conducted by the [insert state enforcement agency] at a time and place designated by it or as designated by the Administrative Procedure Act. Based on the recorded evidence of the hearing the [insert state enforcement agency] shall make a finding and shall proceed to either suspend or revoke the permit, withhold action, grant a permit or deny a permit.

Section 3. [Serving Notices.] The notice provided for in this chapter is properly served when it is delivered to the permit holder or to the applicant for a permit or when it is sent by registered or certified mail, return receipt requested, to the last known address of the permit holder or applicant for a permit. A copy of any such notice shall be filed in the records of the [insert state enforcement agency].

Detention

Section 1. [General.] Whenever an authorized representative of the [insert state enforcement agency] encounters a prescription veterinary drug in the possession of a person who is not authorized by Section 1 of Chapter 6 of this code, said representative may affix to such a drug a tag or other appropriate marking, warning all persons not to remove or dispose of such drug by sale or otherwise until permission is given for removal or disposal by the [insert state enforcement agency] or the court.

Section 2. [Seizure and Condemnation.] Any veterinary drug found in violation of this code shall be liable to be proceeded against and seized and condemned upon petition to the judge of the police, county or circuit court in whose jurisdiction the drug is found. Any drug condemned under this section shall, after entry of the decree, be disposed of by
destruction or sale as the court may direct and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the treasury of the state of [insert state name], but such article shall not be sold or disposed of contrary to the provisions of this code, provided, that after entry of the decree and upon the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such article shall not be sold or disposed of contrary to the provisions of this code, the court may by order direct that the drug be delivered to the owner thereof, to be destroyed or brought into compliance by obtaining a permit or delivery to a permit holder under the supervision of an authorized representative of the [insert state enforcement agency], and the expenses of such supervision shall be paid by the person obtaining release of the drug under bond.

Injunction Proceedings

Section 1. [General.] The appropriate courts of the state of [insert state name] shall have jurisdiction, for cause shown, to restrain violations of this code. In case of violation of an injunction or restraining order issued under this section, which also constitutes a violation of this code, trial shall be by the court or upon the demand of the accused by a jury.

Penalties

Section 1. [General.] Any person who violates a provision of Chapter 6 of this code shall be imprisoned for not more than [insert number] year(s) or fined not more than [insert amount], or both; provided that if any such person commits such a violation after a conviction under this section becomes final, such person shall be imprisoned for not more than [insert number] of year(s) or fined not more than [insert amount], or both.

Recall

Section 1. [General.] The [insert state enforcement agency] may require a permit holder to recall any veterinary drug that has been distributed within the state of [insert state name] in violation of this code.
Abandoned Housing Rehabilitation Act

This act, based on 1987 Illinois legislation, permits a not-for-profit organization in the state to petition for the temporary possession of certain abandoned residential property for use as rental property for moderate- and low-income persons and families. It provides for the contents of the petition, process and submission of rehabilitation plans and for compensation to the not-for-profit organization if the owner is restored to possession of the property.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This act may be cited as the Abandoned Housing Rehabilitation Act.

2 Section 2. [Definitions.] As used in this act:
3 (1) "Property" means any residential real estate for which taxes are delinquent for the preceding [two] years and which has been continuously unoccupied by persons legally in possession for the preceding [one] year.
4 (2) "Nuisance" means any property which because of its physical condition or use is a public nuisance, or any property which constitutes a blight on the surrounding area, or any property which is not fit for human habitation under the applicable fire, building and housing codes.
5 (3) "Organization" means any [insert state name] corporation agency, partnership, association, firm or other entity consisting of [two or more] persons organized and conducted on a not-for-profit basis with no personal profit inuring to anyone as a result of its operation which has among its purposes the improvement of housing.
6 (4) "Parties in interest" means any owner or owners of record, judgment creditor, tax purchaser or other party having any legal or equitable title or interest in the property.
7 (5) "Last known address" includes the address where the property is located or the address as listed in the tax records or as listed pursuant to any owner's registration ordinance duly adopted by a home rule unit of government.
8 (6) "Low or moderate income housing" means housing for persons and families with low or moderate incomes, provided that the income limits for such persons and families shall be the same as those established by rule by the [state housing development authority] in accordance with [insert appropriate section of state code].
9 (7) "Rehabilitation" means the process of improving the property, including but not limited to bringing property into compliance with applicable fire, housing and building codes.
Section 3. [Petition for Temporary Possession of Property.] An organization may petition for temporary possession of property if:

(1) the property has been tax delinquent for the proceeding [two] years and has been continuously unoccupied by persons legally in possession for the preceding year;

(2) the property is a nuisance;

(3) the organization intends to rehabilitate the property and use the property as housing for low and moderate income persons and families; and

(4) the organization has sent notice to the parties in interest of the property, by certified or registered mail, mailed to their last known address and posted on the property at least [30] days but not more than [60] days before the date the petition is filed, of the organization's intent to file a petition for possession under this act.

Section 4. [Filing Petition.] The proceeding shall be commenced by filing a verified petition in the [circuit court] in the county in which the property is located. The petition shall allege the conditions specified in Section 3. All parties in interest of the property shall be named as defendants in the petition and summons shall be issued and served as in other civil cases pursuant to [insert appropriate section of state civil procedure code].

Any defendant may file as part of his answer, as an affirmative defense, a plan for the rehabilitation of the property. The court shall grant that defendant [90] days to bring the property into compliance with applicable fire, housing and building codes. The court may, for good cause shown, extend the [90] day compliance period. If the property is brought into such compliance within the [90] day period or extension of time thereof, the petition shall be dismissed. If the defendant fails to bring the property into such compliance within the [90] day period or extension of time thereof, or if the defendant's plan is otherwise insufficient, the defendant's affirmative defense shall be stricken.

At the hearing on the organization's petition, the organization shall submit to the court a plan for the rehabilitation of the property and present evidence that the organization has adequate resources to rehabilitate and thereafter manage the property. For the purpose of developing such a plan, representatives of the organization may be permitted entry onto the property by the court at such times and on such terms as the court may deem appropriate.

Section 5. [Court Action.] If the court approves the petition, the court shall enter an order approving the rehabilitation plan and granting temporary possession of the property to the organization. The organization may, subject to court approval, enter into leases or other agreements in relation to the property.

Section 6. [Annual Report.] The organization shall file an annual report in relation to the rehabilitation and use of the property. The court shall require reports and status dates to be filed as it may deem
appreciate under the circumstances but no less frequently than [one]
year. The report shall include statements of all expenditures made by
the organization including but not limited to payments for the rehabili-
tation, operation and maintenance of and repairs to the property, and
for real estate taxes, and payments to mortgagees and lienholders dur-
ing the [preceding] year, and shall include statements of all income and
receipts from the property for the preceding year.

Section 7. [Restoration of Possession.] The owner shall be entitled to
regain possession of the property by petitioning to the [circuit court] for
restoration of possession and, upon due notice to the plaintiff organiza-
tion, for a hearing on such petition. At the hearing, the court shall deter-
mine proper compensation to the organization for its expenditures, in-
cluding management fees, based on the organization's reports to the
court. The court, in determining the proper compensation to the organi-
ization, may consider income or receipts received from the property by
the organization. After the owner pays the compensation to the organiza-
tion as determined by the court, the owner shall resume possession of
the property, subject to all existing rental agreements whether written
or verbal, entered into by the organization.

Section 8. [Redemption of Property.] If the property under this act is
sold for unpaid taxes, an organization with temporary possession may
redeem the property in the same manner as the owner as permitted by
the [insert appropriate citation for state code], and amounts paid to
redeem the property shall be included as expenditures in the organiza-
tion's report to the court.

Section 9. [Petition for Judicial Deed.] If an owner takes no action to
regain possession of the property in the [five] year period following en-
try of an order granting temporary possession of the property to the
organization, the organization may file a petition for judicial deed and
upon due notice to the named defendants, an order may be entered grant-
ing a quitclaim judicial deed to the organization providing that the prop-
erty shall be used for low and moderate income housing for at least a
[10] year period after the deed is granted.

Section 10. [Effective Date.] [Insert effective date.]
BIDCO Act

This act, based on a 1986 Michigan law, encourages the formation of Business and Industrial Development Corporations (BIDCOs) to help meet the financing assistance and management assistance needs of business firms in the state. It also provides for a system of licensing, regulation and enforcement to enable BIDCOs to satisfy eligibility requirements to participate in the program of small business administration pursuant to the federal Small Business Act.

Suggested Legislation

(Title, enacting clause, etc.)

Article 1
Short Title, Purposes and Definitions

Section 1. [Short Title.] This act may be cited as the [state] BIDCO Act.

Section 2. [Purposes.] The purposes of this act are to do all of the following:

(1) Promote economic development by encouraging the formation of business and industrial development corporations, a new type of private institution, to help meet the financing assistance and management assistance needs of business firms in this state.

(2) Provide for a system of licensing, regulation and enforcement that will enable business and industrial development corporations to satisfy eligibility requirements to participate, if they so choose, in the program of the small business administration pursuant to section 7(a) of the small business act, Public Law 85-536, 15 U.S.C. 636(a), and other programs for which they may be eligible.

(3) Provide for a system of licensing, regulation and enforcement designed to prevent fraud, conflict of interest and mismanagement, and to promote competent management, accurate record keeping, and appropriate communication with shareholders, in order to provide the following:

(i) Comfort to prospective shareholders so as to facilitate equity investments in business and industrial development corporations.

(ii) Comfort to prospective debt sources so as to facilitate the borrowing of money by business and industrial development corporations.

(4) Safeguard the general reputation of business and industrial development corporations as a type of institution in order to increase the confidence of prospective equity investors in and prospective debt sources for those institutions.

Section 3. [Definitions.] As used in this act, unless otherwise indicated:

(1) “Affiliate” means, if used with respect to a specified person other than a natural person, a person controlling or controlled by that specified
person, or a person controlled by a person who also controls the specified person.

(2) "BIDCO" means a business and industrial development corporation licensed under this act.

(3) "Business firm" means a person that transacts business on a regular and continual basis, or a person that proposes to transact business on a regular and continual basis.

(4) "Commissioner" means the [commissioner] of the [financial institutions bureau of the department of commerce].

(5) "Control" means, if used with respect to a specified person, the power to direct or cause the direction of, directly or indirectly through [one] or more intermediaries, the management and policies of that specified person, whether through the ownership of voting securities; by contract, other than a commercial contract for goods or management services; or otherwise. A natural person shall not be considered to control a person solely on account of being a director, officer or employee of that person. A person who, directly or indirectly, owns of record or beneficially holds with power to vote, or holds proxies with discretionary authority to vote, [20] percent or more of the then outstanding voting securities issued by a corporation shall be rebuttably presumed to control that corporation.

(6) "Controlling person" means, if used with respect to a specified person, a person who controls that specified person, directly or indirectly through [one] or more intermediaries.

(7) "Corporate name" means the name of a corporation as set forth in the articles of incorporation of that corporation.

(8) "Incorporating statute" means the act under which a licensee is incorporated, [insert citations for business and nonprofit corporation codes].

(9) "Insolvent" means a licensee that ceases to pay its debts in the ordinary course of business, that cannot pay its debts as they become due, or whose liabilities exceed its assets.

(10) "Interests of the licensee" includes the interests of shareholders of the licensee.

(11) "License" means a license issued under this act authorizing a [state] corporation to transact business as a BIDCO.

(12) "Licensee" means a [state] corporation which is licensed under this act.

(13) "[State] corporation" means a corporation incorporated under the [insert citation for business corporation code].

(14) "[State] nonprofit corporation" means a corporation incorporated under the [insert citation for nonprofit corporation code].

(15) "Officer" means:

(i) If used with respect to a corporation, a person appointed or designated as an officer of that corporation by or pursuant to applicable law or the articles of incorporation or bylaws of that corporation, or a person who performs with respect to that corporation functions usually performed by an officer of a corporation.

(ii) If used with respect to a specified person other than a natural
person or a corporation, a person who performs with respect to that
specified person functions usually performed by an officer of a corpora-
tion with respect to that corporation.

(16) "Order" means an approval, consent, authorization, exemption,
denial, prohibition or requirement applicable to a specific case issued
by the [commissioner]. Order includes a condition of a license and an
agreement made by a person with the [commissioner] under this act.

(17) "Person" means an individual, proprietorship, joint venture, part-
nership, trust, business trust, syndicate, association, joint stock company,
corporation, cooperative, government, agency of government or any other
organization. If used with respect to acquiring control of or controlling
a specified person, person includes a combination of [two] or more per-
sons acting in concert.

(18) "Principal shareholder" means a person that owns, directly or in-
directly, of record or beneficially, securities representing [10] percent or
more of the outstanding voting securities of a corporation.

(19) "Subject person" means a controlling person, subsidiary or af-
fliate of a licensee; a director, officer or employee of a licensee or of a
controlling person, subsidiary, or affiliate of a licensee; or any other per-
son who participates in the conduct of the business of a licensee.

(20) "Subsidiary" means, if used with respect to a licensee, a company
or business firm which the licensee holds control of as permitted by Ar-
ticle 5, section 4(a)(2),(3) or (4).

(21) "This act" includes an order issued or rule promulgated under this
act.

Article 2
Regulation, Reporting and Examination

Section 1. [Commissioner to Administer Provisions.]
(a) The [commissioner] shall administer this act. The [commissioner]
may issue orders and promulgate rules that, in the opinion of the [com-
missioner], are necessary to execute, enforce and effectuate the purposes
of this act. Any rules promulgated shall be promulgated in accordance
with the [state administrative procedures act].
(b) Whenever the [commissioner] issues an order or license under this
act, the [commissioner] may impose conditions that are necessary, in the
opinion of the [commissioner], to carry out this act and the purposes of
this act.
(c) The [commissioner] may honor applications from interested persons
for declaratory rulings regarding any provision of this act.
(d) Every final order, decision, license or other official act of the [com-
missioner] under this act is subject to judicial review in accordance with
law.
(e) An application filed with the [commissioner] under this act shall
be in such a form and contain such information as the [commissioner]
may require.

Section 2. [Investigations.]
(a) The [commissioner] may make public or private investigations within or outside this state that the [commissioner] considers necessary to determine whether to approve an application filed with the [commissioner] under this act, or to aid in issuing an order or promulgating a rule under this act.
(b) For purposes of an investigation, examination or other proceeding under this act, the [commissioner] may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records which the [commissioner] considers relevant or material to the proceeding.
(c) If a person fails to comply with a subpoena issued by the [commissioner] or to testify with respect to a matter concerning which the person may be lawfully questioned, the [insert appropriate court of jurisdiction] on application of the [commissioner], may issue an order requiring the attendance of the person and the giving of testimony or production of evidence.

Section 3. [Service of Process.] Service of process authorized to be made by the [commissioner] in connection with a noncriminal proceeding under this act may be made by registered or certified mail.

Section 4. [Fees.]
(a) A fee shall be paid to, and collected by, the [commissioner], as follows:
   (1) The fee for filing an application for a license is [insert amount].
   (2) The fee for filing an application for approval to acquire control of a licensee is [insert amount].
   (3) The fee for filing an application for approval for a licensee to merge with another corporation, an application for approval for a licensee to purchase all or substantially all of the business of another person or an application for approval for a licensee to sell all or substantially all of its business or of the business of any of its offices to another licensee is [insert amount]. If [two] or more applications relating to the same merger, purchase or sale are filed, the fee for filing each application shall be the quotient determined by dividing [insert amount] by the number of the applications.
   (4) The annual fee for a licensee is [insert amount], payable at a time prescribed by the [commissioner].
   (5) Whenever the [commissioner] examines a licensee or a subsidiary of a licensee, within [10] days after receiving a statement from the [commissioner], the licensee shall pay a fee established by the [commissioner] based on the number of examiner hours used for the examination, plus travel expenses. Examiner time shall be billed at a rate not less than [insert amount] per hour and not more than [insert amount] per hour.
   (b) A fee for filing an application with the [commissioner] is nonrefundable and shall be paid at the time the application is filed with the [commissioner].
   (c) A fee collected under this section shall be paid into the state
treasury to the credit of the [financial institutions bureau of the department of commerce], and money in this account shall be used only for the operation of the [financial institutions bureau].

Section 5. [Licensee — Books, Accounts, Other Records.]
(a) A licensee shall make and keep books, accounts and other records in such a form and manner as the [commissioner] may require. These records shall be kept at such a place and shall be preserved for such a length of time as the [commissioner] may specify.
(b) The [commissioner] may require by order that a licensee write down any asset on its books and records to a valuation which represents its then value.
(c) Not more than [90] days after the close of each calendar year or a longer period if specified by the [commissioner], a licensee shall file with the [commissioner] an audit report containing all of the following:
   (1) Financial statements, including balance sheet, statement of income or loss, statement of changes in capital accounts and statement of changes in financial position or, for a licensee that is a [state] nonprofit corporation, comparable financial statements for, or as of the end of, the calendar year, prepared with an audit by an independent certified public accountant or an independent public accountant in accordance with generally accepted accounting principles.
   (2) A report, certificate or opinion of the independent certified public accountant or independent public accountant who performs the audit, stating that the financial statements were prepared in accordance with generally accepted accounting principles.
   (3) Other information that the [commissioner] may require.
(d) If a person other than a licensee makes or keeps the books, accounts or other records of that licensee, this act applies to that person with respect to the performance of those services and with respect to those books, accounts and other records to the same extent as if that person were the licensee.
(e) If a person other than an affiliate or subsidiary of a licensee makes or keeps any of the books, accounts or other records of that affiliate or subsidiary, this act applies to that person with respect to those books, accounts, and other records to the same extent as if that person were the affiliate or subsidiary.
(f) If the [commissioner] considers it expedient, the [commissioner] may require any particular licensee to obtain the approval of the [commissioner] before permitting another person to make or keep any of the books, accounts or other records of the licensee.
(g) Each licensee, each affiliate of a licensee, and each subsidiary of a licensee shall file with the [commissioner] such reports as and when the [commissioner] may require. A report under this section shall be in such a form and shall contain such information as the [commissioner] may require.

Section 6. [Annual Report.] The [commissioner] shall publish annually and provide to the [insert appropriate legislative committees] on the
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3 impact of this act in promoting economic development in this state. At
4 the minimum, the information shall include aggregate statistics on each
5 of the following:
6 (1) The number and dollar amount of provisions of financing assistance
7 made by licensees to business firms.
8 (2) The number and dollar amount of provisions of financing assistance
9 made by licensees to business firms classified in broad categories of in-
10 dustry such as divisions of the standard industrial classification manual.
11 (3) The number and dollar amount of provisions of financing assistance
12 made by licensees to minority-owned business firms and to woman-
13 owned business firms.
14 (4) Estimates of the number of jobs created or retained.

1 Section 7. [Examination of Licensee.]
2 (a) The [commissioner] shall examine each licensee not less than once
3 each calendar year.
4 (b) The [commissioner] may at any time examine a licensee or sub-
5 sidiary of a licensee.
6 (c) A director, officer or employee of a licensee or of a subsidiary of a
7 licensee being examined by the [commissioner], or a person having
8 custody of any of the books, accounts or records of the licensee or of the
9 subsidiary, shall exhibit to the [commissioner], on request, any of the
10 books, accounts and other records of the licensee or of the subsidiary and
11 shall otherwise facilitate the examination so far as it is in their power
12 to do so.
13 (d) If in the [commissioner's] opinion it is necessary in the examina-
14 tion of a licensee or of a subsidiary of a licensee, the [commissioner] may
15 retain a certified public accountant, attorney, appraiser or other person
16 to assist the [commissioner]. Within [10] days after receipt of a statement
17 from the [commissioner], the licensee being examined shall pay the fees
18 of a person retained by the [commissioner] under this subsection.

Article 3
Licensing

1 Section 1. A [state] corporation may apply to the [commissioner] for
2 licensure as a BIDCO. A person other than a [state] corporation shall
3 not apply for a license.

1 Section 2. [Approval of Applicant.]
2 (a) After a review of information regarding the directors, officers and
3 controlling persons of the applicant, a review of the applicant's business
4 plan, including at least [three] years of detailed financial projections and
5 other relevant information and a review of additional information con-
6 sidered relevant by the [commissioner], the [commissioner] shall approve
7 an application for a license if, and only if, the [commissioner] determines
8 all of the following:
9 (1) The applicant has a net worth or firm financing commitments
10 which demonstrate that the applicant will have a net worth when the
applicant begins transacting business as a BIDCO, in liquid form
available to provide financing assistance, that is adequate for the ap-
plicant to transact business as a BIDCO as determined under subsec-
tion (b).

(2) Each director, officer and controlling person of the applicant is
of good character and sound financial standing; each director and officer
of the applicant is competent to perform his or her functions with respect
to the applicant; and the directors and officers of the applicant are col-
lectively adequate to manage the business of the applicant as a BIDCO.

(3) It is reasonable to believe that the applicant, if licensed, will com-
ply with this act.

(4) The applicant has reasonable promise of being a viable, ongoing
BIDCO and of satisfying the basic objectives of its business plan.

(b) In determining if the applicant has a net worth or firm financing
commitments adequate to transact business as a BIDCO, the [commiss-
ioner] shall consider the types and variety of financing assistance that
the applicant plans to provide; the experience that the directors, officers
and controlling persons of the applicant have in providing financing and
managerial assistance to business firms; the financial projections and
other relevant information from the applicant's business plan; and
whether the applicant intends to operate as a profit or nonprofit corpora-
tion. Except as otherwise provided in this act, the [commissioner] shall
require a minimum net worth of not less than [one million] dollars and
not more than [ten million] dollars. The [commissioner] may require a
minimum net worth of less than [one million] dollars, but not less than
[500,000] dollars, if in the context of the applicant's business plan, the
initial capitalization amount is adequate for the applicant to transact
business as a BIDCO because of special circumstances including, but
not limited to, funded overhead, low overhead or specialized opportuni-
ties.

(c) For the purposes of subsection (a), the [commissioner] may find any
of the following:

(1) That a director, officer or controlling person of an applicant is not
of good character if the director, officer, or controlling person, or a director
or officer of a controlling person, has been convicted of or has pleaded
nolo contendere to a crime involving fraud or dishonesty.

(2) That it is not reasonable to believe that an applicant, if licensed,
will comply with this act, if the applicant has been convicted of or has
pleaded nolo contendere to a crime involving fraud or dishonesty.

(d) For purposes of subsection (a), subsection (c) shall not be considered
to be the only grounds upon which the [commissioner] may find that a
director, officer or controlling person of an applicant is not of good
character or that it is not reasonable to believe that an applicant, if
licensed, will comply with this act.

Section 3. [Preliminary Approval of Applicants.]

(a) A person may apply to the [commissioner] for preliminary approval
of an application for a license. Notwithstanding that commitments to
invest in the equity of the applicant have not been obtained and that
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all directors and officers of the applicant have not been identified, the
[commissioner] may grant preliminary approval. In issuing an order
granting preliminary approval, the [commissioner] shall indicate that
for the [commissioner] to determine that the requirements of Article 3,
Section 2 are satisfied, final approval is conditioned on review by the
[commissioner] of the applicant's completion of fund-raising, including
the controlling persons and review by the [commissioner] of the comple-
tion of the roster of directors and officers. If an application for prelimi-
ary approval has been granted, before granting final approval of the
application for a license, the [commissioner] may request an updated
balance sheet and such other information considered relevant by the
[commissioner].

(b) If a person files an application under this section, the fee required
by Article 2, Section 4, is payable at the time the application is filed with
the [commissioner].

Section 4. (a) If the [commissioner] denies an application under sec-
tions 1 to 3 of this article, the [commissioner] shall provide the applicant
with a written statement explaining the basis for the denial.
(b) If the application for a license is approved and all conditions prece-
dent to the issuance of that license are fulfilled, the [commissioner] shall
issue a license to the applicant. A licensee shall post the license in a con-
spicuous place in the licensee's principal office. A license is not trans-
ferable or assignable.

Section 5. [Use of the Term BIDCO.]
(a) Except as otherwise provided in subsection (b), a person transact-
ing business in this state, other than a licensee, shall not use a name
or title which indicates that the person is a business and industrial
development corporation including, but not limited to, use of the term
"BIDCO," and shall not otherwise represent that the person is a business
and industrial development corporation or a licensee.
(b) Before being issued a license under this act, a [state] corporation
that proposes to apply for a license or that applies for a license may per-
form, under a name that indicates that the corporation is a business and
industrial development corporation, the acts necessary to apply for and
obtain a license and to otherwise prepare to commence transacting
business as a licensee. Such a corporation shall not represent that it is
a licensee until after the license has been obtained.

Section 6. A licensee shall not misrepresent the meaning or effect of
its license.

Section 7. (a) A [state] corporation that is licensed under another law
of this state or under any law of the United States may apply for and
be issued a license under this act unless the transaction of business by
that corporation as a licensee under another law of this state or a law
of the United States violates this act or is contrary to the purposes of
this act.

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(b) A [state] corporation that is licensed under this act may apply for
and be issued a license under another law of this state or a law of the
United States unless the transaction of business by that corporation as
a licensee under another law of this state or a law of the United States
would violate this act or would be contrary to the purposes of this act.

Section 8. [Surrender of License.]
(a) Upon approval of a [two-thirds] vote of its board of directors and after
complying with subsection (b), a licensee may apply to the [commissioner] to have the [commissioner] accept the surrender of the licensee's license. If the [commissioner] determines that the requirements of this section have been satisfied, the [commissioner] shall approve the application unless in the opinion of the [commissioner] the purpose of the application is to evade a current or prospective action by the [commissioner] under Article 7.
(b) Not less than [60] days before filing an application with the [commissioner] under subsection (a), a licensee shall notify all of its shareholders and all of its creditors of its intention to file the application. Each creditor shall be notified of the right to comment to the [commissioner]. Each shareholder shall be notified of the right to file with the licensee an objection to the proposed surrender of the license within the [60]-day period and shall be advised that, if the shareholder files an objection, the shareholder should send a copy of the objection to the [commissioner]. If shareholders representing [20] percent of the outstanding voting securities of the licensee file an objection, the licensee shall not proceed with the application under subsection (a) unless the application is approved by a vote of shareholders representing [two-thirds] of the outstanding voting securities of the licensee.

Article 4
Corporate Matters

Section 1. [Corporate Name.] The corporate name of each licensee shall include the word "BIDCO." A licensee shall not transact business under a name other than its corporate name.

Section 2. [Board of Directors.]
(a) The board of directors of each licensee shall consist of not less than [seven] directors.
(b) The board of directors of each licensee shall hold a meeting not less than once each [calendar quarter].
(c) Within [30] days after the death, resignation or removal of a director or officer; the election of a director; or the appointment of an officer, the licensee shall notify the [commissioner] in writing of the event and shall provide any additional information which the [commissioner] may require.

Section 3. [Dividend Policies.]
(a) A licensee shall not pay, or obligate itself to pay, a cash dividend
or dividend in kind to its shareholders, unless that payment is consistent with a dividend policy which has been adopted by the licensee and approved by the [commissioner]. In reviewing dividend policies under this section, the [commissioner] shall be flexible in recognizing the special characteristics of BIDCOs and the diverse range of potentially appropriate dividend policies for BIDCOs, while at the same time protecting against unsafe or unsound acts which could threaten the viability of the licensee as an ongoing BIDCO. The [commissioner] may at any time withdraw any previous approval of a dividend policy if the [commissioner] determines that the withdrawal is necessary to prevent unsafe or unsound acts.

(b) Without the prior approval of the [commissioner], a licensee shall not buy back, or obligate itself to buy back a share of stock from a shareholder.

**Article 5**

**Transaction of Business**

1. **Section 1. [Licensee's Office.]**
   1. (a) A licensee shall maintain not less than [one] office in this state.
   2. (b) A licensee shall not maintain an office at any place outside this state.
   3. (c) Each office of a licensee shall be located in a place which is reasonably accessible to the public.
   4. (d) A licensee shall post in a conspicuous place at each of its offices a sign which bears the corporate name of the licensee.
   5. (e) A licensee shall maintain at each of its offices personnel who are competent to conduct the business of the licensee.
   6. (f) Upon written notice to the [commissioner], a licensee may establish, relocate or close an office.

2. **Section 2. [Powers of Licensee.]**
   1. (a) The business of a licensee shall be the business of providing financing assistance and management assistance to business firms. A licensee shall not engage in a business other than the business of providing financing assistance and management assistance to business firms.
   2. (b) In addition to the powers and privileges provided to a licensee by this act, a licensee has all powers and privileges conferred by its incorporating statute which are not inconsistent with or limited by this act. The powers of a licensee include, but are not limited to, all of the following:
      1. (1) To borrow money and otherwise incur indebtedness for its purposes, including issuance of corporate bonds, debentures, notes or other evidence of indebtedness. A licensee's indebtedness may be secured or unsecured and may involve equity features including, but not limited to, provisions for conversion to stock and warrants to purchase stock.
      2. (2) To make contracts.
      3. (3) To incur and pay necessary and incidental operating expenses.
      4. (4) To purchase, receive, hold, lease or otherwise acquire, or to sell,
convey, mortgage, lease, pledge or otherwise dispose of, real or personal property, together with rights and privileges that are incidental and appurtenant to these transactions of real or personal property, if the real or personal property is for the licensee's use in operating its business or if the real or personal property is acquired by the licensee from time to time in satisfaction of debts or enforcement of obligations.

(5) To make donations for charitable, educational, research or similar purposes.

(6) To implement a reasonable and prudent policy for conserving and investing its money before the money is used to provide financing assistance to business firms or to pay the expenses of the licensee.

Section 3. [Financing Assistance.]

(a) A licensee may determine the form and the terms and conditions for financing assistance provided by that licensee to a business firm including, but not limited to, forms such as loans; purchase of debt instruments; straight equity investments such as purchase of common stock or preferred stock; debt with equity features such as warrants to purchase stock, convertible debentures or receipt of a percent of net income or sales; royalty based financing; guaranteeing of debt; or leasing of property. A licensee may purchase securities of a business firm either directly or indirectly through an underwriter. A licensee may participate in the program of the small business administration pursuant to section 7(a) of the small business act, Public Law 85-536, 15 U.S.C. 636(a), or any other government program for which the licensee is eligible and which has as its function the provision or facilitation of financing assistance or management assistance to business firms. If a licensee participates in a program referred to in this subsection, the licensee shall comply with the requirements of that program.

(b) Management assistance provided by a licensee to a business firm may encompass both management or technical advice and management or technical services.

(c) Financing assistance or management assistance provided by a licensee to a business firm shall be for the business purposes of that business firm.

(d) A licensee may exercise the incidental powers that are necessary or convenient to carry on the business of, or are reasonably related to the business of, providing financing assistance and management assistance to business firms.

(e) Except as provided in subsection (f), in connection with an extension of credit by a person to a licensee or an extension of credit by a licensee to a business entity as defined in [insert appropriate citation], the parties may agree to any rate of interest, including a rate in excess of the rate set forth in [insert appropriate citation].

(f) In connection with an extension of credit described in subsection (e), a person shall not knowingly charge, take or receive money or other property as interest on the loan at a rate exceeding [25] percent simple interest per annum. A person who violates this subsection is guilty of a felony punishable by imprisonment for not more than [five] years or
Section 4. [Licensee Holding Control.]

(a) Either by itself or in concert with a director, officer, principal shareholder or affiliate; another licensee; or a director, officer, principal shareholder or affiliate of another licensee, a licensee shall not hold control of a business firm, except as follows:

(1) If and to the extent necessary to protect the licensee's interest as creditor of, or investor in, the business firm, a licensee that has provided financing assistance to a business firm may acquire and hold control of that business firm. Unless the [commissioner] approves a longer period, a licensee holding control of a business firm under this subsection shall divest itself of the interest which constitutes holding control as soon as practicable or within [three] years after acquiring that interest, whichever is sooner.

(2) With the approval of the [commissioner], a licensee may acquire and hold control of a corporation which has offices located only in this state and which is licensed as a small business investment company under the small business investment act of 1958, Public Law 85-699, 72 Stat. 689.

(3) With the approval of the [commissioner], a licensee may acquire and hold control of a company located in this state which is a local development company in accordance with the small business investment act of 1958, whether or not such a development company is or may become certified by the small business administration under section 503 of the small business investment act of 1958, 15 U.S.C. 697.

(4) With the approval of the [commissioner], a licensee may acquire and hold control of another business firm with offices only in this state which is engaged in no business other than the business of providing financing assistance and management assistance to business firms.

(5) With the approval of the [commissioner], a licensee may acquire and hold control of a business firm not referred to in paragraphs (1) to (4). The [commissioner] shall not approve an application under this subsection unless the [commissioner] determines that such an approval will not cause the amount of the licensee's investments in business firms covered by this subsection to exceed [15] percent of the amount of the assets of the licensee and that in the [commissioner's] judgment such an approval will promote the purposes of this act. An approval by the [commissioner] under this subsection shall be for a period of not more than [three] years, except that in a particular case the [commissioner] may subsequently extend the period beyond [three] years if the [commissioner] determines that a longer period is needed and is consistent with the purposes of this act.

(b) If the [commissioner] fails to issue an order approving or denying
an application under subsection (a)(2) or (3), within [45] days from receipt
by the [commissioner] of an application which complies with Article 2,
Section 1(e), the application shall be considered approved by the [com-
missioner].
(c) For the purposes of subsection (a), “hold control” means ownership,
directly or indirectly, of record or beneficially, of voting securities greater
than:
(1) For a business firm with outstanding voting securities held by
fewer than [50] shareholders, [40] percent of the outstanding voting
securities.
(2) For a business firm with outstanding voting securities held by
[50] or more shareholders, [25] percent of the outstanding voting
securities.
(d) If a licensee anticipates acquiring and holding control of a business
firm under subsection (a)(1), the licensee shall file with the [com-
missioner] a plan for acquiring and holding control of the business firm that
shall include at least all of the following:
(1) The reasons it is necessary for the licensee to acquire and hold
control of the business firm.
(2) The percentage of outstanding voting securities of the business
firm the licensee plans to own.
(3) The licensee’s proposed course of action upon obtaining control
of the business firm.
(4) The length of time the licensee anticipates it will be necessary
to hold control of the business firm.
(e) The [commissioner] may require the licensee to demonstrate the
necessity for the licensee to hold control of a business firm under subsection
(a)(1).

Section 5. [Transacting Business in a Safe and Sound Manner.]
(a) A licensee shall transact its business in a safe and sound manner
and shall maintain itself in a safe and sound condition.
(b) In determining whether a licensee is transacting business in a safe
and sound manner or has committed an unsafe or unsound act, the [com-
missioner] shall not consider the risk of a provision of financing assis-
tance to a business firm, unless the [commissioner] determines that the
risk is so great compared with the realistically expected return as to
demonstrate gross mismanagement.
(c) Subsection (b) does not limit the authority of the [commissioner] to
do any of the following:
(1) Determine that a licensee’s financing assistance to a single
business firm or group of affiliated business firms is in violation of
subsection (a) or constitutes an unsafe or unsound act, if the amount of
that financing assistance is unduly large in relation to the total assets
or the total shareholders equity of the licensee.
(2) Require that a licensee maintain a reserve in the amount of ant-
icipated losses.
(3) Require that a licensee have in effect a written financing
assistance policy, approved by its board of directors, including credit
evaluation and other matters. The [commissioner] shall not require that
a licensee adopt a financing assistance policy that contains standards
which prevent the licensee from exercising needed flexibility in evaluat-
ing and structuring financing assistance to business firms on a deal by
deal basis.

Section 6. [Conflict of Interest.]
(a) For purposes of this section:
(1) "Associate" means that term as defined as in Article 8.
(2) "Relative" means parent, child, sibling, spouse, father-in-law,
mother-in-law, son-in-law, brother-in-law, daughter-in-law, sister-in-law,
grandparent, grandchild, nephew, niece, uncle or aunt.
(b) If a licensee provides financing assistance to a business firm or
engages in another business transaction, and if that financing assistance
or transaction involves a potential conflict of interest, the terms and con-
ditions under which the licensee provides the financing assistance or
engages in the transaction shall not be less favorable to the licensee than
the terms and conditions that would be required by the licensee in the
ordinary course of business if the transaction did not involve a poten-
tial conflict of interest. Each person who participates in the decision
of the licensee relating to a transaction described in this section and has
knowledge of a potential conflict of interest involving that transaction
shall take care that the potential conflict of interest is disclosed in the
financing documents of the transaction or, for a business transaction not
involving financing assistance, in another appropriate document.
(c) For the purposes of subsection (b), transactions engaged in by a
licensee which involve a potential conflict of interest include, but are
not limited to, the following:
(1) Providing financing assistance to a principal shareholder of the
licensee, to a person controlled by a principal shareholder of the licensee,
or to a director, officer, partner, relative, controlling person or affiliate
of a principal shareholder of the licensee.
(2) Providing financing assistance to a business firm to which a prin-
cipal shareholder of the licensee; a director, officer, partner, relative, con-
trolling person or affiliate of a principal shareholder of a licensee; or a
person controlled by a principal shareholder of the licensee provides or
plans to provide contemporaneous financing assistance.
(3) Providing financing assistance to a business firm which has or
is expected to have a substantial business relationship with another
business firm which has a director, officer or controlling person who is
also a director, officer or controlling person of the licensee or who is the
spouse of a director, officer or controlling person of the licensee.
(4) Providing financing assistance to a business firm if that business
firm, or a director, officer or controlling person of that business firm, con-
temporaneously has lent or will lend money to an associate of the
licensee.
(5) Providing financing assistance for the purchase of property of an
associate or principal shareholder of the licensee.
(6) Selling or otherwise transferring any of its assets to an associate
or principal shareholder of the licensee.
(d) Nothing in this section or in any other section of this act limits the
authority of the commissioner to determine that an act involves a con-
flict of interest and therefore is an unsafe or unsound act.

Section 7. Except with the approval of the [commissioner], a licensee
shall not provide a lien on or security interest in any of its property for
the purpose of securing an obligation of, or an obligation incurred for
the benefit of, another person.

Article 6
Mergers and Acquisitions

Section 1. [Acquisitions]
(a) Without the prior approval of the [commissioner], a person shall
not acquire control of a licensee.
(b) With respect to an application for approval to acquire control of a
licensee, if the [commissioner] determines that the applicant and the
directors and officers of the applicant are of good character and sound
financial standing; that it is reasonable to believe that, if the applicant
acquires control of the licensee, the applicant will comply with this act;
and that the applicant’s plans, if any, to make a major change in the
business, corporate structure, or management of the licensee are not
detrimental to the safety and soundness of the licensee, the [commis-
sioner] shall approve the application. If, after notice and a hearing, the
[commissioner] determines otherwise, the [commissioner] shall deny the
application.
(c) For purposes of subsection (b), the [commissioner] may determine
any of the following:
(1) That an applicant or a director or officer of an applicant is not
of good character if that person has been convicted of, or has pleaded nolo
contendere to, a crime involving fraud or dishonesty.
(2) That an applicant’s plan to make a major change in the manage-
ment of a licensee is detrimental to the safety and soundness of the
licensee if the plan provides for a person to become a director or officer
of the licensee and that person has been convicted of, or has pleaded nolo
contendere to, a crime involving fraud or dishonesty.
(d) The conditions described in subsection (c) are not the only condi-
tions upon which the [commissioner] may determine that an applicant
or a director or an officer of an applicant is not of good character or that
an applicant’s plan to make a major change in the management of a
licensee is detrimental to the safety and soundness of the licensee.

Section 2. [Mergers.]
(a) A licensee shall not merge with another corporation unless:
(1) If the licensee is the surviving corporation, the merger is approved
by the [commissioner].
(2) If the licensee is a disappearing corporation, the surviving cor-
poration is a licensee and the merger is approved by the [commissioner].

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(b) A licensee shall not purchase all or substantially all of the business of another person unless the purchase is approved by the [commissioner].
(c) A licensee shall not sell all or substantially all of its business or the business of any of its offices to another person unless that other person is a licensee and the sale is approved by the [commissioner].
(d) The [commissioner] shall approve an application for approval of a merger, purchase or sale, if, and only if, the [commissioner] determines all of the following:
   (1) That the merger, purchase or sale will be safe and sound with respect to the acquiring licensee.
   (2) That, upon consummation of the merger, purchase or sale, it is reasonable to believe that the acquiring licensee will comply with this act.
   (3) That the merger, purchase or sale will not have a major detrimental impact on competition in the providing of financial assistance or management assistance to business firms, or if there will be such a detrimental impact, the merger, purchase or sale is necessary in the interests of the safety and soundness of any of the parties to the merger, purchase or sale, or is otherwise, on balance, in the public interest.

**Article 7**

**Enforcement**

Section 1. If in the opinion of the [commissioner], a person violates, or there is reasonable cause to believe that a person is about to violate this act, the [commissioner] may bring an action in the name of the people of this state in a [circuit court] to enjoin the violation or to enforce compliance with this act. Upon a proper showing, a restraining order, preliminary or permanent injunction, or writ of mandamus shall be granted, and a receiver or a conservator may be appointed for the defendant or the defendant’s assets. The court shall not require the [commissioner] to post a bond in an action brought under this act.

Section 2. (a) If the [commissioner] finds that a person has violated or that there is reasonable cause to believe that a person is about to violate Article 3, Section 5, the [commissioner] may order the person to cease and desist from the violation unless and until the person is issued a license.

(b) Within [30] days after an order is issued under subsection (a), the person to whom the order is directed may file with the [commissioner] an application for a hearing on the order. If the [commissioner] fails to commence a hearing within [15] business days after that application is filed or within a longer period to which the person consents, the order shall be considered rescinded. Upon the hearing, the [commissioner] shall affirm, modify or rescind the order. The right of a person to whom an order is issued under subsection (a) to petition for judicial review of the order is not affected by the failure of the person to apply to the [commissioner] for a hearing on the order issued under this subsection.
Section 3. (a) If, after notice and a hearing, the [commissioner] determines that a licensee or a subject person of a licensee has violated or is violating, or that there is reasonable cause to believe that a licensee or subject person of a licensee is about to violate, this act or another applicable law, or that a licensee or subject person of a licensee has engaged or participated or is engaging or participating, or that there is a reasonable cause to believe that a licensee or subject person of a licensee is about to engage or participate, in an unsafe or unsound act with respect to the business of that licensee, the [commissioner] may order that licensee or subject person to cease and desist from the action or violation. The order may require the licensee or subject person to take affirmative action to correct any condition resulting from the action or violation.

(b) If the [commissioner] determines that any of the factors set forth in subsection (a) are true with respect to a licensee or subject person of a licensee and that the action or violation is likely to cause the insolvency of or substantial dissipation of the assets or earnings of the licensee; is likely to seriously weaken the condition of the licensee; or is likely to otherwise seriously prejudice the interests of the licensee before the completion of proceedings conducted under subsection (a), the [commissioner] may order the licensee or subject person to cease and desist from that action or violation. The order may require the licensee or subject person to take affirmative action to correct any condition resulting from the action or violation.

(c) Within [30] days after an order is issued under subsection (b), the licensee or subject person of a licensee to whom the order is directed may file with the [commissioner] an application for a hearing on the order. If the [commissioner] fails to commence a hearing within [15] business days after the application is filed or within a longer period to which the licensee or subject person consents, the order shall be considered rescinded. Upon the hearing, the [commissioner] shall affirm, modify, or rescind the order. The right of a licensee or subject person to whom an order is issued under subsection (b) to petition for judicial review of the order is not affected by the failure of the licensee or subject person to apply to the [commissioner] for a hearing on the order issued under this subsection.

Section 4. (a) The [commissioner] may issue an order removing a subject person of a licensee from his or her office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, if, after notice and a hearing, the [commissioner] determines all of the following are true:

1. The subject person has violated this act or another applicable law;
2. the subject person has engaged or participated in an unsafe or unsound act with respect to the business of the licensee; or the subject person has engaged or participate in an act which constitutes a breach of the subject person’s fiduciary duty.
3. The act, violation or breach of fiduciary duty has caused or is likely to cause substantial financial loss or other damage to the licensee.
Suggested State Legislation

or has seriously prejudiced or is likely to seriously prejudice the interests
of the licensee, or the subject person has received financial gain by reason
of the act, violation or breach of fiduciary duty.

(3) The act, violation or breach of fiduciary duty either involves
dishonesty on the part of the subject person or demonstrates the sub-
ject person's gross negligence with respect to the business of the licensee
or a willful disregard for the safety and soundness of the licensee.

(b) The [commissioner] may issue an order removing the subject per-
son from his or her office with the licensee, if any, and prohibiting the
subject person from further participating in any manner in the conduct
of the business of the licensee, except with the prior consent of the [com-
missioner], if, after notice and a hearing, the [commissioner] determines
that, by engaging or participating in an act with respect to a financial
or other business institution which resulted in substantial financial loss
or other damage, the subject person of a licensee has demonstrated both
of the following:

(1) Dishonesty or willful or continuing disregard for the safety and
soundness of the financial or other business institution.

(2) Unfitness to continue as a subject person of the licensee or to par-
ticipate in conducting the business of the licensee.

(c) If the [commissioner] determines that the factors set forth in subsec-
tion (a) or (b) are true with respect to a subject person of a licensee, and
that it is necessary for the protection of the interests of the licensee or
for the protection of the public interest that the [commissioner] im-
mediately suspend the subject person from his or her office, if any, with
the licensee and prohibit the subject person from further participating
in any manner in conducting the business of the licensee, the [com-
missioner] may issue an order suspending the subject person from his or her
office, if any, with the licensee and prohibiting the subject person from
further participating in any manner in conducting the business of the
licensee, except with the consent of the [commissioner].

(d) Within [30] days after an order is issued under subsection (c), the
subject person of a licensee to whom the order is directed may file with
the [commissioner] an application for a hearing on the order. If the [com-
missioner] fails to begin a hearing within [15] business days after the
application is filed or within a longer period to which the subject per-
on consents, the order shall be considered rescinded. Upon the hear-
ing, the [commissioner] shall affirm, modify or rescind the order. The
right of a subject person of a licensee to whom an order is issued under
subsection (c) to petition for judicial review of the order shall not be af-
fected by the failure of the subject person to apply to the [commissioner]
for a hearing on the order issued under this subsection.

(e) A person to whom an order is issued under this section may apply
to the [commissioner] to modify or rescind the order. The [commissioner]
shall not modify or rescind the order unless the [commissioner] deter-
mines that it is in the public interest to do so and that it is reasonable
to believe that the person, if and when he or she becomes a subject per-
on of a licensee, will comply with this act.

(f) As used in this section, "office," if used with respect to a licensee,
Section 5. (a) If the [commissioner] determines that a subject person of a licensee has been indicted by a grand jury or has been bound over for trial by a court for a crime involving dishonesty or breach of trust, and that the fact that the person continues to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee, the [commissioner] may issue an order suspending the subject person from his or her office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the consent of the commissioner.

(b) If the [commissioner] determines that a subject person or former subject person of a licensee to whom an order was issued under subsection (a), or another subject person of a licensee, has been convicted of a crime which is punishable by imprisonment for a term of not less than one year and which involves dishonesty or breach of trust, and that the fact that the person continues to be or will resume to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee, the [commissioner] may issue an order suspending or removing the subject person or former subject person from his or her office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the [commissioner].

(c) Within [30] days after an order is issued under subsection (a) or (b), the subject person of a licensee to whom the order is directed may file with the [commissioner] an application for a hearing on the order. If the [commissioner] fails to commence a hearing within [15] business days after the application is filed or within a longer period to which the subject person consents, the order shall be considered rescinded. Upon the hearing, the [commissioner] shall affirm, modify or rescind the order. The right of a subject person or former subject person of a licensee to whom an order is issued under subsection (a) or (b) to petition for judicial review of the order is not affected by the failure of the person to apply to the [commissioner] for a hearing on the order issued under this subsection.

(d) The fact that a subject person of a licensee charged with a crime involving dishonesty or breach of trust is not convicted of the crime shall not preclude the [commissioner] from issuing an order to the subject person under any other provision of this act.

(e) A person to whom an order is issued under this section may apply to the [commissioner] to modify or rescind the order. The [commissioner] shall not modify or rescind the order unless the [commissioner] determines that it is in the public interest to do so and that it is reasonable to believe that the person, if and when he or she becomes a subject person of a licensee, will comply with this act.

(f) As used in this section, "office," if used with respect to a licensee,
means the position of director, officer or employee of the licensee or of a subsidiary of the licensee.

Section 6. If, in the opinion of the commissioner, disclosure to shareholders regarding a matter is warranted, the commissioner may require a licensee, in such a form and manner as the commissioner may specify, to disclose to the shareholders of a licensee the results of a communication or order from the commissioner addressed to the licensee or to a subject person of the licensee.

Section 7. (a) If the commissioner considers it expedient, the commissioner may call a meeting of the board of directors of a licensee by giving notice of the time, place and purpose of the meeting not less than [five] days before the meeting to each director either by personal service or by registered or certified mail sent to the director's last known address as shown in the records of the commissioner.

(b) If the commissioner considers it expedient, the commissioner may call a meeting of the shareholders of a licensee by giving notice of the time, place and purpose of the meeting not less than [five] days before the meeting to each shareholder either by personal service or by registered or certified mail sent to the shareholder's last known address as shown by the books of the licensee. The licensee shall pay the expenses of the notice and of a meeting called under this subsection.

Section 8. (a) The commissioner may issue an order directing a licensee to refrain from providing any additional financing assistance to business firms if, in the opinion of the commissioner the order is necessary to protect the interests of the licensee or the public interest, and if, after notice and a hearing, the commissioner determines that any of the following are true:

1. The licensee or a controlling person, subsidiary or affiliate of the licensee has violated this act or another applicable law.
2. The licensee is conducting its business in an unsafe and unsound manner.
3. The licensee is in a condition that makes it unsafe or unsound for the licensee to transact business.
4. The licensee has ceased to transact business as a business and industrial development corporation.
5. The licensee is insolvent.
6. The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.
7. The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement or other relief under a bankruptcy, reorganization, insolvency or moratorium law, or that a person has applied for such relief under such a law against a licensee and the licensee has by any affirmative act approved or consented to the action or such relief has been granted.
8. A fact or condition exists which would have been grounds for deny-
Section 9. (a) If the [commissioner] finds that any of the factors set forth in section 8(a) are true with respect to a licensee and that it is necessary for the protection of the interests of the licensee or for the protection of the public interest that the [commissioner] take immediate possession of the property and business of the licensee, the [commissioner] may appoint a conservator for the licensee. The [commissioner] may appoint as conservator one of the employees of the [financial institutions bureau of the department of commerce] or some other competent and disinterested person. The [financial institutions bureau of the department of commerce] shall be reimbursed out of the assets of the conservatorship for all sums expended by the [bureau] in connection with the conservatorship as expenses. Upon the approval of the [commissioner], the expenses of the conservatorship shall be paid out of the assets of the licensee. The expenses shall be a first charge upon the assets and shall be fully paid before any final distribution is made.

(b) Under the direction of the [commissioner], the conservator shall take possession of the books, records and assets of the licensee and shall take such action with respect to employees, agents or representatives of the licensee or any other action as may be necessary to conserve the assets of the licensee or ensure payment of obligations of the licensee pending further disposition of its business as provided by law. At any appropriate time, the [commissioner] may terminate the conservatorship and permit the licensee to resume the transaction of its business.
subject to the terms, conditions, restrictions and limitations the [commissioner] may prescribe.
(c) If in the opinion of the [commissioner] it is appropriate that the licensee be liquidated, the [commissioner], with the [attorney general] representing the [commissioner], may apply to the [circuit court] for the county in which the principal office of the licensee is located for the appointment of a receiver for the licensee, if the [commissioner] determines that any of the following are true:
   (1) The licensee is insolvent.
   (2) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors or has admitted in writing its inability to pay its debts as they become due.
   (3) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement or other relief under a bankruptcy, reorganization, insolvency or moratorium law.
   (4) A person has applied for the relief described under paragraph (3) against any licensee and that licensee has by an affirmative act approved of or consented to the action or the relief has been granted.
   (5) The licensee is in a condition that makes it unsafe or unsound for the licensee to transact business.
(d) If a receiver is appointed under subsection (c), the receiver shall liquidate the property and business of the licensee in the manner provided for in [insert appropriate citation for state banking code].

Section 10. (a) If, after notice and a hearing, the [commissioner] finds that a person has violated this act, the [commissioner] may order that person to pay to the [commissioner] a civil penalty in the amount the [commissioner] specifies. However, the amount of the civil penalty shall not exceed [1,000] dollars for each violation, or in the case of a continuing violation, [1,000] dollars for each day for which the violation continues. Money collected for a civil penalty under this section shall be paid into the state treasury and credited to the general fund of this state.
(b) This section does not apply to any act committed or omitted in good faith in conformity with an order, rule, declaratory ruling or written interpretative opinion of the [commissioner], notwithstanding that the order, rule, declaratory ruling or written interpretative opinion is later amended, rescinded or repealed, or determined by judicial or other authority to be invalid for any reason.
(c) The provisions of subsection (a) are additional to, and not alternative to, other provisions of this act which authorize the [commissioner] to issue orders or to take other action on account of a violation of this act.
A person who is convicted under Article 8, Section 10 on account of a violation of Article 8 shall not be liable to pay a civil penalty under subsection (a) on account of that violation. A person who pays a civil penalty under subsection (a) on account of a violation of Article 8 shall not be liable to prosecution under Article 8, Section 10 on account of that violation.
Article 8
Certain Unlawful Activities

Section 1. [Definitions.]
(a) As used in this article, unless the context otherwise requires:
(1) "Advisor" means a person who regularly provides legal, accounting or management services or advice to a licensee.
(2) "Associate" means, if used with respect to a licensee:
(i) A controlling person, director, officer, agent or advisor of that licensee.
(ii) A director, officer or partner of a person referred to in subparagraph (i).
(iii) A person who controls, is controlled by, or is under common control with a person referred to in subparagraph (i), directly or indirectly through one or more intermediaries.
(iv) Any close relative of any person referred to in subparagraph (i).
(v) A person of which a person referred to in subparagraphs (i) to (iv) is a director or officer.
(vi) A person in which a person referred to in subparagraphs (i) to (iv) or any combination of those persons acting in concert, owns or controls, directly or indirectly, a 20 percent or greater equity interest.
(3) "Close relative" means parent, child, sibling, spouse, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law or sister-in-law.
(4) "Closing services" means services performed in connection with the providing of financing assistance. Closing services includes, but is not limited to, appraising property and preparing credit reports. Closing services does not include a service performed after the providing of financing assistance.
(5) "Short-term financing assistance" means financing assistance with a term of not more than [five] years.
(b) For the purposes of subsection (a)(2):
(1) A person who is in a relationship referred to in that subdivision within [six] months before or after a licensee provides financing assistance shall be considered to be in that relationship as of the date that licensee provides that financing assistance.
(2) If a licensee, in order to protect its interests, designates a person to serve as a director of, officer of, or in any capacity in the management of a business firm to which that licensee provides financing assistance, that person shall not, on that account, be considered to have a relationship with that business firm. This subdivision does not apply if the person has, directly or indirectly, any other financial interest in the business firm or if the person, at any time before the licensee provides the financing assistance, served as a director of, officer of, or in any other capacity in the management of the business firm for a period of [30] days or more.

Section 2. [False Statements.] A person shall not willfully make an untrue statement of a material fact in an application or report filed with the [commissioner] under this act, or willfully omit to state in such an
Suggested State Legislation

Section 3. [Refusal to Inspect Books.] A person having custody of any of the books, accounts or other records of a licensee shall not willfully refuse to allow the [commissioner], upon request, to inspect or make copies of any of these books, accounts or other records.

Section 4. [False Entries.] A person shall not, with intent to deceive a director, officer, employee, auditor or attorney of a licensee; the [commissioner]; or a governmental agency, make a false entry in the books, accounts or other records of that licensee; omit to make an entry in those books, accounts or other records which that person is required to make; or alter, conceal or destroy any of those books, accounts or other records.

Section 5. A licensee shall not provide, directly or indirectly, financing assistance to an associate of the licensee.

Section 6. A licensee shall not provide, directly or indirectly, financing assistance to discharge, or to free other money for use in discharging, in whole or in part, an obligation to an associate of that licensee. This section does not apply to a transaction effected by an associate of a licensee in the normal course of that associate's business involving a line of credit or short-term financing assistance.

Section 7. (a) A licensee shall not provide, directly or indirectly, financing assistance to a business firm to which an associate of that licensee provides financing assistance, either contemporaneously with, or within [one] year before or after, the providing of financing assistance by the licensee, if the terms on which the licensee provides financing assistance are less favorable to the licensee than the terms on which the associate provides financing assistance to the business firm. If the financing assistance provided by the associate of the licensee is of a different kind from the financing assistance provided by the licensee, the burden shall be on the licensee to prove that the terms on which the licensee provided financing assistance were at least as favorable to the licensee as the terms on which the associate provided financing assistance to the business firm.

(b) This section does not apply to any of the following:
   (1) If the associate is a controlling person of the licensee and is also the only shareholder of the licensee.
   (2) If the associate is a subsidiary of the licensee.
   (3) A transaction effected by an associate of a licensee in the normal course of that associate's business involving a line of credit or short-term financing assistance.

Section 8. An associate of a licensee shall not receive, directly or indirectly, from a person to whom that licensee provides financing assistance, compensation in connection with the providing of that financ-
Section 9. (a) By such orders or rules the [commissioner] considers necessary and appropriate, the [commissioner] may exempt from Article 8, sections 5 to 8, either unconditionally or upon specified terms and conditions and for specified periods, a person or transaction or class of persons or transactions, if the [commissioner] finds that the exemption is in the public interest and that the regulation of the person, transaction or class is not necessary for the purposes of this act.

(b) In exempting a person or transaction or class of persons or transactions, the [commissioner] shall give consideration, as considered appropriate by the [commissioner], to conflict of interest provisions of federal law or regulation that may be applicable to that person or transaction governing participants in federal financing programs.

Section 10. (a) A person who knowingly commits an act which act violates this article shall be fined not more than [10,000] dollars or shall be imprisoned for not more than [one] year, or both.

(b) This section does not apply to an act committed or omitted in good faith in conformity with an order, rule, declaratory ruling or written interpretative opinion of the [commissioner], notwithstanding that the order, rule, declaratory ruling or written interpretative opinion is later amended, rescinded, or repealed or determined by judicial or other authority to be invalid for any reason.

(c) Nothing in this act limits the power of the state to punish a person for an act which constitutes a crime under any statute.

Article 9

Section 1. [Repealer.] [Insert repealer cause.]

Section 2. [Effective Date.] [Insert effective date.]
Product Liability Reform Act

This act, based on 1987 New Jersey legislation, is intended as a remedial measure to clarify certain matters pertaining to the rules governing actions for the harm caused by products and to establish statutory standards and procedures for the imposition of punitive damages. The act is intended to apply to all actions for harm caused by products, except actions for damage caused by breach of an express warranty. The provisions are not intended to codify all issues relating to product liability, but only to matters that require clarification.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Product Liability Reform Act.

Section 2. [Definitions.] As used in this act:

(1) "Claimant" means any person who brings a product liability action, and if such an action is brought through or on behalf of an estate, the term includes the person's decedent, or if an action is brought through or on behalf of a minor, the term includes the person's parent or guardian.

(2) "Harm" means

(i) physical damage to property, other than to the product itself;

(ii) personal physical illness, injury or death;

(iii) pain and suffering, mental anguish or emotional harm; and

(iv) any loss of consortium or services or other loss deriving from any type of harm described in subparagraphs (i) through (iii) of this paragraph.

(3) "Product liability action" means any claim or action brought by a claimant for harm caused by a product, irrespective of the theory underlying the claim, except actions for harm caused by breach of an express warranty.

(4) "Environmental tort action" means a civil action seeking damages for harm where the cause of the harm is exposure to toxic chemicals or substances, but does not mean actions involving drugs or products intended for personal consumption or use.

Section 3. [Causes of Action.] A manufacturer or seller of a product shall be liable in a product liability action only if the claimant proves by a preponderance of the evidence that the product causing the harm was not reasonably fit, suitable or safe for its intended purpose because it:

(1) deviated from the design specifications, formulae or performance standards of the manufacturer or from otherwise identical units manufactured to the same manufacturing specifications or formulae; or
(2) failed to contain adequate warnings or instructions; or
(3) was designed in a defective manner.

Section 4. [Liability for Harm Caused by an Alleged Design Defect.]
(a) In any product liability action against a manufacturer or seller for
harm allegedly caused by a product that was designed in a defective man-
ner, the manufacturer or seller shall not be liable if:
(1) at the time the product left the control of the manufacturer, there
was not a practical and technically feasible alternative design that would
have prevented the harm without substantially impairing the reason-
ably anticipated or intended function of the product; or
(2) the characteristics of the product are known to the ordinary con-
sumer or user, and the harm was caused by an unsafe aspect of the pro-
duct that is an inherent characteristic of the product and that would be
recognized by the ordinary person who uses or consumes the product
with the ordinary knowledge common to the class of persons for whom
the product is intended, except that this paragraph shall not apply to
industrial machinery or other equipment used in the workplace and it
is not intended to apply to dangers posed by products such as machinery
or equipment that can feasibly be eliminated without impairing the use-
fulness of the product; or
(3) the harm was caused by an unavoidably unsafe aspect of the pro-
duct and the product was accompanied by an adequate warning or in-
struction as defined in Section 5 of this act.
(b) The provisions of paragraph (1) of subsection (a) of this section shall
not apply if the court, on the basis of clear and convincing evidence,
makes all of the following determinations:
(1) the product is egregiously unsafe or ultra-hazardous;
(2) the ordinary user or consumer of the product cannot reasonably
be expected to have knowledge of the product's risks, or the product poses
a risk of serious injury to persons other than the user or consumer; and
(3) the product has little or no usefulness.
(c) No provision of subsection (a) of this section is intended to establish
any rule, or alter any existing rule, with respect to the burden of proof.

Section 5. [Adequate Warning or Instruction.] In any product liabil-
ity action the manufacturer or seller shall not be liable for harm caused
by a failure to warn if the product contains an adequate warning or in-
struction or, in the case of dangers a manufacturer or seller discovers
or reasonably should discover after the product leaves its control, if the
manufacturer or seller provides an adequate warning or instruction. An
adequate product warning or instruction is one that a reasonably pru-
dent person in the same or similar circumstances would have provided
with respect to the danger and that communicates adequate informa-
tion on the dangers and safe use of the product, taking into account the
characteristics of, and the ordinary knowledge common to, the persons
by whom the product is intended to be used, or in the case of prescrip-
tion drugs, taking into account the characteristics of, and the ordinary
knowledge common to, the prescribing physician. If the warning or
instruction given in connection with a drug or device or food or food additive has been approved or prescribed by the federal Food and Drug Administration under the “Federal Food, Drug, and Cosmetic Act,” 52 Stat. 1040, 21 U.S.C. sec. 301 et seq. or the “Public Health Service Act,” 58 Stat. 682, 42 U.S.C. sec. 201 et seq., a rebuttable presumption shall arise that the warning or instruction is adequate. For purposes of this section, the terms “drug,” “food,” and “food additive” have the meanings defined in the “Federal Food, Drug, and Cosmetic Act.”

Section 6. [Punitive Damages.]
(a) Punitive damages may be awarded to the claimant only if the claimant proves, by a preponderance of the evidence, that the harm suffered was the result of the product manufacturer’s or seller’s acts or omissions, and such acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of the safety of product users, consumers, or others who foreseeably might be harmed by the product. For the purposes of this section “actual malice” means an intentional wrongdoing in the sense of an evil-minded act. and “wanton and willful disregard” means a deliberate act or omission with knowledge of a high degree of probability of harm to another and reckless indifference to the consequences of such action or omission. Punitive damages shall not be awarded in the absence of an award of compensatory damages.
(b) The trier of fact shall first determine whether compensatory damages are to be awarded. Evidence relevant only to punitive damages shall not be admissible in that proceeding. After such determination has been made, the trier of fact shall, in a separate proceeding, determine whether punitive damages are to be awarded. In determining whether punitive damages are to be awarded, the trier of fact shall consider all relevant evidence, including but not limited to, the following:
(1) the likelihood at the relevant time that serious harm would arise from the tortfeasor’s conduct;
(2) the tortfeasor’s awareness of reckless disregard of the likelihood that the serious harm at issue would arise from the tortfeasor’s conduct;
(3) the conduct of the tortfeasor upon learning that its initial conduct would likely cause harm; and
(4) the duration of the conduct or any concealment of it by the tortfeasor.
(c) Punitive damages shall not be awarded if a drug or device or food or food additive which caused the claimant’s harm was subject to premarket approval or licensure by the federal Food and Drug Administration under the “Federal Food, Drug, and Cosmetic Act,” 52 Stat. 1040, 21 U.S.C. sec. 301 et seq. or the “Public Health Service Act,” 58 Stat. 682, 42 U.S.C. sec. 201 et seq. and was approved or licensed; or is generally recognized as safe and effective pursuant to conditions established by the federal Food and Drug Administration and applicable regulations, including packaging and labeling regulations. However, where the product manufacturer knowingly withheld or misrepresented information required to be submitted under the agency’s regulations, which information was material and relevant to the harm in question,
punitive damages may be awarded. For purposes of this subsection, the
terms "drug," "device," "food," and "food additive" have the meanings
defined in the "Federal Food, Drug, and Cosmetic Act."
(d) If the trier of fact determines that punitive damages should be
awarded, the trier of fact shall then determine the amount of those
damages. In making that determination, the trier of fact shall consider
all relevant evidence, including, but not limited to, the following:
(1) all relevant evidence relating to the factors set forth in subsec-
tion (b) of this section.
(2) the profitability of the misconduct to the tortfeasor;
(3) when the misconduct was terminated; and
(4) the financial condition of the tortfeasor.

Section 7. The provisions of this act shall not apply to any environmen-
tal tort action.

Section 8. Except as otherwise expressly provided in this act, no pro-
vision of this act is intended to establish any rule, or alter any existing
rule, with respect to the burden of proof in a product liability action.

Section 9. [Effective Date.] [Insert effective date.]
Investment Advisory Activities Act

This act, based on a New York bill, establishes a comprehensive registration scheme for investment advisors and investment advisor representatives, and authorizes the state's attorney general to deny, suspend or revoke any registration for certain enumerated reasons. Specific provisions include the revision of the definition of "investment advisor" to include financial planners; making it unlawful for such advisors to do business without registering with the attorney general on an annual basis; and authorizing the attorney general to require that certain books and records be kept by the registrants.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Investment Advisory Activities Act.

Section 2. [Definitions.] As used in this act:

(1) "Investment advisor" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling or holding securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment advisor" also includes financial planners and others who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment advisor" does not include: (i) an investment advisor representative; (ii) a bank or trust company; (iii) a lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of his profession; (iv) a broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for them; (v) a publisher of any bonafide newspaper, news column, newsletter, news magazine or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client; and (vi) such other persons as the [attorney general] may by rule or regulation designate.

(2) "Investment advisor representative" means any partner, officer or director or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment advisor, except clerical or ministerial personnel, who, with respect to advisory clients: (i) makes any recommendations or otherwise renders
advice regarding securities directly to advisory clients; (ii) manages accounts or portfolios of clients; (iii) determines which recommendations or advice regarding securities should be given if that person is a member of the investment advisor's investment committee that determines general investment advice to be given to advisory clients or, if the investment advisor has no investment committee, the person that determines general advisory client advice, provided, however, that if there are more than five such persons, only the supervisors of such persons are deemed to be investment advisor representatives; (iv) solicits, offers or negotiates for the sale of or sells investment advisory services; or (v) supervises employees with respect to the performance of such foregoing services. Investment advisor representative does not include: (i) outside advertising firms or their employees which or who have no direct contact with advisory clients; (ii) persons performing advertising or marketing functions in an investment advisor firm who have no direct contact with advisory clients; nor (iii) attorneys employed by an investment advisor who perform any legal work on behalf of the investment advisor and do not otherwise participate in the giving of investment advice to advisory clients.

(3) "Person" means any natural person, corporation, company, partnership, trust or association.

Section 3. [Investment Advisor-Lawful Transactions of Business Defined.] It is unlawful for any person to transact business in this state as an investment advisor or as an investment advisor representative unless:
(1) He is so registered pursuant to the provisions of this act;
(2) His only clients in this state are investment companies as defined in the [insert appropriate section of state code], other investment advisors, broker-dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than [one] million dollars, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or regulation of the [attorney general]; or
(3) He has no place of business in this state and during any period of [12] consecutive months does not direct business communications in this state in any manner to more than [five] clients, other than those specified in paragraph (2) of this section whether or not he or any of the persons to whom the communications are directed is then present in this state.

Section 4. [Investment Advisor Representative.] It is unlawful for any investment advisor required to be registered pursuant to this act to employ an investment advisor representative unless the investment advisor representative is also registered pursuant to this act. The registration of an investment advisor representative is not effective during any period when he is not employed by an investment advisor registered pursuant to this act. When an investment advisor representative begins or terminates employment with an investment advisor, the investment advisor shall promptly notify the [attorney general].
Section 5. [Registration Period.] Every registration shall be for the
2 calendar year and shall expire on the last day of December of such year
3 unless renewed.

Section 6. [Registration Application; Fees; Bonds.]
1 (a) An investment advisor or investment advisor representative may
2 obtain an initial or renewal registration by filing with the [attorney
general](or with a central registration depository established by or with
5 an organization of securities administrators approved by the [attorney
general]) an application together with a consent to service of process pur-
7 suant to [insert appropriate section of state code].
(b) The application shall contain such information the [attorney
general] may require concerning such matters as: (1) the applicant’s form
and place of organization; (2) the applicant’s proposed method of doing
business; (3) the qualifications and business history of the applicant in-
cluding, in the case of an investment advisor, the qualifications and
business history of any partner, officer or director thereof, any person
occupying a similar status or performing similar functions, or any per-
son directly or indirectly controlling the investment advisor; (4) any in-
junction or administrative order secured against the applicant or con-
viction of the applicant of any felony or of a misdemeanor involving a
security or any aspect of the securities business; (5) the applicant’s finan-
cial condition and history; and (6) any information to be furnished or
disseminated to any client or prospective client. The requirement for the
filing of such information shall be satisfied by the filing of [uniform ap-
plication for investment advisor registration] or [uniform application for
securities industry registration or transfer].
(c) If no denial order is in effect and no proceeding is pending under
this act, registration becomes effective at [noon of the 30th day] after
an application is filed. The [attorney general] may by rule, regulation
or order specify an earlier effective date, and may by order defer the ef-
fective date until [noon of the 30th day] after the filing of any amend-
ment. Registration of an investment advisor automatically constitutes
registration of any investment advisor representative who is a partner,
officer or director thereof, or a person occupying a similar status or per-
forming similar functions.
(d) Every applicant for initial or renewal registration shall pay a fil-
ing fee of [400] dollars in the case of an investment advisor and [25]
dollars in the case of an investment advisor representative; provided,
however, that an additional fee to be determined by the [attorney general]
not to exceed [100] dollars in the case of an investment advisor and [25]
dollars in the case of an investment advisor representative may be re-
quired for processing an application through a central registration
depository pursuant to subsection (a). When an application is denied or
withdrawn, the [attorney general] shall retain the fee.
(e) A registered investment advisor may file an application for registra-
tion of a successor, whether or not the successor is then in existence, for
the unexpired portion of the year. There shall be no filing fee.
(f) Investment advisors having custody of client funds or securities
shall maintain minimum net capital of (20,000) dollars or minimum
47 tangible net assets or minimum net worth of (35,000) dollars and invest-
48 ment advisors having discretionary authority over client funds or
49 securities without having custody thereof shall maintain minimum net
50 capital of (5,000) dollars or minimum tangible net assets or minimum
51 net worth of (10,000) dollars. The [attorney general] may by rule or
52 regulation provide for uniform definitions, reporting, and other re-
53 quirements relating to such minimum financial requirements.
(g) Investment advisors who have custody of or discretionary authori-
54 ty over client funds or securities shall be required to post surety bonds
55 in amounts up to (100,000) dollars. Any appropriate deposit of cash or
56 securities shall be accepted by the [attorney general] in lieu of any bond
57 so required. No bond may be required of any registrant whose minimum
58 financial requirement exceeds (50,000) dollars. Every bond shall provide
59 for suit thereon by the person who has a cause of action under this act
60 and, if the [attorney general] by rule, regulation or order requires, by
61 any person who has a cause of action not arising under this act. Every
62 bond shall provide that no suit may be maintained to enforce any liabi-
63 lity on the bond unless brought within the time limitations of this act.

Section 7. [Records; Disclosure Statement.]
(a) Every registered investment advisor shall make and keep such ac-
1 counts, correspondence, memoranda, papers, books and records as the
2 [attorney general] by rule or regulation may prescribe. All records so re-
3 quired shall be preserved for [three] years. An investment advisor shall
4 be in compliance with the record keeping requirements hereunder if the
5 investment advisor complies with the record keeping requirements of
6 the [insert appropriate section of state code] and the rules and regula-
7 tions promulgated thereunder.
(b) (i) Any investment advisor, registered or required to be registered
8 shall, in accordance with the provisions of this act, furnish each advisory
9 client and prospective advisory client with a written disclosure state-
10 ment which shall be a copy of [insert appropriate part of uniform applica-
11 tion for investment advisor registration] or written documents contain-
12 ing at least the information then so required by [insert appropriate part
13 of uniform application].
(ii) An investment advisor, except as provided herein, shall deliver
16 the statement required by this act to an advisory client or prospective
17 advisory client not less than [48] hours prior to entering into any invest-
18 ment advisory contract with such client or prospective client; or at the
19 time of entering into any such contract, if the advisory client has a right
20 to terminate the contract without penalty within [five] business days
21 after entering into the contract. Delivery of the statement need not be
22 made in connection with entering into an investment company contract
23 or a contract for impersonal advisory services.
(iii) An investment advisor [annually] shall, without charge, deliver
26 or offer in writing to deliver upon written request to each of its advisory
27 clients the statement required by this act. The delivery or offer required
28 herein need not be made to advisory clients receiving advisory services
Suggested State Legislation

solely pursuant to an investment company contract or a contract for im-
personal advisory services requiring a payment of less than [200] dollars.
With respect to an advisory client entering into a contract or receiving
advisory services pursuant to a contract for impersonal advisory services
which requires a payment of [200] dollars or more, an offer to provide
a written disclosure statement shall also be made at the time of enter-
ing into an advisory contract. Any statement requested in writing by
an advisory client pursuant to an offer required herein must be mailed
or delivered within [seven] days of the receipt of the request.

(iv) If an investment advisor renders substantially different types
of investment advisory services to different advisory clients, any infor-
mation required by [insert appropriate part of uniform application] may
be omitted from the statement furnished to an advisory client or pro-
spective advisory client if such information is applicable only to a type
of investment advisory service or fee which is not rendered or charged,
or proposed to be rendered or charged, to that client or prospective client.

(v) Nothing herein shall relieve any investment advisor from any
obligation pursuant to any other provision of [insert article] or the rules
and regulations thereunder or other federal or state law to disclose any
information to its advisory clients or prospective advisory clients not
specifically required herein.

(iv) A “contract for impersonal advisory services” means any con-
tract relating solely to the provision of investment advisory services by
means of written material or oral statements which do not purport to
meet the objectives or needs of specific individuals or accounts; through
the issuance of statistical information containing no expression of
opinion as to the investment merits of a particular security; or any com-
bination of the foregoing services. The words “entering into,” in reference
to an investment advisory contract, do not include an extension or
renewal without material change of any such contract which is in effect
immediately prior to such extension or renewal. An “investment com-
pany contract” means a contract with an investment company registered
under the [insert appropriate section of state code].

(c)(i) Every registered investment advisor who has custody of client
funds or securities or requires payment of advisory fees [six] months or
more in advance and in excess of [500] dollars per client shall file with
the [attorney general] an audited balance sheet as of the end of the in-
vestment advisor’s fiscal year. Each such balance sheet filed shall be
prepared and filed in accordance with the following requirements:

(A) It shall be certified by an independent certified public accoun-
tant or independent public accountant;

(B) It shall be prepared in conformity with generally accepted ac-
counting principles; and

(C) It shall be accompanied by an opinion of the accountant as to
the report of financial position, and by a note stating the principles used
to prepare it, the basis of included securities, and any other explanations
required for clarity.

(ii) Every registered investment advisor who has discretionary
authority over client funds or securities, but not custody, shall file with
the [attorney general] a balance sheet, which need not be audited, but
which must be prepared in accordance with generally accepted account-
ing principles and represented by the investment advisor or the person
who prepared the statement as true and accurate, as of the end of the
investment advisor's fiscal year.

(iii) The financial statements required herein shall be filed with the
[attorney general] within [90] days following the end of the investment
advisor's fiscal year. Every registered investment advisor shall file such
financial reports as the [attorney general] may by rule or regulation
prescribe.

d) If the information contained in any document filed with the [at-
torney general] is or becomes inaccurate or incomplete in any material
respect the registrant shall file a correcting amendment on [uniform ap-
plication for investment advisor registration]. Any amendment to such
form shall be filed with the [attorney general] within the time period
specified in the instructions to that form relating to filings made with
the securities and exchange commission. Any correcting amendments
relating to an investment advisor representative shall be made on
[uniform application for securities industry registration or transfer] in
the manner prescribed by that form. The fee for such filing shall be [50]
dollars.

e) All the records referred to in subsection (a) shall be subject at any
time, or from time to time, to such reasonable periodic, special, or other
examinations by representatives of the [attorney general], within or
without this state, as the [attorney general] deems necessary or ap-
propriate in the public interest or for the protection of investors or by
the issuance of subpoenas by the [attorney general] as provided for by
[insert article]. For the purpose of avoiding unnecessary duplication of
examinations, the [attorney general], insofar as he deems it practicable
in administering this section, may cooperate with the [insurance depart-
ment] of the state of [insert state name], the securities administrators
of other states, or countries or provinces thereof, the securities and ex-
change commission, and any self-regulatory organization established
by law with respect to investment advisors.

Section 8. [Attorney General's Authority.]
(a) The [attorney general], in addition to the authority or ability to ob-
tain relief otherwise provided, may by order deny, suspend or revoke any
registration, or bar or censure any registrant or any partner, officer or
director thereof or person occupying a similar status or performing
similar functions for a registrant, from employment with a registered
investment advisor, or restrict or limit a registrant as to any function
or activity of the business for which registration is required in this state
if he finds that the order is in the public interest and that the applicant
or registrant or, in the case of an investment advisor, any partner, officer
or director thereof or any person occupying a similar status or perform-
ing similar functions, or any person directly or indirectly controlling the
investment advisor:

(1) has filed an application for registration which as of its effective
date, or as of any date after filing in the case of an order denying effec-
tiveness, was incomplete in any material respect or contained any state-
ment which was, in light of the circumstances under which it was made,
false or misleading with respect to any material fact;
(2) has willfully violated or willfully failed to comply with any pro-
vision of this act or a predecessor act or any rule, regulation or order
under this act or a predecessor act;
(3) has been convicted, within the past [10] years, of any misdemeanor
involving a security or any aspect of the securities business, or any
felony;
(4) is permanently or temporarily enjoined by any court of compe-
tent jurisdiction from engaging in or continuing any conduct or prac-
tice involving any aspect of the securities business;
(5) is the subject of an order of the [attorney general] denying, suspen-
ding, or revoking registration as an investment advisor or investment
advisor representative;
(6) is the subject of an adjudication or determination within the past
[five] years by a securities or commodities agency or administrator of
another state or a court of competent jurisdiction that the person has
violated the [Securities Act of 1933, the Securities Exchange Act of 1934,
the Investment Advisors Act of 1940, the Investment Company Act of
1940 or the Commodity Exchange Act], or the securities or commodities
law of any other state or country or province thereof;
(7) has engaged in dishonest or unethical practices in the securities
business;
(8) is insolvent, either because his liabilities exceed his assets or
because he cannot meet his obligations as they mature; provided,
however, that the [attorney general] may not enter an order against an
investment advisor under this paragraph without a finding of insolvency
as to the investment advisor;
(9) has failed reasonably to supervise his investment advisor
representatives or employees if he is an investment advisor to assure
their compliance with this act; or
(10) has failed to pay the proper filing fee; provided, however, that
the [attorney general] may enter only a denial order under this
paragraph, and shall vacate any such order when the deficiency has been
corrected; or
(11) is not qualified on the basis of such factors as training, expe-
rience, and knowledge of the securities business; provided, however,
that the [attorney general]:
(i) may not enter an order against any investment advisor on the
basis of the lack of qualification of any person other than the investment
advisor himself if he is an individual or an investment advisor
representative;
(ii) may not enter an order solely on the basis of lack of experience
if the applicant or registrant is qualified by training or knowledge or
both;
(iii) shall consider that an investment advisor representative who
will work under the supervision of a registered investment advisor need
not have the same qualifications as an investment advisor;

(iv) may by rule or regulation provide for an examination, including
an examination developed or approved by an organization of securities
administrators, which examination may be written or oral or both, to
be taken by any class of or all applicants under this act; and

(v) may by rule, regulation or order waive such examination re-
requirement as to a person or class of persons or provide for the acceptance
of equivalent examinations, or industry or academic designations or
degrees in lieu thereof, if the attorney general determines that the ex-
amination is not necessary for the protection of advisory clients; provid-
ed, however, that any person who was registered as an investment ad-
dvisor in this state on the effective date of this act shall not be required
to take and pass any examination.

(b) The [attorney general] may not institute a suspension or revoca-
tion proceeding on the basis of a fact or transaction known to him when
registration became effective unless the proceeding is instituted within
[30] days of such effective date.

c) The [attorney general] may by order summarily postpone or suspend
registration pending final determination of any proceeding under this
act. Upon the entry of the order, the [attorney general] shall promptly
notify the applicant or registrant, as well as the employer or prospective
employer, if the applicant or registrant is an investment advisor
representative, that it has been entered and of the reasons therefor and
that within [15] days after the receipt of a written request the matter
will be set down for hearing. If no hearing is requested and none is
ordered by the [attorney general], the order will remain in effect until
it is modified or vacated by the [attorney general]. If a hearing is re-
quested or ordered, the [attorney general], after notice of and opportunity
for hearing, may modify or vacate the order or extend it until final
determination.

d) If the [attorney general] finds that any registrant or applicant for
registration is no longer in existence or has ceased to do business as an
investment advisor or investment advisor representative, or is subject
to an adjudication of mental incompetence or to the control of a commit-
tee, conservator or guardian, or cannot be located after reasonable
search, the [attorney general] may by order cancel the registration or
application.

e) Withdrawal from registration as an investment advisor or invest-
ment advisor representative becomes effective [30] days after receipt of
an application to withdraw or within such shorter period of time as the
[attorney general] may determine, unless a revocation or suspension pro-
ceeding is pending when the application is filed or a proceeding to revoke
or suspend or to impose conditions upon the withdrawal is instituted
within [30] days after the application is filed. If a proceeding is pending
or instituted, withdrawal becomes effective at such time and upon such
conditions as the [attorney general] may, by order, determine. If no pro-
cceeding is pending or instituted and withdrawal automatically becomes
effective, the [attorney general] may, nevertheless, institute a revocation
or suspension proceeding pursuant to this act within [one] year after
withdrawal became effective and enter a revocation or suspension order
as of the last date on which registration was effective.
(1) No order may be entered under any part of this act, except the first
sentence of subsection (c) without:
(1) appropriate prior notice to the applicant or registrant, and to the
employer or prospective employer if the applicant or registrant is an in-
vestment advisor representative;
(2) opportunity for hearing; and
(3) written findings of fact and conclusions of law.
The [attorney general] shall issue a final order in any contested pro-
ceeding no later than the [60th] calendar day after the last day that
testimony was given or evidence taken at the hearing on the order
originally issued by the attorney general.

Section 9. [Unethical Activities.]
(a) It is unlawful for any person who receives, directly or indirectly, any
consideration from another person for advising the other person as to
the value of securities or their purchase or sale, whether through the
issuance of analyses or reports or otherwise:
(1) to employ any device, scheme or artifice to defraud the other per-
son; or
(2) to engage in any act, practice or course of business which operates
or would operate as a fraud or deceit upon the other person; or
(3) to engage in dishonest or unethical practices as the [attorney
genral] may by rule or regulation define.
(b) In the solicitation of advisory clients, it is unlawful for any person
to make any untrue statement of a material fact, or omit to state a
material fact necessary in order to make the statements made, in light
of the circumstances under which they are made, not misleading.

Section 10. [Liability.]
(a) Any person who:
(1) engages in the business of advising others, for compensation,
either directly or through publications or writings, as to the value of
securities or as to the advisability of investing in, purchasing or selling
securities, or who, for compensation and as a part of a regular business,
issues or promulgates analyses or reports concerning securities in viola-
tion or subparagraph (2) or (3) or subsection (b) of Section 9 or of any rule,
regulation or order under Section 8; or
(2) receives, directly or indirectly, any consideration from another
person for advice as to the value of securities or their purchase or sale,
whether through the issuance of analyses, reports or otherwise employs
any device, scheme or artifice to defraud such other person or engages
in any act, practice or course of business which operates or would operate
as a fraud or deceit on such other person, is liable to such other person
who may bring an action either at law or in equity to recover the con-
sideration paid for such advice and any loss due to such advice, together
with interest at [6] percent per year from the date of payment of the con-
sideration plus costs and reasonable attorney's fees, less the amount of
any income received from such advice. An action pursuant to a viola-
tion of Section 4 may not be maintained except by those persons who
directly received advice from the unregistered investment advisor
representative. An action based on a violation of Section 9(b) may not
prevail where the person accused of the violation sustains the burden
of proof that he did not know, and in the exercise of reasonable care could
not have known, of the existence of the facts by reason of which the
liability is alleged to exist.

(b) Every person who, directly or indirectly, controls a person liable
under this section, including every partner, officer or director of such
a person, every person occupying a similar status or performing similar
functions, every employee of such a person who materially aids in the
conduct giving rise to the liability, is liable jointly and severally with
and to the same extent as such person, unless such person is able to show
that he did not know, and in exercise of reasonable care could not have
known, of the existence of the facts by reason of which the liability is
alleged to exist. There shall be contribution as in cases of contract among
the several persons so liable.

(c) Every cause of action under this act survives the death of any per-
son who might have been a plaintiff or defendant.

(d) No person may bring an action under this act more than [three]
years after the contract of sale or the rendering of investment advice,
or the expiration of [two] years after the discovery of the facts constituting
the violation, whichever first occurs.

(e) No person who has made or engaged in the performance of any con-
tract in violation of any provision of this act or any rule, regulation or
order hereunder, or who has acquired any purported right under any
such contract with knowledge of the facts by reason of which its mak-
ing or performance was in violation, may base any suit on the contract.

(f) Any condition, stipulation or provision binding any person receiv-
ing any investment advice to waive compliance with any provisions of
this act or any rule, regulation or order hereunder is void.

(g) The rights and remedies provided for by this section are in addi-
tion to any other rights and remedies that may exist at law or in equity,
but this act does not create any cause of action not specified in this sec-
tion or in subsection (g) of Section 6 of this act.

Section 11. [Penalties.]

(a) Any person, partnership, corporation, company, trust or association
who violates any provision of subparagraph (1) or (2) of subsection (a)
or of subsection (b) of Section 9 of this act shall be guilty of a [felony].

(b) Any person, partnership, corporation, company, trust or association
who violates any other provision of this act shall be guilty of a
[misdemeanor].

Section 12. [Effective Date.] [Insert effective date.]
Low-Income Housing Tax Credit Act

This act, based on 1987 California legislation enacted as part of the state's tax conformity measures, establishes a state tax credit for low-income rental housing designed to complement the federal low-income housing tax credit. The federal Tax Reform Act of 1986 enacted a tax credit for low-income rental housing that can be claimed annually for 10 years. The annual maximum credit is 9 percent for new construction and rehabilitation and 4 percent for the cost of acquiring existing housing and expenditures for new construction and rehabilitation when other federal subsidies are utilized for rental housing meeting specified set-aside and rent requirements.

The state tax credit is for four years and the amount of credit for all projects, whether or not federally subsidized, will total 30 percent over the credit period. For projects placed in service in 1987, the credit will be 9 percent for the first three years and 3 percent for the fourth year of the credit period. The total amount of tax credit that may be granted in each of the years 1987 through 1989 cannot exceed $35 million plus any carryover from the previous year. The compliance period for set-aside and rent requirements is 30 years.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Low-Income Housing Tax Credit Act.

Section 2. [Low-Income Housing Tax Credit Established.]

(a) There shall be allowed as a credit against the taxes imposed by this part a state low-income housing tax credit in an amount equal to the amount determined in subsection (c), computed in accordance with Section 42 of the Internal Revenue Code, except as otherwise provided in this section.

(b)(1) The amount of the credit allocated to any project shall be authorized by the [mortgage bond allocation committee], or any successor thereof, based on a project's need for the credit for economic feasibility.

(i) The low-income housing project shall be located in [insert state name] and shall meet either of the following requirements:

(A) It shall have been allocated by the [mortgage bond allocation committee] a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(B) It shall qualify for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(ii) The [mortgage bond allocation committee] shall not require fees for the credit under this section in addition to those fees required for
applications for the tax credit pursuant to Section 42 of the Internal
Revenue Code.

(2)(i) The mortgage bond allocation committee shall certify to the
taxpayer the amount of tax credit under this section to which the tax-
payer is entitled for each year in the credit period.

(ii) The taxpayer shall attach a copy of the certification to any
return upon which a tax credit is claimed under this section.

(iii) In the case of a failure to attach a copy of the certification for
the year to the return in which a tax credit is claimed under this sec-
tion, no credit under this section shall be allowed for that year until a
copy of that certification is provided.

(c) Section 42(b) of the Internal Revenue Code shall be modified as
follows:

(1) In the case of any qualified low-income building placed in service
by the taxpayer during [insert year], the term "applicable percentage"
means 9 percent of each of the first three years and 3 percent for the
fourth year for new buildings (whether or not the building is federally
subsidized) and for existing buildings.

(2) In the case of any qualified low-income building placed in service
by the taxpayer after [insert year] (for new buildings whether or not the
building is federally subsidized and for existing buildings), the term "ap-

clicable percentage" means either of the following:

(i) For each of the first three years, the highest percentage pre-
scribed under Section 42(b)(2) of the Internal Revenue Code, for the
month in which the building is placed in service, in lieu of the percentage
prescribed in Section 42(b)(1)(A) of the Internal Revenue Code.

(ii) For the fourth year, the difference between 30 percent and the
sum of the applicable percentages for the first three years.

(d) The term "qualified low-income housing project" as defined in Sec-
tion 42(c)(2) of the Internal Revenue Code is modified by adding the
following requirements:

(1) The taxpayer shall be entitled to receive a cumulative cash
distribution on the taxpayer's cash invested in the qualified low-income
housing project in an amount not to exceed 8 percent per annum. For
purposes of this paragraph, if the taxpayer is a partnership or an S cor-
poration, the limitation on return shall apply to each of the partners or
the shareholders, respectively.

(2) The taxpayer shall apply any cash available for distribution in
excess of the amount eligible to be distributed under paragraph (1) to
reduce the rent on rent-restricted units or to increase the number of rent-
restricted units subject to the tests of Section 42(g)(1) of the Internal
Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall
be modified as follows:

(1) The term "credit period" as defined in Section 42(f)(1) of the In-
ternal Revenue Code is modified by substituting "4 income years" for
"10 taxable years."

(2) The special rule for the first taxable year of credit period under
Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax

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credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of the [insert year] or [insert next consecutive year] taxable year, the qualified basis of any building exceeds the qualified basis of such building as approved for the initial allocation of credits pursuant to this section, the taxpayer shall be eligible to apply for an allocation of the credit on the excess in an amount equal to the applicable percentage determined pursuant to subsection (c) above for the four-year period beginning with the later of the taxable year in which the increase in qualified basis occurs or the taxable year in which the credit allocation is received.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable: The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the [mortgage bond allocation committee] for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (6) and (7) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g)(1) Except as provided in paragraph (2), the aggregate housing credit dollar amount which may be allocated annually by the [mortgage bond allocation committee] for the [insert series of years] calendar years pursuant to this section shall be an amount equal to $1,250 multiplied by the state population in that year, as established by the [department of finance].

(2) The portion of the aggregate housing credit dollar amount of the [mortgage bond allocation committee] which is not allocated for each of the calendar years may be carried over to any subsequent calendar years through 1989. Thereafter, Section 42(h)(2) of the Internal Revenue Code shall apply.

(h)(1) The term "compliance period" as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30 consecutive income years beginning with the first income year of the credit period with respect thereto, subject to the limitation in paragraph (2).

(2) If, after the first 15 years of the compliance period, a qualified low-income housing project is not economically feasible, the taxpayer shall be entitled to remove one or more low-income units from the set-aside and rent requirements of Section 42(g) of the Internal Revenue Code as is necessary for the project to become economically feasible, provided that once a project is again economically feasible, the taxpayer designates the next available units as low-income units subject to the set-aside and rent requirements, up to the original number of low-income units, while keeping the project economically feasible.

(3) For purposes of paragraph (2), "economically feasible" means that project revenue equals or exceeds project operating expenses excluding any return on investment.
(4) For purposes of paragraph (3), "operating expenses" means the reasonable expenses necessary to operate and maintain the project in habitable condition, debt service, taxes, and reasonable reserves. For purposes of this paragraph, debt service shall not include that portion of payments of principal and interest attributable to any excess refinanced principal over the outstanding principal of the loan that was refinanced.

(i) Section 42(g) of the Internal Revenue Code shall not be applicable and the following shall be substituted in its place:

1. The requirements of this section shall be set forth in a regulatory agreement between the [mortgage bond allocation committee] and the taxpayer.

2. The regulatory agreement shall include, but not be limited to, the following:

   (i) A term equal to the compliance period.

   (ii) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

   (iii) A provision stating which state and local agencies can enforce the regulatory agreement in the event the taxpayer fails to satisfy any of the requirements of this section.

   (iv) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto.

   (v) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

   (vi) A requirement that the taxpayer provide the [mortgage bond allocation committee] or its designee and the local agency that can enforce the regulatory agreement with advance notice if the taxpayer intends to reduce the number of low-income units to make a project economically feasible.

   (vii) A requirement that the taxpayer notify the [mortgage bond allocation committee] or its designee and the local agency that can enforce the regulatory agreement if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

   (viii) A requirement that the taxpayer, as security for the performance of taxpayer's obligations under the regulatory agreement, assign the taxpayer's interest in rents which it receives from the project, provided that until there is a default under the regulatory agreement, the taxpayer is entitled to collect and retain the rents.

   (ix) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the taxpayer is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance, securing the appointment of a receiver to operate the project, or any other relief as may be appropriate.
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(j) In allocating the housing credit, the [mortgage bond allocation commission] shall give priority to qualified low-income housing projects that satisfy the following criteria, which are weighted according to the numerical order of the paragraphs listed below:

(1) Projects that have received government financing or mortgage assistance and are eligible and likely to convert to market-rate rental units.

(2)(i) Projects that commit to providing low-income units for a significantly longer period than the compliance period under this section.

(ii) Projects that commit to providing a greater percentage of low-income units than is required under Section 42(g)(1) of the Internal Revenue Code.

(3) Projects that commit to charging rent for low-income units that is less than the rent requirements under Section 42(g)(2) of the Internal Revenue Code.

(4)(i) Projects for which the rate of return on cash investment is less than the rate allowed under this section.

(ii) Projects targeted to those groups identified in the [insert state housing plan] as having special needs, including projects that ensure that rural areas receive a proportionate share of the housing credits.

(k) Section 42(l) of the Internal Revenue Code shall be modified as follows: The term “Secretary” shall be replaced by the term “Mortgage Bond Allocation Committee.”

(l) In the case where the state credit allowed under this section exceeds the taxes imposed by this part for the income year, that portion of the credit which exceeds those taxes may be carried over to the taxes imposed by this part in succeeding income years, with respect to which this section shall remain in effect for purposes of carrying over excess credit, until the credit is used. The credit shall be applied first to the earliest income years possible.

(m) The aggregate amount of tax credits granted pursuant to this section shall not exceed [35] million dollars per year. The [mortgage bond allocation committee] shall not authorize any credit if the total amount of credits authorized in any year under the [personal income tax law] and the [bank and corporation tax law] exceeds [35] million dollars.

Section 3. [Repealer.] [Insert repealer clause.]

Section 4. [Effective Date.] [Insert effective date.]
All-Terrain Vehicles (Statement)

Since their introduction in the 1970s, all-terrain vehicles (ATVs) have been under attack for a variety of alleged abuses including noise and environmental degradation. However, it is the concern over their safety that has led to substantial activity regulating ATVs at both the federal and state level. The U.S. Consumer Product Safety Commission (CPSC) and the U.S. Department of Justice have blamed ATVs for more than 1,000 deaths and over 300,000 injuries.

A March 14, 1988 agreement between the ATV industry, the Justice Department and the CPSC on limiting the safety threat grew out of an "imminent hazard" case against ATV distributors initiated by the Commission. On April 28, 1988, federal District Court Judge Gerhard Gesell signed the final regulatory consent decree between the U.S. government and the ATV industry which went into effect immediately. The decree included provisions for:

• a continuation of the halt in sales of new three-wheel ATVs;
• an industry pledge to undertake an $8.5 million advertising campaign publicizing the safety risks of ATVs;
• a requirement for distributors to develop a free nationwide safety and training program for consumers who purchased ATVs since December 30, 1986;
• issuance of new warning labels, owner's manuals and a consumer hot line for riders.

Currently, no state prohibits the use of ATVs; however, there are several state laws related to the operation and registration of these vehicles. According to information compiled by the Specialty Vehicle Institute of America (September 1987), 29 states have registration requirements; 12 states require a title; three states require a motor vehicle operator's license to ride an ATV across public roads; 25 states have minimum age requirements for ATV operation; 15 states have rider safety certification requirements; 30 states restrict access to public roads; 34 regulate the types of equipment (lights, brakes, mufflers) on ATVs; and 16 states have helmet provisions.

The 1987 edition of Suggested State Legislation included an All-Terrain Vehicle Registration Act, based on a 1985 Pennsylvania law (volume 46, pp. 115-126). However, at this time, the Committee on Suggested State Legislation would like to call attention to a model ATV code drafted by the Association of Food and Drug Officials (AFDO).

The AFDO All-Terrain Vehicle Model Code provides for the registration of ATVs and regulation of their use, establishes an ATV operator safety education program and supports operator certification. It prohibits the use of ATVs on public roads; emphasizes safety awareness at the dealer location, by requiring that the dealer provide certain safety information to the purchaser; considers the certification and qualifications of ATV safety instructors and specifications for the training program for these instructors; and considers passenger restrictions.

A copy of the AFDO All-Terrain Vehicle Model Code may be obtained
Suggested State Legislation

from the Association of Food and Drug Officials, P.O. Box 3425, York, Pennsylvania 17402, 717/757-2888.
Cellular Radio Telephone Privacy Act

This act, based on 1985 California legislation, with specified exceptions, prohibits and makes criminal penalties applicable to persons intercepting, receiving, or assisting in intercepting or receiving communications transmitted between cellular radio telephones or between a cellular radio telephone and a landline telephone, unless consented to by all parties to the communication. It also imposes a state-mandated local program by expanding to cellular radio phones, the penalties for manufacturing, assembling, selling etc., a device primarily designed for eavesdropping upon the communications of another.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Cellular Radio Telephone Privacy Act.

Section 2. [Legislative Intent.] The legislature finds that the advent of widespread use of cellular radio telephone technology means that persons will be conversing over a network which cannot guarantee privacy in the same way that is guaranteed over landline systems.

The legislature further finds that there is, at present, no commercially feasible method to prevent unauthorized third parties from eavesdropping upon private cellular radio telephone communications.

The legislature also finds that the right of privacy has been established under present law in order to prevent the continued and increasing use of new technological devices and techniques suitable only for eavesdropping upon private conversations.

Therefore, the legislature declaresthat parties to a cellular radio telephone communication have a right of privacy in that communication, and that this act is intended to provide a legal recourse to those persons whose private cellular radio telephone communications have been maliciously invaded by persons not intended to receive such communication.

It is not the intent of the legislature to prohibit the manufacture, sale, possession or use of electronic scanning devices or radios, capable of intercepting or receiving radio frequencies, nor to prohibit the interception or reception of radio frequencies other than the unauthorized malicious interception or reception of cellular radio frequencies.

Section 3. [Definitions.] As used in this act:

(1) "Person" means an individual, business association, partnership, corporation, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof, whether federal, state or local, but excludes an individual known by all parties to a confidential communication to be overhearing or recording
the communication.
(2) "Confidential communication" means any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.
(3) "Cellular radio telephone" means a wireless telephone authorized by the Federal Communications Commission to operate in the frequency bandwidth reserved for cellular radio telephones.

Section 4. [Penalties for Interference with Cellular Communications.]
(a) Every person who, maliciously and without the consent of all parties to the communication, intercepts, receives or assists in intercepting or receiving a communication transmitted between cellular radio telephones or between any cellular radio telephone and a landline telephone shall be punished by a fine not exceeding $2,500 dollars, by imprisonment in the (county jail) not exceeding one year or in the [state prison], or by both that fine and imprisonment. If the person has been previously convicted of a violation of this act or [insert other appropriate sections of state penal code], the person shall be punished by a fine not exceeding $10,000 dollars, by imprisonment in the (county jail) not exceeding one year or in the [state prison], or by both that fine and imprisonment.
(b) In the following instances, this act shall not apply:
(1) To any public utility engaged in the business of providing communications services and facilities, or to the officers, employees or agents thereof, where the acts otherwise prohibited are for the purpose of construction, maintenance, conduct or operation of the services and facilities of the public utility.
(2) To the use of any instrument, equipment, facility or service furnished and used pursuant to the tariffs of the public utility.
(3) To any telephonic communication system used for communication exclusively within a state, county, city and county or city correctional facility.

Section 5. [Law Enforcement Officers Exempted.] Nothing in this act prohibits the [attorney general], any [district attorney], or any [assistant, deputy or investigator of the attorney general or any district attorney], any officer of the [insert state highway patrol and other appropriate law enforcement officers], or any person acting pursuant to the direction of one of these law enforcement officers acting within the scope of his or her authority, from overhearing or recording any communication which they could lawfully overhear or record prior to the effective date of this act.
Nothing in this act shall render inadmissible any evidence obtained by the above-named persons by means of overhearing or recording any
communication which they could lawfully overhear or record prior to the effective date of this act.

Section 6. [Exemptions for Obtaining Evidence.] Nothing in this act prohibits one party to a confidential communication from recording the communication for the purpose of obtaining evidence reasonably believed to relate to the commission by another party to the communication of the crime of extortion, kidnapping, bribery, any felony involving violence against the person or a violation of [insert other appropriate provisions]. Nothing in this act renders any evidence so obtained inadmissible in a prosecution for extortion, kidnapping, bribery, any felony involving violence against the person, a violation of [insert other appropriate provisions] or any crime in connection therewith.

Section 7. [Penalties for Trespassing to Commit Act.] Any person who trespasses on property for the purpose of committing any act, or attempting to commit any act, in violation of this act shall be punished by a fine not exceeding [2,500] dollars, by imprisonment in the [county jail] not exceeding [one year] or in the [state prison], or by both that fine and imprisonment. If the person has previously been convicted of a violation of this act, the person shall be punished by a fine not exceeding [10,000] dollars, by imprisonment in the [county jail] not exceeding [one year] or in the [state prison], or by both that fine and imprisonment.

Section 8. [Penalties for Manufacturing, Assembling, Selling Device.] (a) Every person who manufactures, assembles, sells, offers for sale, advertises for sale, possesses, transports, imports or furnishes to another any device which is primarily or exclusively designed or intended for eavesdropping upon the communication of another, or any device which is primarily or exclusively designed or intended for the unauthorized interception or reception of communications between cellular radio telephones or between a cellular radio telephone and a landline telephone in violation of Section 4, shall be punished by a fine not exceeding [2,500] dollars, by imprisonment in the [county jail] not exceeding [one year] or in the [state prison], or by both that fine and imprisonment. If the person has previously been convicted of a violation of this act, the person shall be punished by a fine not exceeding [10,000] dollars, by imprisonment in the [county jail] not exceeding [one year] or in the [state prison], or by both that fine and imprisonment.

(b) This section does not apply to either of the following:

(1) An act otherwise prohibited by this section when performed by

(2) a communication utility or an officer, employee or agent thereof
for the purpose of construction, maintenance, conduct or operation of,
otherwise incident to, the use of, the services or facilities of the utility; or

(3) a state, county or municipal law enforcement agency or an agency of the federal government; or

(4) a person engaged in selling devices specified in subsection (a)
for use by, or resale to, agencies of a foreign government under terms
approved by the federal government, communication utilities, state, county or municipal law enforcement agencies, or agencies of the federal government.

(2) Possession by a subscriber to communication utility service of a device specified in subsection (a) furnished by the utility pursuant to its tariffs.

Section 9. [Effective Date.] [Insert effective date.]
Action for Sexual Exploitation by Psychotherapists

This act, based on 1986 Minnesota legislation, provides civil penalties for psychotherapists who have sex with their patients during a therapy session, or outside of a session if they are told it is part of the treatment or if the patient is emotionally dependent upon the psychotherapist. Employers or former employers of psychotherapists may also be liable if they fail to take reasonable action when they have reason to know that a psychotherapist engaged in sex with clients or if they fail to make inquiries of former employers concerning sex with clients.

Suggested Legislation

(Title, enacting clause, etc.)

1. Section 1. [Short Title.] This act may be cited as the Action for Sexual Exploitation by Psychotherapists Act.

2. Section 2. [Definitions.] As used in this act:

   (1) “Emotionally dependent” means that the nature of the patient’s or former patient’s emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to believe that the patient or former patient is unable to

   withhold consent to sexual contact by the psychotherapist.

   (2) “Former patient” means a person who was given psychotherapy within [two] years prior to sexual contact with the psychotherapist.

   (3) “Patient” means a person who seeks or obtains psychotherapy.

   (4) “Psychotherapist” means a physician, psychologist, nurse, chemical dependency counselor, social worker, member of the clergy or other person, whether or not licensed by the state, who performs or purports to

   perform psychotherapy.

   (5) “Psychotherapy” means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom or condition.

   (6) “Sexual contact” means any of the following, whether or not occurring with the consent of a patient or former patient:

   (i) sexual intercourse, cunnilingus, fellatio, anal intercourse or any

   intrusion, however slight, into the genital or anal openings of the patient’s or former patient’s body by any part of the psychotherapist’s body

   or by any object used by the psychotherapist for this purpose, or any intru- 

   sion, however slight, into the genital or anal openings of the psycho-

   therapist’s body by any part of the patient’s or former patient’s body or

   by any object used by the patient or former patient for this purpose, if

   agreed to by the psychotherapist;

   (ii) kissing of, or the intentional touching by the psychotherapist of

   the patient’s or former patient’s genital area, groin, inner thigh, but-

   tocks, or breast or of the clothing covering any of these body parts;
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(iii) kissing of, or the intentional touching by the patient or former patient of the psychotherapist's genital area, groin, inner thigh, buttocks, or breast or of the clothing covering any of these body parts if the psychotherapist agrees to the kissing or intentional touching.

"Sexual contact" includes requests by the psychotherapist for conduct described in subparagraphs (i) to (iii).

"Sexual contact" does not include conduct described in subparagraphs (i) or (ii) that is a part of standard medical treatment of a patient.

(7) "Therapeutic deception" means a representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the patient's or former patient's treatment.

Section 3. [Cause of Action for Sexual Exploitation.] A cause of action against a psychotherapist for sexual exploitation exists for a patient or former patient for injury caused by sexual contact with the psychotherapist, if the sexual contact occurred:

(1) during the period the patient was receiving psychotherapy from the psychotherapist; or

(2) after the period the patient received psychotherapy from the psychotherapist if:

(i) the former patient was emotionally dependent on the psychotherapist; or

(ii) the sexual contact occurred by means of therapeutic deception.

The patient or former patient may recover damages from a psychotherapist who is found liable for sexual exploitation. It is not a defense to the action that sexual contact with a patient occurred outside a therapy or treatment session or that it occurred off the premises regularly used by the psychotherapist for therapy or treatment sessions.

Section 4. [Liability of Employer.]

(a) An employer of a psychotherapist may be liable under Section 3 of this act if:

(1) the employer fails or refuses to take reasonable action when the employer knows or has reason to know that the psychotherapist engaged in sexual contact with the plaintiff or any other patient or former patient of the psychotherapist; or

(2) the employer fails or refuses to make inquiries of an employer or former employer, whose name and address have been disclosed to the employer and who employed the psychotherapist as a psychotherapist within the last five years, concerning the occurrence of sexual contacts by the psychotherapist with patients or former patients of the psychotherapist.

(b) An employer or former employer of a psychotherapist may be liable under Section 3 of this act if the employer or former employer:

(1) knows of the occurrence of sexual contact by the psychotherapist with patients or former patients of the psychotherapist;

(2) receives a specific written request by another employer or prospective employer of the psychotherapist, engaged in the business of psychotherapy, concerning the existence or nature of the sexual contact; and
(3) fails or refuses to disclose the occurrence of the sexual contacts.
(c) An employer or former employer may be liable under Section 3 of
this act only to the extent that the failure or refusal to take any action
required by subsection (a) or (b) was a proximate and actual cause of any
damages sustained.
(d) No cause of action arises, nor may a licensing board in this state
take disciplinary action, against a psychotherapist's employer or former
employer who in good faith complies with this section.

Section 5. [Scope of Discovery.] In an action for sexual exploitation,
evidence of the plaintiff's sexual history is not subject to discovery ex-
cept when the plaintiff claims damage to sexual functioning; or
(1) the defendant requests a hearing prior to conducting discovery and
makes an offer of proof of the relevancy of the history; and
(2) the court finds that the history is relevant and that the probative
value of the history outweighs its prejudicial effect.
The court shall allow the discovery only of specific information or ex-
amples of the plaintiff's conduct that are determined by the court to be
relevant. The court's order shall detail the information or conduct that
is subject to discovery.

Section 6. [Admission of Evidence.] In an action for sexual exploita-
tion, evidence of the plaintiff's sexual history is not admissible except
when:
(1) the defendant requests a hearing prior to trial and makes an offer
of proof of the relevancy of the history; and
(2) the court finds that the history is relevant and that the probative
value of the history outweighs its prejudicial effect.
The court shall allow the admission only of specific information or ex-
amples of the plaintiff's conduct that are determined by the court to be
relevant. The court's order shall detail the information or conduct that
is admissible and no other such evidence may be introduced.
Violation of the terms of the order may be grounds for a new trial.

Section 7. [Limited Period.] An action for sexual exploitation shall be
commenced within five years after the cause of action arises.

Section 8. [Effective Date.] [Insert effective date.]
Dangerous Dogs Act

This act, based on 1987 Washington legislation, requires the owners of “dangerous dogs” (as defined in statute) to obtain a certificate of registration from the animal control authority. In order to obtain this certificate, the owner must show that he has a surety bond or insurance policy in the amount of $50,000 covering the owner against any injuries inflicted by the dog. The owner must also show that there is a proper enclosure for the dog. If a dangerous dog attacks or bites and the dog’s owner has a prior conviction under the act’s provisions, the owner is guilty of a class C felony and the dog must be quarantined and subsequently destroyed. Dogs are not considered dangerous if the injury or threat is sustained by a person who commits a willful trespass upon the owner’s premises, or by a person who torments, abuses or assaults the dog. “Potentially dangerous dogs” are regulated only by local, municipal and county ordinances.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This act may be cited as the Dangerous Dogs Act.

2 Section 2. [Definitions.] As used in this act:

1 (1) “Potentially dangerous dogs” means any dog that when unprompted:

3 (i) inflicts bites on a human or a domestic animal either on public
4 or private property, or
5 (ii) chases or approaches a person upon the streets, sidewalks or any
6 public grounds in a menacing fashion or apparent attitude of attack, or
7 any dog with a known propensity, tendency or disposition to attack unprompted, to cause injury, or to cause injury or otherwise to threaten the safety of humans or domestic animals.

2 (2) “Dangerous dog” means any dog that according to the records of
3 the appropriate authority:

5 (i) has inflicted severe injury on a human being without provocation
6 on public or private property,
7 (ii) has killed a domestic animal without provocation while off the
8 owner’s property, or
9 (iii) has been previously found to be potentially dangerous, the owner
10 having received notice of such and the dog again aggressively bites, attacks or endangers the safety of humans or domestic animals.

20 (3) “Severe injury” means any physical injury that results in broken
21 bones or disfiguring lacerations requiring multiple sutures or cosmetic
22 surgery.

23 (4) “Proper enclosure of a dangerous dog” means, while on the owner’s
24 property, a dangerous dog shall be securely confined indoors or in a

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securely enclosed and locked pen or structure, suitable to prevent the
entry of young children and designed to prevent the animal from escap-
ing. Such pen or structure shall have secure sides and a secure top, and
shall also provide protection from the elements for the dog.
(5) "Animal control authority" means an entity acting alone or in con-
cert with other local governmental units for enforcement of the animal
control laws of the city, county and state and the shelter and welfare of
animals.
(6) "Animal control officer" means any individual employed, contracted
with or appointed by the animal control authority for the purpose of
aiding in the enforcement of this act or any other law or ordinance
relating to the licensure of animals, control of animals or seizure and
impoundment of animals, and includes any state or local law enforce-
ment officer or other employee whose duties in whole or in part include
assignments that involve the seizure and impoundment of any animal.
(7) "Owner" means any person, firm, corporation, organization or
department possessing, harboring, keeping, having an interest in or hav-
ing control or custody of an animal.

Section 3. [Certificate of Registration.]
(a) It is unlawful for an owner to have a dangerous dog in the state
without a certificate of registration issued under this section. This sec-
tion shall not apply to dogs used by law enforcement officials for police
work.
(b) The animal control authority of the city or county in which an owner
has a dangerous dog shall issue a certificate of registration to the owner
of such animal if the owner presents to the animal control unit sufficient
evidence of:
(1) A proper enclosure to confine a dangerous dog and the posting
of the premises with a clearly visible warning sign that there is a
dangerous dog on the property. In addition, the owner shall conspicu-
ously display a sign with a warning symbol that informs children of the
presence of a dangerous dog;
(2) A surety bond issued by a surety insurer qualified under [insert
appropriate citation] in a form acceptable to the animal control authority
in the sum of at least [50,000] dollars, payable to any person injured by
the vicious dog; or
(3) A policy of liability insurance, such as homeowner’s insurance,
issued by an insurer qualified under [insert appropriate citation] in the
amount of at least [50,000] dollars, insuring the owner of any personal
injuries inflicted by the dangerous dog.
(c)(1) If an owner has the dangerous dog in an incorporated area that
is serviced by both a city and a county animal control authority, the
owner shall obtain a certificate of registration from the city authority;
(2) If an owner has the dangerous dog in an incorporated or unincor-
porated area served only by a county animal control authority, the owner
shall obtain a certificate of registration from the county authority;
(3) If an owner has the dangerous dog in an incorporated or unincor-
porated area that is not served by an animal control authority, the owner
Suggested State Legislation

shall obtain a certificate of registration from the office of the [local
sheriff].
(d) Cities and counties may charge an annual fee, in addition to regular
dog licensing fees, to register dangerous dogs.

Section 4. [Other Restrictions.]
(a) It is unlawful for an owner of a dangerous dog to permit the dog
to be outside the proper enclosure unless the dog is muzzled and restrain-
ed by a substantial chain or leash and under physical restraint of a
responsible person. The muzzle shall be made in a manner that will not
cause injury to the dog or interfere with its vision or respiration but shall
prevent it from biting any person or animal.
(b) Potentially dangerous dogs shall be regulated only by local, mu-
nicipal and county ordinances. Nothing in this section limits restrictions
local jurisdictions may place on owners of potentially dangerous dogs.
(c) Dogs shall not be declared dangerous if the threat, injury or damage
was sustained by a person who, at the time, was committing a willful
trespass or other tort upon the premises occupied by the owner of the
dog, or was tormenting, abusing or assaulting the dog or has, in the past,
been observed or reported to have tormented, abused or assaulted the
dog or was committing or attempting to commit a crime.

Section 5. [Penalties.]
(a) Any dangerous dog shall be immediately confiscated by an animal
control authority if the:
(1) dog is not validly registered under Section 3 of this act;
(2) owner does not secure the liability insurance coverage required
under Section 3 of this act;
(3) dog is not maintained in the proper enclosure;
(4) dog is outside of the dwelling of the owner, or outside of the proper
enclosure and not under physical restraint of the responsible person. In
addition, the owner shall be guilty of a [gross misdemeanor] punishable
in accordance with [insert appropriate citation].
(b) If a dangerous dog of an owner with a prior conviction under this
act attacks or bites a person or another domestic animal, the dog’s owner
is guilty of a [class C felony], punishable in accordance with [insert ap-
propriate citation]. In addition, the dangerous dog shall be immediately
confiscated by an animal control authority, placed in quarantine for
the proper length of time, and thereafter destroyed in an expeditious and
humane manner.
(c) The owner of any dog that aggressively attacks and causes severe
injury or death of any human, whether the dog has previously been
declared potentially dangerous or dangerous, shall be guilty of a [class
C felony] punishable in accordance with [insert appropriate citation].
In addition, the dog shall be immediately confiscated by an animal con-
trol authority, placed in quarantine for the proper length of time, and
thereafter destroyed in an expeditious and humane manner.
(d) Any person entering a dog in a dog fight is guilty of a [class C felony]
punishable in accordance with [insert appropriate citation].
1 Section 6. [Severability.] [Insert severability clause.]

1 Section 7. [Effective Date.] [Insert effective date.]
Home Detention Act

Electronic monitoring of criminal offenders was first considered in the 1960s. It was not until 1983, however, that a New Mexico judge ordered a monitoring device to be attached to an offender’s body to monitor his whereabouts. Since that time electronic monitoring of prisoners and probationers has been tried in various counties in Florida, Kentucky, Michigan, and Oregon; and in New Jersey and Oklahoma.

This act, based on a 1988 Indiana law, authorizes home detention with an electronic monitoring device as a condition of probation for adult offenders and juveniles who have committed a delinquent act that would be a crime if committed by an adult. It allows a court to suspend the sentence for Class C and D felonies currently nonsuspendable, if the court orders the offender to undergo home detention as a condition of probation and for a period equal to the minimum sentence for the crime. The act establishes the requirements for an order of home detention.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Home Detention Act.

Section 2. [Applicability.] This act applies to adult offenders and to juveniles who have committed a delinquent act that would be a crime if committed by an adult.

Section 3. [Definitions.] As used in this act:

1. "Home" means the actual living area of the temporary or permanent residence of an offender. The term includes a hospital, health care facility, hospice, group home, residential treatment facility and boarding house. The term does not include a correctional facility or the residence or another person who is not part of the social unit formed by the offender’s immediate family.

2. "Monitoring device" means an electronic device that is:

   (i) limited in capability to the recording or transmitting of information regarding an offender’s presence or absence from the offender’s home;

   (ii) minimally intrusive upon the privacy of the offender or other persons residing in the offender’s home; and

   (iii) incapable of recording or transmitting:

      (A) visual images;

      (B) oral or wire communications or any auditory sound; or

      (C) information regarding the offender’s activities while inside the offender’s home.

3. "Offender" has the meaning set forth in [insert appropriate section of state code].
Section 4. [Period of Detention.]
(a) As a condition of probation a court may order an offender confined to the offender's home for a period of home detention lasting at least [60] days.
(b) The period of home detention may be consecutive or nonconsecutive, as the court orders. However, the aggregate time actually spent in home detention must not exceed the minimum term of imprisonment prescribed under [insert appropriate section of state code] for the crime committed by the offender.

Section 5. [Requirements for Order for Home Detention.] An order for home detention of an offender under Section 4 of this act must include the following:
(1) A requirement that the offender be confined to the offender's home at all times except when the offender is:
   (i) working at employment approved by the court or traveling to or from approved employment;
   (ii) unemployed and seeking employment approved for the offender by the court;
   (iii) undergoing medical, psychiatric, mental health treatment, counseling, or other treatment programs approved for the offender by the court;
   (iv) attending an educational institution or a program approved for the offender by the court;
   (v) attending a regularly scheduled religious service at a place of worship; or
   (vi) participating in a community work release or community service program approved for the offender by the court.
(2) Notice to the offender that violation of the order for home detention may subject the offender to prosecution for the crime of escape under [insert appropriate section of state code].
(3) A requirement that the offender abide by a schedule prepared by the [probation department] specifically setting forth the times when the offender may be absent from the offender's home and the locations the offender is allowed to be during the scheduled absences.
(4) A requirement that the offender is not to commit another crime during the period of home detention ordered by the court.
(5) A requirement that the offender obtain approval from the [probation department] before the offender changes residence or the schedule described in subsection (3).
(6) A requirement that the offender maintain:
   (i) a working telephone in the offender's home; and
   (ii) if ordered by the court, a monitoring device in the offender’s home, or on the offender’s person, or both.
(7) A requirement that the offender pay a home detention fee set by the court [in addition to any other fee required under another section of state code].
(8) A requirement that the offender abide by other conditions of probation set by the court under [insert appropriate section of state code].
Section 6. (Circumstances Under Which Home Detention May Not Be Ordered.)

(a) A court may not order home detention for an offender unless the offender agrees to abide by all of the requirements set forth in the court's order issued under this act.

(b) A court may not order home detention for an offender who is being held under a retainer, warrant or process issued by a court of another jurisdiction.

Section 7. (Home Detention Fees.)

(a) All home detention fees collected by a [county based probation department] shall be transferred to the [county treasurer] who shall deposit the fees into the [county supplemental adult or juvenile probation services fund]. The expenses of administering a home detention program, including the purchase of monitoring devices and other supervision expenses shall be paid from the fund.

(b) All home detention fees collected by the [probation department of a city or town court] shall be transferred to the [fiscal officer of the city or town] who shall deposit the fees into the [local supplemental adult or juvenile probation services fund]. The expenses of administering a home detention program, including the purchase of monitoring devices and other supervision expenses shall be paid from the fund.

Section 8. (Offender Responsible for Certain Expenses.) An offender ordered to undergo home detention under Section 4 of this act is responsible for providing food, housing, clothing, medical care and other treatment expenses. The offender is eligible to receive government benefits allowable for persons on probation, parole or other conditional discharge from confinement.

Section 9. (Information to Be Provided Law Enforcement Agencies.)

A [probation department] charged by a court with supervision of offenders ordered to undergo home detention shall provide all law enforcement agencies having jurisdiction in the place where the [probation department] is located with a list of offenders under home detention supervised by the [probation department]. The list must include the following information about each offender:

(1) The offender's name, any known aliases, and the location of the offender's home detention.

(2) The crime for which the offender was convicted.

(3) The date the offender's home detention expires.

(4) The name, address and telephone number of the offender's supervising probation officer for home detention.

Section 10. (Effective Date.) [Insert effective date.]
Athlete Agent Restrictions Act

This act, based on 1988 Ohio legislation, prohibits an athlete agent from entering into an agent contract with a student athlete unless certain requirements are met, including filing a copy of the proposed contract with the student's institution of higher education. It authorizes the state attorney general to seek an injunction and a civil penalty of up to $10,000 for a violation and makes a violation a first degree misdemeanor. The act also gives the state court jurisdiction over a nonresident athlete agent who enters into an agent contract with a student athlete of one of the state's institutions of higher education.

The reader may wish to consult other related legislation regarding the registration of athlete agents. In 1985, Oklahoma enacted legislation that requires the registration of agents with the secretary of state's office; it also requires that copies of contracts made with non-NCAA athletes be filed with that office, as well as the athletes' institutions of higher education (Title 70, Chapter 9, sections 821.61-821.71). In 1987, Alabama enacted legislation requiring that such agents be registered with the athlete agents regulatory commission also established in the act (87-628).

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Athlete Agent Restrictions Act.

Section 2. [Definitions.] As used in this act:

1. (1) "Agent contract" means any contract or agreement pursuant to which a student athlete authorizes or empowers or agrees to authorize or empower at some later date a person to negotiate or solicit any professional sport services contract on behalf of the athlete. If a student athlete also engages in a nonintercollegiate sporting event, contest, exhibition or program, "agent contract" does not include any contract or agreement described in this subsection if the athlete agent negotiates or solicits any professional sport services contract on behalf of the athlete in the nonintercollegiate sport that he engages in.

2. (2) "Athlete agent" means any person who offers an agent contract to, or enters into an agent contract with, a student athlete. Athlete agent does not include either of the following:

   (i) A member of a student athlete's immediate family;

   (ii) An attorney from whom a student athlete seeks legal advice concerning a proposed professional sport services contract if the attorney does not represent the student athlete in negotiating or soliciting the contract.

3. (3) "Immediate family" means an individual's spouse, child, parent, stepparent, grandparent, grandchild, brother, sister, parent-in-law,
brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin or
the spouse or guardian of any of the individuals described in this sub-
section.

(4) "Institution of higher education" means a state university or col-
lege or a private college or university located in this state that possesses
a certificate of authorization issued by [insert appropriate governing
body and section of state code].

(5) "Professional sport services contract" means any contract or agree-
ment pursuant to which an individual is employed or agrees to render
services as a player on a professional sport team or as a professional
athlete.

(6) "State university or college" includes the state universities listed
in [insert appropriate section of state code], community colleges created
pursuant to [insert appropriate section of state code], university branches
created pursuant to [insert appropriate section of state code], technical
colleges created pursuant to [insert appropriate section of state code],
and state community colleges created pursuant to [insert appropriate
section of state code].

(7) "Student athlete" means any individual who is enrolled as a stu-
dent at an institution of higher education in this state and engages in
any intercollegiate sporting event, contest, exhibition or program.

Section 3. [Agent Contract Requirements.] No athlete agent shall enter
into an agent contract with a student athlete unless the agent complies
with both of the following:

(1) The agent contract is in writing and includes all agreements be-
tween the parties;

(2) Not less than [14] days before entering into an agent contract with
a student athlete, the athlete agent files a copy of the proposed contract
with the official who is responsible for the supervision of the particular
sports program at the institution of higher education at which the stu-
dent athlete who is a participant in the program is enrolled.

Section 4. [Agent's Grounds for Action.] No athlete agent shall com-
mence or maintain an action in any court in this state on the basis of
any agent contract entered into in this state unless the contract com-
piles with Section 3 of this act.

Section 5. [Violations Render Contract Void.] Any agent contract
entered into in violation of sections 2 to 7 of this act shall be void and
unenforceable.

Section 6. [Attorney General May Bring Action.] (a) If the [attorney general], on the basis of his own inquiries or as a
result of a complaint, has reasonable cause to believe that an athlete
agent has violated or is violating Section 3 of this act, he may bring an
action, with notice as required by [insert appropriate civil rule], to ob-
tain a temporary restraining order, preliminary injunction or permanent
injunction to restrain the violation. If the [attorney general] shows by
a preponderance of the evidence that the athlete agent has violated or is violating Section 3 of this act, the court may issue a temporary restraining order, preliminary injunction or permanent injunction to restrain and prevent the violation.

(b) On motion of the [attorney general], or on its own motion, the court may impose a civil penalty of not more than [10,000] dollars against the athlete agent. The civil penalty ordered pursuant to this subsection shall be paid to the [treasurer] of the county in which the action is brought.

(c) No action may be brought by the [attorney general] under this section more than [two] years after the occurrence of a violation.

Section 7. [Court Jurisdiction Over Agents.] Subject to service of process pursuant to [insert appropriate civil rule], a court may exercise personal jurisdiction over an athlete agent who resides or engages in business outside this state as to a cause of action arising from the athlete agent entering into an agent contract with a student athlete outside this state without complying with Section 3 of this act.

Section 8. [Penalty for Violation.] Whoever violates Section 3 of this act is guilty of a [misdemeanor of the first degree].

Section 9. [Effective Date.] [Insert effective date.]
Action for Violation of NCAA Rules

This act, based on 1988 Tennessee legislation, authorizes action against a person who causes, aids or abets a student athlete or institution to violate or be in violation of a rule or rules of the National Collegiate Athletic Association (NCAA). It provides that the person shall be liable for damages to the institution if that person knew or should have known that a rule was violated or would be violated, and the rule violation is a contributing factor in disciplinary action taken by the institution against the student athlete or to disciplinary action taken by the NCAA against the institution or student athlete.

Suggested Legislation

(Title, enacting clause, etc.)

1. Section 1. [Short Title.] This act may be cited as the Action for Violation of NCAA Rules Act.

2. Section 2. [Definitions.] As used in this act:
   (1) “Attorney general” means the [attorney general] and reporter of the state of [insert state name].
   (2) “Institution” means a public or private institution of higher education, including any college or university, situated in [insert state name].
   (3) “National collegiate athletic association” means a national collegiate athletic association with [one] or more member institutions in [40] or more states, including [insert state name], and “governing national collegiate athletic association” means the national collegiate athletic association of which the institution is a member.
   (4) “Person” means an individual, company, corporation, association, partnership or other legal entity, except it does not mean a government or governmental agency or subdivision.
   (5) “Rescindability period” means that period of [20] days following expiration of the student athlete’s period of eligibility.
   (6) “Sports agent” means a person, his agents and employees, who directly or indirectly, recruits or solicits any student athlete to enter into any agent contract or professional sport services contract, or who for a fee procures, offers, promises or attempts to obtain employment for any student athlete with a professional sport team or as a professional athlete. The term includes an attorney licensed by any state who acts as a sports agent for any student athlete but does not include an attorney in his capacity as legal counsel for such student athlete in advising such student athlete with respect to contractual matters involving a career in professional sports.
   (7) “Student athlete” means any person who is enrolled as a student at an institution in the state of [insert state name] and who participates individually or as a team member in intercollegiate sports which are subject to the rules and regulations of such institution’s governing
national collegiate athletic association; such person shall be deemed to be a "student athlete" for his or her period of eligibility.

(8) "Period of eligibility" refers to athletic eligibility and is that period of time beginning with the student athlete's enrollment at such institution and ending with the last intercollegiate competition in which the student athlete is permitted to compete under rules of such institution's governing national intercollegiate athletic association, notwithstanding any disqualification under such rules.

Section 3. [Applicable Rules.] For purposes of determining violations under this act, the rules of the governing national collegiate athletic association in effect at time of passage of this act, and as amended from time to time thereafter by such association, shall apply.

Section 4. [Liability for Damages.] A person who causes, aids or abets a student athlete or institution, or both, to violate or be in violation of a rule or rules of its governing national collegiate athletic association shall be liable for damages as provided in sections 7 and 8 of this act to such institution if:

(1) the person knew or reasonably should have known that a rule was violated or would be violated, and

(2) the violation of the rule is a contributing factor:

(i) to disciplinary action including, but not limited to, loss of eligibility, taken by the institution against the student athlete, or

(ii) to disciplinary action taken by the governing national collegiate athletic association against the institution or student athlete.

In an action involving public institutions, the action shall be brought by the [attorney general].

Section 5. [Contractual Relationships.] (a) In addition to the violations and liabilities set forth in Section 4, contractual relationships between sports agents and student athletes shall be governed by the terms of this section. For purposes of this act, "contractual relationships" shall include, but not be limited to:

(1) a contract to represent the student athlete in pursuing a professional sports career;

(2) loans or advances of money in any way connected with the student athlete pursuing a professional sports career; or

(3) providing services or material goods in any way connected with the student athlete pursuing a professional career in sports.

(b) The contract between the sports agent and the student athlete must be:

(1) in writing,

(2) signed by both the sports agent and the student athlete in the presence of a notary public who shall duly notarize the same, and

(3) include the address of the sports agent to which notices may be sent.

(c) The contract must contain the following paragraphs in ten point, bold type and each of the following paragraphs must be dated and
initialed by the student athlete:

WARNING: A STUDENT ATHLETE SIGNING THIS CONTRACT WILL LOSE HIS OR HER ELIGIBILITY TO COMPETE IN INTERCOLLEGIATE ATHLETICS.

PURSUANT TO [INSERT STATE NAME] LAW, A COPY OF THIS CONTRACT MUST BE SENT TO THE CHIEF EXECUTIVE OFFICER OF YOUR COLLEGE OR UNIVERSITY IN ORDER TO BE VALID AND ENFORCEABLE.

PURSUANT TO [INSERT STATE NAME] LAW, YOU AS A STUDENT ATHLETE SIGNING THIS CONTRACT HAVE THE RIGHT TO RESCIND THIS CONTRACT WITHIN [20] DAYS OF (i) THE SIGNING OF THIS CONTRACT, (ii) NOTICE OF THIS CONTRACT BEING RECEIVED BY THE CHIEF EXECUTIVE OFFICER OF YOUR COLLEGE OR UNIVERSITY, OR (iii) IF NO NOTICE IS GIVEN TO YOUR COLLEGE OR UNIVERSITY, YOUR LAST INTERCOLLEGIATE GAME, WHICHEVER OCCURS THE LATEST.

IF YOU SIGN THIS CONTRACT PRIOR TO YOUR LAST INTERCOLLEGIATE GAME AND DO NOT NOTIFY YOUR COLLEGE OR UNIVERSITY OF THIS CONTRACT, YOUR TEAM MAY BE REQUIRED TO FORFEIT ALL GAMES IN WHICH YOU PARTICIPATED THEREAFTER, AND YOU MAY CAUSE YOUR TEAM TO BE INELIGIBLE FOR POSTSEASON GAMES.

Reference is not to be made to the notice provisions of this subsection when interpreting this statute. Such notice provisions are solely for the purpose of advising the student athlete of the possible effects of his or her signing the agency contract and some of his or her rights.

(d) A duly signed and notarized copy of the contract shall be furnished to the student athlete at the time of execution thereof.

(e) It shall be the responsibility of the sports agent and the student athlete to give notice to the chief executive officer of the student athlete's institution of any contractual relationship (including a written contract) between the sports agent and the student athlete during the student athlete's period of eligibility within [72] hours of entry into such relationship. Notice shall be in writing and for the sports agent shall be via registered or certified mail.

(f) Within [20] days of the last of the following to occur, the student athlete shall have the right to rescind the contract or any contractual relationship with the sports agent by giving notice in writing to the sports agent of his or her intent to rescind:

1. date on which the contractual relationship between the sports agent and the student athlete arises,

2. notification, as provided in section 5(e), of such contractual relationship is received by the chief executive officer of the student athlete's institution, or
(3) if such notification as required in section 5(e) is not given, expiration
of the eligibility period of the student athlete.

The student athlete may not under any circumstances effect a waiver
of the right to rescind, and any attempted waiver of the right to rescind
shall be ineffective.

(g) In addition to the rights to rescind as provided in section 5(f) any
contract dated during the rescindability period may be rescinded by the
student athlete prior to the expiration of the rescindability period.

(h) The contract shall be governed by the laws of the state of [insert
state name].

(i) Failure of the sports agent to comply with the terms of this act, in-
cluding, but not limited to, notification as required in subsection (d) of
this section, shall:

(1) render such contract void and unenforceable as between the sports
agent and the student athlete, and

(2) render the sports agent liable for violating Section 4 of this act.

(j) Post dating of contracts contemplated by this act is prohibited and
any such post dated contract shall be void and unenforceable. Execution
of such post dated contract shall be deemed a violation of this act.

(k) Any money, things of value, extra benefits or any other form of con-
sideration given by a sports agent to a student athlete may be retained
by the student athlete and shall be deemed a gift if:

(1) the student athlete rescinds his or her contractual relationship
with the sports agent as provided herein, or

(2) the contract between the student athlete and the sports agent is
void and unenforceable for failure to comply with the terms of this act.

Section 6. [Defenses.] Except for violations of Section 5 of this act, it
is a defense to an action under this act that at the time of the violation
of the rule, the defendant was:

(1) an employee of the national collegiate athletic association whose
rule was violated, or

(2) an employee of the institution.

Section 7. [Damages.] Damages awarded pursuant to the provisions
of this act may include, but are not limited to:

(1) Lost television revenues, lost ticket sales of regular season athletic
events, and lost revenues from not qualifying for post season athletic
events such as football bowl games and tournaments.

(2) Amounts earned or received for post season participation in athletic
events which amounts are required to be returned or forfeited.

Section 8. [Treble Damages.] In addition to damages, if any, awarded
pursuant to other sections of this act, treble damages may be assessed
for violation of this act in an amount equal to [three] times the value
of the athletic scholarship furnished by the institution to the student
athlete during the student athlete's period of eligibility.

Section 9. [Award of Fees.] If the [attorney general] prevails on behalf
Suggested State Legislation

of an institution in an action under this act, he is entitled to an award
of reasonable attorney’s fees and all other related costs including court
costs.

1 Section 10. [Right to Rescind.] The right to rescind granted to student
2 athletes under this act shall, in all cases, terminate [20] days after the
3 expiration of the eligibility period or upon notice as provided in section
4 5(e) has been given.

1 Section 11. Nothing in this act shall:
2 (1) prevent a student athlete from relinquishing his or her eligibility
3 to compete in intercollegiate athletics, or
4 (2) impair the validity of any contractual relationship between a stu-
5 dent athlete and a sports agent provided that the required notices are
6 given to the student athlete’s institution and the applicable period of
7 rescindability has expired.

1 Section 12. [Severability.] [Insert severability clause.]

1 Section 13. [Effective Data.] [Insert effective date.]
Homeless Employment Program

This act, based on a California bill, establishes a demonstration program to provide homeless persons residing at emergency shelters with job counseling, job training and job referral services through the state's department of employment development. The department is expected to cooperate with and provide assistance to eligible local public agencies in developing this program.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. (Short Title.) This act may be cited as the Homeless Employment Program Act.

Section 2. (Legislative Findings and Declarations.) The legislature finds and declares that conservative estimates suggest that [insert number] persons are now homeless in the state because of economic, physical and mental conditions that are beyond their control. Due to difficulties in conducting an accurate census and the fact that the problem is continuously growing, the actual count of homelessness may be considerably higher. Churches, local governments and nonprofit organizations providing assistance to the homeless have been overwhelmed by a new population of homeless persons: families with children, individuals with employment skills and formerly middle-class families and individuals with long work histories.

The legislature finds and declares that the lack of jobs, inadequately funded financial assistance programs, lack of access to existing financial assistance programs, family breakup and domestic violence and the shortage of affordable housing all contribute to the problem of homelessness. Once homeless, a person's chance of finding work, income and housing are virtually nonexistent without some assistance.

The legislature finds and declares that many homeless persons have been unemployed for an extended period of time. Contributing factors are functional illiteracy, insufficient work and social skills, lack of transportation, lack of child care and the emotional trauma of homelessness. Further, homelessness tends to create its own identity and attitude.

To break this cycle there is an immediate need to develop specific employment and job training programs for the employable homeless and to coordinate these programs with available housing, child care, and transportation agencies. These employment and job training programs will result in financial benefits to the state through the increased contribution of the homeless person turned taxpayer, and to the local community through local savings of welfare expenditures no longer needed because of employment to the homeless.

Section 3. (Definitions.) As used in this act.
Suggested State Legislation

1. (1) “Department” means [department of employment development].
   (2) “Local public agency” means [insert names of local jurisdictions].

Section 4. [Program Development and Operation.] The [department of employment development] shall cooperate with and provide assistance to eligible [local public agencies] in developing a program to provide jobs to homeless individuals residing in emergency shelters. Upon the request of the [local public agency], the [department] shall operate the program either through local field offices or local shelter providers to the homeless, as jointly determined by the [department] and the [local public agency]. Only one program site shall be operated in each [local public agency], except where it is mutually agreed upon by the [department] and the [local public agency] to operate more program sites. In selecting specific field offices the [department] and the [local public agency] shall consider the proximity of the field offices to the major homeless shelters and the availability of existing federal, state and local resources identified in Section 9 to fund these services. The [department] shall designate an employee in each field office participating in the program to serve as liaison to the homeless shelters. The allocation of personnel hours for this employee to this program shall be consistent with local demand for the services offered.

Section 5. [Program Objectives.] The two major objectives of the program are to improve the job search skills of homeless individuals and to link together employable homeless individuals with employers seeking temporary or permanent, part-time or full-time employees.

1. (1) In carrying out these objectives, the [department] shall do the following:
   (i) ensure the provision of training in job search skills, including interviewing, resume writing and job searching. The department may coordinate these job training activities with [private industry councils] funded through the federal Job Training Partnership Act (JTPA);
   (ii) coordinate with [local public agencies] new job development activities through affirmative marketing to the local business community;
   (iii) in cooperation with the advisory board established pursuant to subsection (2)(i), conduct job referral and job placement activities, including screening and interviewing of homeless individuals, for job openings consistent with the [department’s] responsibilities;
   (iv) conduct outreach services where the [department] and the [local public agency] have jointly determined the necessity of those services to ensure maximum participation by the homeless residing in emergency shelters. These outreach services may include the placement of computer terminals in homeless shelters designated to participate in the program pursuant to Section 4.

2. (2) In carrying out these objectives, the [local public agency] shall do the following:
   (i) Form an advisory board comprised of the following members:
      (A) an elected official from the participating local jurisdiction;
      (B) a representative from local government responsible for ad-
28 ministering homeless programs in the respective jurisdiction;
29 (C) a representative from a nonprofit operator of a major homeless
30 shelter participating in the program;
31 (D) [Three] representatives from the local business community,
32 [one] representing a large business, [one] representing a small business,
33 and [one] representing the local chamber of commerce;
34 (E) a representative of the [department];
35 (F) a representative of the local [private industry council], created
36 pursuant to [insert appropriate section of state code].
37 The primary responsibility of the advisory board shall be to ensure
38 the successful implementation of the [local public agency's] program. The
39 board shall meet [bimonthly] to review the progress reports prepared pur-
40 suant to Section 6. The board shall recommend ways to expand employ-
41 ment opportunities for the homeless, remove obstacles to the effective
42 implementation of the [local public agency's] program and help improve
43 marketing of the program to the local business community.
44 (ii) Provide administrative support, as necessary to the advisory
45 board established pursuant to paragraph (i).
46 (iii) Conduct affirmative marketing of the program to the local busi-
47 ness community.
48 (iv) Provide prescreening of homeless individuals to ensure that
49 homeless applicants to the [department] are job ready.
50 (v) Where local staff expertise exists, provide training in job search
51 skills or assist the [department] in providing that training.
52 (vi) Provide other appropriate administrative support as requested
53 by the [department] consistent with the availability of local resources.

Section 6. [Progress Reports.] Each [local public agency] shall prepare
a [quarterly] progress report using data provided by the [department],
which at a minimum contains the following information:
(1) The number and type of jobs placed for the homeless by the [depart-
ment] under the program, including whether the jobs were temporary
or permanent, part-time or full-time.
(2) The number and type of jobs to which homeless individuals have
been referred, including whether the jobs were temporary or permanent,
part-time or full-time.
(3) The number of applications for employment accepted by the [depart-
ment] from homeless individuals residing in emergency shelters par-
ticipating in the program.

Section 7. [Provision of Services to Facilitate Employment.] The
[department] and the [local public agency] shall work together to deter-
mine how transportation services shall be provided to facilitate employ-
ment of those homeless individuals in need of transportation. The
[department] may use petty cash to assist homeless persons with trans-
portation costs. A local jurisdiction participating in the program shall
provide a matching financial commitment to ensure that homeless per-
sons can utilize public transportation to travel to and from places of work
and can otherwise be referred to a job.
Suggested State Legislation

1. The [local public agency], with the assistance of the advisory board shall provide for other needs of the homeless, such as temporary child care and wearing apparel, immediately necessary to enable the individual to be referred to a job.

Section 8. [Annual Report.] The [department] shall submit an annual report to the legislature and the governor on or before [insert date], and on or before [insert date] of each subsequent year, which evaluates the effectiveness of the program.

Section 9. [Funding.] It is the intent of the legislature that the program established pursuant to this act shall, to the maximum extent feasible, be funded through existing federal, state and local resources and through any other public and private resources as may be available. These resources may include, but are not limited to, the following:

1. The federal Job Training Partnership Act (29 U.S.C.A. Sec. 1501 et seq.).
2. The federal Wagner-Peyser Act (29 U.S.C.A. Sec. 49 et seq.).
3. The federal Community Development Block Grant Program.
4. The federal Community Services Block Grant Program.
5. Local general fund revenues.
6. Private charitable donations.

Section 10. [Target Assistance.] It is further the intent of the legislature that assistance provided under this act be targeted to those areas in the state with the highest concentration of homeless populations, and which have already established comprehensive and coordinating strategies to address the homeless. It is intended that this act be part of a comprehensive local strategy involving federal, state and local resources working in cooperation with the private business and charitable sectors.

Section 11. [Repealer.] [Insert repealer clause.]

Section 12. [Effective Date.] [Insert effective date.]
Volunteer Service Credit Act

This act, based on 1987 California legislation, directs the state's department of aging to establish a three-year pilot volunteer service credit program. In this program, the department awards grants to approved sponsors, and provides for a program through which individuals may volunteer targeted services, as defined, in return for service credits that may be subsequently exchanged for targeted services.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Volunteer Service Credit Act.

Section 2. [Legislative Intent.]

(a) It is the intent of the legislature to create a statewide program for the utilization of the experience, talent and time of our senior citizens in building community and meeting unmet human needs, beginning with senior needs, and thereafter to utilize the results of these pilots to investigate the feasibility of expanding the service credit concept to other populations in need.

(b) It is further the intent of the legislature to assist in the development of local programs that simultaneously promote the following goals:

(1) To encourage our senior citizens who are willing and able to do so to participate in volunteer programs which use their time, talents, skills, experience, wisdom and caring in providing assistance to eligible persons in need, especially the frail elderly, and other seniors at risk of institutionalization.

(2) To allow these volunteer participants to earn credit for their time so invested in an earned credit system which they may draw upon later in time of their own increasing needs.

(c) It is the intent of the legislature that the senior partners service credit program supplement and not supplant existing public and private services, building upon existing volunteer service agencies and organizations to enhance their effectiveness and individual service goals.

(d) It is the intent of the legislature that the senior partners service credit program:

(1) Include a system for volunteer recruitment, screening, training and oversight supervision.

(2) Be designed through a consultative process with seniors and volunteer organizations.

(3) Build upon analogous and existing programs utilizing the concept of earned credits.

(4) Be essentially decentralized and community specific, allowing latitude for experimentation, innovation, pilots and various models appropriate to diverse communities, demographics, economics, ethnicity...
and existing infrastructures in each participating community.

(5) Utilize extensively the models developed in other states calling
upon research, accountability and evaluation studies of each program.
(6) Encourage local participation in matching funds, program design
and goal setting.
(7) Remain free from excessive regulation, criteria and procedural
obstacles except in the assurance of the health and safety of participants
and recipients.
(8) Require liability insurance to protect the volunteer and recipient
against injury and property damage; and provisions which would hold
the state not liable for damages resulting from such injuries or property
loss, nor for earned credits.
(9) Allow for the transference of earned credits to eligible persons.
(10) Permit [local area agency on aging] service areas the flexibility
they need to tailor programs toward the specific needs of their commu-

Section 3. [Definitions] As used in this act:
(1) "Eligible person" means an individual who is [60] years of age or
older.
(2) "Service credit" means the unit of exchange upon which the
volunteer service credit program operates. There shall be no monetary
value attached to the service credit.
(3) "Sponsor" means a nonprofit organization or a consortium of non-
profit organizations that receives and dispenses service credits on behalf
of eligible persons and is designated by the [department] to perform the
administrative tasks necessary to implement this act.
(4) "Targeted service" means a task for which service credits may be
earned when performed by a program volunteer for an eligible person.
(5) "Program volunteer" means an individual [60] years of age or older
who earns credits by providing targeted services to an eligible person
not related to him or her by blood, marriage, guardianship or adoption.
(6) "Department" means the [department of aging].
(7) "Program" means a senior partner service credit program funded
entirely or in part by an appropriation under this act.

Section 4. [Establishment of Program.]
(a) Within [eight] months after the effective date of this act, the [department]
shall establish a [three-year] pilot service credit program, in at
least [four] program sites, through which individuals may volunteer
targeted services and in return earn service credits that may be subse-
quently exchanged for targeted services. To implement the program, the
department shall develop a process for notifying potential sponsors of
the availability of program grants, then awarding grants to those spon-
sors that best meet the objectives set forth in this act. At least [one] pro-
gram shall be in a rural area.
(b) The [department] shall ensure that each sponsor maintains a
register containing all of the following:
   (1) The names of participating volunteers, services for which they
       are available, and any other personal information relevant to the pro-
       gram.
   (2) An accounting system with the capacity to make available to the
       [department], each volunteer, and to the sponsor a monthly balance of
       service credits earned and used.
   (3) Any other data that may be needed to monitor and administer
       the program.

The register required by this subsection shall be used solely to match
volunteers with eligible persons and to accomplish other tasks consist-
ent with the purposes of this act.
(c) The [department] shall require that any grantee of funds awarded
pursuant to this act shall provide matching funds or in-kind services of
equal value, or a combination of both.

Section 5. [Targeted Services.] Targeted services shall consist of those
tasks that the [department] has determined will foster the independence,
self-sufficiency and noninstitutionalized living of eligible persons by pro-
viding services directly to these people or respite care to their caregivers.
No program volunteer shall perform services required by law to be per-
formed by a licensed professional, unless that volunteer holds a current,
valid license to perform that service. Targeted services shall be defined
to fall within the following categories:
(1) Personal care tasks performed in the home of an eligible person,
such as personal grooming and meal preparation.
(2) Tasks such as light housekeeping, cleaning or minor repairs per-
formed in or around the home of an eligible person.
(3) Those tasks, such as transportation and escort services, that en-
hance the ability of an eligible person to function outside the home.

Section 6. [Service Credits.]
(a) To initiate the program, the [department] shall establish a pool of
service credits to be distributed to sponsors, who shall in turn be authorized to award them as they determine most appropriate. Each sponsor’s awarding of credits to eligible persons shall be commensurate with the availability of volunteers in that particular program.

(b) Volunteers who provide targeted services shall earn [one] service credit for each hour of targeted services provided.

(c) A volunteer who has service credits may transfer all or part of those credits, either directly or through a sponsor, to an eligible person in the same program. Credits thus transferred may not be retransferred.

(d) A volunteer with accrued service credits may transfer all or part of those credits to the sponsor for the purpose of replenishing the pool of service credits established under subsection (a).

(e) Except as otherwise provided by this section or the rules issued by the [department] under Section 11, an eligible person may exchange service credits that he or she has earned, received by transfer, or been awarded for an equal number of hours of any targeted service. The sponsor shall determine whether a requested service is a targeted service and whether the requester is an eligible person.

Section 7. [Notices.]

(a) Before entering the program, every program volunteer and every eligible person requesting targeted services from the program, shall read and sign a clearly written information sheet. This sheet shall include a notice that the program is part of a demonstration project that carries no guarantees of credits earned by program volunteers.

(b) To ensure that outstanding service credits can be honored when exchanged for targeted services, each sponsor shall engage in diligent volunteer recruitment.

(c) If the statewide program expires or is terminated, the [department] shall promptly give written notice to all sponsors and to all persons known to have outstanding credits from the pool of service credits established under section 6(a). In the event any sponsor expects its program to end, the sponsor shall promptly give written notice of the program’s expiration or termination to all other persons known to have outstanding credits.

Section 8. [Advisory Committee.]

(a) Each sponsor shall have an advisory committee that includes all of the following:

(1) Persons skilled in the provision of targeted services.

(2) Persons who represent or advocate the interests of eligible persons.

(3) Persons representing the interests of program volunteers. The advisory committee shall monitor the sponsor’s compliance with program requirements, make recommendations to the sponsor on program implementation, and carry out any other program-related tasks that the [department] deems appropriate.

(b) Members of the advisory committee serve in an informal capacity, and assume no legal responsibility for program action or decisions.
Section 9. [Compensation.]
(a) Volunteers shall not, by virtue of their participation in the program or a demonstration project, be considered for any purpose to be employees or agents of either the [department] or a sponsor, or be entitled to any monetary compensation for their services. Service credit hours to be claimed are contingent upon the availability of volunteer hours during the course of the pilot program, and in no case shall cause any liability, monetary or otherwise, to accrue to the local program, the [department] or the state.
(b) Notwithstanding subsection (a), sponsors may reimburse volunteers for necessary expenses directly related to their provision of targeted services.

Section 10. [Cause of Action.]
(a) If a volunteer completes a department-approved training program, no cause of action shall arise against a volunteer participating in a program pursuant to this act except in instances of gross negligence or intentional conduct.
(b) No cause of action shall arise against the state as a result of any negligent or intentional act or omission of a sponsor or volunteer in the implementation of a program pursuant to this act.

Section 11. [Guidelines.] The [department] shall, by [insert date], develop guidelines necessary to carry out the purposes of this act. These guidelines shall include, but need not be limited to, standards and procedures with respect to the following:
(1) Volunteer qualifications, screening, preservice and in-service training, monitoring and termination.
(2) Minimum liability and accident insurance for volunteers.
(3) Sponsor qualifications.
(4) The amount of funds and other resources that a potential program sponsor shall provide as an equal match to state funds. The match requirement may be met by cash or in-kind contributions, or a combination thereof.
(5) The awarding of service credits.
(6) Weekly and annual limits on the number of service credits a volunteer may earn.
(7) Contingency planning and volunteer reserves.
(8) Program evaluation and the responsibilities of sponsor advisory committees.

Section 12. [Annual Report.] The [department] shall prepare and submit to the legislature annual reports on the program established by this act. These reports shall, at a minimum, include all of the following information on each program:
(1) A description of the participating population, including the number of persons served and the services provided.
(2) The number of service credits outstanding at the conclusion of the reporting period.
Suggested State Legislation

9  (3) Program costs.

COMMENT: The California bill also requires that the Legislative Analyst report to the Legislature on the impact of the program according to a set of evalulative criteria including: the increase in volunteer hours provided; the increase in the number of individuals served; the expansion of availability of targeted services; total program costs; estimated direct and indirect cost savings; and any other criteria relevant to evaluate the overall program impact including the impact on community volunteer programs, the quality of life of program volunteers and service recipients and other program benefits.

1  Section 13. [Appropriation.] [Insert appropriation amount.]

1  Section 14. [Repealer.] [Insert repealer clause.]

1  Section 15. [Effective Date.] [Insert effective date.]
Family Leave Act

This act, based on 1988 Wisconsin legislation, provides mandatory time off for both men and women in cases of birth, adoptions and family illnesses involving children, spouses or parents. In a 12-month period, employees may take no more than six weeks of family leave for the birth or adoption of a child; in a 12-month period, employees may take no more than two weeks of family leave to care for a child, spouse or parent in cases of serious health condition. Public and private sector employers with at least 50 individuals employed on a permanent basis are covered under the act.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This act may be cited as the Family Leave Act.

1 Section 2. [Definitions] As used in this act:
2 (1) "Child" means a natural, adopted or foster child, a stepchild or a legal ward to whom any of the following applies:
4 (i) The individual is less than [18] years of age.
5 (ii) The individual is [18] years of age or older and cannot care for himself or herself because of a serious health condition.
7 (2) "Christian Science practitioner" means a Christian Science practioner residing in this state who is listed as a practitioner in the Christian Science journal.
9 (3) "Employee" means an individual employed in this state by an employer, except the employer's parent, spouse or child.
11 (4) Except as provided in section 15(b), "employer" means a person engaging in any activity, enterprise or business in this state employing at least [50] individuals on a permanent basis. "Employer" includes the state and any office, department, independent agency, authority, institution, association, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature and the courts.
19 (5) "Employment benefit" means an insurance, leave or retirement benefit which an employer makes available to an employee.
21 (6) "Health care provider" means a person described under [insert appropriate section of state code].
23 (7) "Parent" means a natural parent, foster parent, adoptive parent, stepparent or legal guardian of an employee or an employee's spouse.
25 (8) "Serious health condition" means a disabling physical or mental illness, injury, impairment or condition involving any of the following: (i) Inpatient care in a hospital, as defined in [insert appropriate section of state code], nursing home, as defined in [insert appropriate section of state code], or hospice.
29 (ii) Outpatient care that requires continuing treatment or supervi-
Suggested State Legislation

Section 3. [Scope.]
(a) Nothing in this act prohibits an employer from providing employees with rights to family leave or medical leave which are more generous to the employee than the rights provided under this act.
(b) This act does not limit or diminish an employee’s rights or benefits under [insert appropriate section of state code].
(c) This act only applies to an employee who has been employed by the same employer for more than [52] consecutive weeks and who worked for the employer at least [1,000] hours during the preceding [52-] week period.

Section 4. [Family Leave.]
(a) In a [12-] month period:
   (1) No employee may take more than [six] weeks of family leave under subsections (b)(1) and (2);
   (2) No employee may take more than [two] weeks of family leave for the reasons specified under subsection (b)(3);
   (3) No employee may take more than [eight] weeks of family leave for any combination of reasons specified under subsection (b).
   (b) An employee may take family leave for any of the following reasons:
       (1) The birth of the employee’s natural child, if the leave begins within [16] weeks of the child’s birth.
       (2) The placement of a child with the employee for adoption or as a precondition to adoption under [insert appropriate section of state code], but not both, if the leave begins within [16] weeks of the child’s placement.
       (3) To care for the employee’s child, spouse or parent, if the child, spouse or parent has a serious health condition.
       (c) Except as provided in subsection (d), an employee shall schedule family leave after reasonably considering the needs of his or her employer.
       (d) An employee may take family leave as partial absence from employment. An employee who does so shall schedule all partial absence so it does not unduly disrupt the employer’s operations.

Section 5. [Medical Leave.]
(a) Subject to subsections (b) and (c), an employee who has a serious health condition which makes the employee unable to perform his or her employment duties may take medical leave for the period during which he or she is unable to perform those duties.
(b) No employee may take more than [two] weeks of medical leave during a [12-] month period.
(c) An employee may schedule medical leave as medically necessary.

Section 6. [Payment for and Restrictions upon Leave.]
(a) This act does not entitle an employee to receive wages or salary
while taking family leave or medical leave.

(b) An employee may substitute, for portions of family leave or medical leave, paid or unpaid leave of any other type provided by the employer.

Section 7. [Notice to Employer.]
(a) If an employee intends to take family leave for the reasons in section 4 (b)(1) or (2), the employee shall, in a reasonable and practicable manner, give the employer advance notice of the expected birth or placement.
(b) If an employee intends to take family leave because of the planned medical treatment or supervision of a child, spouse or parent or intends to take medical leave because of the planned medical treatment or supervision of the employee, the employee shall do all of the following:
(1) Make a reasonable effort to schedule the medical treatment or supervision so that it does not unduly disrupt the employer's operations, subject to the approval of the health care provider of the child, spouse, parent or employee.
(2) Give the employer advance notice of the medical treatment or supervision in a reasonable and practicable manner.

Section 8. [Certification.]
(a) If an employee requests family leave for a reason described in section 4 (b)(3) or requests medical leave, the employer may require the employee to provide certification, as described in subsection (b), issued by the health care provider or Christian Science practitioner of the child, spouse, parent or employee, whichever is appropriate.
(b) No employer may require certification stating more than the following:
(1) That the child, spouse, parent or employee has a serious health condition.
(2) The date the serious health condition commenced and its probable duration.
(3) Within the knowledge of the health care provider or Christian Science practitioner, the medical facts regarding the serious health condition.
(4) If the employee requests medical leave, an explanation of the extent to which the employee is unable to perform his or her employment duties.
(c) The employer may require the employee to obtain the opinion of a second health care provider, chosen and paid for by the employer, concerning any information certified under subsection (b).

Section 9. [Position upon Return from Leave.]
(a) Subject to subsection (c), when an employee returns from family leave or medical leave, his or her employer shall immediately place the employee in an employment position as follows:
(1) If the employment position which the employee held immediately before the family leave or medical leave began is vacant when the employee returns, in that position.
(2) If the employment position which the employee held immediately before the family leave or medical leave began is not vacant when the employee returns, in an equivalent employment position having equivalent compensation, benefits, working shift, hours of employment and other terms and conditions of employment.

(b) No employer may, because an employee received family leave or medical leave, reduce or deny an employment benefit which accrued to the employee before his or her leave began or, consistent with Section 10, accrued after his or her leave began.

(c) Notwithstanding subsection (a), if an employee on a medical or family leave wishes to return to work before the end of the leave as scheduled, the employer shall place the employee in an employment position of the type described in subsection (a) (1) or (2) within a reasonable time not exceeding the duration of the leave as scheduled.

Section 10. [Employment Right, Benefit or Position.]

(a) Except as provided in subsection (b), nothing in this act entitles a returning employee to a right, employment benefit or employment position to which the employee would not have been entitled had he or she not taken family leave or medical leave or to the accrual of any seniority or employment benefit during a period of family leave or medical leave.

(b) Subject to subsection (c), during a period an employee takes family leave or medical leave, his or her employer shall maintain group health insurance coverage under the conditions that applied immediately before the family leave or medical leave began. If the employee continues making any contribution required for participation in the group health insurance plan, the employer shall continue making group health insurance premium contributions as if the employee had not taken the family leave or medical leave.

(c)(1) An employer may require an employee to have in escrow with the employer an amount equal to the entire premium or similar expense for [eight] weeks of the employee’s group health insurance coverage, if coverage is required under subsection (b).

(2) An employee may pay the amount required under paragraph (1) in equal installments at regular intervals over at least a 12-month period. An employer shall deposit the payments at a financial institution in an interest bearing account.

(3) Subject to paragraph (4), an employer shall return to the employee any payments made under paragraph (1), plus interest, when the employee ends his or her employment with the employer.

(4) If an employee ends his or her employment with an employer during or within 30 days after a period of family leave or medical leave, the employer may deduct from the amount returned to the employee under paragraph (3) any premium or similar expense paid by the employer for the employee’s group health insurance coverage while the employee was on family or medical leave.

(d) If an employee ends his or her employment with an employer during or at the end of a period of family leave or medical leave, the time period for conversion to individual coverage under [insert appropriate
section of state code] shall be calculated as beginning on the day that
the employee began the period of family leave or medical leave.

Section 11. [Alternative Employment.] Nothing in this act prohibits
an employer and an employee with a serious health condition from
mutually agreeing to alternative employment for the employee while
the serious health condition lasts. No period of alternative employment,
with the same employer, reduces the employee's right to family leave or
medical leave.

Section 12. [Prohibited Acts.]
(a) No person may interfere with, restrain or deny the exercise of any
right provided under this act.
(b) No person may discharge or in any other manner discriminate
against any individual for doing any of the following:
   (1) Opposing a practice prohibited under this act.
   (2) Filing a charge or instituting or causing to be instituted any pro-
cceeding under or related to this act.
   (3) Assisting or intending to assist in an investigation or proceeding
relating to a right under this act.
   (4) Testifying or intending to testify in an investigation or proceeding
relating to a right under this act.

Section 13. [Administrative Proceeding.]
(a) In this section, "department" means:
   (1) The [personnel commission], if the employee is employed by the
state or any office, department, independent agency, authority, institu-
tion, association, society or other body in state government created or
authorized to be created by the constitution or any law, including the
legislature and the courts.
   (2) The [department of industry, labor and human relations], if the
employee is employed by an employer other than one described in
paragraph (1).
(b) An employee who believes his or her employer has violated Section
12 may, within [30] days after the violation occurs or the employee should
reasonably have known that the violation occurred, whichever is later,
file a complaint with the [department] alleging the violation. The
[department] shall investigate the complaint and shall attempt to resolve
the complaint by conference, conciliation or persuasion. If the complaint
is not resolved and the [department] finds probable cause to believe a
violation has occurred, the [department] shall proceed with notice and
a hearing on the complaint as provided in [insert appropriate state code].
The hearing shall be held within [60] days after the [department] receives
the complaint.
(c) If two or more health care providers disagree about any of the in-
formation required to be certified under section 8(b), the [department]
may appoint another health care provider to examine the child, spouse,
parent or employee and render an opinion as soon as possible. The
[department] shall promptly notify the employee and the employer of the
appointment. The employer and the employee shall each pay [50] per-
cent of the cost of the examination and opinion.
(d) The [department] shall issue its decision and order within [30] days
after the hearing. If the [department] finds that an employer violated
Section 12, it may order the employer to take action to remedy the viola-
tion, including providing requested family leave or medical leave,
reinstating an employee, providing back pay accrued not more than [two]
years before the complaint was filed and paying reasonable actual at-
torney fees to the complainant.

Section 14. [Civil Action.]
(a) An employee or the [department] may bring an action in [circuit
court] against an employer to recover damages caused by a violation of
Section 12 after the completion of an administrative proceeding, in-
cluding judicial review, under Section 13 concerning the same violation.
(b) An action under subsection (a) shall be commenced with the later
of the following periods, or be barred:
(1) Within [60] days from the completion of an administrative pro-
ceeding, including judicial review, under Section 13 concerning the same
violation.
(2) [Twelve] months after the violation occurred, or the [department]
or employee should reasonably have known that the violation occurred.

Section 15. [Notice Posted.]
(a) Each employer shall post, in one or more conspicuous places where
notices to employees are customarily posted, a notice in a form approved
by the [department] setting forth employees’ rights under this act. Any
employer who violates this section shall forfeit not more than [100]
dollars for each offense.
(b) Any person employing at least 25 individuals shall post, in one or
more conspicuous places where notices to employees are customarily
posted, a notice describing the person’s policy with respect to leave for
the reasons described in sections 4(b) and 5(a).

Section 16. [Effective Date.] [Insert effective date.]
Child Care Services Act

This act, based on a California bill, requires that the state's department of education coordinate child care services, develop a state plan for child care services, act as a resource to promote and develop new private and public child care programs according to community needs, and promulgate regulations regarding the provisions of child care services. The act authorizes the department to provide low-interest loans and make grants to assist child care providers, and to make grants to various governmental and private non-profit organizations to develop and coordinate a system of child care provider training.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Child Care Services Act.

Section 2. [Legislative Findings and Declarations.]
(a) The number of children living in homes where both parents work, or living in homes with a single parent who works, has increased dramatically over the last decade.
(b) The availability of quality child care is critical to the self-sufficiency and independence of millions of American families, including the growing number of mothers who have young children and who work out of economic necessity.
(c) High quality child care programs can strengthen our society by providing young children with the foundation on which to learn the basic skills necessary to be productive members of our society.
(d) The years from birth to age [six], inclusive, are critical years in the development of a young child.
(e) High quality early childhood development programs provided during a child's early years are cost effective because these programs reduce the chances of juvenile delinquency and adolescent pregnancy, and improve the likelihood that children will finish high school and become employed.
(f) The number of quality child care arrangements falls far short of the number required for children in need of child care services.
(g) The rapid growth of participation in the labor force by mothers of children under the age of one has resulted in a critical shortage of quality child care arrangements for infants and toddlers.
(h) The lack of available child care services results in many preschool and school-age children being left without adequate supervision for significant parts of the day.
(i) Many working parents are unable to afford adequate child care services, and do not receive adequate financial assistance for these services from employers or public sources.
Suggested State Legislation

(j) A large number of parents are not able to work or seek the training
or education they need to become self sufficient because of the lack of
affordable child care.

(k) Making adequate child care services available for parents who are
employed, seeking employment, or seeking to develop employment skills
promotes and strengthens the well-being of families and the state
economy.

(l) The exceptionally low salaries paid to child care workers contributes
to an inordinately high rate of staff turnover in the child care field,
makes it difficult to retain qualified staff, and adversely affects the quality
of child care.

(m) Several factors result in the shortage of quality child care options
for children and parents, including, but not limited to, the following:

(1) The inability of parents to pay for child care.

(2) The lack of up-to-date information on child care services.

(3) The lack of training opportunities for staff in child care programs.

(4) The high rate of staff turnover in child care facilities.

(n) Improved coordination of child care services will help to promote
the most efficient use of child care resources.

Section 3. [Department of Education's Responsibilities.] The [state
department of education] has primary responsibility for the implement-
tion of this act and shall do all of the following:

(1) Coordinate all child care activities of the [department], including,
but not limited to, support programs and services pursuant to this act
with those of other federal, state and local agencies involved in providing
these services to children, and with other appropriate services, including
social, health, mental health, and nutrition services provided by those
governments.

(2) Establish policies and procedures for developing and implementing
intergovernmental agreements with other agencies of the state and federal
governments to carry out the purposes of this act.

(3) Act as a resource to promote and develop new private and public
programs according to community needs.

(4) Assess child care needs and resources in the state, and assess the
effectiveness of existing child care services, including, but not limited
to, services assisted under this act and under other provisions of law, in
meeting these needs.

(5) Report [annually], to the legislature, the governor, and the [super-
tendent of public instruction] regarding the child care needs of [insert
state name] families.

(6) Develop a state plan pursuant to Section 4 designed to meet the
need for child care services within the state for eligible children, in-
cluding infants, preschool children, and school age children, with special
attention given to meeting the need for child care services for low income
children, migrant children, children with handicapping conditions, foster
children, children in need of protective services, children of adoles-
cent parents who need child care to remain in school, and children with
limited-English language proficiency.
(7) Hold annual hearings in each region of the state in order to provide the public an opportunity to comment on the provision of child care within the state under the proposed state plan.

(8) Provide low-interest loans, and make grants in aid to assist child care providers as specified in the state plan pursuant to Section 4.

(9) Promulgate regulations governing the provision of care assisted pursuant to this act.

Section 4. [State Plan for Child Care Programs.] Prior to [insert date], and every [insert number] year thereafter, the [state department of education] shall develop and submit to the legislature, the governor, and the [superintendent of public instruction], a state plan for child care programs and services which shall cover a [insert number] year period.

(1) The state plan shall set forth policies and procedures designed to ensure all of the following:

(i) That all child care providers assisted pursuant to this act shall be licensed or shall meet all applicable state statutory and regulatory standards.

(ii) That the [department] shall establish a low interest loan program that will be available to child care centers and family day care homes to help these centers and homes meet the cost of establishing child care programs and making renovations and improvements in existing facilities.

(iii) That the [department] shall establish and carry out a program to make grants to contracting child care centers and family day care homes to help these centers and homes meet the cost of establishing child care programs and making renovations and improvements in existing facilities.

(iv) That grants and loans made under this subsection shall be available to all child care programs to assist these programs in meeting federal, state and local child care standards, with priority being given to programs serving children of low-income families.

(2) The state plan shall provide that the [superintendent of public instruction] shall use the amount appropriated to the [department] in any fiscal year to provide child care services pursuant to this act to benefit eligible children, including infants, toddlers, preschool and school age children, within the state on a sliding fee scale basis, including, but not limited to, using funds to allow for the extension of part-day programs as described in Section 5.

(3) Notwithstanding subsection (2) nor subparagraph (A) of paragraph (ii) of subsection (6), the state plan shall provide that the [superintendent of public instruction] shall use a portion of the amount allotted in any fiscal year for activities to improve the quality and availability of child care for all families, regardless of ability to pay, including the following activities:

(i) The development and funding of a resource and referral system to provide information concerning the availability, types, costs and locations of child care services within the state.

(ii) The improvement of the quality of child care services in the state.
Suggested State Legislation

by providing directly, or through grants or contracts with public or
private nonprofit organizations, preservice and continuing in-service
training (in accordance with the requirements of Section 5, and in-
cluding the educational financial assistance provisions of that section)
to child care staff and personnel in centers and other settings.

(iii) Ensuring that sufficient funds are available to enable family day
care providers and centers to comply with the minimum child care stan-
dards for safety and health established under the [state health and safety
code].

(iv) Ensuring adequate salaries and compensation for full- and part-
time staff in child care programs serving children under this act.

(4) The state plan shall provide that funds shall be distributed to a
variety of child care providers in each community, including child care
centers and family day care providers.

(5) The state plan shall provide that child care services assisted by this
act be reimbursed at not less than the market rate for the child care in
the geographic area within the state in which child care is being pro-
vided, and reimbursement will reflect the additional costs to the pro-
vider of special services or to the provider serving children with special
needs.

(6) The plan shall describe the process which the [state department
of education] shall use to do the following:

(i) Ensure that resource and referral agencies shall be made available
to families in all regions of the state.

(ii) Ensure that programs assisted under this act do the following:
   (A) Give priority for services to children with the lowest family in-
   comes, taking into account family size.

   (B) Provide services for an adequate number of hours and days to
   serve the needs of working parents and other parents of eligible children.

   (C) Comply with the minimum child care standards established
   by the [state health and safety code].

   (iii) Ensure that child care is available for parents who work non-
   traditional hours, including, but not limited to, evenings and weekends.

   (iv) Ensure that child care assisted pursuant to this act is available
to children with handicapping conditions.

   (v) Promulgate regulations pursuant to Section 3 governing the pro-
   vision of care assisted pursuant to this act.

   (vi) Ensure that funds are made available so that training oppor-
   tunities shall be provided equitably to all child care providers within
   the state.

   (vii) Encourage child care programs to develop personnel policies that
   include compensated time for staff undergoing training provided for
   under this act.

   (viii) Encourage adequate salaries, and other compensation for full-
   and part-time staff in child care programs serving children assisted pur-
   suant to this act, and to the extent practicable, staff in other child care
   programs, and for other child care personnel.

(7) The state plan shall establish procedures for parental involvement
in state and local planning, monitoring, and evaluation of child care
programs and services in the state.

(8) The state plan shall provide all of the following:
(i) A procedure to address complaints that will provide a reasonable
opportunity for a parent, or child care program that has been adversely
affected or aggrieved by a decision of the [state department of education]
or any program assisted under this [state education code], to be heard.
(ii) Prohibitions against a contracting facility taking any action
against an employee of the facility that would adversely affect the
employment or terms or conditions of employment of the employee
because the employee reports licensing or program deficiencies within
the program.
(iii) For the establishment of procedures for data collection by the
[state department of education] designed to show all of the following:
(A) By race, sex and ethnic origin, how the child care needs of the
state are being fulfilled, including information regarding all of the
following:
(a) The number of children being assisted with funds provided
under this [state education code], and under other state and federal child
care and preschool programs.
(b) The number of child care positions in the state.
(c) The type and number of child care programs, child care pro-
viders, caregivers and support personnel located in the state.
(d) The regional cost of child care.
(e) Other information as the [superintendent of public instruc-
tion] considers necessary to establish how funds provided under this
[state education code] are being used.
(B) The extent to which the availability of child care has been in-
creased, including the number of licensed or regulated child care spaces.
(C) How the purpose of this [state education code] and the objec-
tives of the state set forth in the state plan are being met, including ef-
forts to improve the quality, availability and accessibility of child care.

Section 5. [Funds to Extend Part-day Programs.]
(a) Some funds available for activities under this act shall be reserved
to enable the part-day programs described in subsection (b) to extend
existing hours of operation and provide full-day child care services
throughout the year, that shall meet the needs of working parents and
other parents of children eligible for services assisted by this act.
(b) The part-day programs referred to in subsection (a) include all of
the following:
(1) Schools and nonprofit programs including community-based
organizations receiving state or local funds designated for preschool.
(2) Programs established under the Headstart Act (42 U.S.C. Sec.
9831 et seq.).
(3) Preschool programs assisted under Chapter 1 of the Education
Consolidation and Improvement Act of 1981 (20 U.S.C. Sec. 3801 et seq.).
(4) Preschool programs for children with handicapping conditions.

Section 6. [Inservice, Continuing Education, Other Training.]
(a) The [state department of education] shall require that all employed
or self-employed persons providing child care under this act complete
at least [15] hours per year of inservice, continuing education, or other
training in the areas described in this section, and shall ensure that this
training is available.

(b) The [superintendent of public instruction] shall make grants to, and
enter into contract with, any of the following:

(1) City, county, and local public agencies, private nonprofit organiza-
tions, and institutions of higher education to develop and coordinate a
system of child care provider training programs under which preservice
and continuing inservice training is provided to caregivers, teachers, ad-
ministrative personnel, staff of resource and referral programs, and
others involved in providing child care in the state.

(2) Other organizations, including institutions of higher education,
resource and referral organizations, child care food program sponsors,
and family day care associations, to enable such agencies to provide
training and technical assistance to family day care providers. Each re-
cipient of a grant pursuant to this paragraph may do any of the following:

(i) Recruit and train new family day care providers, including pro-
viders with the capacity to provide nighttime child care and emergen-
cy child care at irregular hours, as well as emergency care for sick
children.

(ii) Provide ongoing training to family day care providers, including
specialized training in working with infants.

(iii) Operate resource centers to make available to family day care
providers developmentally appropriate curriculum materials.

(iv) Operate a system of substitute caregivers.

(v) Furnish technical assistance to providers to assist those pro-
viders in understanding and complying with local regulations and rele-
vant tax and other policies, and in meeting state licensing, registration
or other requirements pertaining to family day care.

(vi) Provide subgrants to family day care providers for the purchase
of moderate cost equipment.

(vii) Provide other support to family day care providers in their com-
munities as the [state department of education] determines to be
appropriate.

(c) The [superintendent] shall establish a program to provide educa-
tional financial assistance to individuals who meet scholastic achieve-
ment criteria established by the [superintendent], and who are any of
the following:

(1) Individuals seeking a [child development associate] credential for
center-based or family day care whose income does not exceed, by more
than [50] percent, the poverty line (as defined in Section 673 (2) of the
Community Services Block Grant Act (42 U.S.C. Sec. 9902 (2))), in
amounts sufficient to cover the costs involved in securing the credentials.

(2) Individuals seeking to meet the inservice training requirements
of subsection (a).

(d) The [superintendent] shall establish within the [state department
of education], a clearinghouse to collect and disseminate training
(e) Training opportunities provided to enable caregivers to meet the requirements established under subsection (a) shall offer a variety of options. The training may include any of the following:

1. Attendance at workshops and seminars.
2. Visits to other programs.
3. Access to resource materials.
4. Inservice sessions or enrollment in courses at community colleges or technical schools.

(f) This training shall address all of the following:

1. The provision of services as appropriate to special populations of children including disabled children, migrant children and children with limited-English language proficiency.
2. Health and safety, including training in first aid, the recognition of communicable diseases and child abuse detection and prevention.
3. Child growth and development.
4. Guidance and discipline techniques.
5. Planning learning activities.
6. Linkages with community services.
7. Communication with families.

Section 7. [Effective Date.] [Insert effective date.]
Child Support Security Deposit Act

This act, based on 1987 California legislation, provides an enforcement tool where the obligated parent is self-employed or changes jobs frequently. It provides authorization and procedures for courts to require security deposits for child support payments when the parent obligated to make such payments is delinquent and when that parent is not subject to an enforceable wage assignment. The deposit could be equal to one year of support payments and would be returned to the parent after one year of timely payments.

At least 29 states have laws authorizing the courts to require security or bonds to secure support payments. However, this act makes the security deposit enforcement mechanism mandatory where the obligor-parent is in arrears, and clearly sets out the procedure to be followed when this enforcement method is employed. It constitutes a first attempt to address the need for mandatory enforcement mechanisms in cases involving self-employed parents.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Child Support Security Deposit Act.

Section 2. [Order for Deposit of Assets to Secure Future Support Payments.]

(a) Subject to subsections (b) and (c), in any proceeding where the court has ordered either or both parents to pay any amount of the support of a minor child, upon an order to show cause or notice of motion, application and declaration signed under penalty of perjury by the person or county officer to whom support has been ordered to have been paid stating that the parent or parents so ordered is in arrears in payment in a sum equal to the amount of [60] days of payments, the court shall issue to the parent or parents ordered to pay support, following notice and opportunity for a hearing, an order requiring that the parent or parents deposit assets to secure future support payments with the court. Upon request of any party the court may also issue an ex parte restraining order as specified in subsection (d). Upon deposit of any asset which is not readily convertible into money, the court may not less than [20] days after serving the obligor-parent or parents with written notice and a hearing order the sale of that asset or assets and the deposit of the proceeds with the person designated under this subsection. For purposes of [insert appropriate section of state civil procedure code], the date of the issuance of the order to deposit assets shall be construed as the date notice of levy on an interest in real property was served on the judgment debtor. When the asset ordered to be deposited is real
property, the order shall be certified as an abstract of judgment in ac-
cordance with [insert appropriate section of state civil procedure code].
A deposit of real property is made effective by recordation of the certified
abstract with the [county recorder]. The deposited real property and the
rights, benefits and liabilities attached to that property shall continue
in the possession of the legal owner.
(2) Upon an obligor-parent's failure, within the time specified by the
court, to make reasonable efforts to cure the default in child support
payments or to comply with a court-approved payment plan, if payments
continue in the arrears, the [district attorney], [county officer] or trustee
designated by the court shall, not less than [25] days after providing the
obligor-parent or parents with a written notice served personally or with
return receipt requested, unless a motion or order to show cause has been
filed to stop the use or sale, use the money or sell or otherwise process
the deposited assets for an amount sufficient to pay the arrearage and
the amount ordered by the court for the support, maintenance and educa-
tion of the minor child currently due.
Assets which have been deposited pursuant to an order issued in ac-
cordance with paragraph (1) shall be construed as being assets subject
to levy pursuant to [insert appropriate section of state civil procedure
code]. The sale of assets shall be conducted in accordance with [insert
appropriate section of state civil procedure code].
(3) The [district attorney], [county officer] or trustee designated by
the court may deduct from the deposited money the sum of [one] dollar
for each payment made pursuant to paragraph (2).
(4) An obligor-parent alleged to be in arrears under this act may
employ any of the following grounds as a defense to the motion filed pur-
suant to paragraph (1) or as a basis for filing a motion to stop a sale or
use of assets under paragraph (2):
(i) Child support payments are not in arrears.
(ii) Laches.
(iii) There has been a change in the custody of the children.
(iv) There is a pending motion for reduction in support due to a
reduction in income.
(v) Illness or disability.
(vi) Unemployment.
(vii) Serious adverse impact on the immediate family of the obligor-
parent residing with the obligor-parent, that outweighs the impact of
denial of the motion or stopping the sale on obligee.
(viii) Serious impairment of the ability of the obligor-parent to
generate income.
(ix) Other emergency conditions.
An obligor-parent must rebut the presumptions that nonpayment
of child support was willful, without good faith and that the obligor had
the ability to pay the support.
An obligor-parent may file a motion to stop the use of the money or
the sale of the asset pursuant to paragraph (2) within [15] days after ser-
vice of notice on him or her pursuant to paragraph (2). The clerk of the
court shall set the motion for hearing not less than [20] days after
Suggested State Legislation

service on the person or county officer to whom support has been ordered
to have been paid.
(b) The court shall issue an order pursuant to paragraph (1) of subsection (a) upon a determination that one or more of the following conditions exists:
(1) The obligor-parent is not receiving salary or wages subject to an assignment pursuant to [insert citation for existing child support statute] and there is reason to believe that he or she has earned income from some source of employment.
(2) An assignment of a portion of salary or wages pursuant to [insert citation for existing child support statute] would not be sufficient to meet the amount of the support obligation, for reasons other than a change of circumstances which would qualify for a reduction in the amount of child support ordered.
(3) The job history of the obligor-parent shows that an assignment of a portion of salary or wages pursuant to [insert citation for existing child support statute] would be difficult to enforce or would not be a practical means for securing the payment of the support obligation, due to circumstances including, but not limited to, multiple concurrent or consecutive employers.
(c) The designation of assets subject to an order pursuant to paragraph (1) of subsection (a) shall be based upon concern for maximizing the liquidity and ready conversion into cash of the deposited asset. In all instances, the assets shall include a sum of money up to or equal in value to [use year of support payments or (6,000) dollars whichever is less, or any other assets, personal or real, designated by the court which equal in value up to [one] year of payments for support of the minor child, or (6,000) dollars whichever is less, subject to [insert appropriate section of state civil procedure code]. In lieu of depositing cash or other assets as provided above, the obligor-parent may, if approved by the court, provide a performance bond secured by any real property or other assets of the parent and equal in value to one year of payments.
(d) During the pendency of any proceeding pursuant to this act, and upon the application of either party in the manner provided by [insert appropriate section of state civil procedure code], the court may, without a hearing, issue ex parte orders restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life, and if the order is directed against a party, requiring him or her to notify the other party of any proposed extraordinary expenditures and to account to the court for all such extraordinary expenditures. The matter shall be made returnable not later than [20] days, or if good cause appears to the court, [25] days from the date of the order at which time the ex parte order shall expire. Any order issued pursuant to this act shall state on its face the date of expiration of the order, which shall expire in [one] year or upon deposit of assets or money pursuant to paragraph (1) of subdivision (a), whichever first occurs. The court, at the hearing, shall determine for which property the obligor-parent shall be
Child Support Security Deposit Act

required to report extraordinary expenditures and shall specify what
is deemed an extraordinary expenditure for purposes of this subsection.

e) Any [district attorney], [county officer] or trustee designated by the
court pursuant to subsection (a) who is responsible for any money or prop-
erty and for any disbursements under this act shall not be held liable
for any action undertaken in good faith and in conformance with this act.

(f) The [district attorney], [county officer] or trustee designated by the
court shall return all assets subject to court order under paragraph (1)
of subsection (a) to the obligor-parent or parents when both of the follow-
ing occur:

(1) [One] year has elapsed since the court issued the order described
under paragraph (1) of subsection (a).

(2) The obligor-parent or parents have made all support payments on
time during that [one]-year period.

When the above criteria have been satisfied and when the deposited
asset was real property, the [district attorney], [county officer] or trustee
designated by the court shall prepare a release in accordance with [in-
sert appropriate section of state civil procedure code] and shall request
the clerk of the court where the order to deposit assets was rendered to
certify the release and record it in the [office of the county recorder].

(g) The [district attorney], [county officer] or trustee shall, if requested
by an obligor-parent, prepare a statement setting forth disbursements
and receipts made under this act.

(h) If the [district attorney], [county officer], trustee or person design-
nated under subsection (a) incurs fees or costs under this act which are
not compensated by the deduction under paragraph (3) of subsection (a),
including, but not limited to, fees or costs incurred in any sale of assets
pursuant to subsection (a) and in the preparation of a statement pur-
suant to subsection (g), the court shall hear not less than [20] days after
service upon the obligor-parent of the notice of motion or order to show
cause by the [district attorney], [county officer], trustee or person design-
nated under subsection (a) incurring the fees or costs, and order the
obligor-parent or parents to pay reasonable fees and costs. Fees and costs
ordered to be paid by the court under this subsection shall be in addition
to any deposit made under subsection (a), but shall not exceed [five]
percent of [one] year's child support obligation or the total amount
ordered deposited under paragraph (1) of subsection (a), whichever is less.

(i) The purpose of this act is to provide an extraordinary remedy for
cases of bad faith failure to pay child support obligations.

Section 3. [Effective Date.] [Insert effective date.]
AIDS Legislation (Note)

As the growing number of cases reflect, AIDS (Acquired ImmunoDeficiency Syndrome) has become the nation's most serious public health problem. Combating its spread, dealing with the costs of health care and treatment and protecting individual and societal rights are broad concerns associated with the disease. Over the last five years, in response to these concerns, state legislatures have considered hundreds of bills addressing both the social and personal aspects of AIDS and its causative agents, including Human Immunodeficiency Virus (HIV). As a result of efforts to share information and ideas, lawmakers are proposing more effective and innovative solutions.

The Committee on Suggested State Legislation strongly agreed that the AIDS issue should be addressed in this volume. However, the Committee felt that at this time no single bill could realistically serve as a model for the states to consider. In lieu of offering a single piece of draft legislation, the Committee chose to give policymakers some background on state activity and examples of the areas in which various states have enacted AIDS-related legislation. The reader should note, however, that state regulation may cover certain of the areas where statute does not.

The areas most commonly addressed in AIDS-related legislation are:
• antibody testing;
• blood and blood products;
• confidentiality;
• education;
• employment;
• housing;
• informed consent;
• insurance;
• marriage;
• prison population; and
• reporting.

Some states, such as Indiana, Georgia, Washington and Wisconsin have enacted, and several others, including Florida, Kansas, New Hampshire, Ohio, South Dakota and West Virginia have been considering, comprehensive or omnibus AIDS legislation that combines many of the above-mentioned areas.

Most of the legislative summary that follows was abstracted from a November 6, 1987 article in The Journal of American Medical Association, and updated by The Council of State Governments to reflect state activity through mid-1988.

Antibody testing

Oklahoma, Tennessee, Texas and Wisconsin require blood banks, hospitals and other storage facilities to test for the AIDS antibody.
Delaware, Idaho, Illinois, Rhode Island, Virginia and Wisconsin require surgeons, physicians, funeral directors and blood banks, etc., when authorized to remove organs for donation or to receive semen for artificial insemination purposes, to test for the presence of the AIDS antibody in the donated organ or semen. Oklahoma and South Carolina register laboratories that test for AIDS, and Iowa prohibits the advertising or sale of home testing kits.

Florida requires individuals convicted of prostitution to be screened for sexually transmitted diseases (STDs) and permits anyone arrested for prostitution to request screening for STDs, including the presence of the AIDS antibody. Georgia and Washington require AIDS testing for anyone convicted of crimes involving sex or drug abuse, and Colorado requires testing for sex offenders even before conviction.

Confidentiality

California, Colorado, Hawaii, Indiana, Iowa, Kentucky, Maryland, Rhode Island and Texas have established confidentiality of medical or epidemiologic information or records held or maintained by a state agency, health care provider or facility, physician, laboratory, blood bank or third-party payer regarding information indicating that a person has AIDS, or is a carrier of the AIDS antibody. California, Florida, Illinois, Iowa, Maine, Massachusetts, North Dakota, Oregon, Rhode Island, Vermont and Wisconsin prohibit disclosure of test results that relate to the presence of the AIDS antibody, except to the test subject and others under carefully circumscribed conditions.

Education

At least 12 states (Connecticut, Florida, Indiana, Illinois, Kentucky, Michigan, Minnesota, Nevada, North Carolina, Ohio, Oklahoma and Washington) have passed legislation mandating instruction about AIDS in the public schools. According to the National Association of State Boards of Education, another 14 states, plus the District of Columbia have adopted policies through their state board of education or through a combination of state board and legislative approval (Alabama, Delaware, Georgia, Hawaii, Iowa, Kansas, Maryland, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Tennessee and Virginia). Most state mandates call for instruction in the seventh to 12th grades, but education experts feel that information should be made available for younger students in grades 4 to 6.

In 1985, Indiana administratively established a statewide public AIDS education and prevention program through their state board of health. The program ensures the widespread distribution of timely and useful information and operates a Counseling and Test Site Program among other AIDS-related services and activities. For more information on the Indiana program see The Council of State Governments’ 1987 Innovations report “AIDS: Indiana’s Health Education and Risk Reduc-
tion Program” (RM-775).

Employment

Connecticut, Florida, Illinois, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, Oregon, Washington and Wisconsin have adopted policies prohibiting discrimination against individuals with AIDS. All have laws that prohibit discrimination against handicapped persons and have declared AIDS as a handicap. California, Florida and Wisconsin prohibit the use of the results of blood tests designed to detect the presence of the AIDS antibody for screening, determining suitability for, or discharging a person from employment. Massachusetts and Wisconsin prohibit employers from soliciting or requiring a test for the presence of the AIDS antibody as a condition of employment for current or prospective employees. Iowa and Rhode Island prohibit discrimination and the use of an AIDS test as a condition of employment, unless the employee constitutes a threat to others.

Housing

California legislation protects real estate agents or property owners from being required to disclose to prospective tenants or owners that previous occupants of the property were infected with the AIDS antibody. Hawaii prohibits a person from being compelled to consent to the release of statutorily-protected confidential information that identifies an individual who has or may have any condition related to an STD, or who has been tested for any condition related to an STD, for use in obtaining or maintaining housing. Kansas also prohibits the use of information in AIDS cases to discriminate in housing.

Insurance

Connecticut, Florida, Illinois, Indiana, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, Rhode Island, Tennessee, Washington and Wisconsin have created or authorized a risk-sharing or reinsurance association to offer health insurance at a reasonable cost to persons who are at high risk or uninsurable. To address discrimination in insurance, the states of California, Florida, Maine and Wisconsin, and the District of Columbia prohibit insurers from requesting that an individual who has taken an AIDS test reveal the test results as a determinant for insurability or rates. Vermont regulates the manner in which insurance companies can test for AIDS.

Marriage

Both Illinois and Louisiana require premarital AIDS testing before issuance of a marriage license. The physician is required to inform both
parties of the test results, and the applicants bear the cost of the test. Rhode Island provides that physicians or other health care providers offer HIV testing and counseling, with the department of health responsible for providing pre- and post-test educational materials and post-test counseling for HIV-positive persons. California, Georgia, Idaho and Indiana provide information about AIDS and the availability of testing in educational pamphlets given to marriage license applicants.

Prison population

While several states authorize the screening of prisoners for the AIDS virus by means of regulation, some states are enacting legislation in the area. Iowa requires prisoners who bite, cause exchange of bodily fluids or cause any bodily secretion to be cast on another to submit to withdrawal of a bodily specimen for testing to determine if the person is infected with a contagious infectious disease. Iowa also authorizes jail personnel to be notified if a prisoner is found to have a contagious infectious disease and to take any appropriate measure to prevent the transmission of the disease to others, including segregation of an individual who tests positive for the AIDS antibody. Nevada requires that a criminal offender released from prison submit to a test for exposure to the AIDS virus. Oregon requires persons convicted of sex crimes and drug-related crimes to be screened by health care workers for evidence of possible exposure to the AIDS virus, and requires persons so identified to be serologically tested and undergo counseling regarding safeguards against transmission of the virus.

Reporting

In all states, confirmed cases of AIDS constitute a reportable condition either by statute or administrative regulation. Through statute, California, Colorado, Illinois and Indiana require licensed hospitals and physicians to report confirmed cases of AIDS to the state board of health. Georgia, Illinois, Indiana, Louisiana, Michigan, Mississippi and Tennessee require physicians, health care facilities or other health care providers to prepare a written notification to accompany the body of an individual who died as a result of the disease and to inform funeral directors of the cause of death for the purpose of observing body fluid precautions. Florida, Maryland and Rhode Island require that a licensed health care facility which receives a patient who has subsequently been diagnosed as having AIDS must contact emergency medical personnel who treated or transported the ill or injured patient; the patient's confidentiality is protected, however. In Illinois, individuals testing positive for the AIDS virus will be asked to name all of their sexual contacts, as well as those with whom they shared needles when taking drugs intravenously during the previous year.

Up-to-date summaries of introduced and enacted state AIDS legislation, budget appropriations and task force studies may be obtained for
Suggested State Legislation

a minimal cost from the Intergovernmental Health Policy Project, 2011
Eye Street, NW, Suite 200, Washington, DC, 202/872-1445.
Long Term Care Act

This act, based on 1987 Indiana legislation, establishes a program of long term care designed to provide: incentives for individuals to insure against the costs of providing for their long term care needs; a mechanism for individuals to qualify for coverage of the long term care costs under the Medicaid program without first being required to exhaust all of their resources; counseling and planning services for long term care needs; and assistance to certain individuals in the payment of premiums for the purchase of long term care insurance.

[Legislation update: the Indiana legislation on which this draft is based has an effective date of July 1989, pending approval of a federal waiver of Medicaid use restrictions. As of September 1988, the state had not received the waiver. The passage of the federal Medicare Catastrophic Coverage Act in July 1988, is expected to have some fiscal impact on the Indiana program; however, sources with the state's Long Term Care Project have indicated that it will not eliminate the need for or drastically alter the legislation.]

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This act may be cited as the Long Term Care Act.

2 Section 2. [Definitions.] As used in this act:
3 (1) "Long term care" means the provision of the following services, in a setting other than an acute care wing of a hospital, to enable individuals whose functional capacities are chronically impaired to be maintained at their maximum level of health and well-being:
4 (i) Physician's services.
5 (ii) Nursing services.
6 (iii) Diagnostic services.
7 (iv) Therapeutic services (including physical therapy, speech therapy
8 and occupational therapy).
9 (v) Rehabilitative services.
10 (vi) Maintenance services.
11 (vii) Personal care services (including companion services and assistance in bathing, dressing and other skills of daily living).
12 (viii) Transportation services.
13 (ix) Day care services.
14 (x) Home health care services.
15 (xi) Respite care services.
16 (xii) Services provided in a facility licensed under [insert appropriate section of state code].
17 (xiii) Services provided by chiropractors, podiatrists and optometrists.
(2) "Long term care insurance" means insurance coverage for at least [12] consecutive months for each covered person on an expense incurred, indemnity, or prepaid basis for [one] or more necessary long term care services provided in a setting other than an acute care wing of a hospital. The term does not include payment of coinsurance, deductibles or premiums for other insurance policies, payment for services covered by other insurance policies, or payment for services covered by Parts A and B of the Medicare program (42 U.S.C. 1395 et seq.).

(3) "Long term care insurance policy" means an insurance policy providing long term care insurance. The term does not include any insurance policy that is offered primarily to provide basic hospital expense coverage, basic medical surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

(4) "Prepaid health care delivery plan" has the meaning set forth in [insert appropriate section of state code].

(5) "Department" means the [state department of public welfare].

Section 3. [Establishment of Long Term Care Program.]
(a) There is established the [insert state name] long term care program to:
(1) provide incentives for individuals to insure against the costs of providing for their long term care needs;
(2) provide a mechanism for individuals to qualify for coverage of the costs of their long term care needs under the Medicaid program (42 U.S.C. 1396 et seq.) without first being required to substantially exhaust all their resources;
(3) assist certain individuals in the payment of premiums for the purchase of long term care insurance;
(4) provide counseling services to individuals in planning for their long term care needs; and
(5) alleviate the financial burden on the state's medical assistance program by encouraging the pursuit of private initiatives.
(b) The program shall be administered by the [state department of public welfare]. The [department] may contract with the [state department on aging and community services] or an [area agency on aging] to provide counseling services under the program.

Section 4. [Application.]
(a) An individual who is at least [65] years of age may elect to participate in the [insert state name] long term care program. An individual who desires to participate shall apply to the [department].
(b) When an individual applies to the [department] to participate in the [insert state name] long term care program, the [department] (or agency with which the [department] has contracted under section 3(b) of this act) shall counsel the individual about the following items:
(1) The availability of long term care insurance policies.
(2) The availability of Medicare supplement insurance policies.
(3) Enrollment in Parts A and B of the Medicare program (42 U.S.C. 1395 et seq.).

(4) Enrollment in a prepaid health care delivery plan.

(c) If an individual elects to pursue any of the options under subsection (b), the [department] shall assist the individual in doing so. If financially unable to do so, the individual may apply to the [department] for financial assistance under subsection (d).

(d) The [department] may pay, in whole or in part, the premiums for enrolling in any of the long term care options described in subsection (b)(1) on behalf of an individual who meets certain financial eligibility requirements established by the [department]. The [department] shall establish financial eligibility standards for granting financial assistance under this section.

Section 5. [Eligibility for Assistance under Medicaid.]

(a) An individual who is:

(1) enrolled in Parts A and B of the Medicare program (42 U.S.C. 1395 et seq.); or

(2) either:

(i) the beneficiary of a Medicare supplement insurance policy approved by the [department]; or

(ii) enrolled in a prepaid health care delivery plan that provides acute care and preventive services; and

(3) either:

(i) the beneficiary of a qualified long term care policy approved by the [department]; or

(ii) enrolled in a prepaid health care delivery plan that provides long term care services;

is eligible for assistance under the Medicaid program (42 U.S.C. 1936 et seq., [insert appropriate section of state code]) for any long term care costs incurred by the individual that are not paid by any of the policies or programs described in paragraphs (1) through (3) and that have been approved for reimbursement by the United States Department of Health and Human Services under a waiver requested by the [department] under Section 6 of this act.

(b) Upon approval by the United States Department of Health and Human Services of the necessary waivers described in Section 6 of this act, an individual who qualifies for assistance under the Medicaid program under this section is not required to meet any other resource and eligibility standard established for individuals who do not participate in the [insert state name] long term care program.

Section 6. [Request for Medicaid Waivers.] The [department] shall request from the United States Department of Health and Human Services the necessary Medicaid waivers under 42 U.S.C. 1936n to implement this act.

Section 7. [Effective Date.] [Insert effective date.]
Alzheimer's Disease Assistance Act

Growing concern over Alzheimer's disease, and other related medical conditions which destroy certain vital brain cells, has prompted many states to explore the need for legislation addressing the problems associated with these disorders and services for the victims and their families.

According to the Intergovernmental Health Policy Project, by mid-1987, six states (Indiana, Maryland, Nevada, New Jersey, New Hampshire and Virginia) had enacted legislation specifically addressing the disease. Prior to 1987, at least 24 states had established a state-level task force or study commission to examine problems stemming from the disease, to assess the availability of services and to determine the need for new or modified programs.

At least 10 states had initiated service programs geared to Alzheimer's disease patients and families (California, Connecticut, Delaware, Florida, Illinois, Kentucky, Massachusetts, New Jersey, New York and Ohio). Other states (Hawaii, Maryland and Wisconsin) explicitly required existing community-based programs to extend services to these patients.

This act, based on 1985 Illinois legislation, establishes a program for the conduct of research regarding the cause, cure and treatment of Alzheimer's disease and related disorders, and through a statewide system of regional and community-based services, provides for the identification, evaluation, diagnosis, referral and treatment of victims. The act also requires that the state's department of public health prepare a state Alzheimer's Disease Assistance (ADA) plan every three years in consultation with the ADA advisory committee also established in the act.

For additional information on Alzheimer's disease legislation across the states, the reader may wish to consult the major national contacts in the area: the Intergovernmental Health Policy Project, 2011 Eye St., NW, Suite 200, Washington, DC 20006, 202/872-1445; Alzheimer's Disease and Related Disorders, 70 East Lake St., Suite 600, Chicago, IL 60601, 312/853-3060; the National Association of State Units on Aging, 600 Maryland Ave., SW, Suite 208, Washington, DC 20024, 202/484-7182.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This act may be cited as the Alzheimer's Disease Assistance Act.

1 Section 2. [Legislative Findings and Declaration.] The legislature finds that Alzheimer's disease and related disorders are devastating health conditions which destroy certain vital cells of the brain and which
Affect an estimated [insert number] Americans. This means that approximately [insert number] citizens of [insert state name] are victims. The legislature also finds that [insert percentage] of all nursing home admissions in the state may be attributable to the Alzheimer's disease and related disorders and that these conditions are the fourth leading cause of death among the elderly. It is the opinion of the legislature that Alzheimer's disease and related disorders cause serious financial, social and emotional hardships on the victims and their families of such a major consequence that it is essential for the state to develop and implement policies, plans, programs and services to alleviate such hardships.

The legislature recognizes that there is no known cause or cure for Alzheimer's disease at this time, and that it can progress over an extended period of time and to such a degree that the victim's deteriorated condition makes him or her susceptible to other medical disorders that generally prove fatal. It is the intent of the legislature, through implementation of the act, to establish a program for the conduct of research regarding the cause, cure and treatment for Alzheimer's disease and related disorders; and through the establishment of Regional Alzheimer's Disease Assistance Centers and community-based services, to provide for the identification, evaluation, diagnosis, referral and treatment of victims of such health problems.

Section 3. [Definitions.] As used in this act:

1. "Alzheimer's disease and related disorders" means a health condition resulting from significant destruction of brain tissue with resultant loss of brain function, including, but not limited to, progressive, degenerative and dementing illnesses including presenile and senile dementias, including Alzheimer's disease and other related disorders.

2. "Regional Alzheimer's Disease Assistance center" or "regional ADA center" means a postsecondary higher educational institution having a medical school in affiliation with a medical center, and designated as such by the [state department of public health] under Section 4 of this act.

3. "Primary Alzheimer's provider" means a licensed hospital, a medical center under the supervision of a physician licensed to practice medicine in all of its branches, or a medical center that provides medical consultation, evaluation, referral and treatment to persons who may be or who have been diagnosed as victims of Alzheimer's disease or related disorders pursuant to policies, standards, criteria and procedures adopted under an affiliation agreement with a regional ADA center under this act.

4. "Alzheimer's Disease Assistance network" or "ADA network" means the various health, mental health and social services agencies that provide referral, treatment and support services under standards and plans adopted and implemented in conjunction with a regional ADA center.

5. "ADA Advisory Committee" or "advisory committee" or "committee" means the Alzheimer's Disease advisory committee created under Section 6 of this act.
Section 4. [Development of Standards for a Service Network and Designation of Regional Centers and Primary Providers.] By [insert date], the [department], in consultation with the advisory committee, shall develop standards for the conduct of research and for the identification, evaluation, diagnosis, referral and treatment of victims of Alzheimer's disease and related disorders and their families through the ADA network of designated regional centers and other providers of service under this act. Such standards shall include:

(1) A description of the specific populations and geographic areas to be served through ADA networks that may be established under this act;

(2) Standards, criteria and procedures for designation of regional ADA centers, which ensure the provision of quality care to a broad segment of the population through on-site facilities and services and through a network of primary Alzheimer’s providers and other providers of service that may be available within the service area defined by the [department]. The regional ADA centers shall provide at least the following:

(i) Comprehensive diagnosis and treatment facilities and services which have (A) professional medical staff specially trained in geriatric medicine, neurology, psychiatry and pharmacology, and the detection, diagnosis and treatment of Alzheimer's disease and related disorders, (B) sufficient support staff who are trained as caregivers to victims of Alzheimer’s disease and related disorders, (C) appropriate and adequate equipment necessary for diagnosis and treatment, (D) transportation services necessary for outreach to the service area defined by the [department] and assuring access of patients to available services, and (E) such other support services, staff and equipment as may be required;

(ii) Consultation and referral services for victims and their families to ensure informed consent to treatment and to assist them in obtaining necessary assistance and support services through primary Alzheimer’s providers and various private and public agencies that may otherwise be available to provide services under this act;

(iii) Research programs and facilities to assist faculty and students in discovering the cause of and the diagnosis, cure and treatment for Alzheimer’s disease and related disorders;

(iv) Training, consultation and continuing education for caregivers, including families of those who are affected by Alzheimer’s disease and related disorders;

(v) Centralized data collection, processing and storage that will serve as a clearinghouse of information to assist victims, families and ADA resources, and to facilitate research; and

(vi) Programs of scientific and medical research in relation to Alzheimer's disease and related disorders that are designed and conducted in a manner that may enable such center to qualify for federal financial participation in the cost of such programs.

(3) Procedures for recording and reporting research and treatment results by primary Alzheimer’s providers and other affiliated providers of service that are within the ADA network to the regional ADA center.
and to the [department];

(4) Policies, procedures and minimum standards and criteria to be included in affiliation agreements between primary Alzheimer's providers and the regional ADA center in the conduct of any research and in the diagnosis, referral and treatment of victims of Alzheimer's disease and related disorders and their families; and

(5) Policies, procedures, standards and criteria, including medical and financial eligibility factors, governing admission to and utilization of the programs, facilities and services available through the ADA network by persons who may be or who have been diagnosed as victims of Alzheimer's disease and related disorders, including forms and procedures for obtaining necessary patient consents to participation in research, and in the reporting and processing of appropriate information in a patient's medical records in relation to consultations, referrals and treatments by the various providers of service within the ADA network.

Section 5. [State ADA Plan.] By [insert date], and every [three] years thereafter, the [department] shall prepare a state Alzheimer's disease assistance plan in consultation with the advisory committee to guide research, diagnosis, referral and treatment services within each service area described by the [department]. Such plan shall indicate any research programs being conducted and the status, results, costs and funding sources of such programs. The plan shall also indicate the number of persons served, the extent of services provided, and the resources required for the delivery of services. Such plan shall identify and describe the duties and accomplishments of each regional ADA center, the primary Alzheimer's providers and other various providers of service within the ADA network of the described service area. The [department] shall consult with and take into consideration the plans of local and state comprehensive health planning agencies recognized under the [insert citation for state health planning statute, as applicable].

Section 6. [ADA Advisory Committee.] There is created the Alzheimer's disease advisory committee consisting of [21] voting members appointed by the [director] of the [department], as well as [five] nonvoting members as hereinafter provided in this section. The [director] or his designee shall serve as one of the [21] voting members and as the chairman of the committee. Those appointed as voting members shall include persons who are experienced in research and the delivery of services to victims and their families. Such members shall include [four] physicians licensed to practice medicine in all of its branches, [one] representative of a postsecondary educational institution which administers or is affiliated with a medical center in the state, [one] representative of a licensed hospital, [one] registered nurse, [one] representative of a long term care facility, [one] representative of an [area agency on aging], [one] social worker, [one] representative of an organization established under the [state insurance code] for the purpose of providing health insurance, [five] family members or representatives of victims of Alzheimer's disease and
related disorders, and [four] members of the general public. Among the
physician appointments shall be persons with specialties in the fields
of neurology, family medicine, psychiatry and pharmacology. Among the
general public members, at least [two] appointments shall include per-
sons [65] years of age or older.
In addition to the [21] voting members, the [directors] or their designees
of the following state agencies shall serve as nonvoting members: [de-
partment on aging], [department of mental health and developmental
disabilities], [department of rehabilitation services], [department of
public aid], and [guardianship and advocacy commission].
Each voting member appointed by the [director of public health] shall
serve for a term of [two] years, and until his successor is appointed and
qualified. Members of the committee shall not be compensated but shall
be reimbursed for expenses actually incurred in the performance of their
duties. No more than [11] voting members may be of the same political
party. Vacancies shall be filled in the same manner as original appoint-
ments.

Section 7. [Regional ADA Center Grants-in-Aid.] Pursuant to ap-
propriations enacted by the legislature, the [department] shall provide
grants-in-aid to regional ADA centers for necessary research and for the
development and maintenance of services for victims of Alzheimer’s
disease and related disorders and families in accordance with the state
Alzheimer’s assistance plan. The [department] shall promulgate rules
and procedures governing the distribution and specific purposes for such
grants, including any contributions of recipients of services toward the
cost of care.

Section 8. [Effective Date.] [Insert effective date.]
Farm Mediation and Arbitration Program Act

This act, based on 1986 Wisconsin legislation, creates a farm mediation and arbitration board which selects mediators to aid in resolving farm conflicts and mediates and arbitrates farm finance and other farm disputes. Mediators and arbitrators are immune from civil liability for acts and omissions within the scope of their duties under the act, and information obtained during the course of their duties is confidential and exempt from the state open records law. During the pendency of any action brought by a creditor against a farmer, the court may suspend action, upon agreement of the parties, and submit it for mediation and arbitration. Mediators and arbitrators for a particular dispute are selected by the parties from a list submitted to them by the state board. Mediation or arbitration in a particular case is not to operate to delay or stay an action against one of the parties by another creditor or person.

Currently, mediation programs exist in 10 states (Colorado, Iowa, Kansas, Minnesota, Mississippi, Montana, North Dakota, Oklahoma, Wisconsin and Wyoming).

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This act may be cited as the Farm Mediation and Arbitration Program Act.

1 Section 2. [Definitions.] As used in this act:
(1) "Action" means a court action by a creditor against a farmer for payment of a debt, to enforce or foreclose a security interest, lien or mortgage; or to repossess or declare a creditor's interest in real property. "Action" includes garnishment, replevin, execution of judgment, involuntary receivership and supplementary creditor's proceedings.
(2) "Agriculture property" means real property that is used principally for farming, real property that is a farmer's principal residence and any land contiguous to the residence, personal property that is used as security to finance farming or personal property that is used for farming.
(3) "Board" means the [farm mediation and arbitration board]
(4) "Creditor" means any person who holds a mortgage on or is a vendor of a land contract for agricultural property, who has a lien on or security interest in agricultural property or who is a judgment creditor with a judgment against a farmer affecting the farmer's agricultural property.
(5) "Farmer" means a farmer, as defined in [insert appropriate citation], who owns or leases a total of [60] acres or more of land that is agricultural property and whose gross sales of farm products for the preceding year equaled [20,000] dollars or more.
Section 3. [Farm Mediation and Arbitration Board.] There is created a [farm mediation and arbitration board] which is attached to the [state department of agriculture, trade and consumer protection] under [insert appropriate citation]. The [board] shall consist of the [secretary of agriculture, trade and consumer protection] or the [secretary's] designee, the [commissioner of banking] or the [commissioner's] designee and a member appointed by the governor to serve at the pleasure of the governor.

Section 4. [Board, Mediators and Arbitrators.]
(a) The [board] shall select mediators who are residents of this state, who have the character and ability to serve as mediators and who have knowledge of financial or agricultural matters or of mediation processes. The [board] shall ensure that each mediator receives sufficient training in mediation processes, resolving conflicts, farm finance and management and the farm credit system and practices to enable the mediator to perform his or her functions under this act.
(b) The [board] shall select arbitrators who are residents of this state, who have the character and ability to serve as arbitrators and who have knowledge of financial or agricultural matters or of arbitration processes. The [board] shall ensure that each arbitrator receives sufficient training in arbitration processes, resolving conflicts, farm finance and management and the farm credit system and practices to enable the arbitrator to perform his or her functions under this act.
(c) Mediators and arbitrators shall be compensated for travel and other necessary expenses in amounts approved by the [board].
(d) Mediators and arbitrators are immune from civil liability for any act or omission within the scope of their performance of their powers and duties under this act.
(e) The [board] shall prepare all forms necessary for the administration of this act and shall ensure that forms are disseminated and that the availability of mediation and arbitration under this act is publicized.
(f) All mediators and arbitrators shall keep confidential all information and records obtained in conducting mediation and arbitration. The [board] shall keep confidential all information and records that may serve to identify any party to mediation and arbitration under this act.
(g) The [board] may promulgate rules necessary to implement this act.

Section 5. [Suspension of Court Action to Allow for Voluntary Mediation or Arbitration.]
(a) During the pendency of any action brought by a creditor against
a farmer, the [court] may, upon the written stipulation of all parties to
the action that they wish to engage in mediation or arbitration under
this act, enter an order suspending the action.
(b) A suspension order under subsection (a) suspends all orders and pro-
cedings in the action for the time period specified in the suspension
order. In specifying the time period, the [court] shall exercise its discre-
tion for the purpose of permitting the parties to engage in mediation or
arbitration without prejudice to the rights of any person. The suspen-
sion order may include such other terms and conditions as the [court]
may deem appropriate. The suspension order may be revoked upon mo-
tion of any person or upon motion of the [court].
(c) If all parties to the action agree, by written stipulation, that all
issues before the [court] are resolved by mediation or arbitration under
this act, the [court] shall dismiss the action.
(d) If the parties do not agree under subsection (c) or if the [court]
renews the suspension order under subsection (b), the action shall pro-
ceed as if no mediation or arbitration had been attempted.

Section 6. [Mediation Process.]
(a) A farmer or creditor wishing to resolve a dispute between them in-
volving the farmer's agricultural property and the creditor's interest in
a mortgage, land contract, lien, security interest or judgment affecting
the agricultural property, either before an action has been initiated to
which they are parties or after entry of a suspension order in an action
to which they are parties under Section 5, may participate in mediation
under this act in accordance with this section.
(b) To participate in mediation, the farmer and creditor under subsec-
tion (a) shall submit a request for mediation together with an agreement
to mediate, to the [board] on forms prepared by the [board].
(c) If no action has been initiated to which the farmer and creditor are
parties, the [board] shall determine the parties to any mediation under
this act and shall require all parties to enter into an agreement to refrain
from initiating any action among the parties affecting the subject mat-
ter of the mediation for a [60]-day period.
(d) After the [board] has obtained the agreement under subsection (b)
or, if no action has been initiated, under subsections (b) and (c), the
[board] shall provide the farmer and creditor with the names, mailing
addresses and qualifications of [seven] mediators located in the geo-
ographical area in which the agricultural property or farmer is located.
The parties shall select a mediator or, upon request of the parties, the
[board] shall designate a mediator for the parties.
(e) The function of the mediator is to encourage a voluntary settlement
among the parties. The mediator may not compel a settlement. The
mediator shall schedule meetings of the parties, direct the parties to
prepare for the meetings, attempt to achieve a mediated resolution to
the issues among the parties and, if the parties request, assist the par-
ties in preparing a written agreement.
(f) The parties may at any time withdraw from mediation. The parties
have full responsibility for reaching and enforcing any agreement among

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them. After the expiration of the [60-day period under subsection (c) or
the time period specified in the suspension order under Section 5, the
parties may no longer participate in the mediation process regarding
the same subject matter under this act.

Section 7. [Arbitration Process.]
(a) A farmer or creditor wishing to resolve a dispute between them in-
volving the farmer's agricultural property and the creditor’s interest in
a mortgage, land contract, lien, security interest or judgment affecting
the agricultural property, either before an action has been initiated to
which they are parties or after entry of a suspension order in an action
to which they are parties under Section 5, may participate in arbitra-
tion under this act in accordance with this section and subject to [insert
appropriate citation]
(b) To participate in arbitration, the farmer and creditor under subsec-
tion (a) shall submit a request for arbitration to the [board] on a form
prepared by the [board]. After receipt of the request, if the parties wish
to proceed to arbitration under this section, the [board] shall require the
parties to enter into an agreement to binding arbitration on a form
prepared by the [board].
(c) After the [board] has obtained the agreement under subsection (b),
the [board] shall provide the farmer and creditor with the names, mail-
ing addresses and qualifications of [seven] arbitrators located in the
geographical area in which the agricultural property or farmer is
located. The parties shall select an arbitrator or, upon request of the par-
ties, the [board] shall designate an arbitrator for the parties.

Section 8. [Other Creditors; No Delay.] With respect to mediation or
arbitration between parties before an action has been initiated to which
they are parties, no agreement to mediate or to arbitrate, or the fact that
mediation or arbitration is currently occurring, may have the effect of
delaying, postponing or extending any time limits in any legal pro-
ceeding commenced to enforce a mortgage, land contract, lien, security
interest or judgment commenced by a creditor other than the creditor
or creditors participating in the mediation or arbitration.

Section 9. [Effective Date.] [Insert effective date.]
Cumulative Index, 1969-1989

The following cumulative index, covers volumes of Suggested State Legislation since 1969 and includes the legislation through this current edition.

This index uses extensive subject headings, sub-headings and cross references ("see" and "see also" entries). Draft legislation is listed by title under appropriate subjects. Individual bills are often included under several headings, if they cover more than one topic.

Specific entries are of two kinds:

1. Titles of bills (as they appeared in SSL volumes with the word "Act" omitted in most cases), followed by the year of the volume in parentheses and the page numbers. To find the text of a draft bill, you should consult the volume for the specific year listed.

2. References are also provided to parts of draft bills, by subject. These references do not list the full title of the draft bill, but cite only the year and the page numbers.

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