SUGGESTED
STATE
LEGISLATION
1991 Volume 50

The Council of State Governments
Developed by the Committee on Suggested State Legislation

The Council of State Governments
Lexington, Kentucky
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Foreword

The Council of State Governments is pleased to bring you this volume of *Suggested State Legislation*, the 50th in a 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 that originated the bills, and in the Council's Committee on Suggested State Legislation.

The entries in this book 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.

August 1990
Lexington, Kentucky

Daniel M. Sprague
*Executive Director*

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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 22 years ago in the introduction to the 28th volume of Suggested State Legislation.

For 50 years, The Council of State Governments' Suggested State Legislation (SSL) 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 volume 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 50th 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 1989 in Salt Lake City, Utah, and again, in April 1990 in Lexington, Kentucky, to screen and recommend legislation for final consideration by the full SSL Committee. At their annual meeting in July 1990 in Chicago, Illinois, 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 a 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 education.

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, 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.


Finally, on the occasion of this 50th anniversary of the SSL Program and Committee, a special note of appreciation to the members who have served over the years, and to the current chairman, Senator Kemp Hannon, New York, and vice chair, Ms. Terri Lauterbach, Alaska. A note of thanks also to the SSL staff who played major roles in the program’s operation and the production of this volume — Kevin M. Devlin, Nancy L. Olson and Doris J. Ball.

Deborah A. Gona, Suggested State Legislation Program
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. Most sections have 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.)

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

1 Section 2. [Definitions.] As used in this act:
2 (1) “Commission” means the [rehabilitation research commission].
3 (2) “Commissioner” means a member of the [rehabilitation research commission].
4 (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.

* * *

1 Section 4. [Rehabilitation Research Commission.]
2 (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.
3 (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.
Education Legislation (Note)

Education reform and finance have been among the most prominent issues facing states in recent years. A variety of factors—declining student academic performance; increasing competition in the international economy, as well as the American job market; the quest for economic development; and decreasing federal activity in education—have spurred officials to take significant strides toward improving their states' primary and secondary public education systems. In doing so, they have not merely sought to enhance conventional modes of education and funding sources; they have attempted to restructure school systems and employ innovative teaching and administrative techniques.

During the past year, the Committee on Suggested State Legislation reviewed several pieces of state legislation dealing with education reform and funding. In lieu of offering a single item, however, the Committee chose to give policymakers an overview of some of the actions states have taken in response to these issues.

The following review of state legislative action in education is divided into two sections: Education Reform and Accountability and Education Finance and Governance. The reader will note, however, that several states have undertaken comprehensive reform initiatives that will be discussed in both sections. Kentucky, Mississippi, Ohio, Oklahoma and South Carolina, for example, enacted particularly extensive and detailed education reform measures during the past two years and will be prominently featured throughout.

Education Reform and Accountability

Curriculum

Several states have changed their public school curricula, including what children are taught and how they are taught. The Kentucky Education Reform Act of 1990 (HB 940), for example, establishes seven areas of knowledge that public education will help students develop, including communication skills, understanding of governmental processes, understanding of mental and physical wellness, and skills to help students become competitive in the job market. It also creates a council for education technology which will develop a five-year plan for putting advanced technology, including computers, into the classroom.

However, the act’s most striking innovation is the elimination of kindergarten and the first, second and third grades, and the merger of these classes into a single grade level called the primary school program (to be in place by the 1992-93 school year). Children will remain in this program until they are determined to be ready for the fourth grade. The change is designed to help remove the stigma of failure for children who do not advance in early grades, as well as prevent promotion for students who are not ready to move to higher grades. Currently, about 10 percent of the state’s school children fail in the first grade.

Ohio’s Education Accountability and School Reform Act of 1989 (SB
140) authorizes the state's board of education to formulate and prescribe minimum standards requiring the use of phonics in reading classes for kindergarten, as well as grades one, two and three. In addition, the state board is to provide in-service training for teachers concerning the use of phonics as a technique in the teaching of reading at these levels. The act also authorizes the board to adopt an approved list of standardized tests for district boards of education to use in assessing students in four grade levels — grades four, six, eight and 10.

Each local board of education in Ohio is required to implement a competency-based education program for composition, mathematics and reading in grades one through 12. Such programs will feature pupil performance objectives for each grade level, curricula and instruction methods designed to achieve these objectives, assessment of student performance through written standardized tests, and services for students who are not making satisfactory progress. The state board is required to develop a model competency-based program for local school districts to emulate. Also, the state board must prepare a plan accelerating the modernization of the vocational education curriculum to give students a better background in science, English, mathematics and technological skills to help them compete in the workforce of the future. Finally, the act establishes a mandatory kindergarten program.

South Carolina's 1989 school reform act, known as "Target 2000" (R 295, S 321), is unique in that it emphasizes "higher order thinking skills." Higher order thinking and problem solving skills involve pupil synthesis, analysis, evaluation and utilization of information, instead of sole reliance on more traditional modes of education consisting of memorization and recitation with little emphasis on reading and writing. Higher order thinking and problem solving skills can make the application and importance of basic skills clearer to students. Techniques for teaching these skills might include pupil discussions and essay writing about problems or issues.

The South Carolina act requires the state's board of education to establish a committee made up of personnel from the state department of education, school districts and institutions of higher education to assist the board in identifying the characteristics of higher order thinking and problem solving. By 1991-92, students pursuing teacher preparation or education administration degrees at the state's colleges and universities will be required to complete training for teacher higher order thinking skills. By the 1993-94 school year, the state board of education must develop an observational instrument to be used by local school districts in evaluating new teachers. Colleges and universities also are required to develop evaluation instruments to be used by the institutions in evaluating all student teachers.

The state's board of education also will select textbooks and standardized tests promoting higher order thinking and problem solving skills, and design in-service training programs for teachers and school staff to help them learn about instruction in these skills as part of the existing curriculum.

Indiana's Education Reform Act of 1990 (HB 1290) provides for a
pilot program to examine innovative testing methods (including techniques for measuring higher order thinking skills), as well as expanded use of writing samples. The act establishes the Education Technology Program to provide and extend educational technologies to elementary and secondary schools. This may include computers in the homes of students; technology laboratories for instruction in reading, writing and mathematics; and use of laboratories for remedial work. It also establishes the Twenty-first Century Schools Pilot Program, which will create pilot programs in several areas, including school-based management models, parent involvement strategies, innovative curricula, non-standard courses or textbook selections, and teacher and school administrator training.

Oklahoma’s 1990 Common Education Reform Act (HB 1017) establishes a 22-member Curriculum Committee, which will remain in existence until July 1, 1992. The committee is required to determine and prescribe desired levels of competencies of public school students, as well as the core curriculum needed to support effective instruction of these competencies. The committee also must provide for a career exploration program for students in grades six through 10.

The Oklahoma state board of education must adopt a new core curriculum by February 1, 1991 for implementation by the 1993-94 school year. The curriculum will be designed to attain desired levels of competency in a variety of areas, including language, social sciences and communication, as well as math, science, literature and the arts. All students must attain literacy through the core curriculum. The state board is required to provide an option for graduation based on attainment of specified levels of competency in each core curriculum area. The act also gives school districts the option of establishing an extended school year consisting of 11 or 12 months in which school is offered in excess of 200 days with at least six hours of instruction per day.

A number of states are experimenting with innovative testing methods, often called “performance-based testing,” as alternatives to standardized tests. California has begun using open-ended problems as part of its mathematics test for 12th graders. Connecticut is introducing new testing methods for science and mathematics problems. New York requires all fourth graders to conduct science experiments and write reports on the results. Under Kentucky’s reform act, performance-based testing will be implemented in all grades by 1995. Approximately 30 states now include essay writing in their testing programs.

**Dropout Prevention and At-Risk Students**

South Carolina’s Target 2000 program requires all school districts to write and implement plans for dropout prevention and retrieval over the next three years. State funds will be allocated to dropout prevention programs which target students below the 10th grade.

In 1990, as part of its education reform act (HB 1523), Mississippi enacted a program to reduce the state’s high school dropout rate. The plan includes a data collection system to determine why students drop
out of school and assess the dropout rate for each school district; a public awareness program to publicize dropout data, consisting of public service announcements and a media campaign; and the development of programs such as teacher support teams for at-risk students, family involvement plans, and coordinated efforts to prevent drug abuse and teen pregnancy.

Indiana legislation enacted in 1990 (HR 1290) authorizes mentoring programs for at-risk students. The act also requires schools to conduct orientation sessions for parents of students participating in at-risk programs, and requires the state department of education to establish at least 10 measures to be used by schools to determine the effectiveness of their at-risk programs. Kentucky, Mississippi and West Virginia also joined the growing list of states denying drivers’ licenses to students who drop out of school.

Early Childhood Education

Early intervention through early childhood education and child care programs has become a vital part of the effort in many states to improve education. Kentucky’s education reform act initiates half-day preschool programs for under-privileged four-year-olds in each school district beginning in 1990-91, while districts with facilities deemed inadequate will be permitted to delay the initiation of the program until the 1992-93 school year.

Arkansas has established an Early Childhood Commission (SB 71, Act 202), a 17-member body to administer a loan trust fund for child care facilities and the promotion of early childhood programs throughout the state. Indiana legislation (HB 1290) requires schools to develop child care programs for children attending kindergarten through grade six, as well as establishes a pilot program encouraging schools and communities to develop early childhood, preschool and latch-key children’s programs. Mississippi has authorized school districts to use school facilities to provide child care services for pre-kindergarten-aged children, and to use school facilities to provide before and after school child care services for school-age children.

Oklahoma’s new education reform act includes revising the compulsory school age-range requirement from seven to under 18 to five to 18, and beginning in 1990-91, it requires all four-year-old children to attend an early childhood program if they have not attended a public school kindergarten. The act also establishes full-day (six hour) kindergarten classes to be implemented by the 1993-94 school year. New Mexico has created an office of child development (HB 32, Chapter 290) to promulgate licensing requirements for people working with children under eight years of age in schools and other child care settings. South Carolina’s 1989 school reform act requires school districts to provide at least one half-day of early childhood development programs for four-year-old children who demonstrate educational readiness deficiencies.
Open Enrollment

Open enrollment or “school choice” plans have become a much-discussed proposal for improving public schools in many states. Such plans allow students to attend high school outside of the district in which they reside. Most include restrictions concerning class space and desegregation laws, as well as funding student travel. At least four states enacted school choice plans during 1989, and at least 20 states have some type of school choice program.

In 1987, Minnesota became one of the first states to enact an open enrollment program. The act (Minn. Stat. 123.3515) allows students to enroll in schools in participating districts other than the one in which the students live. Nonresident districts must adopt criteria for admission and may refuse admission because of a lack of space. A school with a desegregation plan may restrict the number of students who transfer in or out of the district.

Nebraska is permitting a one-time choice of schools with the enactment of its open enrollment legislation in 1989 (LB 183, Chapter 79). After the plan is implemented, students will have one school year to determine whether they should return to their district of residence or remain in another district until graduation. The plan has a four-year implementation schedule: in 1990-91, open enrollment implementation will be optional for all districts; in 1991-92, resident districts must allow 5 percent of students to opt out; in 1992-93, resident districts must allow 10 percent of students to opt out; in 1993-94, there must be full open enrollment with receiving and resident districts participating.

Ohio’s 1989 Education Accountability and School Reform Act requires each school district to develop an open enrollment policy by July 1993. Districts choosing to implement their policy at an earlier date will have their implementation plan evaluated by the state board of education. The legislation includes guidelines for district plans, including preventing districts from granting admittance on a student’s abilities, such as athletic talent, or denying admittance because of a handicap.

At least 20 states, including Arkansas, Hawaii, Iowa and New Jersey, have adopted limited school choice programs. Illinois has established a choice plan for Chicago and Washington state has a program designed specifically for dropouts.

Post-Secondary Enrollment Options

In some states, 11th and 12th grade students may enroll in colleges on a full- or part-time basis to do nonsectarian work. Two of those states, Minnesota (Minn. Stat. 123.3514) and Ohio (SB 140), allow students to apply to any public or private university in the state to gain credit for nonsectarian courses. Students may choose to earn secondary or post-secondary credit. If the student chooses to take a course for post-secondary credit, the institution will require tuition payment from the student. States are to reimburse colleges for tuition fees and materials for courses taken for high school credit.
Suggested State Legislation

Social Services and Parental Involvement

Many educational experts believe that if pupils are ill or distracted, their capacity to learn is greatly reduced. Consequently, two states are striving to provide services to youngsters to help make them more receptive in the classroom, even though such services are not part of the traditional role of education.

By 1991, under Kentucky's education reform act (HB 940), social service centers located in or near schools must be established in schools where at least one-fifth of the students qualify for the federal school lunch program. Elementary schools will have "family resource centers" serving parents as well as children, including those not yet in kindergarten. Services will include year-round care for needy children between the ages of two and 12, and health care and literacy programs for the entire family. Expectant parents will receive advice on child care development, and day care providers can receive training at the centers.

Middle schools and high schools will establish "youth service centers" to offer teen-age students a wide range of counseling services concerning drugs, alcohol, family crises, mental health, and job training and placement.

Districts with eligible schools will apply for grant funding from the state's cabinet for human resources, which will oversee the program. School districts may contract with local agencies for the provision of services. Approximately 40 percent of the state's schools are expected to be eligible.

In 1989, under authorization from a 1987 appropriations bill, New Jersey's department of human services established a network of 29 youth centers to counsel teen-agers about drugs, mental health and employment issues. The centers, located in or near secondary schools, also offer recreational activities to help lure dropouts back to school. The state plans to expand the program to some elementary schools. New Jersey's program served as a model for the Kentucky effort.

Some state reform acts include provisions encouraging parental involvement in education. Ohio's education reform act (SB 140) requires the state department of education to promote innovative school-parent relationships which actively involve parents in school decisions, as well as encourage school-business relationships to provide students with work experiences. South Carolina's Target 2000 program features parent education programs for parents with young children. Indiana's new act (HB 1290) features a Twenty-first Century Schools Pilot Program which includes parent involvement strategies.

Teacher Qualifications

Several states face teacher shortages, especially in the areas of science and mathematics. Teachers usually are required to have an education college diploma before teaching, but some states have waived these requirements, allowing professionals from other fields to undertake some teacher training and then enter the classroom. New Jersey's program,
which was established by regulation rather than by statute in the mid-1980s, has helped relieve a shortage of science and mathematics instructors by allowing experienced mathematicians, physicists and experts in other disciplines to teach. State officials reportedly have been pleased with the performance of the 1,500 new teachers hired to date.

In Kentucky, candidates for teacher certification may complete a state-approved local district training program as an alternative to college teacher preparation programs (HB 940). Such programs must consist of 250 hours of formal instruction, including a full-time seminar, and a period of classroom supervision with evaluations by members of a professional support team.

In Mississippi (HB 1523), after July 1, 1993, preparation to teach grades seven through 12 will require a college degree in a major other than education. The required program of study in preparation for teaching in kindergarten through grade six must involve one, two or three minors, including language arts, reading, social studies, mathematics, foreign language and science. The act also amends teacher re-certification requirements to require that teachers successfully complete prescribed in-service training programs, coursework for credit or programs developed to instruct teachers in dropout prevention and non-traditional instructional techniques. Finally, the act allows business or professional persons in each school district to teach a maximum of three periods each day with the approval of the local school district and the submission of a transcript or other record of educational qualification for teaching a particular subject.

In South Carolina, the state's commission on higher education, in consultation with the state board of education, must establish a center for the advancement of teaching and school leadership at a selected public college or university (R 295, S 321). The center is to provide a program for school improvement consisting of intensive short-term institutes for teams of teachers and administrators who are committed to creating innovative programs in their schools. The act also makes available training for school administrators with an emphasis on effective instructional leadership at the state department of education's leadership academy, which is provided in cooperation with state universities.

In Ohio, the new education reform act requires the state board of education to adopt standards and procedures for granting teaching internship certificates, valid for one year and renewable for one additional year (SB 140). An individual may apply for an initial internship or renewal only if the superintendent of the local school district has offered the applicant a one-year limited contract contingent upon the applicant's successful completion of certain requirements. Applicant requirements include: a bachelor's degree in the subject area for which the certification is being sought; three years' experience deemed essential to effective teaching; passing an examination measuring the applicant's knowledge of reading, writing and mathematics; and a test measuring the applicant's knowledge of the subject for which certification is sought. Applicants also must complete six hours of pre-service coursework in education.
Suggested State Legislation

Oklahoma legislation (HB 1017) establishes a procedure for the state board of education to grant alternative program teaching certificates to persons with a baccalaureate degree who wish to teach foreign languages, math or science. It requires the person to indicate an intention to seek full certification for the specialization he or she will teach. Such teachers must have five years of work experience outside of education and file a plan with a director of teacher education to meet all certification requirements for a standard certificate within five years, except for student teaching.

Teacher testing has become an increasingly common method for states to ensure that their teachers have a basic knowledge of the subject areas they teach. Since 1980, the number of states requiring teacher competency testing has increased from 10 to 44.

Accountability

As new educational programs are created, state legislators are developing means to monitor those programs and to hold accountable professionals at the district and school levels. Kentucky's massive education reform bill, which considerably alters the state's educational system, establishes a comprehensive accountability system. The act creates a state monitoring agency, the office of educational accountability, under the direction of the legislative research commission. The office is to investigate allegations of wrongdoing, waste or mismanagement in local school districts, as well as monitor implementation of the new school system.

A council on school performance standards will frame goals in measurable terms and define what is expected of students and schools. By July 1, 1993, the state board for elementary and secondary education must disseminate a model curriculum framework based on the goals, outcomes and assessment strategies developed by the council.

By the 1995-96 school year, the state board will implement a performance-based assessment program to ensure school accountability. Beginning in 1991-92, the board will administer an interim student testing program to assess student skills in reading, mathematics, science and social studies in grades four, eight, and 12. Local school boards are required to publish annual performance reports. The state board must develop a system to determine which schools demonstrate improved student performance and to distribute rewards to them. School staff will determine the general areas in which reward funds will be spent. Schools showing improvement will be required to develop a school improvement plan. A school determined to be a “school in crisis” will have certified staff placed on probation, with students permitted to transfer to a successful school. The act also creates a commonwealth school improvement fund to provide grants to schools in educationally deficient districts to improve instruction or management.

By January 1, 1991, the state board will establish standards for school district performance. Failure of an educationally deficient school district to meet the goals in its improvement plan is grounds for the removal
of its superintendent and local school board members. The state board may select replacements, and elections may resume after the school has met performance standards. Educationally deficient districts must work with the state department of education to develop improvement plans.

The state board will provide professional development programs for certified personnel and establish criteria for designating distinguished educators. The act lists several responsibilities and benefits of distinguished educators, including accepting assignments in schools which need improvements and receiving salary supplements while serving as a distinguished educator.

Other states have undertaken significant efforts in the area of accountability. For example, North Carolina enacted legislation in 1989 (SB 2, Ch. 778) which authorizes the state board of education to develop and implement a performance-based educational accountability program. Local school districts which elect to participate must submit a school improvement plan to the state superintendent of public instruction. Such plans must outline student performance goals and the strategy for attaining them. Participating districts will be exempt from certain state requirements.

The act further authorizes the state board of education to adopt procedures and guidelines through which local school administrative units may participate in the program, beginning in the 1990-91 fiscal year. These measures include guidelines for the development of local school improvement plans with three-to-five year student performance goals and a set of student performance indicators for measuring and assessing student performance in participating local school administrative districts. Indicators may include attendance and dropout rates, standardized test scores, parental involvement and post-secondary outcomes.

Oklahoma's school reform act denies state accreditation to schools which do not meet the state's standards for minimum salary, curriculum and class size standards. The state board of education must adopt accreditation standards for public schools by February 1, 1991. The standards will be implemented with the 1993-94 school year, but school districts will not lose or be denied accreditation solely for failure to meet the standards prior to the 1997-98 school year. Also, all schools must reduce their class sizes to no more than 20 for grades one through six by 1993-94 or risk loss of accreditation. Teachers in grades seven through 12 must not be responsible for the instruction of more than 140 pupils per day by 1993-94 or 120 pupils per day by 1997-98, or their schools will risk loss of accreditation. Finally, the act creates an educational oversight board and an office of accountability.

Arkansas' School Report Cards Act of 1989 (SB 293, Act 668) establishes an office of accountability in the department of education. The office of accountability will publish an annual assessment of schools, grouping them according to socio-economic factors. The Massachusetts School Takeover Plan (1989 SB 5639, Chapter 133) permitted Boston University to negotiate a takeover agreement with the school committee of the district of Chelsea which suffered from a high dropout rate,
Suggested State Legislation

... low achievement test scores and the highest teen pregnancy rate in the commonwealth. Under the agreement, the university will assume the district management powers of the school board and oversee the school district for 10 years. The university will be charged with improving curriculum and test scores, decreasing the dropout rate, increasing parental involvement, and other improvements.

Nevada's Accountability Initiative of 1989 (SB 74, Ch. 868) requires county school boards to adopt accountability programs for each district in cooperation with teachers' unions. County school boards must have a method in place for informing residents about school quality and student achievement. New Mexico's District Reports Act of 1989 (Chapter 308) requires school districts to publish annual accountability reports, including information such as budget data, dropout rates and student achievement test scores. The legislation is designed to encourage community involvement.

Ohio's Education Accountability and School Reform Act requires the state board of education to establish indicators of schools and school district performance based on such factors as graduation rates, dropout rates and student academic achievement levels. The state board is required to take action if a school district is not making satisfactory progress toward the elimination of educational deficiencies, such as the assignment of educational experts to such districts to assist in the development of corrective action plans.

Education Finance and Governance

While education reform has been a major concern for state governments over the past decade, the problem of financing those reforms has been particularly troublesome. At the time of publication, for example, there was uncertainty as to how Mississippi's reform package (described in this note) would be financed. In several states, school finance systems have been challenged in court by poor districts claiming that the systems are inequitable. In four states, Kentucky, Montana, New Jersey and Texas, courts struck down public school financing programs as inequitable, and at the time of publication, education finance lawsuits were pending in 12 states and under consideration in nine others.

Revenue

Kentucky enacted comprehensive education reform legislation to help alleviate some of the problems that plagued the state's public school system for generations. This act, more than 900 pages in length, is a response to a Kentucky Supreme Court ruling which declared the public school system to be unconstitutional in the case of Rose vs. Council for Better Education, Inc. The court ruled that the public school system was inequitable because of the disparity in per pupil expenditures among school districts, which ranged from $4,200 to $1,800 per year, thus violating the state constitution's requirement that Kentucky establish an efficient system of common schools. The education reform act
guarantees each district a base amount of $2,305 per pupil the first year.

The reform act increases the state's revenue by $1.3 billion per year by increasing the sales tax from 5 to 6 percent; conforming the state income tax code to the federal code; eliminating the deductability of federal income tax from state income tax; and increasing by 1 percent the corporate income tax. Most of the new revenue will be allocated for education reform.

The Texas General Assembly passed legislation calling for a 10 percent increase in education expenditures (approximately $500 million), along with various reforms aimed at improving the quality of education in the state. Separate legislation will increase the sales tax by a quarter-cent and raise taxes on tobacco and alcohol.

Less than a month after its school funding system was ruled unconstitutional, New Jersey adopted a $2.8 billion tax package, increasing the state sales tax by 1 percent, placing new taxes on alcohol and tobacco, and doubling personal income tax rates for the higher income brackets.

Other states are seeking to empower localities to raise revenues for education. For example, Ohio enacted a school district income tax measure in 1989 (SB 28) which will authorize school districts to impose income taxes on residents and on estates of decedents of each school district, provided they are approved by voters in a referendum. The proceeds for such a tax may be used for any one of a number of purposes, including current school expenses, the support of a public library and recreational expenses. Under SB 140, enacted in 1989, Ohio permitted local boards of education to submit a tax levy to the voters, provided that the purpose of the levy is for current school expenses and permanent improvements for special education and other specified education programs.

Another approach was adopted by Tennessee in its Volunteer Public Education Trust Fund Act of 1985 (Chapter 351). This measure authorizes the state treasurer to accept donations from any person, organization or corporation willing to contribute voluntarily to the trust fund. Interest income from the trust fund will be appropriated by the legislature for primary and secondary education as well as vocational education.

In Oklahoma, a statewide shutdown of the public school system led to a $230 million revenue package which increased some taxes and redistributed property tax receipts to reduce funding inequities among school districts (the wealthiest district spends four times as much per pupil as the poorest). Effective May 1, 1990, the sales tax was increased from 4 to 4.5 percent. Increases in personal income and corporate income taxes retroactive to January 1, 1990 also were enacted.

Financial Incentives

Some states have set up systems providing financial rewards to schools showing improvement in their students' performance. Under Kentucky's school reform act, by the 1994-95 school year, the state board of education must establish a rewards program based on student per-
Suggested State Legislation

formance goals. An interim testing program will be in place until that time. Communications and mathematical skills, comprehension of science, social studies, arts and humanities, and problem-solving skills will be measured and taken into consideration. Schools are expected to increase attendance rates and reduce dropout rates.

The state's department of education will establish a method for determining cash rewards, which will go directly to the schools. School staff members will determine how the reward money will be spent. Schools failing to improve for two consecutive years will be declared "schools in crisis." In such cases, the state will assume control of the school through a "distinguished educator." Such schools also will be eligible for special state grants.

South Carolina's "Target 2000" act includes a competitive school-wide innovation grants program. The act enables the state board of education to establish a competitive grants program with cash awards to schools wishing to implement exemplary programs designed to improve instruction. A separate competitive grants program to encourage public schools to implement innovative and comprehensive approaches for improving student development, performance and attendance also is mandated under the act. Reduction of student dropout rates or retention of low dropout rates, as well as exceptional or improved performance in higher order thinking and problem solving skills, are required to qualify for school incentive grants. Grant awards are funded under the annual state appropriation act and schools may receive a maximum award of $90,000 over a three-year period.

The South Carolina act also authorizes compensatory or remedial funding to school districts for students who score below the 25th percentile on standardized tests. This portion of the act pertains to all elementary and secondary students.

In Kansas, the 1989 legislature established the Education Excellence Program (Ch. 213), which will provide matching incentive grants for districts desiring to create at-risk pupil assistance plans. The program will enable schools to provide such services as remedial instruction, parental and work skills education, and guidance and counseling services. Proposals must include a description of the methods a district will employ to identify at-risk students, and an outline of the plan and evaluation process.

Financial incentives also may be given directly to teachers. Oklahoma increased minimum salary schedules for teachers, and allows school districts to develop teacher incentive pay plans. Districts will be required to establish such plans if 25 percent of the districts' teachers petition for it (HB 1017).

Governance

The Kentucky Education Reform Act makes a number of dramatic changes in the way the state's school system is governed. The act replaces the elected state superintendent of public instruction with an appointed
commissioner of education. At first, the new commissioner will be selected by a committee appointed by the governor and legislative leaders in 1991. The state board for elementary and secondary education will choose the commissioner thereafter. Commissioners will serve at the discretion of the board.

Perhaps the most significant changes will come in the area of local school politics. Teachers will be prohibited from working in school board election campaigns in order to protect them from political pressure. The measure also makes it illegal for any school board member to solicit contributions or campaign work from school employees. It will be illegal for school boards to influence hiring and firing of school employees, with the exception of the superintendent and school board attorney. School boards also will set general educational policy for their districts, but superintendents will hire school employees after consulting with local school councils (which will consist of two parents of pupils, three teachers and the principal). No one who has a relative working for the school district may serve on a local school board. This does not apply to current members whose relatives were hired before they were elected, but such members will not be able to run for re-election. Superintendents also will not be able to promote the relatives of school board members.

Many other state education acts do not restructure the educational governance structure as much as they enhance the powers of existing structures. For example, Ohio's Education Accountability and Reform Act gives new powers to the state board of education to prescribe new curriculum standards, promote an open enrollment program, and develop a teaching internship certificate program. Mississippi's school reform measure requires that local school board members and principals receive a minimum orientation and training exposure to strengthen their professional skills and to familiarize them with new ideas concerning school restructuring (HB 1523). The provision mandates a minimum of 12 hours of education and training through the education and training institute, as well as continuing education of eight hours per year.
Mandated Benefits Review Procedures Act

Mandated health benefit laws require that health insurance contracts cover specific diseases and disabilities and provide for specific health care services. Most mandated benefit laws require insurers to include coverage for such benefits as part of the standard insurance policy, but in some cases the laws require insurers to offer benefits as options to policyholders for which they will pay an extra premium.

A problem facing state legislatures has been in assessing the need for proposed new mandates and their social and financial impact prior to enactment. However, approximately 15 states have enacted various laws establishing criteria and procedures for reviews of existing and/or proposed mandated health benefits.

This act, based on a portion of 1989 Maine legislation (as amended in 1990) establishes a mandated benefits advisory commission, sets the commission's responsibilities, describes the criteria to be used in evaluating the proposed mandates, and requires an assessment of existing mandates.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Mandated Benefits Review Procedures Act.

Section 2. [Mandated Benefits Advisory Commission; Membership; Responsibilities.]

(a) The Mandated Benefits Advisory Commission shall be composed of [19] members.

(1) The following members shall be appointed by the [president of the senate and the speaker of the house]:

(i) [Two health insurance consumers who are not otherwise affiliated with the provision or financing of health care];

(ii) [One representative of a labor organization];

(iii) [Three legislators, two of whom shall be members of the standing committee having jurisdiction over insurance matters and one of whom shall be a member of the standing committee having jurisdiction over human resource matters];

(iv) [One chiropractor]; and

(v) [One representative of a statewide association of public health professionals].

Initial appointments shall be made no later than [30] days after the effective date of this act.

(2) The following members shall be appointed by the [governor]:
Mandated Benefits Review Procedures Act

(i) [Two health insurance consumers who are not otherwise affiliate-
ed with the provision or financing of health care];
(ii) [One representative of a labor organization];
(iii) [One representative of a commercial health insurance com-
pany];
(iv) [One representative of a nonprofit hospital or medical service
organization];
(v) [One representative of a licensed alcohol and substance abuse
treatment program];
(vi) [One representative of a licensed mental health treatment pro-
gram];
(vii) [One representative of small business];
(viii) [One representative of a major industry and business trade
association];
(ix) [One physician, provided that the governor shall alternately
appoint an allopathic and an osteopathic physician]; and
(x) [One representative of the hospital industry].
The [governor] shall notify the [president of the senate, the speaker
of the house] and the [director of the legislative service agency] of the
appointments as soon as they are made. Initial appointments shall be
made within [30] days of the effective date of this act.
(b) Except for initial appointees, members shall serve for [three-year
terms. The appointing authority shall determine the terms of initial ap-
pointees so that [one-third] of the appointments made by the authority
shall serve [three-year terms, [one-third] serve [two-year terms and [one-
third] serve [one-year terms.
(c) A representative of the [bureau of insurance] and a representative
of the [bureau of health] shall serve on the committee as ex officio non-
voting members.
(d) The [chair of the legislative service agency] shall call the first meet-
ing no later than [insert date]. The commission shall select a chair or
co-chairs, as determined by the membership, and shall make other de-
cisions regarding the organization and structure of the commission as
necessary in order to effectively carry out its duties under this section.
(e) The commission shall have the following responsibilities:
(1) The commission shall develop and maintain, with the [bureau of
insurance], a system and program of data collection to assess the impact
of mandated benefits, including costs to employers and insurers, impact
of treatment, cost savings in the health care system, number of providers
and other data as may be appropriate.
(2) The commission shall advise and assist the [bureau of insurance]
on matters relating to mandated insurance benefits regulations.
(3) The commission shall perform assessments of proposed and ex-
isting mandated benefits and other studies of mandated benefits issues
as requested by the legislature pursuant to Section 4 of this act.
(4) The commission shall report annually on its activities to the
[standing committee of the legislature having jurisdiction over insur-
ance matters] by [insert date] of each year.
(f) The [bureau of insurance] shall provide staffing assistance to the
(q) Upon request to the [bureau of insurance], commission members shall be compensated as provided in [insert citation for appropriate state statute].

Section 3. [Assessment of Mandated Benefits Proposals.] The requirements of Section 4 shall apply to any legislative measure which proposes a mandated health benefit applicable to nonprofit hospital or medical services organizations, to the extent the requirement applies to proposals applicable to insurers governed by [insert citation for appropriate state statute].

Section 4. [Assessment of Mandated Benefits Proposals; Studies of Mandated Benefits Issues.]

(a) Whenever a legislative measure containing a mandated health benefit is proposed, the [standing committee having jurisdiction over the proposal] shall request that the Mandated Benefits Advisory Commission, established in Section 2 of this act, prepare and forward to the [governor and the legislature], by a certain date, a study that assesses the social and financial effects and the medical efficacy of the proposed mandated benefit and a recommendation for legislative action on the proposal based on the study. The study may be conducted by the commission or pursuant to a contract with the commission and must analyze information collected from a state data collection system, proponents of the new mandate, the [bureau of insurance], health planning organizations and other appropriate data sources. For purposes of this section, a mandated health benefit proposal is one that mandates health insurance coverage for specific health services, specific diseases or for certain providers of health care services as part of individual or group health insurance policies. A mandated option is not a mandated benefit for purposes of this section.

The study shall include, at the minimum and to the extent that information is available, the following:

1. The social impact of mandating the benefit which shall include:
   (i) The extent to which the treatment or service is utilized by a significant portion of the population;
   (ii) The extent to which the treatment or service is available to the population;
   (iii) The extent to which insurance coverage for this treatment or service is already available;
   (iv) If coverage is not generally available, the extent to which the lack of coverage results in persons being unable to obtain necessary health care treatment;
   (v) If the coverage is not generally available, the extent to which the lack of coverage results in unreasonable financial hardship on those persons needing treatment;
   (vi) The level of public demand and the level of demand from providers for the treatment or service;
   (vii) The level of public demand and the level of demand from the
providers for individual or group insurance coverage of the treatment
or service;
(viii) The level of interest of collective bargaining organizations in
negotiating privately for inclusion of this coverage in group contracts;
(ix) The likelihood of achieving the objectives of meeting a con-
sumer need as evidenced by the experience of other states;
(x) The relevant findings of the state health planning agency or the
appropriate health system agency relating to the social impact of the
mandated benefit;
(xi) The alternatives to meeting the identified need;
(xii) Whether the benefit is a medical or a broader social need and
whether it is consistent with the role of health insurance;
(xiii) The impact of any social stigma attached to the benefit upon
the market;
(xiv) The impact of this benefit on the availability of other benefits
currently being offered; and
(xv) The impact of the benefit as it relates to employers shifting
to self-insured plans;
(2) The financial impact of mandating the benefit which shall in-
clude:
(i) The extent to which the proposed insurance coverage would in-
crease or decrease the cost of the treatment or service over the next [five]
years;
(ii) The extent to which the proposed coverage might increase the
appropriate or inappropriate use of the treatment or service over the next
[five] years;
(iii) The extent to which the mandated treatment or service might
serve as an alternative for more expensive or less expensive treatment
or service;
(iv) The methods which will be instituted to manage the utiliza-
tion and costs of the proposed mandate;
(v) The extent to which the insurance coverage may affect the num-
ber and types of providers of the mandated treatment or service over the
next [five] years;
(vi) The extent to which insurance coverage of the health care serv-
vice or provider may be reasonably expected to increase or decrease the
insurance premium and administrative expenses of policyholders;
(vii) The impact of indirect costs, which are costs other than premi-
um and administrative costs, on the question of the costs and benefits
of coverage;
(viii) The impact of this coverage on the total cost of health care;
and
(ix) The effects on the cost of health care to employers and em-
ployees, including the financial impact on small employers, medium-
sized employers and large employers;
(3) The medical efficacy of mandating the benefit which shall include:
(i) The contribution of the benefit to the quality of patient care and
the health status of the population, including the results of any research
demonstrating the medical efficacy of the treatment or service compared
to alternatives or not providing the treatment or service; and
(ii) If the legislation seeks to mandate coverage of an additional
class of practitioners:
(A) The results of any professionally acceptable research demon-
strating the medical results achieved by the additional class of prac-
titioners relative to those already covered; and
(B) The methods of the appropriate professional organization that
assure clinical proficiency; and
(4) The effects of balancing the social, economic and medical effica-
cy considerations which shall include:
(i) The extent to which the need for coverage outweighs the costs
of mandating the benefit for all policyholders; and
(ii) The extent to which the problem of coverage may be solved by
mandating the availability of the coverage as an option for policyholders.
(b) The Mandated Benefits Advisory Commission shall assess mandat-
ed benefits existing in law as of [insert date], and shall report its find-
ings and recommendations to the [governor] and the [standing commit-
tee of the legislature having jurisdiction over insurance matters] by [in-
sert date]. The assessments must include information relative to the
same issues as for an assessment of proposed mandates, except that the
data to be included must be existing data on the actual effects of the man-
date, rather than predictions of likely effects of the mandate. The report
for each benefit must include an analysis of the social impact, financial
impact and medical efficacy of each benefit relative to all other mandated
benefits and a recommendation as to the relative desirability of the man-
date compared to the other mandates.
(c) The [standing committee of the legislature having jurisdiction over
insurance matters] may request that the commission prepare and for-
ward to the committee studies on other issues relating to mandated
benefits, such as the applicability of mandates to various types of in-
surers, the application of managed care programs to mandated benefits
and issues related to other alternative delivery systems. Requests to the
commission shall be made in writing, signed by the [chair of the com-
mittee], and shall set forth the scope of the issue and a date by which
the study shall be completed and forwarded to the legislature.

Section 5. [Appropriations:] [Insert appropriations amounts.]

Section 6. [Effective Date:] [Insert effective date.]
State Employee Leave Transfer Program Act

Several states have enacted leave transfer laws for their employees and there are a variety of policy alternatives available. For example, states may allow employees to transfer leave to a specific employee instead of a pool; permit transfer of leave among employees of different agencies instead of only one agency; permit refunding of donated leave; and prohibit coercion to donate leave.

Alaska permits an employee to donate accrued personal or annual leave to another official or employee for use as leave for medical reasons (Alaska Stat. Sec. 39.20.245(b)). An employee who is covered by a collective bargaining agreement may donate leave to or receive donations of leave from an employee who is not covered by a collective bargaining agreement.

Arizona law permits the transfer of accumulated annual leave to employees within the same agency if the employee to whom the leave is transferred has exhausted all available leave balances and has a non-job related, seriously incapacitating and extended illness or injury, or has a member of the immediate family who has a similar illness (Arizona Rev. Stat. 41-753). The legislation also allows employees to take leave without pay for up to 180 days or until they are able to return to work.

Colorado has adopted state personnel procedures permitting executive directors of state departments and state college and university presidents to approve the transfer and receipt of annual leave from one employee to another (Personnel Reg. P7-1-10). To qualify, the receiving employee must have a minimum of one year of state service, have exhausted all annual leave and sick leave and must be experiencing serious medical hardship, catastrophic illness or injury or be caring for a family member with such ailments.

In 1986, Connecticut established its donation of leave program as part of a collective bargaining agreement. Employees may donate leave to co-workers in the same agency and bargaining unit. Only vacation and personal leave, not sick leave, can be donated.

Kentucky allows state employees to transfer sick leave to a specific employee, instead of to a leave bank or pool (1990 SB 35, Secs. 1 and 2). Donors are required to retain a 10-day minimum sick leave balance. Interagency transfers are permitted and unused leave is returned to the donor.

Montana established a non-refundable sick leave fund for state employees (Montana Stat. Secs. 2-18-618(8)-(9) and 2-15-216). Employees must contribute sick leave to the fund in order to be eligible to draw donated leave from it. The department of administration administers the fund in consultation with the sick leave advisory council.

Washington state has enacted a law permitting state employees to donate annual leave to specific co-workers who are seriously ill or injured or have immediate family members who are (1989, Ch. 93). It allows
transfer of leave in excess of 10 days, permits interagency transfer of leave with approval of agency directors and the return of unused leave to the donors.

The act presented here, based on 1988 South Carolina legislation, permits state employees to request leave from a pool leave account in the event of a personal emergency. Leave requests must be submitted to the employing agency in writing, and must include a brief description of the nature, severity and anticipated duration of the medical, family or other hardship situation affecting the employee. Employees wishing to donate sick leave to this account may do so in writing, provided they reserve a minimum of 15 days in their own accounts.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title] This act may be cited as the State Employee Leave Transfer Program Act.

Section 2. [Definitions] As used in this act:
1 (1) “Employing agency” means the agency in which the leave recipient is employed.
2 (2) “Leave donor” means an employee of an employing agency whose voluntary written request for transfer of annual or sick leave to the pool leave account of his employing agency is granted.
3 (3) “Leave recipient” means an employee of an employing agency who has a personal emergency and is selected to receive annual or sick leave from the pool leave account of his employing agency.
4 (4) “Personal emergency” means a medical or family emergency or other hardship situation that is likely to require an employee’s absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.
5 (5) “Division” means the [human resource management division of the state budget and control board].

Section 3. [Request for Leave from Pool Leave Account.]
1 (a) Employees of a state agency may request leave from the pool leave account established in this act of his agency for a personal emergency in the manner and under the conditions authorized by this act.
2 (b) This leave request must be submitted to the employing agency and must be accompanied by the following information concerning the employee:
3 (1) The name, employing agency, position title and classification of the employee; and
4 (2) A brief description of the nature, severity and anticipated duration of the medical, family or other hardship situation affecting the
Section 4. [Selection of Leave Recipients] In conformity with guidelines established by the [division] and following receipt of additional information it may require, the employing agency, subject to approval by the [budget and control board], may select leave recipients within the agency for participation in the leave-transfer program from among the potential leave recipients of the agency requesting leave under Section 3 of this act. The selections of the employing agency, after [budget and control board] approval, are final, and there is no administrative or judicial appeal of the selections. Unless the personal emergency involves a medical condition affecting the leave recipient, the employing agency may consider the likely impact on morale and efficiency within the agency in considering a leave recipient's request to use transferred leave.

Section 5. [Transfer from Annual or Sick Leave Account to Pool Account]
(a) An employee of an employing agency may request voluntarily, in writing, that a specified number of hours of his accrued annual or sick leave or both be transferred from his annual or sick leave account to a pool account the agency establishes to distribute leave to leave recipients employed by the agency pursuant to this act, except that an employee with less than [15] days in his sick leave account may not transfer any sick leave to the pool account, and an employee with more than [15] days in his sick leave account may transfer sick leave to the pool account provided he retains a minimum of [15] days in his own sick leave account.
Once leave of an employee has been transferred to the pool account, it must not be restored or returned to the leave donor.
(b) Under procedures established by the [division], the employing agency may transfer all or any portion of the annual leave in the pool account to the annual leave account of the leave recipient, and all or any portion of the sick leave in the pool account to the sick leave account of the leave recipient.
(c) Annual or sick leave transferred under this section may be substituted retroactively for periods of leave without pay or used to liquidate an indebtedness for advanced annual or sick leave granted.

Section 6. [Use of Leave from Pool Account; Unused Portion of Pool Account upon Termination of Leave Recipient's Employment]
(a) Upon approval of his employer, a leave recipient may use annual or sick leave from the pool account established under Section 5 of this act in the same manner and for the same purposes as if he had accrued the leave in the manner provided by law. Leave that accrues to the account of the leave recipient must be used before any transferred leave from the pool account.
(b) Transferred annual or sick leave from the pool account remaining to the credit of a leave recipient when the leave recipient's employment terminates must not be transferred to another employee, included in a lump-sum payment for accrued leave or included in the recipient's
total service for retirement computation purposes.

Section 7. [Termination of Personal Emergency.]
(a) The personal emergency affecting a leave recipient terminates when the employing agency determines that the personal emergency no longer exists or the leave recipient's employment by the employing agency terminates.
(b) The employing agency shall monitor continuously the status of the personal emergency affecting the leave recipient and establish procedures to ensure that the leave recipient is not permitted to receive or use transferred annual or sick leave from the pool account after the personal emergency ceases to exist.
(c) When the personal emergency affecting a leave recipient terminates, the employing agency may not grant any further requests for transfer of annual or sick leave from the pool account to the leave accounts of the leave recipient.

Section 8. [Leave Remaining after Termination of Personal Emergency to be Restored to Pool Account.] Under procedures established by the [division], any transferred annual or sick leave remaining to the credit of a leave recipient when the personal emergency affecting the leave recipient terminates must be restored to the pool account.

Section 9. [Employing Agencies to Maintain Records and Report Pertinent Information.] The [division] shall require employing agencies to maintain records and report pertinent information to the [division] concerning the administration of the leave-transfer program for the purpose of evaluating the desirability, feasibility and cost of the transfer program.

Section 10. [Effective Date] [Insert effective date.]
Workers' Compensation Reform Legislation (Note)

In recent years, many states have grappled with changes to their increasingly-expensive workers' compensation systems—systems which provide payments to employees who suffer work-related injuries or disease. Nationally, workers' compensation costs have soared 300 percent since 1970, according to the National Council on Compensation Insurance, while the consumer price index for the same period rose 206 percent.

Already in 1990, Oregon and Oklahoma have passed reform acts, and Texas, Florida and Illinois, as well as Ohio and California (two states whose actions will be discussed in more detail in this note), enacted major legislation in the area during 1989. That same year, at least 19 states modified their existing statutes, and over the last five years, at least half of the states have formed commissions to study the problems associated with their systems.

Under Oregon's reforms (SB 1197/1198), managed health care organizations (HMOs) will be able to handle workers' compensation medical treatment under contract with an employer or group program. Attending physicians for medical treatment must be MDs, thus preventing chiropractors and other alternative medical providers from having access to the system. The act also defines compensable injuries, which will likely increase the benefit per worker as certain injuries will no longer result in compensation. The savings resulting from these and other provisions is expected to approach $62 million.

Oklahoma's act (SB 530) requires all insurers in the state to reduce workers' compensation rates to companies that have successfully completed a program of occupational safety and health education offered by the state's department of labor. Previously, state law allowed only employers with premiums below a certain level to participate, while the new program offers the training to all employers. Employers must reduce the dollar amount and severity of claims by 10 percent in order to earn a reduction in rates, as well as demonstrate a commitment to worker safety. Delaware has enacted a similar law (HB 130, 1989).

Texas' workers' compensation act (SB 1, Second Special Session 1989) increases weekly disability benefits for injured workers, but limits worker access to litigation and base benefits on an impairment rating schedule rather than lost-wage earning capacity.

Two pieces of comprehensive workers' compensation reform legislation were enacted by the states of Ohio and California in 1989. In lieu of presenting these lengthy items in the standard format, the Committee on Suggested State Legislation approved the inclusion of the following, which summarizes the major provisions of these acts. The summary of Ohio's legislation was adapted from an Ohio Legislative Service Commission analysis; California's is based on a summary produced for the Senate Committee on Industrial Relations.
Suggested State Legislation

Workers' Compensation Reform Act

[Readers interested in this 1959 Ohio act should consult Amended Substitute House Bill No. 222, or contact the Suggested State Legislation Program, The Council of State Governments, Iron Works Pike, P.O. Box 11910, Lexington, Kentucky 40578-1910, (606) 231-1939, for a copy of the complete text. In reviewing the following summary, readers should note that Ohio's constitution gives the state exclusive power to administer workers' compensation insurance. Employers may self-insure provided they permit the state to administer benefits.]

Workers' Compensation Board

This act creates a 12-member workers' compensation board and transfers to the board and the administrator of workers' compensation all of the industrial commission's non-adjudicatory functions. Eight members (four representatives of industry, four of labor) are to be appointed by the governor, with the consent of the Senate. The remaining board members are the chairmen and ranking minority members of the Senate and House committees which handle workers' compensation legislation. Legislative members on the board, however, will serve in an advisory capacity only and have no voting rights.

The legislation requires the board to establish the overall administrative policy of the bureau of workers' compensation; have the final right of approval of all rates and assessments recommended to it by the administrator; approve, reject or modify all administrative rules adopted by the bureau; set the salaries of bureau personnel; and have the right of approval, along with the industrial commission, over all investments made by the administrator.

Industrial Commission

This act makes the industrial commission responsible for the adjudication of claims and the establishment of adjudicatory policy under the workers' compensation system. The commission has the right to approve all investments made by the administrator of the bureau of workers' compensation.

The legislation requires the commission to use, to the extent possible, electronic data processing equipment for issuing orders immediately following a hearing, scheduling hearings and medical examinations, tracking claims, retrieving information, and any other matter within its jurisdiction.

Workers' Compensation Advisory Commission

This act creates a 14-member workers' compensation advisory commission. Eight members (four representing employers, four representing labor) are to be appointed to four-year terms by the governor, with the consent of the Senate. The remaining members are the chairmen
of the legislative committees handling workers' compensation matters, and four legislators appointed by the House speaker and Senate president.

This body is to advise the industrial commission regarding workers' compensation matters. The advisory commission may conduct research on the workers' compensation system to develop and publish reports and recommendations for the industrial commission, governor and general assembly; and must examine methods of streamlining the adjudicatory process.

Ombudsman Program

This act places the ombudsman program, which provides assistance to claimants and employers in dealing with the bureau and industrial commission, under the jurisdiction of the workers' compensation advisory commission. It establishes six-year terms for ombudsmen and authorizes the advisory commission to set their salaries.

Administrator of Workers' Compensation

The legislation gives the administrator responsibility for the implementation of the policies of the workers' compensation board and oversight of the day-to-day operation of the bureau of workers' compensation. The board selects, and may discipline or discharge, the administrator.

The administrator's duties include reviewing and processing application claims; awarding compensation and benefits on order of the commission and on uncontested claims; establishing occupational and industrial classifications, premium rates and contributions, rules and systems of ratings, rate revisions and merit ratings; prescribing safety measures for employees; investigating industrial accidents, diseases and safety violations, and managing safety and hygiene funds; granting and revoking the privilege of self-insurance, issuing surety bonds for self-insuring employers, and operating the surety bond program; exercising control over non-complying employers; overseeing the rehabilitation of injured workers; inspecting employers' books and records concerning wage expenditures; and collecting, maintaining and distributing allocations from the state insurance fund.

Bureau and Commission Medical Sections

Previously, state law required the state's industrial commission to maintain a medical section under its control to serve the needs of both the commission and the bureau. This act eliminates that medical section and requires the bureau administrator to establish and maintain a medical section within the bureau.

The bureau's medical section must assist the administrator in establishing standard medical fees; approving medical procedures and determining eligibility and reasonableness of the compensation payments for
medically, hospital and nursing services; establishing guidelines for payment policies which recognize reasonable methods of payment for covered services; providing a resource to respond to questions from claims examiners; auditing fee bill payments; and implementing a program for the electronic storage of information to facilitate authorizations of medical fee payments.

**Health Care Providers**

The legislation requires the bureau administrator to adopt rules regarding health care providers. Health care providers are required to submit not fewer than five items at a time per claimant nor more than once per month per claimant if the provider has fewer than five items to submit for payment. The rule must contain an administrative assessment on the provider, as determined by the administrator, to cover the extra costs incurred by the bureau in processing items not submitted as required.

Medical providers are prohibited from assessing a claimant or employer any fee for the costs of completing any bureau form necessary for obtaining medical services or benefits. Providers also are required to submit itemized billing statements for services or supplies rendered or provided to injured workers and prohibited from assessing a claimant or an employer the difference between the amount allowed by the bureau and the provider’s charge when a fee bill for services or supplies has been submitted to the bureau for assignment and it has been approved for payment. The measure provides standards and procedures for excluding health care providers from participating if they have misrepresented costs in the past or have been convicted of a criminal offense related to the provision of services under the workers’ compensation system. Violators of state Medicaid agreements are to be dealt with in similar fashion. The administrator must negotiate with health care providers to standardize and obtain discounts on services and supplies provided; determine the eligibility and fairness of the compensation payments for medical, hospital, drug and nursing services; and secure the services of a pharmacist on a full- or part-time basis to assist in the review of medication bills.

**Group Rating**

The act requires the bureau administrator to insure the workers’ compensation obligations of employers under a group rating plan that pools the risk of employers within the group, provided they meet the following conditions:

- All of the employers are members of an organization that was formed for purposes other than obtaining workers’ compensation coverage and that existed at least two years before the date of application for insurance;
- The employers’ business in the organization is substantially similar, such that the risks are substantially homogeneous;
The employer group consists of at least 100 members, or the aggregate premiums of the members are expected to exceed $150,000 during the coverage period;

- The formation and operation of the group program will substantially improve accident prevention and claims handling for the employers within the group; and

- Each employer seeking to enroll in a group has an industrial insurance account in good standing with the bureau.

In providing employer group plans, the bureau must consider an employer group as a single employer for the purposes of retrospective rating. No employer may be a member of more than one group for the purpose of obtaining workers' compensation coverage.

**Self-Insured Assessments**

Beginning July 1, 1990 and on every July 1 thereafter, the act requires the bureau administrator to separately calculate each self-insured employer's assessment for administrative costs and other expenses. The assessment for each individual employer is calculated by dividing the total assessment against all self-insuring employers as a class, for each fund and for the administrative costs for the year for which the employers are being assessed, by the total amount of paid compensation for the previous calendar year attributable to all amenable self-insuring employers. That quotient is multiplied by the total amount of paid compensation for the previous calendar year attributable to the individual self-insuring employer.

Every self-insuring employer must certify by affidavit to the bureau the amount of his paid compensation for the previous year. In reporting compensation, the employer must include all amounts paid for living maintenance benefits; for compensation; as wages in lieu of such compensation; in lieu of such compensation under a non-occupational accident and sickness program fully funded by the employer; and for violations of a specific safety standard. The employer may exclude any reimbursement received in the previous calendar year for "wrongfully" awarded compensation.

The administrator is required to adopt rules establishing the reporting date and the amount of assessments for employers who have been granted self-insuring status within the last calendar year.

**Default of Self-Insured Employers**

This act requires the bureau administrator to adopt a rule requiring self-insuring employers to provide security in addition to a surety bond. The additional security required must be sufficient to provide for financial assurance in meeting the obligations of self-insuring employers under the workers' compensation law.
Suggested State Legislation

Disability

Temporary Total

The act provides that if an employee receives temporary total disability benefits and Social Security retirement benefits, the employee's weekly temporary total disability benefit amount may not exceed two-thirds of the statewide average weekly wage.

The legislation further requires that an employee who initially receives temporary total disability compensation for a consecutive 90-day period, be referred to the bureau for a medical examination to determine continued entitlement to benefits, rehabilitation potential and whether the medical treatment currently being given the employee is appropriate.

Permanent Partial

The act establishes a new procedure for the initial determination of the percentage of permanent partial disability. When the application for determination is filed, the bureau must send a copy to the employer and schedule the employee for a medical examination. The administrator must review the claim and make a tentative order based on the evidence. Each side must be advised of its right to request a hearing.

The measure also changes the procedure for subsequent determination of the percentage of permanent disability. If an employee files an application for a subsequent determination, the bureau must notify the employer. Prior to issuing a tentative order, the administrator may require a medical examination or review of the employee.

Permanent Partial — Scheduled Benefits

The act changes the manner in which the weekly compensation is determined. It provides that employees shall receive the statewide average weekly wage for a specified number of weeks, instead of two-thirds of that amount.

Wrongfully Paid Compensation

The act specifies that a self-insured employer is entitled to reimbursement when a claim is denied in whole or in part. It also provides that if a mandamus or other court action results in a final determination that compensation or other benefits should not have been paid, the amount paid is charged to a state fund.

Workers' Compensation Board Study Commission

This act establishes a commission, under the jurisdiction of the workers' compensation board, to examine the most effective ways of educating employees through a workplace safety program and to prepare for
the establishment of a safety center at a state university or college. The purpose of the center will be to reduce industrial accidents, injuries and occupational diseases. At the end of the study period, the board must establish the center, which will operate for no more than five years.

Workers' Compensation Oversight Committee

The act establishes a five-year workers' compensation oversight committee consisting of the chairmen of the Senate and House standing committees which handle workers' compensation legislation, and one labor and industry member of the workers' compensation board (appointed by the board).

The committee is to oversee the operation and implementation of the act, and must publish five annual reports describing the progress made and difficulties which have arisen in the operation and implementation of the legislation. Five years after the effective date of the act, a final report must be submitted to the workers' compensation board, the governor and the general assembly, whereupon the committee will cease to exist.

Workers' Compensation Reform Act

[Readers interested in this 1989 California act should consult Assembly Bill No. 276; Senate Bill No. 47, Chs. 892 and 893. Readers also may contact the Suggested State Legislation Program, The Council of State Governments, Iron Works Pike, P.O. Box 11910, Lexington, Kentucky 40578-1910, (606) 231-1939, for a copy of the complete text.]

State Administration

This act creates the division of workers' compensation (replacing the division of industrial accidents), and two new offices within the division: the office of benefit determination, which will assume rehabilitation and disability evaluation functions; and the office of benefit assistance and enforcement, which will assume information and claims responsibilities, as well as new powers involving audits and the assessment of civil penalties.

The office of benefit assistance and enforcement also will be responsible for enforcing new civil penalties, which may be invoked for failure to comply with a notice of assessment within 15 days of receipt; failure to pay the undisputed portion of an indemnity payment, the reasonable cost of medical treatment or a charge or cost of implementing an approved rehabilitation plan; and failure to comply with any rule or regulation of the administrative director.

The administrative director is required to promulgate a schedule of violations and the amount of the penalty to be imposed for each type. Penalties will range from $100 to $5,000 depending on the seriousness of each violation. Fines of up to $100,000 may be assessed by the administrative director upon finding an employer or insurer is knowingly and
frequently committing serious violations.

Disability Benefits

The act increases both the maximum and minimum weekly temporary disability benefits payments. It also compensates employees retroactively for three-day waiting periods if a temporary disability lasts more than 14 days, a reduction from the previous threshold of 21 days.

After medical recovery, a person in vocational rehabilitation will receive a separate “maintenance allowance” rather than an extension of temporary disability benefits. The maintenance allowance is similar to the temporary disability benefit in that it is two-thirds of the employee's average weekly earnings, but the maximum is lower. Employees in rehabilitation will be entitled to receive an additional weekly amount from their permanent disability entitlement sufficient to provide a weekly maintenance allowance equal to their weekly temporary disability benefit entitlement.

The act increases the maximum weekly benefit to injured workers who are permanently and totally disabled, and the benefit is payable for life. The permanent partial maximum benefit, payable for a period commensurate with the severity of the disability, is increased in cases where the employee is determined to be at least 25 percent disabled. The act adjusts the payment to allow one additional weekly payment for permanent partial disability, and increases mileage fees paid to injured workers required to travel to medical examinations.

Death Benefits

The act more than doubles the maximum burial allowance, and increases the maximum aggregate amount payable in the case of multiple dependents, at least one of whom was totally dependent on the deceased.

In cases of injuries occurring on or after January 1, 1990, a new provision allows death benefits to continue until the employee's youngest child reaches the age of 18. Another new provision presumes that the employee's spouse was totally dependent on the deceased for support, if the surviving spouse earned less than $30,000 the year preceding the death.

Benefit Delivery

Employers are required to provide injured workers with claim forms, along with a notice of potential eligibility for benefits, within one working day of receiving notice or knowledge of injury. The form is to be filed with the employer and dated copies given to the employer's insurer and to the person filing the claim.

The filing of the claim form initiates a 90-day period for the investigation of claims. If liability is not rejected during this period, the claim will be presumed compensable. The first payment for temporary disa-
bility is due 14 days after knowledge of the injury and disability and will have to include all amounts when due. The first payment of permanent disability indemnity is due 14 days after the last payment of temporary disability indemnity. There will be an automatic 10 percent increase in late indemnity payments.

**Vocational Rehabilitation**

The act provides that a qualified rehabilitation representative will be assigned to each rehabilitation candidate after 90 days of aggregate disability. The representative will be responsible for explaining the employee’s rights and obligations under rehabilitation and for determining whether the injured worker is medically eligible for rehabilitation. To qualify as “medically eligible,” a worker must be unable to return to his or her former kind of work. If medical eligibility cannot be determined after 365 days of aggregate disability, the worker will be presumed eligible for rehabilitation services.

Within 10 days of determining eligibility, the employer will provide the employee with a notice explaining rehabilitation. Most workers who elect to delay participation will receive a lower income maintenance allowance or have less permanent permanent disability benefits remaining when rehabilitation is completed. Employers who delay action will be responsible for the full weekly amount the worker received in temporary full disability benefits for the period of delay.

The act also provides incentives promoting rehabilitation plans which involve modified and alternative work. Preference will be given to alternative or modified work plans where the employee has the skills to compete for different types of occupations. An employer will receive a partial rebate of the workers’ compensation insurance premium if a worker qualified for rehabilitation services returns to alternative or modified work with the employer for a minimum of 12 consecutive months. Employees who accept alternative or modified work will be entitled to additional rehabilitation services if the employment is terminated within one year, other than for cause, and the employee is unable to secure suitable employment.

If an employer believes an employee is failing to cooperate in his or her vocational rehabilitation program, the employer is authorized to withhold payments, but only with written notice and the opportunity for a conference with the rehabilitation bureau. If the employee requests the conference, payments will continue, pending the determination of the conference. An employer’s liability for rehabilitation service will conclude when an employee declines vocational rehabilitation services; fails to request services within 90 days; completes an approved vocational rehabilitation plan; or fails to complete an approved rehabilitation plan unjustifiably.

**Medical and Legal Issues**

The act authorizes the creation of an industrial medical council,
of whose members will be appointed by the governor and half by the legislature, to decide many of the medical issues associated with the act's implementation. The council will appoint the medical director of the division of workers' compensation, who will serve as executive secretary to the council; appoint qualified medical examiners to administer most medical-legal evaluations when the act is fully implemented; and promulgate standards governing the timeliness of evaluations, procedures to be followed in evaluating permanent disability and other common medical issues, and procedures for determining the compensability of psychiatric injuries.

Qualified medical evaluators will be appointed to four-year terms by the industrial medical council. To be appointed, a physician must spend at least 20 percent of his or her time treating patients, must have been an agreed medical examiner at least eight times in the year prior to application, or be a retired or teaching physician who qualifies under council standards; or be board certified or board qualified in a specialty, or meet certain other criteria for chiropractors or psychologists. An evaluator will be reappointed if he or she has completed evaluations on a timely basis; has not had more than 30 percent of his or her evaluations of unre presented injured workers rejected by a judge; has completed at least eight hours of continuing education in disability evaluation in the previous two years; and has not been terminated or suspended as an evaluator during the most recent term.

The act includes several quality control provisions for medical evaluations. The medical director is required to conduct a continuous review of evaluations, including a random sample of those submitted, as well as those alleged to be inaccurate or incomplete. Anyone signing a report who is not a doctor will be prohibited from conducting the examination or participating in evaluation preparation. In addition, violations will carry civil penalties of up to $1,000. The payment or receipt of any compensation for the referral of a patient for a consultation will be prohibited.

The legislation establishes two tracks for obtaining medical evaluations: one applies to workers represented by attorneys, while the other is comprised of unre presented workers.

Parties initially will attempt to agree on a physician to evaluate permanent disability and certain other common issues in the case of represented workers. If agreement cannot be reached, each side will be restricted to obtaining reports from one physician, who generally must be a qualified medical examiner, for each appropriate specialty. Agreed medical evaluators will not be allowed in the cases of unre presented workers. If there is permanent disability, an unre presented worker will receive from the state a list of three qualified medical evaluators in the appropriate specialty and geographic area. The worker will select one to carry out the evaluation.

If the evaluation obtained through this process indicates benefits are payable, the employer will be required to begin payments or file an application for adjudication. If the employer files an application for adjudication when an employee is unre presented, the employer also will be
liable for the employee's attorneys' fees if the employee does not obtain additional medical evaluations.

Psychiatric Injury

To receive benefits, workers who sustain psychiatric injuries will have to demonstrate a greater connection between the injury and work than workers sustaining physical injuries. For a psychiatric injury to be compensable, employees will have to prove the employment was more than a mere contributing cause, by demonstrating that the actual events of employment were at least 10 percent of the cause of the injury. Moreover, such an injury will have to be diagnosed under procedures developed by the new industrial medical council.

Insurance

The act reduces the expense provision in workers' compensation rates (included to pay for claims adjustment, sales and other insurer expenses) for three years. Thereafter, the statutory provision will be automatically repealed, permitting the insurance commissioner to set it once again by administrative regulation.

A study of the current workers' compensation insurance system and alternatives will be conducted by a commission comprised of independent academic experts appointed by the governor and legislature. The commission is directed to evaluate the workers' compensation insurance rate-making process and the effectiveness of systems in other states; the extent to which the current system fosters or discourages competition among insurers because of the use of minimum rates for different types of employment, the advantages and disadvantages of establishing an exclusive state fund to provide workers' compensation insurance in the state, eliminating private insurance as an alternative for employers to secure their workers' compensation liability; and whether the functions now performed by the workers' compensation insurance insurance rating bureau should instead be implemented by the state's department of insurance. The report is due June 30, 1991.

Health and Safety Commission

The act establishes a health and safety commission within the department of industrial relations, with six members (three representatives of labor, three of employers) appointed by the department director.

The commission will review and approve applications from employers and employee organizations for grants to assist in the establishment of injury prevention programs. Funds for these grants will be derived from fines assessed for penalties under this act.
Prohibition of Employment Discrimination on Basis of Smoking

The act presented below, based on 1990 Kentucky legislation, amends the state’s employment discrimination statute to prohibit an employer from discriminating against a smoker (or non-smoker), as long as the person complies with any workplace policy concerning smoking.

In the last year, several states have considered, and at least two others have enacted, legislation prohibiting employment discrimination based on smoking. As this is an area that has received and will continue to receive attention in the states, the Committee on Suggested State Legislation wanted to further note a particular feature of a bill proposed in the state of Illinois. Section 8 of the “Smoking Standards Act” (HB 378), introduced in the 1989-90 General Assembly, limits home rule powers and functions by providing that the regulation of smoking in indoor areas open to the public and in places of work is an exclusive power and function of the state. It states that a home rule unit may not regulate smoking in indoor areas open to the public and in places of work.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Prohibition of Employment Discrimination on Basis of Smoking Act.

Section 2. It is an unlawful practice for an employer:

1. To fail to refuse to hire, or to discharge any individual, or otherwise discriminate against an individual with respect to his compensation, terms, conditions or privileges of employment, because of the individual’s race, color, religion, national origin, sex, age between 40 and 70, or because the individual is a smoker or nonsmoker, as long as the person complies with any workplace policy concerning smoking;

2. To limit, segregate or classify his employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect his status as an employee, because of the individual’s race, color, religion, national origin, sex or age between 40 and 70, or because the individual is a smoker or nonsmoker, as long as the person complies with any workplace policy concerning smoking; or

3. To require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products outside the course of employment, as long as the person complies with any workplace policy concerning smoking.

COMMENT: The Kentucky legislation, on which this draft is based,
Prohibition of Employment Discrimination

also prohibits the sale of tobacco products to persons under the age of 16 and requires the posting of signs to that effect wherever the products are sold.

Section 3. [Effective Date] [Insert effective date.]
Genetic Screening in the Workplace
(Note)

The previous item (see page 34) amends existing legislation to further define unlawful employment practices. In the area of employment discrimination, however, states are facing another set of concerns as a result of emerging technologies and the application of those technologies in the workplace. The Committee on Suggested State Legislation would like to call attention to an issue that is growing in interest, and note some initial responses to it.

Tests for diagnosing or predicting some genetically-based diseases have been in existence for several years. Screening tests for sickle cell trait, for example, have been available since the early 1970s. The states have authorized blood tests of newborns to screen for a genetic ailment that causes mental retardation and death if not treated early. Controversy has arisen, however, with the prospect of applying genetic screening to personnel selection.

A primary reason for such screening apparently is to determine whether there is a possibility that an applicant or employee may be susceptible to potentially life-threatening genetic diseases. For example, if firms could determine that certain persons are particularly susceptible to a toxin found in the work environment, they could decide not to hire them or prevent their assignment to areas near the substance. Opponents of such tests, however, believe they are potentially discriminatory and violations of privacy.

Critics argue, for example, that the validity and accuracy of most screening tests have not been firmly established. And because such genetic traits tend to be unequally distributed among different races or ethnic groups, screening programs could be viewed as discriminatory. At the same time, a number of privacy issues arise, particularly with regard to the question of who has access to test results.

At least two states, Oregon and New Jersey, have enacted statutes in response to this issue. Oregon amended its employment practices statute (ORS 659.227) to prohibit employers from subjecting employees or prospective employees to genetic screening or brain wave tests. The act does not define these terms, however.

Using a different approach, New Jersey amended its unlawful employment practices act (10:5-12) to prohibit employers from discriminating against anyone in compensation or the terms, conditions and privileges of employment on the basis of atypical hereditary cellular or blood traits. Atypical cellular or blood traits, as defined in the act, include sickle cell trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait or cystic fibrosis trait.

Anatomical Donations by Minors Act

The act presented here is based on 1989 Ohio amendments to its anatomical donation legislation. It authorizes a minor to make a gift of his/her body or any body part for the same purposes for which adults can make such gifts (including organ donation or medical research), provided the minor’s parent or guardian witnesses the document or statement by which the minor makes such a gift.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This act may be cited as the Anatomical Donations by Minors Act.

1 Section 2. [Conditions for Donation.]
2 (a) Any individual of sound mind may give all or any part of his body for any purpose specified in [insert citation for section of donor statute], the gift to take effect upon his death, if either of the following conditions applies:
3 (1) The individual is [18] years of age or more;
4 (2) The individual is less than [18] years of age and a parent or guardian of the individual signs a document pursuant to Section 3(b)(2) or a statement pursuant to Section 3(c) of this act.
6 (b) Any of the following persons, in the order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give any part of the decedent’s body for any purpose specified in [insert citation for section of donor statute]:
8 (1) The spouse;
9 (2) An adult son or daughter;
10 (3) Either parent;
11 (4) An adult brother or sister;
13 (5) A guardian of the person of the decedent at the time of his death;
15 (6) Any other person authorized or under obligation to dispose of the body.
17 (c) The donee shall not accept the gift if he has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class. The persons authorized in subsection (b) of this section may make the gift after or immediately before death.
24 (d) A gift of all or part of a body authorizes any examination necessary to ensure medical acceptability of the gift for the purpose intended.
28 (e) The rights of the donee created by the gift are paramount to the rights of others except that a coroner or, in his absence, a deputy coroner,
who has, under [insert citation for appropriate state statute], taken
charge of the decedent's dead body and decided that an autopsy is neces-
sary, has a right to the dead body and any part that is paramount to the
rights of the donee. The coroner, or in his absence, the deputy coroner,
may waive this paramount right and permit the donee to take a donat-
ed part if the donated part is or will be unnecessary for successful com-
pletion of the autopsy or for evidence. If the coroner or deputy coroner
does not waive his paramount right and later determines, while perform-
ing the autopsy, that the donated part is or will be unnecessary for suc-
cessful completion of the autopsy or for evidence, he may thereupon
waive his paramount right and permit the donee to take the donated
part, either during the autopsy or after it is completed.

Section 3. [Methods of Designating Donation.]

(a) A gift of all or part of the body under Section 2(a) of this act may
be made by will when the individual is [18] years of age or more. The
gift becomes effective upon the death of the testator without waiting for
probate. If the will is not probated or if it is declared invalid for testamen-
tory purposes, the gift, to the extent that it has been acted upon in good
faith, is nevertheless valid and effective.

(b)(1) A gift of all or part of the body under Section 2(a) may also be
made by any document other than a will. The gift becomes effective upon
the death of the donor. The document, which may be a card designed to
be carried on the person, shall be signed by the donor in the presence
of two witnesses who shall sign the document in his presence. If the do-
nor cannot sign, the document may be signed for him at his direction
and in the presence of two witnesses, having no affiliation with the
donee, who shall sign the document in his presence. Delivery of the docu-
ment of gift during the donor's lifetime is not necessary to make the gift
valid.

(2) If a person less than [18] years of age wishes to make a gift under
subsection (b)(1) of this section, one of the witnesses who signs the docu-
ment shall be a parent or guardian of that person.

(c) A gift of parts of the body under Section 2(a), may also be made by
a statement, to be provided for on all [state] operator's or chauffeur's
licenses and motorcycle operator's licenses, or endorsements, and on all
identification cards. The gift becomes effective upon the death of the do-

or. The statement must be signed by the holder of the operator's or
chauffeur's license or endorsement, or by the holder of the identification
card, in the presence of two witnesses, who must sign the statement
in the presence of the donor; except that when the holder of the license
or card is less than [18] years of age, one of the witnesses who signs shall
be a parent or guardian of the holder. Delivery of the license or identifi-
cation card during the donor's lifetime is not necessary to make the gift
valid. The gift shall become invalidated upon expiration or cancellation
of the license, endorsement or identification card. Revocation or suspen-
sion of the license or endorsement will not invalidate the gift. The gift
must be renewed upon renewal of each license, endorsement or identifi-
cation card. If the statement is ambiguous as to whether a general or
specific gift is intended by the donor, the statement shall be construed
as evidencing the specific gift only. As used in this subsection, “iden-
tification card” means an identification card issued under [insert cita-
tion for appropriate state statute].
(d) The gift may be made to a specified donee or without specifying a
donee. If the latter, the gift may be accepted by the attending physician
as donee upon or following death. If the gift is made to a specified donee
who is not available at the time and place of death, the attending phy-
sician may accept the gift as donee upon or following death, in the ab-
sence of any expressed indication that the donor desired otherwise. The
physician who accepts the gift as donee under this subsection shall not
participate in the procedures for removing or transplanting a part.
(e) Notwithstanding [insert citation for appropriate state statute], the
donor may designate in his will, card or other document of gift the sur-
geon or physician to carry out the appropriate procedures. In the absence
of a designation or if the designee is not available, the donee or other
person authorized to accept the gift may employ or authorize any sur-
geon or physician to carry out the appropriate procedures.
(f) Any gift by a person specified in Section 2(b) shall be made by a docu-
ment signed by him or made by his telegraphic, recorded telephone or
other recorded message.

COMMENT: The Ohio enactments also amended a section of the
state code pertaining to applications for identification cards. The ap-
lication must state whether or not an applicant wishes to certify will-
ingness to make an anatomical donation (under Section 3 of the draft
act presented here) and must include information about the require-
ments that apply to persons under the age of 18.

Section 4. [Repealer:] [Insert repealer clause.]

Section 5. [Effective Date] [Insert effective date.]
Prevention, Early Assistance and Early Childhood Act (Statement)

This legislation, enacted by Florida in 1989, represents an effort to increase the number of children entering school ready-to-learn, and reduce the number of teenage pregnancies, drug-exposed newborns, the crime rate and the school dropout rate.

In lieu of presenting this lengthy item in the standard format, the Committee on Suggested State Legislation approved the inclusion of the following statement, which summarizes the provisions of the act. Readers interested in the text should consult Chapter 89-379, Committee Substitute for HB 1818, or contact the Suggested State Legislation Program, The Council of State Governments, Iron Works Pike, PO. Box 11910, Lexington, Kentucky 40578-1910, (606) 231-1939, for a copy of the complete text.

Continuum of Comprehensive Services

The legislation broadens the definition of "high-risk" or "at-risk" child to include drug-exposed children, handicapped children, children surviving an accident resulting in developmental delays, children whose families are below the poverty level and children placed in residential care under the custody of the state. The act creates child care and early childhood resource information agencies, as well as other programs to aid parents in finding day care, health care and educational assistance for their children.

The act directs the state departments of education and health and rehabilitative services to use a continuum of prevention and early assistance services for high-risk pregnant women and for high-risk and handicapped children. The continuum includes public education about the causes of handicapped conditions, normal and abnormal child development, the benefits of abstinence from sexual activity, and the consequences of teen pregnancy.

Services also include information and referral services for the families of high-risk and handicapped children; case management; provision of services prior to pregnancy, such as food, clothing and shelter; health education and family planning; maternity and newborn services, including comprehensive prenatal care, adoption counseling for unmarried pregnant teen-agers and delivery services; health and nutrition services for preschool children; education, early assistance and other services for at-risk children; support services for all expectant parents and parents of high-risk children, including child care and early childhood programs, parent education and counseling; and other programs, such as resource information systems on available services, a registry of high-risk newborns and newborns with birth defects, and well-baby insurance for preschoolers included in the family policy coverage.

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Prevention and Early Assistance

The act directs the departments of education and health and rehabilitative services to prepare a joint strategic plan relating to prevention and early assistance.

Each department is required to establish an office of prevention, early assistance and child development for the purpose of intra-agency and inter-agency planning, policy and program development and coordination to enhance existing programs and services and develop new ones for high-risk children and their families. The act also creates an independent, non-partisan state coordinating council for early childhood services to ensure coordination among the agencies serving preschool children; facilitate the use of resources; and promote high standards for all programs. The council is to be comprised of 27 members, five appointed by the governor, seven each by the commissioner of education and the secretary of health and rehabilitative services, four by the president of the senate and four by the speaker of the house.

Infants and Toddlers

The act establishes the children’s early investment program for young children who are at risk of developmental dysfunction or delay. The program is designed to provide intensive early intervention to at-risk expectant mothers, young children and their families. Basic services under the program include adequate prenatal care health services, health services for at-risk children, infant and child care services, parenting skills training, education or training opportunities for families and economic support. Services may delivered through county public health offices, department of health and rehabilitative services offices, local school districts, local children’s services agencies or other local government or private not-for-profit agencies.

AFDC Requirements

The act requires teen parents to work toward a high school diploma or other state-approved certificate in order to receive assistance under the Aid to Families with Dependent Children (AFDC) program. AFDC support may be reduced or eliminated for teen parents who drop out of school without good cause.

Child Care Resource and Referral

The act requires the department of health and rehabilitative services to establish a statewide child care resource and referral network, with at least one referral center to be established in each district of the department. The department must identify existing public and private child care and early child education services and collect data on each provider.
Suggested State Legislation

Child Care Plus

Child care facilities or family day care homes meeting standards to provide care to high-risk or handicapped preschool children may be identified as “child care plus” facilities. In addition to standard licensing requirements, there will be a separate child care plus license. To acquire the license, these facilities must meet quality standards for child development, health, nutrition, family counseling, parent training and staff credentials. Such facilities, once they have acquired such a license, may apply for a one-year grant.

Child Care Trust Fund

The act establishes a child care trust fund within the state treasury. The funds from the trust are to be used to reduce the waiting list for subsidized child care; promote public-private partnerships for full-day and before and after school child care; training of child care personnel; and child care and early childhood program resource information. Private gifts and donations as well as government grants may be deposited in the account.

The act also amends previous legislation to create a child care facility and family day care home trust fund for the purpose of loaning funds to applicants for the costs of expanding existing facilities or establishing new ones. Loans of up to $100,000 may be granted.

Community Resource Parent Programs

The act authorizes the department of health and rehabilitative services to establish a community resource program for mothers and fathers in counties with high incidences of medically underserved high-risk children, low birthweight babies and high infant mortality. The department may contract with public health agencies and other non-profit agencies to deliver health and education training services to new parents. The legislation also enables retired persons to volunteer to provide such services.

Prenatal Care

The legislation provides for a statewide prenatal care program for low-income pregnant women. The act calls for regional perinatal intensive care centers which will include therapies to enhance a baby’s growth, and parent support and training both before and after each birth.

Florida First Start Program

This program is designed to help handicapped children and children at risk of future school failure get a good start in their education, and to support the parents’ roles as the first teachers of youngsters under the age of three.
Each school board may submit to the commissioner of education a plan for conducting such a program. To be eligible for funding, such a program must be designed to serve children under three years of age who are handicapped or at-risk. Under the program, trained parent educators are to visit parents to inform them about stages of child development and suggest methods for intellectual, physical and social development, as well as guidance concerning nutrition, safety, discipline and other topics. Other aspects of the program include parent resource centers located in neighborhood schools, monthly group meetings for parents, and educational and medical screening for children.

**Teenage Parent Education Programs**

The act establishes a program to provide pregnant students, or students who are already parents, with the option of participating in regular classroom activities or enrolling in a special program tailored to their needs. The curriculum includes prenatal, postnatal care, parenting skills and instruction in the benefits of sexual abstinence and the consequences of teenage pregnancy. School districts that have developed dropout prevention programs to obtain state funding also are required to develop teenage parent programs.
Tuition Assistance Program for Day Care Providers Act

This act, based on 1989 Maryland legislation, establishes a tuition assistance program, administered by the state scholarship administration, to train child care providers. Eligible recipients of the tuition assistance include state residents enrolled as full-time students in programs leading to an associate or bachelor degree in child development or early childhood education, or in programs leading to a child development associate credential from the Child Development Associate consortium; part-time students similarly enrolled are eligible if they are employed part-time at a group child care center.

In return for the assistance, the recipient must furnish a surety bond or promissory note to the administration agreeing to perform a service obligation to the state or repay the assistance given. Each year of tuition assistance will be forgiven by the state in return for providing child care services at a group child care center in the state for one year.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Tuition Assistance Program for Day Care Providers Act.

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

(1) "Administration" means the [state scholarship administration].

(2) "Authorized part-time employment" means employment as a day care provider at a group day care center which is:

(i) For not less than [15] hours each week; and

(ii) Licensed by the [administration].

(3) "Day care provider" means a person employed:

(i) As a family day care provider; or

(ii) At a group day care center as a:

(A) Senior staff member; or

(B) Staff aide under the full-time, on-site supervision of a:

(a) Senior staff member; or

(b) Director of a group day care center.

(4) "Eligible institution" means an accredited college or university that has a program of studies leading to a [child development associate credential] from the [child development associate consortium].

(5) "Eligible program" means a program approved by the [administration] and offered by an eligible institution that provides studies leading to:

(i) A [child development associate credential] from the [child development associate consortium]; or
(ii) An undergraduate degree or an associate degree with a curricu-

lum concentration qualifying the degree holder to apply for a [child de-

velopment associate credential] from the [child development associate

college or consortium]; or

(iii) An associate or bachelor degree in child development or early

childhood education.

(6) "Family day care provider" means an individual registered by the

state to provide family day care in a registered family day care home.

(7) "Group day care center" means a licensed agency or institution in

the state offering or supplying, on a regular schedule more than once

a week or more than [20] hours a month, group day care to [seven] or more

children who do not have the same mother or father.

(8) "Recipient" means a recipient of tuition assistance under this act.

(9) "Service obligation" means the obligation of a recipient to provide
day care services as a senior staff member or director at a group day care

center in the state.

(10) "Tuition assistance" means any funds provided for the cost of basic

instructional charges, fees, room, board or other related educational

expenses.

Section 3. [Establishment of Tuition Assistance Program.]

(a) There is a program of tuition assistance to train day care providers.

(b) The [state scholarship administration] shall adopt regulations that

include:

(1) Procedures for applications and renewals of tuition assistance;

and

(2) Requirements that a tuition assistance recipient provide to the

state adequate financial security to assure compliance with the service

obligation.

(c)(1) The [administration] shall adopt regulations to determine academic criteria for the selection of tuition assistance recipients from eligible applicants.

(2) The [state scholarship administration] may adopt any other regulations necessary to implement this act.

Section 4. [Qualifications for Tuition Assistance]

(a) The [state scholarship administration] annually shall award to

eligible applicants tuition assistance for the education of persons training to be day care providers.

(b) A recipient of a tuition assistance award under this act shall:

(1) Be a resident of this state;

(2) Be selected by the [state scholarship administration] from qualified applicants based on competitive standards;

(3) Qualify as follows:

(i) Be enrolled as a:

(A) Full-time student in an eligible program; or

(B) Part-time student in an eligible program, if the student submits to the [administration] evidence of authorized part-time employ-

ment at a group day care center; or
(ii) Sign a letter of intent to enroll at an eligible institution as a:
   (A) Full-time student in an eligible program; or
   (B) Part-time student in an eligible program, if evidence of authorized part-time employment at a group day care center is submitted with the letter of intent.
   (4)(i) Furnish a surety bond or guaranteed promissory note to the [state scholarship administration] or its designee with security satisfactory to the [state scholarship administration];
   (ii) After completion of certification studies or undergraduate studies in an eligible program, perform the service obligation; and
   (5) Satisfy any additional criteria the [state scholarship administration] may establish.
   (c) A recipient of tuition assistance under this act may not receive any other form of state-sponsored financial assistance.
   (d) The annual amount of tuition assistance granted to a recipient under this act may not exceed [2,000] dollars.
   (e) A recipient of tuition assistance may reapply for an award if the recipient:
      (1) Remains enrolled as a full-time student in an eligible program; or
      (2) Remains enrolled as a part-time student and continues to hold authorized part-time employment at a group day care center; and
      (3) Satisfies any additional criteria the [state scholarship administration] may establish.
   (f) The governor shall provide in the annual budget of the [state scholarship administration] funds for the tuition assistance program which may not:
      (1) Be used to supplant funds of any other program; or
      (2) Exceed the amount necessary to make [100] awards each year.

Section 5. [Repayment Procedures.]
(a) The recipient shall repay the [state scholarship administration] the funds expended on behalf of the recipient, [plus simple interest that is equal to the prime rate] and [2] percent calculated from the date of the first payment of the tuition assistance award under this act, for any portion of the award not forgiven, if the recipient does not:
   (1) Complete at least [90] classroom hours in an eligible program in early childhood curriculum and child development, which are specifically directed to the needs of children who are between the ages of [0 and 8] years;
   (2)(i) Work for [one] year with a group of children in a licensed early childhood program; or
      (ii) Successfully complete [one] year of part-time or full-time study in an accredited institution of higher learning;
   (3) Earn an associate or bachelor degree in child development or early childhood education or a valid [child development associate credential] from the [child development associate consortium]; and
   (4) Perform the service obligation for [one] year for each year that the recipient has a tuition assistance, as provided in Section 4(b) of this act.
(b)(1) Subject to the provisions of Section 6(a) of this act, the [state scholarship administration] shall waive the repayment of the tuition assistance award at the rate of [one] year for each year that the recipient performs the service obligation.

(2) The [administration] shall require a recipient to begin repayment at any time during the required period that the recipient is no longer performing the service obligation.

(3) A recipient who leaves an eligible program may delay repayment as long as the recipient remains a full-time undergraduate student.

(4)(i) Repayment shall be made to the state within [six] years after the repayment period begins and shall follow a repayment schedule established by the [state scholarship administration].

(ii) The [state scholarship administration] may waive or defer repayment in the event of disability or extended sickness which prevents the recipient from fulfilling the service obligations required under Section 4(b) of this act.

Section 6. [Forgiveness of Repayment.]

(a) The repayment of the tuition assistance award of a recipient who is not yet required by the provisions of Section 5 of this act to begin repayment of the award and who accepts employment that fulfills the service obligation shall be forgiven, for the purposes of Section 5, at a rate of [one] year for each year that the recipient performs the service obligation.

(b) The [state scholarship administration] may adopt regulations to implement the provisions of this section.

Section 7. [Effective Date.] [Insert effective date.]
Home Ownership Made Easy Act

This act, based on 1989 Illinois legislation, establishes the Home Ownership Made Easy (HOME) program to provide potential home buyers with a method of accumulating funds sufficient for a down payment on a home. A person may participate in the program by making monthly, quarterly or semi-annual deposits with the state treasurer or through a payroll deduction plan administered by the home buyer’s employer.

At the direction of the participant, the state treasurer invests the moneys in one or more of the following ways: by depositing the moneys into single money market mutual funds or accounts; by purchasing bonds issued by the state housing development authority; or by depositing the moneys in the HOME Investment Pool.

Suggested Legislation

(Title, enacting clause, etc.)

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

2 Section 2. [Legislative Purpose] It is hereby declared that for the benefit of the people of [state], there shall be established a program to help make the dream of home ownership a reality for more of this state’s citizens. It has come to the attention of the legislature that there is a growing gap between housing affordability for eligible home buyers and affordability for persons who presently own the homes in which they live, and that increased demand by mortgage lenders for a greater amount of money as a down payment on a home is a significant barrier to home ownership for many persons in this state. The legislature recognizes that increasing owner-occupied housing has many benefits for the communities in this state, and that owning one’s own home is a worthwhile goal for many of this state’s citizens and a goal which the legislature wishes to help many of this state’s citizens attain. It is the intent of this act to provide to potential purchasers of homes in [state] a method of accumulating, over a period of years, funds sufficient to make a down payment on a home which those persons would otherwise be unable to purchase.

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

1 (1) “Eligible home buyer” means a person [18] years of age or older who has not, as a sole owner, tenant in common or joint tenant with right of ownership, held a fee simple absolute or any other ownership interest in residential real estate within [two] years before beginning participation in the program.

2 (2) “Fund” means the Home Ownership Made Easy Investment Fund created in Section 5(b) of this act.

3 (3) “Participant” means each eligible home buyer participating in the
Home Ownership Made Easy Act

(4) "Program" means the Home Ownership Made Easy Program created in Section 4 of this act.
(5) "Residential real estate" means up to a [two] unit dwelling, one unit of which is owner occupied.

Section 4. [Creation of Program.] There is created the Home Ownership Made Easy (HOME) Program, to be administered by the [state treasurer], who shall give bond with [two or more] sufficient sureties, payable to participants in the program, in the penal sum of [150,000] dollars, conditioned for the faithful discharge of his duties in relation to the Home Ownership Made Easy Program. All reasonable charges incidental to the procuring and giving of such bonds shall be paid in the initial year of the program's operation from the [general revenue fund] pursuant to appropriation granted by the legislature. Such charges may be paid in ensuing years from investments made by the [treasurer] under Section 5, from the proceeds from the sale of HOME Bonds under Section 6 and the earnings thereon, from penalties imposed under Section 5(c)(3), from amounts appropriated therefor by the legislature, or any combination thereof.

Section 5. [Participation in Program.]
(a) A person may participate in the program by making periodic deposits of money with the [state treasurer]. Deposits may be made [monthly, quarterly or semi-annually], or may be made through a payroll deduction plan administered by the eligible home buyer's employer. The initial deposit shall be in an amount not less than [250] dollars for each alternative investment; subsequent deposits may be in any amount, subject to rules adopted by the [state treasurer].

(b) All money received by the [state treasurer] under this act shall be deposited in the Home Ownership Made Easy Investment Fund, which is hereby created. The [treasurer] shall be the custodian of the fund, which shall be outside the state treasury. The [treasurer] shall invest the moneys deposited in the fund by each eligible home buyer participating in the program in one or more of the following ways, according to the direction of the participant:
(1) By depositing the moneys in a single money market mutual fund or account selected by the [state treasurer] which invests solely in securities the income of which is exempt from taxation by the United States government; or
(2) By depositing the moneys in a single money market mutual fund or account selected by the [state treasurer] which invests solely in marketable securities rated in the top 4 rating categories by national rating services and designated as "investment grade" or "bank quality" investment securities; or
(3) By purchasing, for the participant, bonds issued by the [state hous-
Section 6. [Home Bonds.]

(a) Bonds issued to accomplish the purposes of the program, to be known as HOME Bonds, shall be issued by the [state housing development authority], and shall bear interest payable at such time or times and may be sold at such prices and in such manner as may be determined by the [governor], the [director of the bureau of the budget] and the [state treasurer].

(b) All HOME Bonds shall be purchased from the [state treasurer], and shall be issued in registered form as provided in the [registered bond act], as now or hereafter amended.

(c) HOME Bonds shall be issued in a total aggregate original principal amount not to exceed [50,000,000] dollars.

(d) Every HOME Bond shall be issued in the face amount of [1,000] dollars, and shall mature at least [three] years from the date of issuance, as elected by the purchaser. However, interest at the rate borne by each HOME Bond prior to its maturity shall continue to accrue after its maturity until the HOME Bond is paid or redeemed.

(e) HOME Bonds issued under this act, and the income derived therefrom, shall be free from all taxation by the state or its political subdivisions, except for estate, transfer and inheritance taxes.

(f) The provisions of the [state housing development act] applicable to bonds issued by the [state housing development authority], as now or
hereafter amended, shall apply to HOME Bonds.

Section 7. [Program Benefits.]

(a) When a program participant terminates participation in the program, the [state treasurer] shall certify to the [director of revenue] and the [chairman of the state housing development authority] whether:

1. The participant is an eligible home buyer;
2. Within four months after termination of his participation in the program the participant becomes the owner, as sole owner, tenant in common or joint tenant with right of survivorship, of a fee simple absolute interest in real estate located in this state and occupied by him as a principal residence; and
3. (i) For a period of [three] years immediately preceding termination of participation in the program, the participant deposited moneys with the [state treasurer] for investment under Section 5(b)(1), 5(b)(2) or 5(b)(4), at least [two] deposits were made in each [12]-month period during that [three]-year period, and the total amount deposited (minus withdrawals) in each such [12]-month period equals at least [20] percent of the total amount deposited (minus withdrawals); or
   (ii) For a period of [five] years immediately preceding termination of participation in the program, the participant deposited moneys with the [state treasurer] for investment under Section 5(b)(1), 5(b)(2) or 5(b)(4), at least [two] deposits were made in each [12]-month period during that [five]-year period, and the total amount deposited (minus withdrawals) in each such [12]-month period equals at least [10] percent of the total amount deposited (minus withdrawals); or
4. (III) The participant purchased HOME Bonds in the total aggregate face amount of not less than [4,000] dollars, was the original purchaser of those bonds from the [treasurer], and held the bonds to maturity or later.

(b) Any participant who is certified by the [state treasurer] under subsection (a) as having met all of the requirements of that subsection shall:

1. Have refunded to him the tax imposed under the [real estate transfer tax act], as now or hereafter amended, upon the participant’s purchase of a principal residence; and
2. Have priority, over persons who are not so certified, in the [state housing development authority’s] program for acquiring and servicing residential mortgages under [state housing development act], as now or hereafter amended.

(c) At the request of the participant, any participant who is certified by the [state treasurer] under subsection (a) as having met all of the requirements of that subsection may also be so certified by the [state treasurer] to the [treasurer of the county] in which the participant has purchased a principal residence. Upon such certification, the [county treasurer] may refund to the participant the tax or any portion thereof imposed under [insert citation for appropriate state statute], upon the participant’s purchase of a principal residence.

Section 8. [Rules and Regulations] The [state treasurer] shall adopt
rules and regulations he deems necessary for the efficient administration of the program. The rules shall provide that the expenses of administering the program shall be paid from the earnings of the investments made by the [treasurer] under Section 5, from the proceeds from the sale of HOME Bonds under Section 6 and the earnings thereon, from penalties imposed under Section 5(c)(3), from amounts appropriated therefor by the legislature, or any combination thereof.

Section 9. The [state treasurer] and agents of the [state treasurer] acting within the scope of their authority shall be free from liability for damages as a consequence of their acts or failure to act in performing duties related to the implementation of this act, unless the act or failure to act involved fraud or deceit.

Section 10. [Effective Date] [Insert effective date.]
Lawn Care Products Application and Notice Act

This act, based on 1989 Illinois legislation, requires notification measures for the application of lawn care products. Immediately following the application of such products to a lawn, an applicator for hire must place a lawn marker at the usual point(s) of entry. The act requires that the markers carry the warning “LAWN CARE APPLICATION — STAY OFF GRASS UNTIL DRY — FOR MORE INFORMATION CONTACT [insert lawn care firm's name and business phone number].”

In the case of golf courses, the legislation requires the posting of all-weather posters or placards informing users or visitors that plant protectants are periodically used and that the golf course superintendent should be contacted to supply further information.

The act also requires applicators for hire to supply customers with information on the brand or common name of the product applied; the type of fertilizer or pesticide contained in the product; the range of concentration and amount of material applied; any special instructions; and the business names and telephone numbers of the applicator for hire and the individual who applied the product. It further provides that a resident whose property abuts or is adjacent to the property of a customer (or to a golf course) may receive prior notification of an application.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Lawn Care Products Application and Notice Act.

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

(1) “Application” means the spreading of lawn care products on a lawn.

(2) “Applicator for hire” means any person who makes an application of lawn care products to a lawn or lawns for compensation, including applications made by an employee to lawns owned, occupied or managed by his employer and includes those licensed by the [department] as licensed commercial applicators, commercial not-for-hire applicators, licensed public applicators, certified applicators and licensed operators and those otherwise subject to the licensure provisions of the [state pesticide act], as now or hereafter amended.

(3) “Department” means the state [department of agriculture].

(4) “Facility” means a building or structure and appurtenances thereto used by an applicator for hire for storage and handling of pesticides or the storage or maintenance of pesticide application equipment or vehicles.

(5) “Fertilizer” means any substance containing nitrogen, phosho-
Suggested State Legislation

rus or potassium or other recognized plant nutrient or compound, which
is used for its plant nutrient content.
(6) "Golf course" means an area designated for the play or practice of
the game of golf, including surrounding grounds, trees, ornamental beds
and the like.
(7) "Golf course superintendent" means any person entrusted with and
employed for the care and maintenance of a golf course.
(8) "Lawn" means land area covered with turf kept closely mown or
land area covered with turf and trees or shrubs. The term does not in-
clude
(i) land area used for research for agricultural production or for the
commercial production of turf;
(ii) land area situated within a public or private right-of-way; or
(iii) land area which is devoted to the production of any agricultural
commodity, including, but not limited to plants and plant parts, livestock
and poultry and livestock or poultry products, seeds, sod, shrubs and oth-
er products of agricultural origin raised for sale or for human or live-
stock consumption.
(9) "Lawn care products" means fertilizers or pesticides applied or in-
tended for application to lawns.
(10) "Person" means any individual, partnership, association, corpo-
ration or state governmental agency, school district, unit of local govern-
ment and any agency thereof.
(11) "Pesticide" means any substance or mixture of substances defined
as a pesticide under the [state pesticide act], as now or hereafter
amended.
(12) "Plant protectants" means any substance or material used to pro-
tect plants from infestation of insects, fungi, weeds and rodents, or any
other substance that would benefit the overall health of plants.
(13) "Turf" means the upper stratum of soils bound by grass and plant
roots into a thick mat.

Section 3. [Notification Requirements for Application of Lawn Care
Products]
(a) Lawn Markers.
(1) Immediately following application of lawn care products to a lawn,
other than a golf course, an applicator for hire shall place a lawn mark-
er at the usual point or points of entry.
(2) The lawn marker shall consist of a [4 inch by 5 inch] sign, verti-
cal or horizontal, attached to the upper portion of a dowel or other sup-
porting device with the bottom of the marker extending no less than [12]
inches above the turf.
(3) The lawn marker shall be white and lettering on the lawn mark-
er shall be in a contrasting color. The marker shall state on one side, in
letters of not less than [3/8 inch], the following: "LAWN CARE APPLI-
CATION — STAY OFF GRASS UNTIL DRY — FOR MORE INFORMA-
TION CONTACT: (here shall be inserted the name and business tele-
phone number of the applicator for hire).
(4) The lawn marker shall be removed and discarded by the property
owner or resident, or such other person authorized by the property owner
or resident, on the day following the application. The lawn marker shall
not be removed by any person other than the property owner or resident
or person designated by such property owner or resident.
(5) For applications to residential properties of [2] families or less,
the applicator for hire shall be required to place lawn markers at the
usual point or points of entry.
(6) For applications to residential properties of [2] families or more,
or for application to other commercial properties, the applicator for hire
shall place lawn markers at the usual point or points of entry to the prop-
erty to provide notice that lawn care products have been applied to the
lawn.
(h) Notification requirement for application of plant protectants on golf
courses.
(1) Blanket posting procedure. Each golf course shall post in a con-
spicuous place or places an all-weather poster or placard stating to users
of or visitors to the golf course that from time to time plant protectants
are in use and additionally stating that if any questions or concerns arise
in relation thereto, the golf course superintendent or his designee should
be contacted to supply the information contained in subsection (c) of this
section.
(2) The poster or placard shall be prominently displayed in the pro
shop, locker rooms and first tee at each golf course.
(3) The poster or placard shall be a minimum size of [8½ by 11 inches]
and the lettering shall not be less than [½ inch].
(4) The poster or placard shall read: "PLANT PROTECTANTS ARE
PERIODICALLY APPLIED TO THIS GOLF COURSE. IF DESIRED,
YOU MAY CONTACT YOUR GOLF COURSE SUPERINTENDENT
FOR FURTHER INFORMATION."
(c) Information to Customers of Applicators for Hire. At the time of ap-
pllication of lawn care products to a lawn, an applicator for hire shall pro-
vide the following information to the customer:
(1) The brand name or common name of each lawn care product ap-
plicated;
(2) The type of fertilizer or pesticide contained in the lawn care prod-
uct applied;
(3) The reason for use of each lawn care product applied;
(4) The range of concentration of end use product applied to the lawn
and amount of material applied;
(5) Any special instruction appearing on the label of the lawn care
product applicable to the customer's use of the lawn following applica-
tion; and
(6) The business name and telephone number of the applicator for
hire as well as the name of the person actually applying lawn care
products to the lawn.
(d) Prior notification of application to lawn. In the case of all lawns oth-
er than golf courses:
(1) Any neighbor whose property abuts or is adjacent to the property
of a customer of an applicator for hire may receive prior notification of
an application by contacting the applicator for hire and providing his name, address and telephone number.

(2) At least the day before a scheduled application, an applicator for hire shall provide notification to a person who has requested notification pursuant to paragraph (1) of this subsection, such notification to be made in writing, in person or by telephone, disclosing the date and approximate time of day of application.

(3) In the event that an applicator for hire is unable to provide prior notification to a neighbor whose property abuts or is adjacent to the property because of the absence or inaccessibility of the individual, at the time of application to a customer's lawn, the applicator for hire shall leave a written notice at the residence of the person requesting notification, which shall provide the information specified in paragraph (2) of this subsection.

(e) Prior notification of application to golf courses.

(1) Any landlord or resident with property that abuts or is adjacent to a golf course may receive prior notification of an application of lawn care products or plant protectants, or both, by contacting the golf course superintendent and providing his name, address and telephone number.

(2) At least the day before a scheduled application of lawn care products or plant protectants, or both, the golf course superintendent shall provide notification to any person who has requested notification pursuant to paragraph (1) of this subsection, such notification to be made in writing, in person or by telephone, disclosing the date and approximate time of day of application.

(3) In the event that the golf course superintendent is unable to provide prior notification to a landlord or resident because of the absence or inaccessibility, at the time of application, of the landlord or resident, the golf course superintendent shall leave a written notice with the landlord or at the residence which shall provide the information specified in paragraph (2) of this subsection.

Section 4. [Applicator Certification and Training Requirements] Applicators for hire must be certified and licensed by the [department] under the [state pesticide act], as now or hereafter amended, before they can apply lawn care products to lawns.

Section 5. [Wash Water and Rinsate Collection]

(a) No washing or rinsing of pesticide residues from vehicles, application equipment, mixing equipment, floors or other items used for the storage, handling, preparation for use, transport or application of pesticides to lawns shall be performed at a facility except in designated wash areas in accordance with the requirements of this section.

(b) No later than [January 1, 1992], wash water containment areas shall be in use in any facility as defined in this act and no wash water or rinsates may be released into the environment except in accordance with applicable law. Such wash water containment areas shall include the following requirements:

(1) The wash area shall be constructed of concrete, asphalt or other
impervious materials which include, but are not limited to, polyethylene containment pans and synthetic membrane liners.

(2) The wash area shall be designed to capture spills, wash waters and rinsates generated in servicing vehicles and triple rinsing pesticide containers and prevent the release of such spills, wash waters or rinsates to the environment other than as described in paragraph (3) of this subsection.

(3) Wash waters and rinsates captured in the wash area may be either reused as makeup water for dilution of pesticides in preparation of application, or disposed in accordance with applicable local, state and federal regulations.

(c) The requirements of this section shall not apply to situations constituting an emergency where washing or rinsing of pesticide residues from equipment or other items is necessary to prevent imminent harm to human health or the environment.

(d) The requirements of this section shall not apply to persons subject to the containment requirements of the [state pesticide act] or the [state fertilizer act], as such acts are now or hereafter amended, and any rules or regulations adopted thereunder.

Section 6. This act shall be administered and enforced by the [department].

Section 7. [Violations.] A violation of this act shall be a petty offense subject to a fine of [100] dollars for a first offense, a fine of [200] dollars for a second offense and a fine of [500] dollars for a third or subsequent offense.

Section 8. [Nothing in this act shall be interpreted to affect the existing powers of any unit of local government, including any home rule unit].

Section 9. [Effective Date] [Insert effective date.]
Solid Waste Management Act
(Statement)

This comprehensive solid waste management legislation was enacted by the state of Washington in 1989. In lieu of presenting this lengthy item in the standard format, the Committee on Suggested State Legislation approved the inclusion of the following statement, which summarizes the provisions of the act.

Readers interested in the text should consult Substitute House Bill No. 1671, Ch. 431, Laws of 1989, or contact the Suggested State Legislation Program, The Council of State Governments, Iron Works Pike, P.O. Box 11910, Lexington, Kentucky, 40578-1910, (606) 231-1939, for a copy of the complete text.

Comprehensive Solid Waste Management

This act revises the state's solid waste management objectives by making waste reduction the top priority, followed by recycling, incineration and landfilling of separated wastes, and the incineration and landfilling of mixed wastes. It establishes as a statewide goal the recycling of 50 percent of the state's waste by 1995.

The act allows local governments to determine the type of recycling program in each area and which recyclables will be collected. Curbside service, or an alternative approved by the state's department of ecology, must be provided in densely populated urban areas, while drop-off and buy-back recycling centers may be used in non-urban areas. The department must approve the plans, which are due in July 1991, 1992 or 1994, depending on the county's population and location. Programs to divert yard wastes from landfills and incinerators must be provided in areas where markets are available for the product.

The legislation grants county governments increased authority to manage their wastes. Private garbage companies will continue the collection of refuse under the regulation of the state's utilities and transportation commission, but county governments may contract for recycling services themselves or ask the commission to handle it for them. The commission must develop rules to encourage competition for recycling contracts, and require that recycling and garbage collection companies set rates that encourage recycling and discourage garbage disposal (e.g., higher fees for a second can of garbage).

The act requires that by 1992, operators of solid waste incinerators and landfills must be trained and certified.

Additional Recycling Opportunities

The act directs the state's office of waste reduction, in cooperation with the department of general administration, to establish an intensive waste reduction and recycling program for all state agencies.

The act also calls for the development of a waste reduction and re-
cycling awards program for the state's public schools, and further directs the department of ecology to coordinate state and local efforts in developing materials to educate the public on waste reduction and recycling.

Finally, the legislation encourages private sector participation. It creates a product packaging task force to encourage manufacturers to reduce their packaging and make it more recyclable, and prohibits local governments from banning or taxing certain products or packaging until April 1993.

**Developing Markets for Recyclables**

The act requires the state's department of trade and economic development to help create markets for recyclables, and establishes a state committee on recycled materials. It permits local governments to preferentially purchase products comprised of recycled materials.

The act also authorizes funding for demonstration projects on composting, and directs the state's energy office to examine the feasibility of burning mixed paper and plastics as an energy source.

**Funding Strategies**

The legislation calls for a 1 percent state tax to be levied on garbage bills through June 1993 to support research on hard-to-recycle materials, to fund market development activities, and to provide technical assistance and grants to local governments. In addition, it authorizes a $1 fee on each new vehicle tire to help pay for the proper disposal of 20 million tires illegally discarded throughout the state. The fee, expected to generate approximately $3 million annually, will sunset in October 1994.

The act also allows counties to levy a surcharge on garbage rates to pay for planning and administering their recycling systems. The fee cannot be used for system operations, however.

**Handling Problem Wastes**

The legislation requires the department of ecology to determine the best management practices for certain problem wastes, such as hazardous household wastes and incinerator emissions.

The act prohibits the disposal of automobile batteries in landfills or incinerators, and requires stores selling such batteries to accept their customers' used ones. In turn, purchasers who do not return used batteries must pay a $5 fee.
Hard-to-Dispose Materials Act
(Statement)

This legislation regarding hard-to-dispose materials was enacted by the state of Rhode Island in 1989. In lieu of presenting this item in the standard format, the Committee on Suggested State Legislation approved the inclusion of the following statement, which summarizes the provisions of the act.

Readers interested in the text should consult Rhode Island’s P.L. 89-514, House Bill 5504, or contact the Suggested State Legislation Program, The Council of State Governments, Iron Works Pike, P.O. Box 11910, Lexington, Kentucky, 40578-1910, (606) 231-1939, for a copy of the complete text.

Control and Recycling

This act is in response to the increasing use of hard-to-dispose materials and the potential threats they pose to public health and the environment. The legislation defines “hard-to-dispose materials” as: petroleum-based or synthetic lubricating oils, such as lubricants for internal combustion engines; tires used on motorized vehicles and trailers, including cars, trucks, buses and heavy construction equipment; and glycol-based antifreeze and organic solvents. Under this act, petroleum-based or synthetic lubricating oil that is recycled or refined is not considered a hard-to-dispose material.

The legislation calls for control, recovery and recycling of hard-to-dispose materials. It prohibits persons from dropping, depositing, discarding or otherwise disposing of hard-to-dispose materials on public property or waters or on private property, except when authorized by the state.

The act authorizes establishment of a “Hard-to-Dispose Material Account” in the general fund. All assessments, fines, bail forfeitures and other funds collected or received as a result of the act are to be deposited into the account for the administration and implementation of the overall program.

The state may distribute account funds to eligible persons for establishing educational and technical assistance programs for the collection, marketing, recycling, reuse, reduction and safe disposal of hazardous hard-to-dispose materials; establishing grant-in-aid and research programs; and for surveying, tracking and monitoring hard-to-dispose materials.

The act authorizes the state’s department of environmental management to administer the grants-in-aid, recommend local ordinances dealing with hard-to-dispose materials, encourage and coordinate recycling campaigns, develop programs to increase public awareness, seek public and private funding sources, and publish a timetable for establishing state-owned and operated regional collection centers.
Revenues

This act places a tax of $0.05 per quart on lubricating oils; $0.10 per gallon on antifreeze; $0.0025 per gallon on organic solvents; $0.50 on tires; and $3 on every new motor vehicle at the time of titling.

Other Provisions

The act also contains provisions restricting the disposal of solid waste near drinking water sources.
Agricultural Chemical Groundwater Protection Act

This act, based on 1989 Montana legislation, requires a series of cooperative efforts involving the state’s department of agriculture, department of health and environmental sciences and the state university cooperative extension to protect groundwater from chemical contamination. Because the departments share responsibility for certain duties established by the legislation, they are required to coordinate their rulemaking efforts and whenever possible adopt identical rules for those shared areas—groundwater monitoring; field and laboratory operational quality assurance, quality control and confirmation procedures; maintaining confidentiality of certain data; and administrative civil penalties.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Agricultural Chemical Groundwater Protection Act.

Section 2. [Definitions] As used in this act, unless otherwise indicated:

1. “Agricultural chemical” means any of the following:
   1a. a pesticide as defined in [insert citation for appropriate state statute];
   1b. an isomer, degradation or metabolic product of a pesticide; or
   1c. a commercial fertilizer as defined in [insert citation for appropriate state statute].

2. “Aquifer” means a water bearing, subsurface formation capable of yielding sufficient quantities of water to a well for a beneficial use.

3. “Best management plans” and “best management practices” mean activities, procedures and practices established by the [department of agriculture], in consultation with the [state university extension service], to prevent or remedy the introduction of agricultural chemicals into groundwater to the extent technically and economically practical.

4. “Board” means the [board of health and environmental sciences] provided for in [insert citation for appropriate state statute].

5. “Confirmatory procedure” means a process for verifying the detection of agricultural chemicals in water, soil and other related media.


7. “Groundwater” means any water of the state occupying the voids within a geologic formation and within the zone of saturation.

8. “Interim numerical standard” means a health-based number that expresses the concentration of an agricultural chemical allowed in groundwater and that is adopted by a rule of the [board] pursuant to
Section 9(c) or (d).

(9) “Margin of safety” means numerical margins that are applied to the no observable effect level in an agricultural chemical toxicology study and that are used by the EPA to extrapolate data obtained from studies of animals to humans, including sensitive individuals.

(10) “No observable effect level” means the highest dose level of an agricultural chemical to which a laboratory animal is exposed per unit of body weight, at which no effect is observed, as established by EPA’s pesticidal registration process.

(11) “Nonpoint source” means a diffuse source of agricultural chemicals resulting from activities of man over a relatively large area, the effects of which must normally be addressed or controlled by a management or conservation practice.

(12) “Nonpromulgated federal standard” means a health advisory, or a suggested no adverse response level that is published but not promulgated by regulation by EPA and that is a suggested measure of the health risk represented by the concentration of an agricultural chemical in water.

(13) “Numerical risk assessment” means a scientific procedure used to measure the statistical probability of human health risk associated with exposure to an agricultural chemical.

(14) “Oncogenic potential” means the potential of an agricultural chemical to cause tumors in laboratory animals and the extrapolation of that potential to humans through use of statistical models and other evidence.

(15) “Person” means any individual, group, firm, cooperative, corporation, association, partnership, political subdivision, state or federal government agency, or other organization or entity.

(16) “Point of standards application” means the specific location in an aquifer where groundwater quality and quantity are sampled, measured, evaluated or otherwise used by either the [department of agriculture] or the [department of health and environmental sciences] to implement the provisions of this act.

(17) “Point source” means a point source as defined in [insert citation for appropriate state statute], including but not limited to chemical mixing, loading and storage sites and sites of agricultural chemical spills.

(18) “Promulgated federal standard” means an agricultural chemical maximum contaminant level as established under the federal Safe Drinking Water Act, a national primary drinking water standard or an interim drinking water regulation or other EPA regulation based on federal law.

(19) “Registrant” means a person as defined in [insert citation for appropriate state statute].

(20) “Standard” means the numerical value expressing the concentration of an agricultural chemical in groundwater that when exceeded, presents a potential human health risk over a lifetime of consumption and that is adopted by a rule of the [board] as required by Section 9.

(21) “Use” means any act of handling or release of an agricultural chemical or exposure of man or the environment to an agricultural chemi-
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1. Section 3. [Policy.] It is the public policy of this state to:
   (1) Protect groundwater and the environment from impairment or
degradation due to the use of agricultural chemicals;
   (2) Allow for the proper and correct use of agricultural chemicals;
   (3) Provide for the management of agricultural chemicals to prevent,
minimize and mitigate their presence in groundwater; and
   (4) Provide for education and training of agricultural chemical applicators
to the general public on groundwater protection, agricultural
chemical use, and the use of alternative agriculture methods.

2. Section 4. [Administration.]
   (a) The [department of agriculture] and the [department of health and
environmental sciences] shall administer this act.
   (b) The [department of health and environmental sciences] is responsible
for the establishment and enforcement of agricultural chemical
groundwater standards and interim numerical standards as authorized
by Section 9, groundwater monitoring as authorized by Sections 10 and
11, promoting research as set forth in Section 7, and related responsibilities
promoting as set forth in Section 7, and related responsibilities set forth in
[insert citation for appropriate state statute].
   (c) The [department of agriculture] is responsible for the preparation,
implementation and enforcement of agricultural chemical groundwater
management plans as authorized by Sections 12 and 16 through 24, public
education as authorized by Section 6, groundwater monitoring as
authorized by Sections 10 and 11, other duties related to promoting re
search as set forth in Section 7, and related responsibilities set forth in
[insert citation for appropriate state statute].
   (d) The provisions of this act do not limit the [departments'] responsibility
to enforce agricultural chemical label directions and prohibitions.
   (e) The administration of the provisions of this act, including rulemaking
and hearing functions authorized by this act, must be conducted in
accordance with the [insert state administrative procedure act].

3. Section 5. [Rulemaking]
   (a) The [board] shall adopt rules for the administration of this act for
which the [board] and the [department of health and environmental
sciences] have responsibility. These rules must include but are not limited
to:
   (1) standards and interim numerical standards for agricultural
chemicals in groundwater as authorized by Section 9;
   (2) procedures for groundwater monitoring as authorized by Sections
10 and 11;
   (3) field and laboratory operational quality assurance, quality control
and confirmatory procedures as authorized by Sections 7, 10 and
11, which may include, through adoption by reference, procedures that
have been established or approved by EPA for quality assurance and
quility control;
(4) standards for maintaining the confidentiality of data and infor-
mation declared confidential by EPA and the confidentiality of chemi-
ical registrant data and information protected from disclosure by feder-
al or state law as required by Section 8; and
(5) administrative civil penalties as authorized by Section 22.
(b) The [department of agriculture] shall adopt rules necessary to car-
ry out its responsibilities under this act. These rules must include but
not be limited to:
(1) procedures for groundwater monitoring as authorized by Sections
10 and 11;
(2) the content and procedures for development of agricultural chem-
ical groundwater management plans, including the content of best
management practices and best management plans, procedures for ob-
taining comments from the [department of health and environmental
sciences] on the plans, and the adoption of completed plans and plan
modifications as authorized by Section 12;
(3) standards for maintaining the confidentiality of data and infor-
mation declared confidential by EPA and of chemical registrant data and
information protected from disclosure by federal or state law as required
by Section 8;
(4) field and laboratory operational quality assurance, quality con-
trol and confirmatory procedures as authorized by Sections 7, 10 and
11, which may include, through adoption by reference, procedures that
have been established or approved by EPA for quality assurance and
quality control;
(5) emergency procedures as authorized by Section 20;
(6) procedures for issuance of compliance orders as authorized by Sec-
tion 18; and
(7) procedures for the assessment of administrative civil penalties
as authorized by Section 22.

Section 6. [Educational Programs.]
(a) The [department of agriculture], in cooperation with the [state
university extension service], shall develop and conduct appropriate
educational programs to promote the policy specified in Section 3. The
[department of agriculture] and the [state university extension service]
may charge a fee for the educational programs commensurate with the
costs of program development and administration.
(b) All fees collected by the [department of agriculture] pursuant to this
section must be deposited in the [state special revenue fund]. The [depart-
ment of agriculture] may spend the funds for the purposes set forth in
this section.
(c) All fees collected by the [state university extension service] must
be deposited in a special account identified for this purpose. The [exten-
sion service] may spend the funds for the purposes set forth in this sec-
tion.
Section 7. [Research.] The [department of agriculture] or the [department of health and environmental sciences] shall promote, for the purposes described in Section 3, cooperative groundwater research programs with units of the university system and associated agricultural experiment stations, the [bureau of mines and geology] and other appropriate agencies, organizations and individuals.

Section 8. [Confidentiality.]
(a) The [department of agriculture] and [department of health and environmental sciences] shall maintain the confidentiality of data declared confidential by EPA and chemical registrant data and information protected from disclosure by federal or state law.
(b) The [department of health and environmental sciences] shall comply with the requirements of [insert citation for appropriate state statute] and the [department of agriculture] shall comply with the requirements of [insert citation for appropriate state statute], except as otherwise provided by this section.

Section 9. [Groundwater Standards.]
(a) The [board] shall adopt standards and, as applicable, interim numerical standards for agricultural chemicals in groundwater. The standards must be the same as any promulgated or nonpromulgated federal standard established by EPA, although the [board] may determine, pursuant to the requirements of subsection (d), that an interim numerical standard different from either a promulgated or nonpromulgated federal standard is justified. Promulgated federal standards must receive preference. Except as provided in subsections (c) and (d), if more than one nonpromulgated federal standard exists for an agricultural chemical, the [board] must adopt the most recently established nonpromulgated federal standard.
(b) The [board] is not required to adopt a standard or interim numerical standard for every agricultural chemical registered in the state. The only standards and interim numerical standards required are for those agricultural chemicals:
   (1) that are addressed by promulgated and nonpromulgated federal standards;
   (2) the presence of which has been verified in groundwater as provided in Section 10; or
   (3) that the [department of agriculture] and the [department of health and environmental sciences] predict may appear in groundwater, in accordance with the procedures and determinations specified in Sections 10 and 11.
(c) If no promulgated federal standard has been adopted or no nonpromulgated federal standard has been published for an agricultural chemical for which the [board] is required to establish a standard or interim numerical standard as specified in subsections (b)(2) and (b)(3), the [department of health and environmental sciences] shall request EPA to establish a promulgated or nonpromulgated federal standard. If the [department of health and environmental sciences] determines that EPA
cannot comply with the request within [15] days, the [board] shall adopt
an interim numerical standard, provided that the [board] shall review
the interim numerical standard whenever EPA adopts a promulgated
federal standard or publishes a nonpromulgated federal standard for the
agricultural chemical in question.
(d) The [board] may adopt an interim numerical standard that is differ-
ent from either a promulgated or nonpromulgated federal standard, if
there is significant new and relevant technical information available
that is scientifically valid. The [board] shall review the interim numer-
ical standard when EPA establishes or revises the promulgated or non-
promulgated federal standard for the agricultural chemical in question.
(e) The [board] shall consider the following in adopting any interim nu-
merical standard under either subsection (c) or (d):
(1) effect on a person weighing [70] kilograms and drinking [two]
liters of water per day over a lifetime; and
(2) EPA's conclusions regarding the no observable effect level, includ-
ing the margin of safety identified by EPA when scientific data indicate
oncogenic potential for the agricultural chemical and EPA has deter-
mined that a numerical risk assessment is not justified, is inappropri-
ate, or does not serve as the primary toxicological basis for regulation.
(f) Nothing in this section may interfere with the [board's] responsi-
bility to adopt rules and standards under [insert citation for appropri-
ate state statute].

Section 10. [Monitoring Programs.]
(a) The [department of agriculture] or the [department of health and
environmental sciences] shall conduct monitoring programs to deter-
mine:
(1) whether residues of agricultural chemicals are present in ground-
water; and
(2) the likelihood of an agricultural chemical to enter groundwater,
if either [department] determines that sufficient valid scientific data is
available to reasonably predict the behavior of a particular agricul-
tural chemical in the soil.
(b) Any person who receives a chemical analysis indicating the pres-
ence of an agricultural chemical in groundwater shall notify the [depart-
ment of health and environmental sciences].
(c) The [department of agriculture] and the [department of health and
environmental sciences] shall evaluate all information relating to this
section that is received from any person based upon standard procedures,
protocols and confirmatory procedures established by rules. Information
found to be insufficient based on the adopted procedures and protocols,
including analytical results, may be used only for informational pur-
poses.

Section 11. [Evaluation and Use of Monitoring Results.]
(a) When providing preliminary monitoring results or confirmed
monitoring results to groundwater users or the public, the [departments]
shall also provide any applicable standard or interim numerical standard.
(b) When monitoring results reveal the presence of an agricultural chemical in groundwater:

   (1) the [department of health and environmental sciences] is the lead department for determining health risks; and
   (2) the [department of agriculture] is the lead department for determining compliance with agricultural chemical groundwater management plans authorized by Section 12 and with agricultural chemical registration, use and labeling requirements and conditions pursuant to [insert citations for appropriate state statutes].

(c) The [department of agriculture] and [department of health and environmental sciences] shall cooperatively evaluate the results of monitoring programs authorized by Section 10.

(d) Based on the results of monitoring, the [department of agriculture] and the [department of health and environmental sciences] shall implement appropriate actions specified in this act to mitigate any existing impacts of an agricultural chemical found in groundwater and to prevent future impacts of an agricultural chemical that may be found in groundwater, in relation to human health, agriculture and the environment.

(e) The [department of agriculture] may not undertake compliance and enforcement actions authorized by this act and the [department of health and environmental sciences] may not undertake compliance and enforcement actions authorized by [insert citation for appropriate state statute], unless there is sufficient evidence collected through:

   (1) monitoring at a point of standards application that reveals that a person using an agricultural chemical or introducing or discharging the chemical into groundwater, has violated a provision of Section 17 or [insert citation for appropriate state statute]; or
   (2) other investigations that reveal that a person using an agricultural chemical or introducing or discharging the chemical into groundwater has violated a provision of Section 17 or [insert citation for appropriate state statute]; or
   (3) monitoring that reveals a significant probability for an agricultural chemical to enter groundwater.

Section 12. [Agricultural Chemical Groundwater Management Plans.]

(a) The [department of agriculture] shall develop and implement a general state agricultural chemical groundwater management plan to achieve the policies of Section 3. This plan must include general program elements set forth in this act and best management plans and best management practices. Prior to publication of the plan, the [department of agriculture] shall provide a [30-day] period for the [department of health and environmental sciences] to prepare and submit comments on the plan.

(b) Except as provided in subsection (k), the [department of agriculture] shall develop and implement agricultural chemical groundwater management plans specific to particular agricultural chemicals and to a defined geographical area.

   (1) when the level of an agricultural chemical found in groundwater
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(2) when a definite trend of increased presence of the agricultural chemical in groundwater at a point of standards application is scientifically validated;

(3) when agricultural chemicals have been determined to have migrated in the groundwater from the point of detection;

(4) when EPA proposes to suspend or cancel registration of an agricultural chemical, prohibits or restrict the chemical's sale or use in the state, or otherwise initiates action against a chemical because of groundwater concerns and when EPA's action, restriction or prohibition will be implemented unless the state develops an adequate management plan; or

(5) when agricultural chemicals that possess or are suspected of possessing properties that indicate potential to migrate to groundwater are being applied on areas underlain by groundwater that is vulnerable to impairment.

(c) Any person using an agricultural chemical that is addressed by a specific agricultural chemical groundwater management plan in the geographical region that is addressed by the plan, shall comply with the plan. The [department of agriculture] may specifically identify and designate persons who are under the plan, and may inform any person about the plan.

(d) The [department of agriculture] shall prioritize preparation of specific agricultural chemical groundwater management plans in consideration of the specific circumstances of each area and within available resources.

(e) In developing general and specific agricultural chemical groundwater management plans, the [department of agriculture] shall consider the current and potential beneficial use of the groundwater included in or affected by the plans. If the groundwater has not been classified, the [department of agriculture] shall consider it to be included in the classification representing the highest quality of groundwater until such time as the groundwater is classified by the [department of health and environmental sciences], and the [department of agriculture] may proceed to develop an agricultural chemical groundwater management plan as required by subsection (b).

(f) The [department of agriculture] may request the [department of health and environmental sciences] to classify certain groundwater and may collect the data and information required by the [department of health and environmental sciences] to classify the groundwater. If adequate technical data and financial resources are available as determined by the [department of health and environmental sciences], the [department of health and environmental sciences] shall classify groundwater at locations as requested by the [department of agriculture].

(g) A specific agricultural chemical groundwater management plan must include:

(1) requirements to prevent groundwater impairment that are based on groundwater use, value and vulnerability and that address all ap-
applicable aspects of agricultural chemical use; and
(2) requirements to prevent or minimize further presence of the
agricultural chemical in the groundwater and to provide protection for
the present and future beneficial use of the groundwater.
(h) A specific agricultural chemical groundwater management plan
may include, but is not limited, to the following elements:
(1) identification of geographical areas where an agricultural chem-
ical may be used;
(2) groundwater, soil, meteorological and geological characteristics;
(3) best management plans and best management practices;
(4) identification of high priority groundwater;
(5) certification, licensing, training and education requirements for
persons using agricultural chemicals;
(6) identification of setback areas around water wells where certain
activities may be restricted:
(7) agricultural chemical application rates and timing, and related
use criteria;
(8) alternative pest management techniques, including integrated
pest management;
(9) other requirements for pesticides, as set forth in [Insert citation
for appropriate state statute] and related rules, and for fertilizers, as set
forth in [Insert citation for appropriate state statute] and related rules;
(10) EPA requirements; and
(11) alternative soil fertility practices.
(i) When developing and implementing a specific agricultural chemi-
cal groundwater management plan, the [department of agriculture] shall
consider the benefits of appropriate use of the agricultural chemical, and
shall consult with the [state university extension service].
(j) Within available resources, the [department of agriculture] shall
contact users of an agricultural chemical and user groups that will be
subject to a general or specific agricultural chemical groundwater
management plan to request their recommendations concerning the de-
velopment of the plan.
(k) The [department of agriculture] may develop and implement a com-
mmercial fertilizer groundwater management plan if the [department of
agriculture] and the [department of health and environmental sciences]
determined that residues from a commercial fertilizer are present in the
groundwater or when EPA implements a program to protect ground-
water from fertilizers.
(l) The [department of agriculture] shall adopt specific agricultural
chemical groundwater management plans through rulemaking, provid-
ed that the [department] may implement emergency plans as set forth
in [insert citation for appropriate state statute] or as authorized by the
[state administrative procedure act]. Prior to rulemaking, the [depart-
ment of agriculture] shall provide to the [department of health and en-
vironmental sciences] a copy of each proposed specific agricultural chem-
ical groundwater management plan. A [30-day] period must be provid-
ed for the [department of health and environmental sciences] to prepare
comments on the plan.
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(m) The [department of agriculture] shall review agricultural chemical groundwater management plans periodically to determine if the requirements contained in the plans need to be modified based on new scientific data and information. Plan modifications must be accomplished by rulemaking.

(n) A person who sells agricultural land that is subject to the provisions of a specific agricultural chemical groundwater management plan, shall provide the buyer with written notice about his obligations under the plan and shall forward a copy of the notice to the [department of agriculture]. The [department] is not responsible for enforcement of this subsection.

Section 13. [Department of Health and Environmental Sciences to Amend Rules]. The [department of health and environmental sciences] shall amend [insert rule numbers] to define a specific agricultural chemical groundwater management plan prepared pursuant to Section 12 as reasonable land, soil and water conservation practices for point and non-point source agricultural operations involving the use of agricultural chemicals, and to exclude those agricultural operations from [state] groundwater pollution control system permit requirements.


(a) There is a [department of agriculture] agricultural chemical groundwater protection special revenue account and a [department of health and environmental sciences] agricultural chemical groundwater protection special revenue account within the state [special revenue fund].

(b) Both accounts named in subsection (a) may receive funds from any source as gifts, grants, cost-share funds or other funds designated for agricultural chemical groundwater protection purposes.

(c) The [department of agriculture] and the [department of health and environmental sciences] may individually or jointly spend funds received by their respective accounts for the purposes authorized by this act.

Section 15. [Special Funding.]

(a) A fee of [15] dollars is assessed for the registration of pesticides in addition to the fee imposed by [insert citation for appropriate state statute].

(b) A fee of [10] dollars is assessed for the registration of fertilizers in addition to the fee imposed by [insert citation for appropriate state statute]. The additional fee must be used for the groundwater protection responsibilities of the [department of agriculture] relating to fertilizers. Revenues collected from this fee must be credited to the commercial fertilizer account within the state [special revenue fund] for the administration of this act.

Section 16. [Authority to Investigate and Inspect.] Authorized representatives of the [department of agriculture], consistent with the responsibilities set forth in this act and upon presentation of department-issued...
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credentials, may at reasonable times, or under emergency conditions,
enter upon any public or private property to:
(1) investigate conditions relating to compliance with agricultural
chemical labels, agricultural chemical groundwater management plans,
monitoring requirements or groundwater protection requirements, and
to investigate violations of plans or compliance orders;
(2) gain access to and copy any records required by the [department
of agriculture] in the administration of this act;
(3) establish and inspect monitoring equipment; and
(4) sample groundwater, including drinking water supply sources such
as wells and similar structures.

Section 17. [Prohibited Activity.] It is unlawful for a person to:
(1) Violate any provision of a specific agricultural chemical ground-
water management plan;
(2) Violate any lawful order issued pursuant to this act; or
(3) Violate any provision of this act.

Section 18. [Compliance Orders.]
(a) In furtherance of Section 17, the [department of agriculture] may
issue a compliance order to any person violating a standard, an interim
numerical standard or any other requirement established pursuant to
this act. The [department of agriculture] shall coordinate its proposed
actions pursuant to this section with proposed actions of the [department
of health and environmental sciences] pursuant to [insert citation for
appropriate state statute], if any. Issuance of a compliance order under
this act precludes the [department of agriculture] from taking other en-
forcement actions for the same violation under [insert citation for ap-
propriate state statute].
(b) The [department of agriculture] may issue a compliance order to
any person, including the person's employees, agents and subcontrac-
tors, whether or not the person is subject to a specific management plan,
to require the cleanup of any agricultural chemical that the person has
accidentally or purposely dumped, spilled or misused or unlawfully used,
that has a significant probability of entering groundwater.
(c) When issuing a compliance order, the [department of agriculture]
may require a person who has violated a provision of Section 17 to con-
duct monitoring to assist in determining the presence or level of concen-
tration of an agricultural chemical in groundwater, and the effective-
ness of cleanup efforts. The [department of agriculture] shall specify
criteria in the compliance order for determining the duration of mon-
toring.
(d) A compliance order must specify the requirement violated and must
set a time for compliance. In establishing a time for compliance, the
[department of agriculture] shall take into account the seriousness of
the violation and any good-faith efforts that the person has made to com-
ply with the requirement that has been violated. A compliance order
issued under this section must be served either personally by a person
qualified to perform service under the [state rules of civil procedure],
or by certified mail.

Section 19. [Injunctions Authorized.] The [department of agriculture] may commence a civil action seeking appropriate relief, including a permanent or temporary injunction, pursuant to [insert citation for appropriate state statute], as applicable, for a violation that is subject to a compliance order under Section 18.

Section 20. [Emergencies.] Notwithstanding any other provisions of this act, if the [department of agriculture] finds that an emergency exists that requires immediate action to protect groundwater from agricultural chemicals or to prevent use of groundwater impaired or likely to be impaired by agricultural chemicals, the [department of agriculture] may, without notice or hearing, issue necessary orders or adopt rules to protect public health, welfare and safety. The duration of an emergency order or rule is limited to the emergency provisions of the [state administrative procedure act].

Section 21. [Violators Subject to Penalties.]
(a) A person found to be in violation of this act or a rule established pursuant to this act is subject to the penalty provisions of Sections 22 through 24.
(b) For the purpose of this section, the term “person” means, in addition to the definition in Section 2, any responsible corporate officer.
(c) Nothing in this act may be construed as requiring the [department of agriculture] or an authorized agent of the [department] to report minor violations of this act for prosecution, when the [department] or a duly authorized agent believes that the public interest will be best served by other remedial action, by a suitable notice of warning in writing or by a lawful written order.
(d) Action under Sections 22 through 24 does not bar the [department of agriculture] from enforcement of this act or of rules or orders issued under this act by injunction or other appropriate remedy.
(e) The [department of agriculture] and the [department of health and environmental sciences] shall coordinate actions when a violator is subject to the penalties authorized by Sections 22 through 24 and penalties authorized by [insert citation for appropriate state statute] for the same violation.

Section 22. [Administrative Civil Penalties.]
(a) A person who commits a violation of this act may be assessed an administrative civil penalty by either the [department of agriculture] or the [department of health and environmental sciences], consistent with their respective responsibilities, of not more than [1,000] dollars for each offense. Farm applicators possessing a pesticide permit or using a fertilizer may not be assessed an administrative civil penalty of more than [500] dollars for the first offense. Assessment of a civil penalty may be made in conjunction with any other warning, order or administrative action authorized by this act or [insert citation for appropriate
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state statute] that is issued or undertaken by either the [department of
agriculture] or the [department of health and environmental sciences].
(b) No administrative civil penalty may be assessed unless the person
charged is given notice and opportunity for a hearing pursuant to [state
administrative procedure act].
(c) In determining an appropriate administrative civil penalty, the
responsible [department] shall consider the effect on the person’s abil-
ty to continue in business, the gravity of the violation that occurred, the
degree of care exercised by the offender, and whether significant harm
resulted to public health, agricultural crops, livestock or the environ-
ment.
(d) If the responsible [department] is unable to collect the administra-
tive civil penalty, or if a person fails to pay all or a set portion of the ad-
ministrative civil penalty, as determined by the responsible [department], the [department] may seek to recover the amount in the appropri-
ate [district court].
(e) A person against whom the [department of agriculture] or the
department of health and environmental sciences] has assessed an ad-
ministrative civil penalty may, within [30] days of the final agency ac-
tion making the assessment, appeal the assessment to the [district court]
of the county in which the violation is alleged to have occurred. A jury
trial must be granted when demanded under [state rules of civil proce-

Section 23. [Judicial Civil Penalty.] A person who commits a violation
as specified in Section 17 shall be subject to a judicial civil penalty not
to exceed [10,000] dollars. Each occurrence constitutes a separate viola-

Section 24. [Criminal Penalties.]
(a) A person who intentionally commits a violation as specified in Sec-
tion 17 is guilty of an offense and subject to a fine not to exceed [25,000]
dollars for each day the violation continues, or imprisonment for not
more than [one] year, or both. Following an initial conviction under this
section, a subsequent conviction subjects a person to a fine of not more
than [50,000] for each day the violation continues, or imprisonment or
not more than [two] years, or both.
(b) Except as otherwise provided in this act, a person convicted of violat-
ing any of the provisions of this act or rules issued under this act or who
misrepresents, impedes, obstructs, hinders or otherwise prevents or at-
ttempts to prevent the [department of agriculture] from performance of
its duties in connection with the provisions of this act, is guilty of a mis-
demeanor and shall be fined not less than [100] dollars, but not more
than [1,500] dollars.
(c) A person who knowingly makes any false statement, representa-
tion or certification in any record, report or other document filed or re-
quired to be maintained under this act, or who falsifies, tampers with
or knowingly renders inaccurate any monitoring device or method re-
quired to be maintained under this act, shall, upon conviction, be
punished by a fine of not more than [5,000] dollars, or by imprisonment for not more than [six] months, or both.

(d) A person who with intent to defraud, uses or reveals confidential information and data provided under this act or rules issued under this act shall, upon conviction, be fined not more than [5,000] dollars, or imprisoned for not more than [one] year, or both.

Section 25. [Severability.] [Insert severability clause.]

Section 26. [Effective Date.] [Insert effective date.]
Resources Enhancement and Protection Fund

This act, based on 1989 Iowa legislation, creates a Resources Enhancement and Protection (REAP) fund for open spaces acquisition and protection programs; soil and water protection projects, such as reforestation, wildlife habitat preservation, protection of highly erodible soils, and clean water programs; and grants to county conservation programs. More specifically, as provided in the act, the moneys are allocated from the fund to the following accounts: open spaces; county conservation; soil and water enhancement; cities' parks and open space; state land management; historical resource grant and loan fund; and living roadway trust fund.

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(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the [state] Resources Enhancement and Protection Fund Act.

Section 2. [Legislative Findings.] The legislature finds that:
(1) The citizens of [state] have built and sustained their society on [state]'s air, soils, waters and rich diversity of life. The well-being and future of [state] depend on these natural resources.
(2) Many human activities have endangered [state]'s natural resources. [State] has lost [insert percentages of resources lost or other appropriate statistics]. There has been a significant deterioration in the quality of [state]'s surface waters and groundwaters.
(3) The long-term effects of [state]'s natural resource losses are not completely known or understood, but detrimental effects are already apparent. Prevention of further loss is therefore imperative.
(4) The air, waters, soils and biota of [state] are interdependent and form a complex ecosystem. [Citizens of state] have the right to inherit this ecosystem in a sustainable condition, without severe or irreparable damage caused by human activities.

Section 3. [Definitions.] As used in this act, unless otherwise indicated:
(1) "Department" means the state [department of natural resources].
(2) "Director" means the [director of the state department of natural resources].
(3) "Financial institution" means a state bank as defined in [insert citation for section of state code], a federally chartered state bank having its principal office within this state, a federally chartered credit union having its principal office within this state, a federally chartered savings and loan association having its principal office within the state, a credit union organized under [insert citation for section of state code].
Resources Enhancement and Protection Fund

Section 4. [State Resource Enhancement Policy.] It is the policy of the state of [state] to protect its natural resource heritage of air, soils, waters and wildlife for the benefit of present and future citizens with the establishment of a resource enhancement program. The program shall be a long-term integrated effort to wisely use and protect [state]'s natural resources through the acquisition and management of public lands; the upgrading of public park and preserve facilities; environmental education, monitoring and research; and other environmentally sound means. The resource enhancement program shall strongly encourage [citizens of state] to develop a conservation ethic, and to make necessary changes in our activities to develop and preserve a rich and diverse natural environment.

Section 5. [state] Congress on Resources Enhancement and Protection.

(a) Biennially, during even-numbered years, the [director] shall schedule and make the necessary arrangements for a [state] congress on resources enhancement and protection. The congress shall be held in the [insert location and time].

(b) Prior to each congress, the [director] shall make arrangements to hold an assembly in each [insert appropriate representational area] of persons having an interest in resources enhancement and protection. The [department] shall promote attendance of interested persons at each assembly. The [director] shall call each assembly and serve as temporary chairperson. The [department] shall provide those attending with information regarding resource enhancement and protection expenditures. The assemblies shall identify opportunities for regional resource enhancement and protection and review and recommend changes in resource enhancement and protection policies, programs and funding. The persons meeting at each assembly shall elect [five] persons as delegates to the congress on resources enhancement and protection.

(c) The delegates to the congress on resources enhancement and protection shall organize, discuss and make recommendations to the [governor], the [legislature] and the [state natural resource commission] regarding issues concerning resources enhancement and protection. The [director] shall call the congress and serve as temporary chairperson. The delegates are entitled to [insert amount of compensation] while attending the congress.

(d) The expenses of the [department] in making the arrangements for and the conducting of the assemblies and the congress on resources...
enhancement and protection and the expenses of the delegates at the
congress shall be paid from the funds appropriated for this purpose.

Section 6. [[state] Resources Enhancement and Protection Fund — Au-
dits.]
(a) A [state] resources enhancement and protection fund is created in
the office of the [state treasurer]. The fund consists of all revenues and
all other moneys lawfully credited or transferred to the fund. The [direct-
ator] shall certify [monthly] the portions of the fund that are allocated
to the various accounts as provided under Section 7. The [director] shall
certify before the [insert date] the portions of the fund resulting from
the previous month's receipts to be allocated to the various accounts.
(b) The [state auditor] or a certified public accountant firm appointed
by the [state auditor] shall conduct annual audits of all accounts and
transactions of the fund.
(c) Notwithstanding [insert citation for section of state code], interest
or earnings on investments or time deposits of the funds in the [state]
resources enhancement and protection fund or any of its accounts shall
be credited to the fund.

Section 7. [Allocation of Fund Proceeds.]
(a) Upon receipt of any revenue, the [director] shall deposit the moneys
in the [state] resources enhancement and protection fund created pur-
suant to Section 6. The first [350,000] dollars of the funds received for
deposit in the fund annually shall be allocated to the [conservation edu-
cation board] for the purposes specified in Section 12. [One] percent of
the revenue receipts shall be deducted and transferred to the adminis-
tration fund provided for in [insert citation for appropriate section of
state code]. All of the remaining receipts shall be allocated to the fol-
lowing accounts:
(1) [Twenty-eight] percent shall be allocated to the [open spaces ac-
count]. At least [10] percent of the allocations to the account shall be
made available to match private funds for open space projects on the cost-
share basis of not less than [25] percent private funds pursuant to the
rules adopted by the [natural resources commission]. [Five] percent of
the funds allocated to the [open spaces account] shall be used to fund
the [protected waters program]. This account shall be used by the [depart-
ment] to implement the statewide open space acquisition, protection and
development programs. The [department] shall give priority to acquisi-
tion and control of open spaces of statewide significance. The [depart-
ment] shall also use these funds for developments on state property. The
total cost of an open spaces project funded under this paragraph shall
not exceed [2,000,000] dollars unless a public hearing is held on the pro-
ject in the area of the state affected by the project. Political subdivisions
of the state shall be reimbursed for property tax dollars lost to open space
acquisitions based on the reimbursement formula provided for in [in-
sert citation for section of state code]. There is appropriated from the
[open spaces account] to the [department] the amount in that account,
or so much thereof as is necessary, to carry out the open spaces program
as specified in this paragraph. An appropriation made under this paragraph shall continue in force for [two] fiscal years after the fiscal year in which the appropriation was made or until completion of the project. All unencumbered or unobligated funds remaining at the close of the fiscal year in which the project is completed or at the close of the final fiscal year, whichever date is earlier, shall revert to the [open spaces account].

(2) [Twenty] percent shall be allocated to the [county conservation account].

(i) [Thirty] percent of the allocation to the [county conservation account] annually shall be allocated to each county equally.

(ii) [Thirty] percent of the allocation to the [county conservation account] annually shall be allocated to each county on a per capita basis.

(iii) [Forty] percent of the allocation to the [county conservation account] annually shall be held in an account in the state treasury for the [natural resource commission] to award to counties on a competitive grant basis by a project selection committee established in this subparagraph. Local matching funds are not required for grants awarded under this subparagraph. The [project planning and review committee] shall be composed of [two] staff members of the [department] and [two] county conservation board directors appointed by the [director] and a fifth member selected by a majority vote of the [director]'s appointees. The [natural resource commission], by rule, shall establish procedures for application, review and selection of county projects submitted for funding. Upon recommendation of the [project planning and review committee], the [director] shall award the grants.

(iv) [Funds allocated to the counties under subparagraphs (i), (ii) and (iii) may be used for land easements or acquisitions, capital improvements, stabilization and protection of resources, repair and upgrading of facilities, environmental education, and equipment. However, expenditures are not allowed for single or multipurpose athletic fields, baseball or softball diamonds, tennis courts, golf courses, and other group or organized sport facilities. Funds may be used for county projects located within the boundaries of a city.]

(v) [Funds allocated pursuant to subparagraphs (ii) and (iii) shall only be allocated to counties dedicating property tax revenue at least equal to [22 cents per thousand dollars] of the assessed value of taxable property in the county to county conservation purposes. State funds received under this paragraph shall not reduce or replace county tax revenues appropriated for county conservation purposes. The [county treasurer] shall submit documentation annually of the dedication of property tax revenue for county conservation purposes. The annual audit of the financial transactions and condition of a county shall certify compliance with requirements of this subparagraph. Funds not allocated to counties not qualifying for the allocations under subparagraph (ii) as a result of this subparagraph shall be held in reserve for each county for [two] years. Counties qualifying within [two] years may receive the funds held in reserve. Funds not spent by a county within [two] years shall revert to the general pool of county funds for reallocation to other...
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vi) [Each board of supervisors shall create a special resource enhancement account in the office of county treasurer and the county treasurer shall credit all resource enhancement funds received from the state in that account. Notwithstanding [insert citation for section of state code], all interest earned on funds in the county resource enhancement account shall be credited to that account and used for the purposes authorized for that account.]

(vii) [There is appropriated from the [county conservation account] to the [department] the amount in that account, or so much thereof as is necessary, to fund the provisions of this paragraph. An appropriation made under this paragraph shall continue in force for [two] fiscal years after the fiscal year in which the appropriation was made or until completion of the project for which the appropriation was made, whichever date is earlier. All unencumbered or unobligated funds remaining at the close of the fiscal year in which a project funded pursuant to subparagraph (iii) is completed or at the close of the [third] fiscal year, whichever date is earlier, shall revert to the [county conservation account].]

(viii) [Any funds received by a county under this paragraph may be used to match other state or federal funds, and multi-county or multi-agency projects may be funded under this paragraph.]

(3) Twenty] percent shall be allocated to the [soil and water enhancement account]. The moneys shall be used to carry out soil and water enhancement programs including, but not limited to, reforestation, woodland protection and enhancement, wildlife habitat preservation and enhancement, protection of highly erodible soils, and clean water programs. The [soil conservation division], by rule, shall establish procedures for eligibility, application, review and selection of projects and practices to implement the requirements of this paragraph. There is appropriated from the [soil and water enhancement account] to the [soil conservation division] the amount in that account, or so much thereof as is necessary, to carry out the programs as specified in this paragraph.

Remaining funds of the [soil and water conservation account] shall be allocated to the accounts of the [water protection fund] authorized in [insert citation for section of state code]. Annually, [50] percent of the [soil and water enhancement account] funds, not to exceed [1,000,000] dollars, shall be allocated to the [water quality protection projects account]. The balance of the funds shall be allocated to the water protection practices account. An appropriation made under this paragraph shall continue in force for [two] fiscal years after the fiscal year in which the appropriation was made or until completion of the project for which the appropriation was made, whichever date is earlier. All unencumbered or unobligated funds remaining at the close of the fiscal year in which the project is completed or at the close of the [third] fiscal year, whichever date is earlier, shall revert to the [soil and water enhancement account].]

(4) [Fifteen] percent shall be allocated to a [cities' parks and open space account]. The moneys allocated in this paragraph may be used to fund competitive grants to cities to acquire, establish and maintain natural parks, preserves and open spaces. The grants may include expen-
ditures for multipurpose trails, restroom facilities, shelter houses and
picnic facilities, but expenditures for single or multipurpose athletic
fields, baseball or softball diamonds, tennis courts, golf courses and other
group or organized sport facilities requiring specialized equipment are
excluded. The grants may be used for city projects located outside of a
city’s boundaries. The [natural resource commission], by rule, shall es-

tablish procedures for application, review and selection of city projects
on a competitive basis. The rules shall provide for three categories of cits-
ies based on population within which the cities shall compete for grants.
There is appropriated from the [cities’ parks and open space account]
to the [department] the amount in that account, or so much thereof as
is necessary, to carry out the competitive grant program as provided in
this paragraph.

(5) [[Nine] percent shall be allocated to the [state land management
account]. The [department] shall use the moneys allocated to this account
for maintenance and expansion of state lands and related facilities un-
der its jurisdiction. The authority to expand state lands and facilities
under this paragraph is limited to expansion of the state lands and fa-
cilities already owned by the state. There is appropriated from the [state
land management account] to the [department] the moneys in that ac-
count, or so much thereof as is necessary, to implement a maintenance
and expansion program for state lands and related facilities under the
jurisdiction of the [department].]

(6) [[Five] percent shall be allocated to the [historical resource grant
and loan fund] established pursuant to [insert citation for section of state
code]. The [department of cultural affairs] shall use the moneys allocat-
ed to this fund to implement historical resource development programs
as provided under [insert citation for section of state code].]

(7) [[Three] percent shall be allocated to the [living roadway trust
fund] established under [insert citation for section of state code] for the
development and implementation of integrated roadside vegetation
plans.]

(b) The moneys appropriated under this section shall remain in the ap-
propriate account of the [state] resources enhancement and protection
fund until such time as the [agency], [board], [commission] or overseer
of the fund to which moneys are appropriated has made a request to the
[treasurer] for use of moneys appropriated to it and the amount needed
for that use. Notwithstanding [insert citation for section of state code],
moneys remaining of the appropriations made for a fiscal year from any
of the accounts within the [state] resources enhancement and protection
fund on [last day] of that fiscal year, shall not revert to any fund but shall
remain in that account to be used for the purposes for which they were
appropriated and the moneys remaining in that account shall not be con-
sidered in making the allotments for the next fiscal year.

Section 8. [County Resource Enhancement Committee ]
(a) A [county resource enhancement committee] is created in each coun-
ty. The membership of the committee shall be as follows:

(1) The chairpersons of the [board of supervisors], [county conserva-
tion board], [commissioners of the soil and water district], and [board of
directors] of each school district in the county. A chairperson may ap-
point a member of the chairperson’s [board] or [commission] as the chair-
person’s designee on the [committee]. The chairperson or designee of a
school district shall be a member of the [county committee] of the county
in which a majority or the largest plurality of the district’s students
reside.

(2) The [mayor] or the [mayor’s] designee of each city in a county. The
[mayor’s] designee shall be a member of the [city council]. If a city is lo-
cated in more than one county, the membership shall be on the county
committee of the county in which the largest population of the city re-
sides.

(3) The chairperson or the chairperson’s designee of each recognized
farm organization having a county organization in the county. The desig-
nee shall be a member of the organization represented. The recognized
farm organizations are the [state farm bureau federation], the [state
farmers union], the [state grange], the [national farmers organization],
and the [state farm unity coalition].

(4) The chairperson or the chairperson’s designee of each of the fol-
lowing wildlife or conservation organizations having a recognized county
organization:

[inset appropriate organizations]

COMMENT: The Iowa legislation on which this draft is based provides
for representation from the state Audubon Council, state Sportsmens
Federation, Ducks Unlimited, Sierra Club, Pheasants Forever, Nature
Conservancy, state Association of Naturalists, Izaak Walton League
of America, and other recognized wildlife, conservation, environmen-
tal, recreation or conservation education groups.

(5) If a question arises as to whether a recognized county organiza-
tion exists under paragraph (3) or (4), the question shall be decided by
a majority vote of the members selected under paragraphs (1) and (2) ex-
cluding the representative of the [county conservation board].

(b) The duties of the [county resource enhancement committee] are to
coordinate the resource enhancement program, plans and proposed
projects developed by cities, [county conservation board], and [soil and
water conservation district commissioners] for funding. The [county com-
mittee] shall review and comment upon all projects before they are sub-
mitted for funding under Section 7. Each [county committee] shall pro-
spose a five-year program plan which includes a [one-year] proposed ex-
penditure plan and submit it to the [department].

(c) The initial meeting of the [committee] shall be called by the chair-
person of the [board of supervisors]. The chairperson shall give written
notice of the date, time and location of the first meeting. The [committee]
shall meet at least annually to organize by selecting a chairper-
son, vice chairperson and other officers as necessary. The [committee]
shall adopt rules governing the conduct of its meetings.

(d) The [board of supervisors] shall provide a meeting room and the
necessary secretarial and clerical assistance for the [committee]. The
depenses shall be paid from the county general fund.

(c) The members of the [committee] are not entitled to compensation
or expenses related to their duties of office, except as may otherwise be
provided by the [boards], [commissions] or organizations which the mem-
bers represent.

Section 9. [State-Sponsored Credit Card.] The [treasurer] is authorized
to participate in a financial institution credit card program for the ben-
efit of the state. Within [six] months of the effective date of this act, the
[treasurer] shall contact each financial institution to determine if:

(1) The financial institution or its [state] holding company or [state]
affiliate currently administers a credit card program.

(2) The credit card program provides a fee or commission on retail sales
to the sponsoring entity for the issuance and use of the credit card.

(3) The credit card program would accept the state as a sponsoring en-
tity.

If the [treasurer] determines that the state may be a sponsoring enti-
ty for a financial institution credit card, the [treasurer] shall negotiate
the most favorable rate for the state's fee by a credit card issuer. The state
shall not offer a more favorable rate to any other credit card issuer. The
rate must be expressed as a percentage of the gross sales from the use
of the credit card. The proceeds of the fee shall be deposited in the [state]
resources enhancement and protection fund created under Section 6 of
this act. The [treasurer] shall recommend a logo or design for the state-
sponsored credit card indicating the use for which the revenues will be
used.

In selecting a credit card issuer, the [treasurer] shall consider the is-
issuer's record of investments in the state, shall take into consideration
credit card features which will enhance the promotion of the statespon-
sored credit card including, but not limited to, favorable interest
rates, annual fees and other fees for using the card, and shall require
that the card be available to any person who qualifies for a credit card.

Upon entering into an agreement with the financial institution, the
[treasurer] shall notify all state agencies then possessing a credit card
to obtain the new state-sponsored credit card. The financial institution
is authorized to solicit participation from state employees.

Section 10. [Cooperative Tourism Program.] The [department of eco-
nomic development] shall assist the [department of natural resources]
in promoting the state parks, state recreation areas, lakes, rivers and
streams under the jurisdiction of the [natural resource commission] for
tourism purposes. The [department of natural resources] shall provide
the [department of economic development] with brochures and other
printed information concerning hunting and fishing opportunities,
recreational opportunities in state parks and recreation areas, and other
natural and historic information of interest to tourists.

The [department of economic development] shall disseminate the
brochures and other information provided by the [department of natural
Section 11. [County Beautification Program.]

(a) A [county conservation board] may establish a county beautification program to encourage the prevention and cleanup of litter in public areas of the county. The [county conservation director] shall prepare and implement the program which is designed to employ persons from [14] years of age to [18] years of age in a [six]-week summer program. The program may include public informational activities, but shall be directed primarily toward encouraging and facilitating involvement in litter prevention and cleanup. The program shall also include weekly instruction on safety in the workplace while employed with a county beautification program. Financial assistance for a county beautification program may be received through the [county conservation account] pursuant to Section 7. County matching funds shall not be required for eligibility for funding a county beautification program.

(b) A [county conservation board] shall coordinate its county beautification program with the [county engineer] or [director of the county secondary road department] and with the [district highway engineer of the state department of transportation]. The respective county and state highway authorities, within time and budgetary limitations, shall cooperate with the [county conservation board] in implementing the litter program in regard to the rights-of-way of primary and secondary roads when requested by the [county conservation board].

Section 12. [Conservation Education Program Board.]

(a) A conservation education program board is created in the [department of education]. The board shall have [three] members appointed as follows:

(1) [One] member appointed by the [director of the department of education].

(2) [One] member appointed by the [director of the department of natural resources].

(3) [One] member appointed by the [president of the state association of county conservation boards].

(b) The duties of the board are to revise and produce conservation education materials and to specify stipends to [state] educators who participate in innovative conservation education programs approved by the board. The board shall allocate the funds provided for under Section 7(a) for the educational materials and stipends.

(c) The [department of education] shall administer the funds allocated to the conservation education program as provided in this section.

Section 13. [Effective Date] [Insert effective date.]
Local Government Transfer of Development Rights Act

Transfer of development rights—a legal procedure designed to preserve or protect natural or man-made property resources for the public’s benefit—results from a recognition that land ownership has two distinct components. The right to develop land is an independent aspect of land ownership.

This act, based on 1989 New York legislation, provides guidelines whereby any unit of local government may provide for transfer of development rights within a comprehensive planning program in order to protect natural, scenic, recreational and agricultural qualities of open lands, including critical resource areas and sites of particular historic, cultural, aesthetic or economic value.

As defined in this legislation, “development rights” refers to the rights permitted to a lot, parcel or area of land under a zoning ordinance or local law concerning permissible improvements. These rights can be transferred from a sending district (the piece of land to be left as open space) to a receiving district (a piece of land which acquires development rights).

The owner of the sending district must agree to this restriction of the development rights on the land through a conservation easement. This easement provides for payments to the landowner not developing the land. The owner of the land in the receiving district would pay market rights for development rights.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title] This act may be cited as the Local Government Transfer of Development Rights Act.

2 Section 2. [Legislative Declaration.] It is the intent of the legislature in enacting this legislation to clarify an application of existing authority and to provide guidelines whereby any [insert appropriate units of local government] may provide for transfer of development rights within a comprehensive planning program in order to protect natural, scenic, recreational and agricultural qualities of open lands including critical resource areas and enhance sites and areas of special character or special historical, cultural, aesthetic or economic interest or value.

3 The legislature finds that the growth and spread of urban development is encroaching upon, or eliminating open and distinctive areas and spaces of varied size and character, including many having significant agricultural, ecological, scenic, historical, aesthetic or economic values, which areas and spaces if preserved and maintained in their present
Suggested State Legislation

state would constitute important physical, social, aesthetic or econom-
ic assets to existing or impending urban and metropolitan development.
The legislature further finds that transfer of development rights is a use-
ful technique to achieve community objectives and that properly utilized
is consistent with comprehensive planning requirements. The legisla-
ture further finds and declares that transfer of development rights, utiliz-
ing the normal market in land, may provide just compensation to own-
ers of property to be protected or preserved. The legislature declares that
proper utilization of transfer of development rights shall not be deemed
to occur if the result is an unreasonably negative impact upon the avail-
ability or potential development of housing for persons with low or
moderate incomes.

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

(1) "Development rights" shall mean the rights permitted to a lot, parcel or area of land under a zoning ordinance or local law respecting permissible use, area, density, bulk or height of improvements executed thereon. Development rights may be calculated and allocated in accordance with such factors as area, floor area ratios, density, height limitations or any other criteria that will effectively quantify a value for the development right in a reasonable and uniform manner that will carry out the objectives of this act.

(2) "Receiving district" shall mean one or more designated districts or areas of land to which development rights generated from one or more sending districts may be transferred and in which increased development is permitted to occur by reason of such transfer.

(3) "Sending district" shall mean one or more designated districts or areas of land in which development rights may be designated for use in one or more receiving districts.

(4) "Transfer of development rights" shall mean the process by which development rights are transferred from one lot, parcel or area of land in any sending district to another lot, parcel or area of land in one or more receiving districts.

Section 4. [Conditions for Transfer of Development Rights.] In addition to existing powers and authorities to regulate by planning or zoning including authorization to provide for transfer of development rights pursuant to other enabling law, the [local legislative body] is hereby empowered to provide for transfer of development rights subject to the conditions hereinafter set forth and such other conditions as the [local legislative body] deems necessary and appropriate that are consistent with the purposes of this act, except that in [cities of over one million] any transfer of development rights shall be provided in the zoning ordinance after adoption by the [city planning commission and board of estimate].

The purpose of providing for transfer of development rights shall be to protect the natural, scenic or agricultural qualities of open lands, to enhance sites and areas of special character or special historical, cultural, aesthetic or economic interest or value and to enable and encourage flexibility of design and careful management of land in recognition of
land as a basic and valuable natural resource. The conditions here-
inabove referred to are as follows:
(1) That transfer of development rights, and the sending and receiv-
ing districts, shall be established in accordance with a well-considered
plan within the meaning of [insert citation for appropriate state stat-
ute]. The sending district from which transfer of development rights may
be authorized shall consist of natural, scenic, recreational, agricultur-
al or open land or sites of special historical, cultural, aesthetic or eco-
nomic values sought to be protected. Every receiving district, to which
transfer of development rights may be authorized, shall have been found
by the [local legislative body], after evaluating the effects of potential
increased development which is possible under the transfer of develop-
ment rights provisions, to contain adequate resources, environmental
quality and public facilities including adequate transportation, water
supply, waste disposal and fire protection, and that there will be no sig-
nificant environmentally damaging consequences and such increased
development is compatible with the development otherwise permitted
by the [local government] and by the federal, state and county agencies
having jurisdiction to approve permissible development within the dis-
trict. A generic environmental impact statement pursuant to the pro-
visions of [insert citation for environmental conservation law] shall be
prepared by the [local government] for the receiving district before any
such district, or any sending district, is designated, and such statement
shall be amended from time to time by the [local government] if there
are material changes in circumstances. Where a transfer of development
rights affects districts in two or more [school, special assessment or tax
districts], it may not unreasonably transfer the tax burden between the
taxpayers of such districts. The receiving and sending districts need not
be coterminous with zoning districts.
(2) That sending and receiving districts be designated and mapped
with specificity and the procedure for transfer of development rights be
specified. Notwithstanding any other provision of law to the contrary,
environmental quality review pursuant to [insert citation for environ-
mental conservation law] for any action in a receiving district that utili-
dizes development rights shall only require information specific to the
project and site where the action will occur and shall be limited to re-
view of the environmental impacts of the action, if any, not adequately
reviewed in the generic environmental impact statement.
(3) That the burden upon land within a sending district from which
development rights have been transferred shall be documented by an
instrument duly executed by the grantor in the form of a conservation
easement, as defined in [insert citation for environmental conservation
law], which burden upon such land shall be enforceable by the appropri-
ate [local government] in addition to any other person or entity grant-
ed enforcement rights by the terms of the instrument. All provisions of
law applicable to such conservation easements pursuant to such title
shall apply with respect to conservation easements hereunder, except
that the [local government] may adopt standards pertaining to the du-
ration of such easements that are more stringent than such standards
promulgated by the [department of environmental conservation] pursuant to such title. Upon the designation of any sending district, the [local government] shall adopt regulations establishing uniform minimum standards for instruments creating such easements within the district. No such modification or extinguishment of an easement shall diminish or impair development rights within any receiving district. Any development right which has been transferred by a conservation easement shall be evidenced by a certificate of development right which shall be issued by the [local government] to the transferee in a form suitable for recording in the [registry of deeds] for the county where the receiving district is situated in the manner of other conveyances of interests in land affecting its title.

(4) That within [one] year after a development right is transferred, the assessed valuation placed on the affected properties for real property tax purposes shall be adjusted to reflect the transfer. A development right which is transferred shall be deemed to be an interest in real property and the rights evidenced thereby shall inure to the benefit of the transferee, and his heirs, successors and assigns.

(5) That development rights shall be transferred reflecting the normal market in land, including sales between owners of property in sending and receiving districts, a [local government] may establish a development rights bank or such other account in which development rights may be retained and sold in the best interest of the [local government]. [Local governments] shall be authorized to accept for deposit within the bank gifts, donations, bequests or other development rights. All receipts and proceeds from sales of development rights sold by the [local government] shall be deposited in a special municipal account to be applied against expenditures necessitated by the [municipal development rights program].

(6) That prior to designation of sending or receiving districts, the [local legislative body] shall evaluate the impact of transfer of development rights upon the potential development of low or moderate income housing lost in sending districts and gained in receiving districts and shall find either there is approximate equivalence between potential low and moderate housing units lost in the sending district and gained in the receiving districts or that the [local government] has taken or will take reasonable action to compensate for any negative impact upon the availability or potential development of low or moderate housing caused by the transfer of development rights.

Section 5. [Procedures.] A [local legislative body] modifying its zoning ordinance or enacting a local law pursuant to this act shall follow the procedure for adopting and amending its zoning ordinance or local laws, as the case may be, including all provisions for notice applicable for changes or amendments to a zoning ordinance, local law or regulation.

Section 6. Nothing in this act shall be construed to invalidate any provision for transfer of development rights heretofore or hereafter adopted by any [local legislative body].
1 Section 7. [Effective Date] [Insert effective date.]
Agricultural Land Preservation Act
(Statement)

In a 1987 referendum, Pennsylvania voters approved a $100 million bond issue, proceeds from which are to be allocated for the purchase of development rights (easements) for prime agricultural land. An agricultural land preservation board, established in 1988, is authorized to use the bond money and local county matching funds to pay farmers the full difference between the assessed development value and farm value of that portion of their farms voluntarily offered for protection. In return, a deed restriction is placed on the property that limits development to specific, farm-oriented uses. The easement is transferred from owner to owner in perpetuity, with easement enforcement a joint state/county responsibility.

Only farm land that is part of an agricultural security area can be considered for protection. The land offered for protection must be located in a security area and must be capable of generating at least $25,000 in annual gross receipts, with at least 50 percent of the land in pasture, range or cropland.

Preservation funds are to be awarded according to a formula based on development pressure, agricultural production and availability of county matching funds.

These provisions are contained in legislation enacted by Pennsylvania in 1988. In lieu of presenting this lengthy item in the standard format, the Committee on Suggested State Legislation approved the inclusion of the following statement, which summarizes the major provisions of the act.

Readers interested in the full text should consult Pennsylvania Act 1988-149, HB 442, or contact the Suggested State Legislation Program, The Council of State Governments, Iron Works Pike, P.O. Box 11910, Lexington, Kentucky 40578-1910, (606) 231-1958, for a copy of the act.

Purpose

This act amends the commonwealth's 1981 agricultural area security law (P.L. 128, No. 43), to further provide for the protection and enhancement of its agricultural land. The 1988 legislation is designed to encourage landowners to make a long-term commitment to agriculture by offering them financial incentives and security of land use; protect farming operations in agricultural security areas from incompatible non-farm land uses that may render farming impracticable; assure permanent conservation of productive agricultural lands to protect the agricultural economy; provide compensation to landowners in exchange for their relinquishment of the right to develop their private property; and leverage state agricultural easement purchase funds and protect the investment of taxpayers in agricultural conservation easements.
Agricultural Security Area

The act defines an "agricultural security area" as a unit of 500 or more acres of land under the ownership of one or more persons and used for the production of crops, livestock and livestock products. Landowners may submit a proposal to the local governing body for the creation of such an agricultural area. The governing body may, in turn, establish an agricultural security area advisory committee to advise the body and work with the local planning commission regarding the proposed establishment, modification and termination of security areas. The committee (consisting of three active farmers, one other citizen, and a member of the local government) is expected to offer expert advice relative to the desirability of the action, including advice as to the nature of farming and farm resources within the proposed area and the relationship of farming in such an area to the local government as a whole.

Upon receiving reports from the advisory committee and the planning commission, the local government is required to conduct public hearings on the creation of agricultural security areas. The legislation outlines factors that must be considered by the committee, commission, and at any public hearing including: the conduciveness of the land to agriculture; the compatibility of the proposed use of the land with the local government's comprehensive plans; and the extent and nature of farm improvements, anticipated trends in agricultural economic and technological conditions, and any other relevant matter.

Purchase of Agricultural Conservation Easements

The act establishes a 17-member state agricultural land preservation board within the state department of agriculture to administer a program for the purchase of agricultural easements by the state. The legislation sets out several responsibilities for the board including: the adoption of rules and regulations pursuant to the act; the review, and acceptance or rejection, of recommendations made by county boards for the purchase of agricultural conservation easements; the purchase of easements in the name of the state or in joint purchase with a county; the allocation of state moneys among counties for purchasing easements; and the establishment and maintenance of a central repository of purchase records.

Following the establishment of an agricultural security area, a county governing body also may authorize a program (to be administered by the county board) for the purchase of agricultural conservation easements from landowners whose land is located within an agricultural security area.

The legislation provides that agricultural conservation easements shall be perpetual or for a term of 25 years; that they shall not be sold, leased or altered in any fashion for at least 25 years beginning with the date of the purchase of the easement; and that if the land is no longer viable for agriculture, the state may sell or lease the easement to the current owner of record of the farmland subject to the easement after
25 years for a purchase price equal to the value at the time of resale.

The act stipulates that the state board's standards, criteria and requirements for approving county programs for purchasing easements include: the quality of the farmlands in question, including soils and productivity; the likelihood that the farmlands would be converted to non-agricultural use unless subject to an easement; and stewardship of the land and use of conservation and land management practices, such as soil erosion and sedimentation control and nutrient management.

Independent licensed real estate appraisers may determine the market value of farmland as part of the price determination process. The agricultural and non-agricultural value of the land is considered in determining the cash value of the land.

**Agricultural Conservation Easement Purchase Fund**

The legislation establishes an agricultural conservation easement purchase fund to be the source from which all moneys are authorized to carry out the act. Funds may be used to pay all except administrative costs incurred in acquiring and transferring agricultural conservation easements.

Whenever the cash balance in the fund is insufficient, the state treasurer is authorized by the act to transfer dollars from the general fund to the easement fund in such sums as the governor directs, but not less than the amounts needed to pay current obligations. Reimbursements are to be deposited into the general fund using bond and note proceeds authorized under the act or from other funds to be used at the governor's discretion.

**State Debt**

Pursuant to the state constitution and the referendum approved by voters in 1987, issuing officials are authorized to borrow (in the aggregate) up to $100 million. The act authorizes the state to issue general obligation bonds to implement the purposes of the legislation. Proceeds from the bond sales are to be deposited in the agricultural conservation easement fund and dedicated to the purposes of the 1987 referendum being implemented by the act. The state general assembly must allocate moneys to a fund for the payment of interest and the payment of principal at the bonds' maturity.
Sustainable Agriculture Act

This act, based on 1989 Illinois legislation, establishes a sustainable agriculture program to, among other purposes: identify agricultural practices that maintain productivity and minimize environmental degradation; relate overland runoff, sediment transport, streamflow and groundwater quality to specific agricultural practices; integrate and coordinate experiment field and on-farm research and educational efforts of cooperating individuals, agencies, institutions and organizations; test and refine alternative approaches to organizing and conducting on-farm research and demonstration projects; develop an expert system embodying the expertise of farmers and agency, institutional and agribusiness specialists; test the usefulness of the existing conservation tillage knowledge base; and identify the most critical needs for research and educational programs related to sustainable agriculture.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Sustainable Agriculture Act.

Section 2. [Findings] It is the intent of this act to provide for funding of the developmental research program that serves production agriculture in [state]. An economically competitive production agriculture in [state] is essential to sustaining [state's] farmers plus a vast infrastructure of the state's input, processing, distribution and marketing industries and financial institutions, and provides the economic base for many rural communities and municipalities.

Production agriculture in [state] faces rapidly growing competition for international markets, for which the basis of competition is cost of production. In order to compete effectively, agricultural producers in [state] must be the early and most effective adapters of new productivity-enhancing, cost-cutting and quality-improving technology.

In addition, in order to sustain a high level of agricultural production into the 21st century and beyond, it is critical to determine the optimum methods for production agriculture which result in the best return for the farm and best preserves the environment and the farmland of [state]. Tremendous numbers of new practices and products are becoming available because of increased public and private research around the world, and this rate of development will increase in the future, requiring a much stronger and more sophisticated adaptive research program.

The state's investment in utilization and marketing research will have little benefit for the present and future of [state] unless [state's] farmers are the low-cost producers of the raw materials for new food and non-food uses, use production methods that preserve the farmland and guar-
Suggested State Legislation

Section 3. [Establishment of Sustainable Agriculture Program.] There is hereby established in the [department of agriculture] a program to be known as the sustainable agriculture program. The purposes of the program are as follows:

1. To identify agricultural practices that maintain productivity and minimize environmental degradation.
2. To relate overland runoff, sediment transport, streamflow quantity and quality, and groundwater quantity (recharge) and quality to specific agricultural practices.
3. To integrate and coordinate experiment field and on-farm research and educational efforts of cooperating individuals, agencies, institutions and organizations.
4. To test and refine alternative approaches to organizing and conducting on-farm research and demonstration projects.
5. To test the organizational approach of joint farmer/specialist development of a computerized decision support system (expert system) as an approach to fostering sustainable agriculture.
6. To develop an expert system embodying the expertise of experienced farmers and agency, institutional and agribusiness specialists to help answer the question of what tillage and crop management system should be used in a particular field in a particular year.
7. To test the usefulness of the existing conservation tillage knowledge base in making tillage system selection, implementation and management decisions.
8. To identify the most critical needs for research and educational programs related to sustainable agriculture.

Section 4. [Duties of Department of Agriculture] As administrator of the sustainable agriculture program, the [department of agriculture] shall:

1. Determine what production agriculture research projects currently being conducted fit into the purposes of this act;
2. Encourage public and private institutions, including the various public universities in this state, to establish production agriculture research projects;
3. Allocate funds obtained by the sustainable agriculture committee, established in Section 5, to the various research projects the [department of agriculture] determines meet the purposes of the sustainable agriculture program;
4. Act as a clearinghouse and disseminate information concerning research projects funded by the sustainable agriculture program and the results of such research; and
5. Adopt rules necessary to carry out this act.

Section 5. [Establishment of Sustainable Agriculture Committee]
Sustainable Agriculture Act

(a) There is hereby created the sustainable agriculture committee which shall consist of [seven] members as follows: [one member representing and appointed by the governor; one member representing and appointed by the state board of higher education; one member representing and appointed by the state department of agriculture; and four members appointed by the state department of agriculture who are farmers actively involved in production agriculture]. Members of the committee shall be appointed for a term of [five] years.

(b) It is the duty of the committee to seek sources of funding for projects described in Section 4. These sources may be private or public, or federal, state or local, or designated for agricultural, environmental or other related purposes.

Section 6. The sustainable agricultural program shall be maintained for a minimum of [five] years.

Section 7. [Effective Date] [Insert effective date.]
Utility Construction Review Act

This act, based on a portion of a 1985 Indiana enactment that amended the state's utility code, facilitates the construction of electricity generating power plants that state regulators have authorized as necessary. It permits periodic approvals of completed construction work on utility facilities and assured rate recovery for approved expenditures. The concept of state-utility shared responsibility also applies to a continuing evaluation of the need for power, so that if circumstances change, the state public service commission is obligated to immediately notify the utility building a new plant which may no longer be needed.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Utility Construction Review Act.

Section 2. [Definitions.] As used in this act:
(1) "Certificate" means the certificate of public convenience and necessity [or the appropriate prior authorization by the state public service commission required for the utility to begin facility construction].
(2) "Commission" means the state [public service commission].
(3) "Facility" means the electric generation facility regulated by the [commission].
(4) "Utility" means any electric generating utility allowed by state law to earn a return on its investment.

Section 3. [Certificate Review and Investment Recovery.]
(a) When, in the opinion of the [commission], changes in the estimate of the probable future growth of the use of electricity so indicate, the [commission] shall commence a review of any certificate previously granted to determine whether the public convenience and necessity continues to require the facility under construction. If the [commission] finds that completion of the facility under construction is no longer in the public interest, the [commission] may modify or revoke the certificate.
(b) If the public utility cancels construction of the facility as a result of the modification or revocation of the certificate, it may recover, over a reasonable period of time, through rates, absent fraud, concealment or gross mismanagement, the amount of its investment in that facility, along with a reasonable return on the unamortized balance. Recovery may not be challenged on the basis of assumptions regarding probable future growth of the use of electricity.

Section 4. [Construction Progress Reports.]
(a) In addition to the review of the continuing need for the facility
under construction prescribed in Section 3 of this act, the [commission] shall at the request of the public utility maintain an ongoing review of such construction as it proceeds. The applicant shall submit each year during construction, or at such other periods as the [commission] and the public utility mutually agree, a progress report and any revisions in the cost estimates for the construction.

(b) If the [commission] approves the construction and the cost of the portion of the facility under review, that approval forecloses subsequent challenges to the inclusion of that portion of the facility in the public utility's rate base on the basis of excessive cost or inadequate quality control.

(c) If the [commission] disapproves of all or part of the construction or cost of the portion of the facility under review, the [commission] may modify or revoke the certificate. If the public utility cancels construction of the facility as a result of the modification or revocation of the certificate, it may recover, over a reasonable period of time, through rates, absent fraud, concealment or gross mismanagement, the amount of its investment in the facility along with a reasonable return on the unamortized balance, the amount of its investment in the facility along with a reasonable return on the unamortized balance, to the extent the construction and the cost were approved previously by the [commission].

Section 5. [Effective Date] [Insert effective date.]
Alternate Operator Service Provider Act

This act, based on 1990 New Jersey legislation, directs the state's board of public utilities to establish regulatory standards for alternate operator service providers.

Alternate operator service providers are non-facilities based telecommunications carriers who are resellers leasing lines from local exchange carriers and inter-exchange carriers, and who use the leased facilities to provide operator-assisted services with their own operators. These providers contract with entities such as hotels, motels, hospitals and universities to sell long distance telephone services, multi-lingual operator services, voice messaging, voice mail and billing to bank credit cards.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Alternate Operator Service Providers Act.

Section 2. [Definitions.] As used in this act:
(1) "Aggregator" means a person or entity, which is not a telecommunications carrier, who in the ordinary course of its business makes telephones available to the public or to transient users of its business, including, but not limited to, hotels, motels, hospitals or universities, and which provides operator-assisted services through an operator service provider.
(2) "Alternate operator service provider" means a non-facilities based telecommunications carrier who is a reseller leasing lines from local exchange carriers and inter-exchange carriers and who, using these leased facilities along with their own operators, provides operator-assisted services.
(3) "Operator-assisted services" means services which assist callers in the placement or charging of a telephone call, either through live intervention or automated intervention.
(4) "Operator service provider" means every telecommunications carrier which provides operator-assisted services.

Section 3. [Operating Requirements for Provision of Services.]
(a) The [state board of public utilities] shall promulgate, in accordance with the [state administrative procedure act], rules and regulations necessary to effectuate the purposes of this act concerning alternate operator service providers, which shall include, but not be limited to, the following operating requirements for the provision of operator-assisted
services:

(1) An alternate operator service provider shall provide callers with rate quotes, including any surcharges, upon request and without charge.

(2) An alternate operator service provider shall notify a caller, before inception of billing, that the alternate operator service provider is handling the operator-assisted call, by verbal identification by the alternate operator service provider and by a form of signage on the telephone equipment owned or controlled by the aggregator or by the alternate operator service provider if the alternate operator service provider owns or provides the telephones.

(3) Every contract between an alternate operator service provider and an aggregator shall include a provision which provides a caller using a telephone owned or controlled by the aggregator or alternate operator service provider with the means to access, where technically possible, any other operator service provider operating in the relevant geographic area, through the access method chosen by the other operator service provider, or to access a local exchange operator or to access the emergency telephone number that serves the jurisdiction where the telephone is located. However, in order to prevent the fraudulent use of its service, an alternate operator service provider or an aggregator may block access to other operator service providers if either obtains a waiver for this purpose from the [board] or the Federal Communications Commission. Such waivers granted by the [board] may be for a limited period of time on a specific piece of equipment or location upon application to the [board].

(4) No alternate operator service provider shall transfer a call to another operator service provider unless that transfer is accomplished at, and billed from, the point or origination of the call. If such a transfer is not technically possible, the alternate operator service provider shall inform the caller that the call cannot be transferred as requested and that the caller should hang up and attempt to reach another operator service provider through the means provided by that other operator service provider.

(b) In addition, the [board] shall adopt a schedule of fines for violation of these rules and regulations by an alternate operator service provider. The [board] shall not impose a fine exceeding [5,000] dollars for each infraction.

Section 4. [Effective Date] [Insert effective date.]
Tanning Facility Safety Standards Act

This law, based on New Jersey legislation approved in 1990, directs the state’s commissioner of health, in consultation with the department of environmental protection, to establish minimum safety standards for tanning facilities. Under this act, a “tanning facility” includes any location, place, area, structure or business that provides patrons with access to sunlamps, ultraviolet lamps or other equipment which provides skin tanning through the irradiation of any part of the body for cosmetic or nonmedical purposes.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This act may be cited as the Tanning Facility Safety Standards Act.

1 Section 2. [Findings.] The legislature finds that:
2 (1) Tanning facilities are not regulated by the state of [state] and the number of tanning facilities is rapidly growing throughout the state;
3 (2) Various physical complications can arise from frequent and unsupervised use of these tanning facilities such as, overexposure to ultraviolet radiation which can cause severe sunburn and eye injury including cataracts and corneal damage; and
4 (3) Repeated exposure to ultraviolet light in tanning facilities can also cause premature aging of the skin, skin cancers and abnormal skin sensitivity in persons who may be using certain drugs including some tranquilizers, diuretics, antibiotics, high blood pressure medicines and birth control pills.
5 It is, therefore, desirable that citizens are protected against any problems which may result from improperly functioning equipment in tanning facilities, and given the potential for harm that is presented by establishments using artificial suntan sources, it is imperative that effective minimum safety standards in this health area be established.

1 Section 3. [Definition.] As used in this act, “tanning facility” means any location, place, area, structure or business that, either as a sole service or in conjunction with other services, provides patrons with access to sunlamps, ultraviolet lamps or other equipment intended to induce skin tanning through the irradiation of any part of the human body for cosmetic or nonmedical purposes.

1 Section 4. [Establishment of Safety Standards.] The commissioner of health, in consultation with the department of environmental protection, shall, by regulation, establish minimum safety standards for tanning facilities. The standards shall include, but not be limited to:
(1) Establishment of a maximum safe time of exposure to radiation and
a maximum safe temperature at which tanning devices may be operated;
(2) A requirement that a patron at a tanning facility wear protective
eye glasses when using tanning equipment and that a patron be super-
vised as to the length of time the patron uses tanning equipment at the
facility;
(3) A requirement that the facility operator post easily legible, perma-
nent warning signs near the tanning equipment which state: "DANGER
-- ULTRAVIOLET RADIATION FOLLOW ALL INSTRUCTIONS"; and
(4) A requirement that the facility have protective shielding for tan-
ing equipment in the facility.

Section 5. [Certification of Facilities.] The [local board of health] in the
municipality in which a tanning facility is located shall certify that a
facility is in compliance with the safety standards established pursuant
to Section 4 of this act and shall periodically inspect the facility to en-
sure continued compliance with the standards.

Section 6. [Establishment of Non-Ionizing Radiation Fund.] There is
established in the [department of health] a nonlapsing revolving fund
known as the Non-Ionizing Radiation Fund. The fund shall be credited
with all fees collected pursuant to this act. Interest on moneys in the fund
shall be credited to the fund, and all moneys in the fund are appropriat-
ed for the purposes of this act.

Section 7. [Registration of Facilities]
(a) A tanning facility shall register annually with the [department of
health] on forms provided by the [department] and shall pay to the
[department] an annual registration fee.
(b) The [department of health] shall establish a registration fee sched-
ule, by regulation, to cover the costs of implementing the provisions of
this act, including the costs incurred by [local boards of health] pursuant
to Section 5 of this act.

Section 8. [Penalties.] A person who violates the provisions of this act
is subject to a penalty of [100] dollars for the first offense and [200] dol-
ars for each subsequent offense. The penalty shall be sued for and col-
lected in a court of competent jurisdiction in a summary proceeding in
accordance with [insert citation for state penalty enforcement statute].
A penalty recovered under the provisions of this act shall be recovered
by and in the name of the [commissioner of health] or by and in the name
of the [local board of health]. When the plaintiff is the [commissioner
of health] the penalty recovered shall be paid by the [commissioner] into
the treasury of the state. When the plaintiff is a [local board of health],
the penalty recovered shall be paid by the [local board of health] into the
treasury of the municipality where the violation occurred.

Section 9. [Rules and Regulations.] In accordance with the [state ad-
ministrative procedure act], the [commissioner of health], in consulta-
Suggested State Legislation

3 tion with the [department of environmental protection], shall promul-
4 gate rules and regulations necessary to carry out the purposes of this act.

1 Section 10. [Effective Date] [Insert effective date.]
Lease-Purchase Agreement Act

This act, based on 1988 Virginia legislation, involves lease-purchase, popularly known as "rent-to-own" transactions. As defined in this act, a "lease-purchase agreement" means an agreement for the use of property — primarily for personal, family or household purposes — for an initial period of four months or less that is automatically renewable with each payment after the initial period (but does not require or obligate the consumer to continue leasing beyond that period) and that permits the consumer to become the owner of the property.

Among its provisions, the legislation requires the lessor to disclose to the consumer information on the number, amount and timing of payments necessary to acquire ownership of the property; a statement declaring that the consumer will not own the property until the consumer has made the total payment necessary to acquire ownership; the cash price of the property; and various other terms of the agreement.

States have taken different approaches in this area. For example, Pennsylvania's goods and services installment sales act includes a maximum 18 percent APR for rent-to-own contracts (Act 57, 1989; HB 1299). In this case, rent-to-own transactions are included under the state's credit sales provisions. The interest rate on rent-to-own transactions is an imputed interest rate; it is intended to be a rate no higher than the rate on retail transactions on an installment basis.

Iowa, Michigan, Minnesota, Nebraska, New York, Ohio and South Carolina require that between 45 and 55 percent of each payment in a rent-to-own transaction be applied toward the purchase price. Nearly half the states require disclosure of charges in rent-to-own agreements.

Suggested Legislation

(Title, enacting clause, etc.)

1     Section 1. [Short Title] This act may be cited as the [state] Lease-
2     Purchase Agreement Act.

1     Section 2. [Definitions.] As used in this act:
2     (1) "Advertisement" means a commercial message in any medium that
3      aids, promotes or assists, directly or indirectly, a lease-purchase agree-
4      ment.
5     (2) "Cash price" means the price at which the lessor would have sold
6      the property to the consumer for cash on the date of the lease-purchase
7      agreement.
8     (3) "Consumer" means a natural person who rents personal property
9      under a lease-purchase agreement to be used primarily for personal, fa-
10    mily or household purposes.
11     (4) "Consummation" means the time a consumer becomes contractu.
Suggested State Legislation

(5) "Lessor" means a person who regularly provides the use of property through lease-purchase agreements and to whom lease payments are initially payable on the face of the lease-purchase agreement.

(6) "Lease-purchase agreement" means an agreement for the use of personal property by a natural person primarily for personal, family or household purposes, for an initial period of [four] months or less that is automatically renewable with each payment after the initial period, but does not obligate or require the consumer to continue leasing or using the property beyond the initial period, and that permits the consumer to become the owner of the property.

Section 3. [Inapplicability of Other Laws; Exempted Transactions.]
(a) Lease-purchase agreements which comply with this act are not governed by the laws relating to:
   (1) A home solicitation sale as defined in [insert citation for appropriate state statute];
   (2) A consumer transaction as discussed in [insert citation for appropriate state statute]; or
   (3) A security interest as defined in [insert citation for appropriate state statute].
(b) This act does not apply to the following:
   (1) Lease-purchase agreements primarily for business, commercial or agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;
   (2) A lease of a safe deposit box;
   (3) A lease or bailment of personal property which is incidental to the lease of real property, and which provides that the consumer has no option to purchase the leased property; or
   (4) A lease of an automobile.

Section 4. [General Requirements of Disclosure.]
(a) The lessor shall disclose to the consumer the information required by this act. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by such disclosures.
(b) The disclosures shall be made at or before consummation of the lease-purchase agreement.
(c) The disclosures shall be made clearly and conspicuously in writing and a copy of the lease-purchase agreement provided to the consumer. The disclosures required under Section 5(a) shall be made on the face of the contract above the line for the consumer's signature.
(d) If a disclosure becomes inaccurate as the result of any act, occurrence or agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy is not a violation of this act.

Section 5. [Disclosures.]
(a) For each lease-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:
(1) The total number, total amount and timing of all payments necessary to acquire ownership of the property;
(2) A statement that the consumer will not own the property until the consumer has made the total payment necessary to acquire ownership;
(3) A statement that the consumer is responsible for the fair market value of the property if, and as of the time, it is lost, stolen, damaged or destroyed;
(4) A brief description of the leased property, sufficient to identify the property to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the property is new or used, but a statement that indicates new property is used is not a violation of this act;
(5) A brief description of any damages to the leased property;
(6) A statement of the cash price of the property. Where the agreement involves a lease of [five or more] items as a set, in one agreement, the statement of the aggregate cash price of all items shall satisfy this requirement;
(7) The total of initial payments paid or required at or before consummation of the agreement or delivery of the property, whichever is later;
(8) A statement that the total of payments does not include other charges, such as late payment, default, pickup and reinstatement fees, which fees shall be separately disclosed in the contract;
(9) A statement clearly summarizing the terms of the consumer’s option to purchase, including a statement that the consumer has the right to exercise an early purchase option and the price, formula or method for determining the price at which the property may be so purchased;
(10) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility, and a statement that if any part of a manufacturer’s express warranty covers the lease property at the time the consumer acquires ownership of the property, it shall be transferred to the consumer, if allowed by the terms of the warranty;
(11) The date of the transaction and the identities of the lessor and consumer;
(12) A statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair upon expiration of any lease term along with any past due rental payments; and
(13) Notice of the right to reinstate an agreement as herein provided.
(b) With respect to matters specifically governed by the Federal Consumer Credit Protection Act, compliance with such act satisfies the requirements of this section.

Section 6. [Prohibited Practices.] A lease-purchase agreement may not contain:

(1) A confession of judgment;
(2) A negotiable instrument;
(3) A security interest or any other claim of a property interest in any
Suggested State Legislation

Section 7. [Reinstatement]
(a) A consumer who fails to make a timely rental payment may reinstate the agreement, without losing any rights or options which exist under the agreement, by the payment of
   (1) All past due rental charges,
   (2) If the property has been picked up, the reasonable costs of pick-up and redelivery, and
   (3) Any applicable late fee, within [five] days of the renewal date if the consumer pays monthly, or within [two] days of the renewal date if the consumer pays more frequently than monthly.
(b) In the case of a consumer who has paid less than [two-thirds] of the total of payments necessary to acquire ownership and where the consumer has returned or voluntarily surrendered the property, other than through judicial process, during the applicable reinstatement period set forth in subsection (a) of this section, the consumer may reinstate the agreement during a period of not less than 121 days after the date of the return of the property.
(c) In the case of a consumer who has paid [two-thirds or more] of the total of payments necessary to acquire ownership, and where the consumer has returned or voluntarily surrendered the property, other than through judicial process, during the applicable period set forth in subsection (a) of this section, the consumer may reinstate the agreement during a period of not less than [46] days after the date of the return of the property.
(d) Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but such a repossession shall not affect the consumer’s right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition.

Section 8. [Receipts and Accounts.] A lessor shall provide the consumer a written receipt for each payment made by cash or money order.

Section 9. [Renegotiations and Extensions.]
(a) A renegotiation shall occur when an existing lease-purchase agreement is satisfied and replaced by a new agreement undertaken by the same lessor and consumer. A renegotiation shall be considered a new agreement requiring new disclosures. However, events such as the following shall not be treated as renegotiations:
   (1) The addition or return of property in a multiple-item agreement or the substitution of the lease property, if in either case the average pay-
Lease-Purchase Agreement Act

Section 10. [Advertising.]
(a) If an advertisement for a lease-purchase agreement refers to or states the dollar amount of any payment and the right to acquire ownership for any one specific item, the advertisement shall also clearly and conspicuously state the following items, as applicable:
   (1) That the transaction advertised is a lease-purchase agreement;
   (2) The total of payments necessary to acquire ownership; and
   (3) That the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid.
(b) Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.
(c) The provisions of subsection (a) of this section shall not apply to an advertisement which does not refer to or state the amount of any payment, or which is published in the yellow pages of a telephone directory or in any similar directory of business.

Section 11. [Enforcement; Penalties.] Any violation of this act shall constitute a prohibited practice under the provisions of [insert citation for appropriate state statute] and shall be subject to any and all of the enforcement provisions of [insert citation for appropriate state statute].

Section 12. [Effective Date.] [Insert effective date.]
Automobile Theft and Fraud Legislation (Note)

Automobile theft has been increasing in the United States. According to the Federal Bureau of Investigation, the nationwide motor vehicle theft rate per 100,000 registered vehicles increased in 1988 for the fifth year in a row. The 1988 rate of 758 thefts per 100,000 registered vehicles is the highest rate since 1971. The total dollar value of vehicle thefts reported to law enforcement agencies exceeded $7 billion in 1988, while the total value of stolen contents and accessories exceeded $1 billion.

The Coalition for the Reduction of Auto Fraud and Theft (CRAFT), formerly the Joint Industry Task Force on Auto Theft and Fraud, was formed in 1981 and is comprised of the Alliance of American Insurers, American Insurance Association, National Association of Independent Insurers, National Automobiles Theft Bureau and the State Farm Insurance Company. One role of the task force is to propose legislation to decrease the risk of auto theft.

The Coalition has drafted several items, using existing state legislation, to be used as models for comprehensive state anti-fraud and anti-theft efforts. In lieu of presenting those draft items in full text, the Committee on Suggested State Legislation approved the inclusion of the following nine summaries. For the readers' information, and as applicable, the summaries also include citations for the state legislation on which the individual draft items were based, as compiled by the Alliance of American Insurers.

For further information or copies of the full drafts of these items, contact William Schroeder, Chairman of CRAFT, Alliance of American Insurers, 1501 Woodfield Road, Suite 400 West, Schaumburg, Illinois 60173-4980, (708) 330-8500.

Motor Vehicle Chop Shop, Stolen and Altered Property Act

"Chop shop" offenders disassemble stolen motor vehicles, discard or alter parts which are numbered, and sell unnumbered, untraceable parts to repair shops, frequently at a sum equal to the cost of parts purchased from legitimate suppliers. There are several reasons for the proliferation of chop shops. Chop shop profits are high while risks are low. Moreover, there is a steady demand for parts and most parts are unidentifiable once they are removed from the vehicle.

In recent years, organized crime has recognized that profits can be made from chop shop operations. Motor vehicle thefts and chop shops are attractive businesses for "hard core" criminals as well. A skilled chop shop operator can dismantle a motor vehicle in 20 minutes.

Chop shop operations have many costs to the American public, including property losses, additional law enforcement and rising insurance rates. The annual cost of auto theft in the United States is over $5 billion.

The Motor Vehicle Chop Shop, Stolen and Altered Property Act is designed to help control motor vehicle crime through enhanced civil
remedies and may redress, in part, the losses sustained by the victims of motor vehicle theft. This act specifies that owning, operating or conducting a chop shop is a criminal violation. The act also makes it a crime to knowingly transport a motor vehicle part or from a location known to be a chop shop. Other provisions included in the act are penalties for altering or removing a vehicle identification number, selling, purchasing or disposing of a motor vehicle or its parts having an altered or removed identification number, as well as attempt, conspiracy, solicitation, aiding and abetting and accessory after the fact. The act provides mandatory restitution for most financial losses resulting from violations in addition to provisions for the forfeiture of equipment and vehicles used in chop shop operations. It authorizes the seizure of automobiles, tools or instruments as evidence and charges seizing agencies with responsibility for attempting to identify vehicles and determine ownership. Remedies and sanctions under the act include injunctive relief and civil actions for damages three times the amount of the actual damage. The act establishes extended statutes of limitation for civil actions and expanded venue for prosecutions of criminal violations.

[Citations: Alabama (Title 40-12-410 through 40-12-425, Code 32-8-48 and 32-8-87); Michigan (Sec. 535a); Oklahoma (Title 47, Sec. 1502); South Carolina (Sec. 10-1-10)]

Salvage Certificate and Junk Vehicle Act

Salvage and junk vehicle laws are inconsistent across the states. Moreover, many state laws address insured vehicles but not other types of distressed vehicles, including those uninsured or self-insured. Often this is because a salvage or junk vehicle is defined by law as a “total loss payment,” a term that relates only to insured vehicles. As such, insurers are forced to accept lower values for these vehicles or assume ownership in a total loss. Uninsured or self-insured owners are under no responsibility to declare a comparably damaged vehicle as salvage or total loss.

Multi-jurisdictional problems also exist. Some states may grant a valid road title for a vehicle considered junk or salvage under the laws of another state. Such vehicles subsequently may be insured as roadworthy and then be reported stolen in order to collect on the insurance. Frequently, laws do not require that any rebuilt salvage vehicle be inspected by a state agency to ensure that stolen parts have not been used.

The Salvage Certificate and Junk Vehicle Act addresses the need for uniformity and standardization in salvage vehicle controls. The act regulates and controls all salvage or junk vehicles whether they are insured or uninsured. A vehicle is considered to be a “junk” vehicle under this act when it cannot be used on roads or highways and has no value except as a source of parts or scrap. Under this act, a vehicle is considered to be “salvage” under certain circumstances: when it is damaged by collision, fire, flood, accident or trespass, and the owner, or in most cases, the insurer, determines that repair costs are too high to feasibly fix the vehicle, or when a vehicle is modified by the addition or deletion of parts
to the extent that it does not appear to be the vehicle described in the title. The proposal provides a procedure for the detitling of unrepairable vehicles on a permanent basis. It does not require that rebuilt vehicles be indicated as such in their titles. The act also addresses the problem of forum shopping. The fact that a vehicle was stolen would not lead to the vehicle being given salvage title.

Overall, this requires an owner or insurer to surrender a title to a vehicle in a junked or salvaged condition to the state department of motor vehicles, terminates the title chain of a vehicle in a junked condition and establishes a paper trail to detect and prevent theft and fraud. The act establishes a salvage certificate which serves as evidence of ownership of a salvage vehicle and prohibits the use of such vehicles on the roads.

[Citations: Alabama (Sec. 32-8-87); California (Sec. 5505 and 9271, Vehicle Code 10900); Georgia (Sec. 40-3-35); Illinois (Ch. 95 1/2, Sec. 3-117.1); Kentucky (KRS Ch. 186A.010); Louisiana (Sec. 702 & 707); Maine (29 MRSA Sec. 2351, Subsec. 5A-5C; 29 MRSA Sec. 2377, Subsec. 2, par. C; Subch. V, Sec. 2448-2461); Massachusetts (Ch. 90, Sec. 24H); Michigan (Sec. 0217c); Minnesota (Sec. 168.27); Missouri (RS Mo. 301.217-227); Nebraska (Sec. 60-118 to 60-127); New Hampshire (RSA 261:22); New Jersey (Ch. 10, Title 39 P.S.); North Carolina (Sec. 20-71.2 through Sec. 20-71.4); Ohio (Sec. 4505.11); Oklahoma (Sec. 1111); Oregon (ORS 166.715, Ch. 338, Sec. 195, 196, 804 and 808); Rhode Island (Sec. 31-46-1 to 31-46-6; Sec. 31-3.1-17); South Dakota (Sec. 32-3-1); Utah (41-1-36.6); Vermont (Sec. 2091-2095); Virginia (Sec. 46.1-550.6); West Virginia (Art. 4, Sec. 17A-4-10; Art. 3, Sec. 17A-3-12a)]

Motor Vehicle Theft and Motor Vehicle Insurance Fraud Reporting Immunity Act

The number of autos reported as stolen has increased dramatically, and the National Automobile Theft Bureau has estimated that between 10 and 15 percent of the 1.1 million vehicles stolen annually in the United States involve fraudulent insurance claims.

Reciprocal cooperation among law enforcement authorities is needed when the law enforcement agency initiates a request for insurance claims information and the insurers, having reason to believe that a crime has been committed, are required to notify authorized agencies. The threat of civil action for invasion of privacy, libel or slander presents serious obstacles to reducing criminal insurance fraud. Police find it difficult to obtain information about automobile thefts and fraud without a subpoena.

This proposal requires insurers to furnish information to law enforcement officials upon request and to report possible crimes they have discovered. Immunity is assured for insurers and state agencies who furnish and exchange information relevant to the motor vehicle theft or motor vehicle insurance fraud under investigation, including applications for policies, policy premium payment records, and previous claims made

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by the insured.

[Citations: California (Sec. 1798.24 Civil Code Ch. 5, Div. 4, Vehicle Code 10900); Colorado (Sec. 42-5-101 et seq.); Connecticut (Sec. 38-175v); Illinois (Sec. 155.24); Indiana (IC 27-2, Ch. 14); Massachusetts (Ch. 90, Sec. 27A); Missouri (Sec. 301.227); Nebraska (Sec. 44-3, 134 through 44-3, 142); New Jersey (Sec. 17:23-8 through 17:23-15); Oklahoma (Title 74, Sec. 150.7b); South Carolina (Sec. 38-37-1610); Texas (Ins. Code Art. 21.78); Virginia (Sec. 38.2-613)]

Certificate of Title as Evidence Act

In many parts of the country, defense attorneys may prolong a vehicle theft case in the hope that an owner will not be present in court when his testimony is required. Moreover, vehicle owners who have settled with their insurance companies frequently do not wish to appear in court.

This act is designed to prevent the dismissal of cases by allowing a certified copy of a vehicle title certificate to be introduced as evidence of ownership and unauthorized use or possession of a vehicle. In addition, the act provides for the perpetuation of testimony of a witness present in court at the time a continuance is granted. Upon the introduction of evidence that the legal owner of a motor vehicle is not the one named in the certificate of title or that use or possession was with the consent or authority of the owner, a reasonable continuance must be granted any party to enable the vehicle's owner to be brought into court to testify. Also, if necessary, an owner or operator of an automobile may provide testimony at an arraignment or pre-trial hearing which would be admissible at trial. This relieves the witness of the need to appear at every court proceeding.

[Citation: New Jersey (N.J.S.A. 2A:82-10.1)]

Inspection and Cancellation of Titles for Exported Vehicles Act

Certificates of title for previously exported vehicles are used in insurance frauds in which a claimant falsely states that a vehicle has been stolen. Under existing procedures, there is no record in state motor vehicle departments that a vehicle has been exported out of the United States. In addition, there is no generally available document attesting to the fact that a vehicle title has been surrendered prior to its expiration. Within 72 hours of the time a car is stolen, it can be boxed for shipment to the Middle East or driven to Mexico. The National Automobile Theft Bureau estimates as many as 20,000 vehicles are stolen in the United States and transported to Mexico each year.

This legislation requires that an owner who wishes to export his vehicles surrender the certificate of title for the vehicle and obtain a certified receipt of title cancellation. The act also provides that the shipment of a vehicle from the United States for temporary purposes will
Suggested State Legislation

be attested to by an appropriate statement from the owner filed with the state department of motor vehicles. Such a statement would indicate the circumstances surrounding the temporary exportation of the vehicle. The act would effectively remove certificates of title for exported vehicles from the stream of illegal commerce and provide documentation to establish the exported status of a motor vehicle. A first violation of the act would be a misdemeanor; repeated violations would result in felony charges.

(Citation: Ohio (Ch. 4505))

Insurance Fraud Act

Some insurance fraud statutes only prohibit written misrepresentations of material facts. In some jurisdictions, there is no crime of insurance fraud or the penalties for insurance fraud are relatively minor.

This act defines insurance fraud to include both oral and written statements containing any false information. Such statements could take the form of policy reports, notice or proof of loss, assignment of title, bill of sale, release of lien, estimate of property damages, hospital or other medical records or other evidence of loss, injury, expense, condition or title. Attempted insurance frauds also are made illegal under this act. Violations may be committed by presenting false information to an insurer or by assisting, aiding or abetting in the submission of false information to an insurer. The proposal suggests that insurance fraud should be punished as a felony.

(Citations: California (Sec. 556); Connecticut (Sec. 38-175v); Louisiana (R.S. 22:1462); New Jersey (Sec. 17:23-10); New York (Sec. 5215).

False Police Reports Act

False police reports waste valuable time which could be spent handling legitimate claims. The insurance business also may pay a price for false police reports in the form of claims investigations. A fraudulent claim may be paid by honest policyholders.

Although many jurisdictions have sanctions for making false theft or damage reports to police, in many cases such an offense is treated as a simple misdemeanor. This act makes it a misdemeanor on the first conviction, and a felony upon subsequent convictions, for any person to knowingly make or assist in making a false report of a theft, destruction, damage or conversion of any property to a law enforcement agency. The proposal covers all types of false theft and damage reports to police rather than merely dealing with automobile thefts.

(Citation: California (Vehicle Code 10501); Illinois (Ch. 38, Sec. 16-3.1); Maryland (Art. 48A, Sec. 293A); Ohio (Sec. 2913.01, 2913.47-48))

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Return of Stolen Property Act

When an insured automobile is stolen, an insurance company has two alternatives: wait to see if the car is quickly abandoned by the thief and recovered in usable condition; or pay the insured the "book" value of the car. While waiting for a potential recovery, however, an insurer is often under obligation to reimburse its policyholder for car rental. In some cases, insurance companies do both. If a stolen car is recovered and impounded, the insurance company may be forced to pay storage charges that could easily total $15 per day, and a car theft trial could last as long as a year.

In some parts of the United States, the retention of vehicles and other stolen personal items for use as evidence in criminal trials is common practice. Owners are faced with depreciation in value because of this type of retention, as well as being denied use of the property.

This act provides means for the release of stolen property being held as evidence in a criminal proceeding. Upon completing examination of the evidence and following a request for the release of the property, the prosecutor notifies the defendant or the defense attorney to arrange for any appropriate inspection or tests to determine property value or to provide photographs of the items alleged to have been stolen. The proposal also provides that a court may order retention of the property where it determines retention is necessary, such as when the condition of the property is relevant to the case. Legally sufficient evidence, such as photographs, may be used in lieu of the property itself at trial.

[Citation: Illinois (Ch. 38, Sec. 115-9)]

Vehicle Owner Fraud Act

"Owner give up" is one area of "white collar" fraud in a number of jurisdictions. It occurs when a vehicle owner voluntarily relinquishes control of the automobile to another person for a fee and then reports the vehicle as stolen to an insurer. The owner subsequently collects the theft loss claim. Another type of fraud is committed by persons who fraudulently obtain evidence of legal ownership of a vehicle, such as certificate of title, from a governmental authority. Fraudulent claims and reports increase the demands placed on insurers and public agencies. Often existing laws are not specific enough to make punishment for these crimes possible.

This act makes it a felony to knowingly make or assist in making a false report or claim regarding theft, destruction or damage of a vehicle or its contents. It also is a felony under this act to illegally obtain evidence of vehicle ownership by making a false report or application to a governmental agency, such as the department of motor vehicles. The proposal allows the court to require convicted persons to make monetary restitution to any persons who suffered losses as a result of the fraud, including insurers and government agencies. Fines of up to three times the amount of fraud committed may be imposed. Proof of loss state-
Suggested State Legislation

ments, law enforcement reports and reports or applications for evidence of ownership must include a notice stating that it is a crime to make a false report, claim or application. This act may assist law enforcement officials by clarifying activities which are prohibited. It also provides penalties for violations.
Service of Legal Papers by Alternative Methods

The three acts presented here are based on 1989 New York state amendments to its civil practice law and rules. The provisions recognize and authorize the use of procedures and technologies designed to make such service more timely and efficient.

The first, Personal Service of Process by Mail, allows for the personal service of a summons and complaint, or summons and notice, or notice of petition and petition by mail as an alternative to existing methods of service of process. Modeled after a federal rule of process enacted by Congress in 1983, this act authorizes service of the abovementioned by mail, with acceptance of such service being optional with the person served. Failure to acknowledge receipt and acceptance of the service within 30 days from the day of receipt results in a failure of complete service and requires the plaintiff to complete service through another method.

The second act, Service of Papers by Electronic Means, allows the service of legal papers upon an attorney via transmission by electronic means, i.e., a facsimile machine. It provides that service shall be deemed complete upon receipt by the sender of a signal from the attorney served indicating the transmission was received, and the mailing of a copy of the papers to the attorney.

Finally, Service of Papers by Overnight Delivery Service provides that service upon an attorney is complete upon deposit of the paper, enclosed in a properly addressed wrapper, into the custody of the overnight delivery service prior to such service's latest time for overnight delivery.

Personal Service of Process by Mail

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Personal Service of Process by Mail Act.

Section 2. [Personal Service by Mail.] As an alternative to the methods of personal service authorized by [insert citation from section of state code], a summons and complaint, or summons and notice, or notice of petition and petition may be served by the plaintiff, the plaintiff's attorney or an employee of the attorney by mailing to the person or entity to be served, by first class mail, postage prepaid, a copy of the summons and complaint, or summons and notice or notice of petition and petition, together with [two] copies of a statement of service by mail and acknowledgment of receipt in the form set forth in Section 5 of this act,
with a return envelope, postage prepaid, addressed to the sender.

Section 3. [Completion of Service and Time to Answer]
(a) The defendant, defendant's attorney or an employee of the attorney must complete the acknowledgment of receipt and mail or deliver a copy of it within [30] days from the date of receipt. An action is commenced and service is complete on the date the signed acknowledgment of receipt is mailed or delivered to the sender. The signed acknowledgment of receipt shall constitute proof of service.
(b) Where a complaint or petition is served with the summons or notice of petition, the defendant shall serve an answer within [20] days after the date the signed acknowledgment of receipt is mailed or delivered to the sender.

Section 4. [Affirmation.] The acknowledgment of receipt of service shall be subscribed and affirmed as true under penalties of perjury and shall have the same force and effect as an affidavit.

Section 5. [Form.] The statement of service by mail and the acknowledgment of receipt of such service shall be in substantially the following form:

Statement of Service by Mail and
Acknowledgment of Receipt by Mail of
Summons and Complaint or Summons and Notice
or Notice of Petition and Petition
[CAPTION]
STATEMENT OF SERVICE
BY MAIL

To: (Insert the name and address of the person or entity to be served.)
The enclosed summons and complaint, or summons and notice, or notice of petition and petition are served pursuant to [insert citation for section of state code].
To avoid being charged with the expense of service upon you, you must sign, date and complete the acknowledgment part of this form and mail or deliver one copy of the completed form to the sender within [30] days from the date you receive it. If you wish to consult an attorney, you should do so as soon as possible before the [30] days expire.
If you do not complete and return the form to the sender within [30] days, you (or the party on whose behalf you are being served) may be required to pay expenses incurred in serving the summons and complaint, or summons and notice, or notice of petition and petition in any other manner permitted by law, and the cost of such service as permitted by law may be entered as a judgment against you.
If you have received a complaint or petition with this statement, the return of this statement and acknowledgment does not relieve you of the necessity to answer the complaint or petition. The time to answer expires [20] days after the day you mail or deliver this form to the sender.
If you wish to consult with an attorney, you should do so as soon as possible before the [20] days expire.

If you are served on behalf of a corporation, unincorporated association, partnership or other entity, you must indicate under your signature your relationship to the entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

It is a crime to forge a signature or to make a false entry on this statement or on the acknowledgment.

__________________________
Signature

__________________________
Print name

__________________________
Address

ACKNOWLEDGMENT OF RECEIPT
OF SUMMONS AND COMPLAINT
OR SUMMONS AND NOTICE OR
NOTICE OF PETITION AND PETITION

I received a summons and complaint, or summons and notice, or notice of petition and petition in the above-captioned matter at (insert address). PLEASE CHECK ONE OF THE FOLLOWING;

IF 2 IS CHECKED, COMPLETE AS INDICATED:

1. ☐ I am not in military service.

2. ☐ I am in military service, and my rank, serial number and branch of service are as follows:

   Rank __________________________
   Serial number ______________________
   Branch of Service ____________________

Date: ____________________________
(Date this Acknowledgment is Executed)

I affirm the above as true under penalty of perjury.

__________________________
Signature

__________________________
Print name

__________________________
Relationship to Entity/Authority to Receive Service of Process

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Section 6. [Subsequent Service.] Where a duly executed acknowledgment is not returned, upon the subsequent service of process in another manner permitted by law, the summons or notice of petition or paper served with the summons or notice of petition shall indicate that an attempt previously was made to effect service pursuant to this act.

Section 7. [Disbursements.] Where the signed acknowledgment of receipt is not returned within [30] days after receipt of the documents mailed pursuant to Section 2, the reasonable expense of serving process by an alternative method shall be taxed by the court as a disbursement to the party serving process, if that party is awarded costs in the action or proceeding.

Section 8. [Effective Date.] [Insert effective date.]

__________________________________________

Service of Papers By Electronic Means

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the [Service of Papers Act, with provision for transmission by electronic means.]

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

1. “Mailing” means the deposit of a paper enclosed in a first class post-paid wrapper, addressed to the address designated by a person for that purpose or, if none is designated, at that person’s last known address, in a post office or official depository under the exclusive care and custody of the United States Postal Service within the state.

2. “Electronic means” means any method of transmission of information between two machines designed for the purpose of sending and receiving such transmissions, and which results in the fixation of the information transmitted in a tangible medium of expression.

Section 3. [Service Upon an Attorney.] Except where otherwise prescribed by law or order of court, papers to be served upon a party in a pending action shall be served upon the party’s attorney. Where the same attorney appears for two or more parties, only one copy need be served upon the attorney. Such service upon an attorney shall be made:

1. By delivering the paper to the attorney personally; or

2. By mailing the paper to the attorney at the address designated by that attorney for that purpose or, if none is designated, at the attorney’s last known address; service by mail shall be complete upon mailing; where a period of time prescribed by law is measured from the service of a paper and service is by mail, [five] days shall be added to the
prescribed period; or
(3) If the attorney's office is open, by leaving the paper with a person
in charge, or if no person is in charge, by leaving it in a conspicuous place;
or if the attorney's office is not open, by depositing the paper, enclosed
in a sealed wrapper directed to the attorney, in the attorney's office let-
ter drop or box; or
(4) By leaving it at the attorney's residence within the state with a per-
son of suitable age and discretion. Service upon an attorney shall not
be made at the attorney's residence unless service at the attorney's of-

cannot be made; or
(5) By transmitting the paper to the attorney by electronic means,
provided that a telephone number or other station or other limitation,
if any, is designated by the attorney for that purpose. Service by elec-
tronic means shall be complete upon the receipt by the sender of a sig-
nal from the equipment of the attorney served indicating that the trans-
mission was received, and the mailing of a copy of the paper to that at-
torney. The designation of a telephone number or other station for ser-
vice by electronic means in the address block subscribed on a paper served
or filed in the course of an action or proceeding shall constitute consent
to service by electronic means in accordance with this section. An at-
torney may change or rescind a number or address designated for serv-

Section 4. [Service Upon a Party.] If a party has not appeared by an at-
torney or the party's attorney cannot be served, service shall be upon
the party by a method specified in paragraph (1), (2), (4) or (5) of Section
3 of this act.

Section 5. [Filing.] If a paper cannot be served by any of the methods
specified in Section 3 or 4 of this act, service may be made by filing the
paper as if it were a paper required to be filed.

Section 6. [Effective Date.] [Insert effective date.]

Service of Papers By Overnight Delivery Service

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the [Service of Papers
Act, with provision for overnight delivery service.]

Section 2. [Definitions.] As used in this act:
(1) "Mailing" means the deposit of a paper enclosed in a first class post-
paid wrapper, addressed to the address designated by a person for that

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purpose or, if none is designated, at that person’s last known address, in a post office or official depository under the exclusive care and custody of the United States Postal Service within the state.

(2) "Overnight delivery service" means any delivery service which regularly accepts items for overnight delivery to any address in the state.

Section 3. [Service Upon an Attorney.] Except where otherwise prescribed by law or order of court, papers to be served upon a party in a pending action shall be served upon the party’s attorney. Where the same attorney appears for two or more parties, only one copy need be served upon the attorney. Such service upon an attorney shall be made:

(1) By delivering the paper to the attorney personally; or

(2) By mailing the paper to the attorney at the address designated by that attorney for that purpose or, if none is designated, at the attorney’s last known address; service by mail shall be complete upon mailing; where a period of time prescribed by law is measured from the service of a paper and service is by mail, fifteen days shall be added to the prescribed period; or

(3) If the attorney’s office is open, by leaving the paper with a person in charge, or if no person is in charge, by leaving it in a conspicuous place; or if the attorney’s office is not open, by depositing the paper, enclosed in a sealed wrapper directed to the attorney, in the attorney’s office letter drop or box; or

(4) By leaving it at the attorney’s residence within the state with a person of suitable age and discretion. Service upon an attorney shall not be made at the attorney’s residence unless service at the attorney’s office cannot be made; or

(5) By dispatching the paper to the attorney by overnight delivery service at the address designated by the attorney for that purpose or, if none is designated, at the attorney’s last known address. Service by overnight delivery service shall be complete upon deposit of the paper enclosed in a properly addressed wrapper into the custody of the overnight delivery service for overnight delivery, prior to the latest time prescribed by the overnight delivery service for overnight delivery. Where a period of time prescribed by law is measured from the service of a paper and service is by overnight delivery, one business day shall be added to the prescribed period.

Section 4. [Service Upon a Party.] If a party has not appeared by an attorney or the party’s attorney cannot be served, service shall be upon the party by a method specified in paragraph (1), (2), (4) or (5) of Section 3 of this act.

Section 5. [Filing.] If a paper cannot be served by any of the methods specified in Sections 3 or 4 of this act, service may be made by filing the paper as if it were a paper to be filed.

Section 6. [Effective Date.] [Insert effective date.]
Actions by Adult Survivors of Childhood Sexual Abuse

Psychologists have reported that victims of childhood sexual abuse often repress the memory of their abuse for years, or if they do remember, minimize or deny its effects such that they do not connect the abuse with later injuries. It may not be until the adult survivor of abuse enters therapy that he or she develops a more meaningful understanding of the injuries.

For these individuals, a procedural obstacle to civil redress is the application of statutes of limitation to traditional tort claims. While the traditional statute of limitations begins to run as of the date of the wrongful act or omission that is the basis for the plaintiff's claim, these injured plaintiffs may not know or be expected to know of their injuries until after the limitations period has expired.

The "delayed discovery" exception, however, is a judicially fashioned response to such situations. The discovery rule provides that the statute of limitations does not begin to run until the plaintiff discovers or through the use of reasonable diligence should have discovered the cause of action.

The act presented here is based on 1990 Alaska legislation which applies the discovery rule to civil actions based on intentional torts brought by adult survivors of childhood sexual abuse seeking recovery of damages for injuries suffered as a result of that abuse. The reader, however, might also want to note similar legislation enacted in Washington state in 1988 and subsequently amended in 1989 (RCW 4.16.340). In 1986, that state's Supreme Court had held that the discovery rule did not apply to civil suits brought by survivors of childhood sexual abuse (Tyson v. Tyson, 107 Wn.2d 72 P.2d 226 (1986)).

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This act may be cited as the Actions by Adult Survivors of Childhood Sexual Abuse Act.

Section 2. [Definition.] As used in this act, "sexual abuse" means an act committed by the defendant against the plaintiff maintaining the cause of action if the defendant's conduct would have violated a provision of [insert citations for sections of state code on crimes of sexual assault] at the time it was committed.

Section 3. [Claim Based on Sexual Abuse as a Minor under [16] Years of Age.]

(a) A person who, as a minor under [16] years of age, was the victim
of sexual abuse may maintain an action for recovery of damages against
the perpetrator of the act or acts of sexual abuse based on the perpetr-
tor’s intentional conduct for an injury or condition suffered as a result
of the sexual abuse.
(b) If the defendant committed more than one act of sexual abuse on
the plaintiff, the plaintiff is not required to prove which specific act
caused the injury.

Section 4. [Disabilities of Minority and Incompetency]
(a) If a person entitled to bring an action mentioned in this act is at
the time the cause of action accrues either
(1) Under the age of majority, or
(2) Incompetent by reason of mental illness or mental disability,
the time of a disability identified in paragraph (1) or (2) of this section
is not a part of the time limit for the commencement of the action. Ex-
cept as provided in subsection (b) of this section, the period within which
the action may be brought is not extended in any case longer than [two]
years after the disability ceases.
(b) An action based on a claim of sexual abuse under Section 3 of this
act may be brought more than [three] years after the plaintiff reaches
the age of majority if it is brought under the following circumstances:
(1) If the claim asserts that the defendant committed one act of sex-
ual abuse on the plaintiff, the plaintiff shall commence the action within
[three] years after the plaintiff discovered or through use of reasonable
diligence should have discovered that the act caused the injury or con-
dition;
(2) If the claim asserts that the defendant committed more than one
act of sexual abuse on the plaintiff, the plaintiff shall commence the ac-
tion within [three] years after the plaintiff discovered or through use of
reasonable diligence should have discovered the effect of the injury or con-
dition attributable to the series of acts, a claim based on an asser-
tion of more than one act of sexual abuse is not limited to plaintiff’s first
discovery of the relationship between any one of those acts and the in-
jury or condition, but may be based on plaintiff’s discovery of the effect
of the series of acts.

Section 5. [Effective Date] [Insert effective date.]
Sex Offender Act

This act, based on 1989 Minnesota legislation, has three major components: the beginning of a treatment continuum for all sex offenders, regardless of whether they are sentenced to prison or remain in local corrections agencies or on probation; a special “patterned sex offender” sentencing provision designed to provide longer and more structured sentencing, as well as longer supervised release; and the collection, profiling and admissibility of evidence based on DNA analysis in cases of alleged or suspected criminal sexual conduct.

As defined in this legislation, a “patterned sex offender” is one whose criminal sexual behavior is so ingrained that the risk of re-offending is great without intensive psychotherapeutic intervention or other long-term controls. DNA analysis is the process through which deoxyribonucleic acid (DNA) in a human biological specimen is analyzed and compared with DNA from another human biological specimen for identification purposes.

The reader also may want to note the measures other states have taken regarding treatment programs for sex offenders. The departments of corrections in Missouri and Vermont, for example, credit their treatment programs for sex offenders with lowering the number of repeat offenders.

In 1980, Missouri enacted HB 1138 which mandated the development of a sex offender treatment program within correctional facilities. Offenders participating in the program receive medical treatment from a team of eight psychologists, who specialize in the treatment of sex offenders, and two corrections case workers. The program consists of two phases, with two weeks of extensive psychological testing and classes on therapy and human behavior in the initial phase, and approximately a year of group therapy sessions four times a week. Missouri's study of its program revealed that 17 percent of the program's participants returned to prison as opposed to 32 percent who did not receive treatment.

Vermont's Treatment Program for Sexual Aggressors, operational since 1982, is based on the notion that sex offenders cannot be cured, but can learn to control their abusive attitudes. Treatment includes individual, marital and group therapy, substance abuse counseling, vocational training and behavior modification. A 1988 study showed the overall recidivism rate for those who participated in the program at 4 percent, as opposed to 60 percent for untreated offenders.

In 1990, Washington state enacted legislation that both broadens treatment and toughens punishment for sex offenders (SB 6259). The legislation allocates more funding for treatment programs, with about $70 million available over the next three years, and requires that more stringent records of the personal history of convicted offenders be kept to aid treatment. However, the act also will double or triple prison sentences for sex offenders, and repeat offenders could receive life sentences. The legislation requires the state to closely supervise released convicts and establishes a civil commitment program whereby the state may
Suggested State Legislation

deem an offender a public menace and continue detention even after the sentence has been served. The offender automatically would undergo psychiatric treatment.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Sex Offender Act.

Section 2. [Sex Offender Treatment; Programs; Standards.]

(a) A sex offender treatment system is established under the administration of the [commissioner of corrections] to provide and finance a range of sex offender treatment programs for eligible adults and juveniles. Eligible offenders are:

(1) Adults and juveniles committed to the custody of the [commissioner];

(2) Adult offenders for whom treatment is required by the court as a condition of probation; and

(3) Juvenile offenders who have been found delinquent or received a stay of adjudication, for whom the juvenile court has ordered treatment.

(b) By [insert date], the [commissioner] shall adopt rules for the certification of adult and juvenile sex offender treatment programs in state and local correctional facilities. The rules shall require that sex offender treatment programs be at least [four] months in duration. After [insert date], a correctional facility may not operate a sex offender treatment program unless the program has met the standards adopted by and been certified by the [commissioner of corrections].

(c) The [commissioner] shall provide for a range of sex offender treatment programs, including intensive sex offender treatment, within the state adult correctional facility system. Participation in any treatment program is voluntary and is subject to the rules and regulations of the [department of corrections]. Nothing in this act requires the [commissioner] to accept or retain an offender in a treatment program. Nothing in this act creates a right of an offender to treatment.

(d) The [commissioner] shall provide for residential and outpatient sex offender treatment and aftercare when required for conditional release or as a condition of supervised release.

(e) The [commissioner] shall provide for sex offender treatment programs for juveniles committed to the [commissioner] by the courts, as provided under Section 3 of this act.

(f) The [commissioner] shall designate [three or more] pilot programs to increase sex offender treatment for:

(1) Adults convicted of a violation of [insert citations for appropriate sections of state code] who are sentenced by the court to incarceration in a local correctional facility or to sex offender treatment as a con-

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dition of probation; and
(2) Juveniles found delinquent or receiving a stay of adjudication, for a violation of [insert citations for appropriate sections of state code] for whom the juvenile court has ordered sex offender treatment.

COMMENT: Under the Minnesota act on which this draft is based, offenses for which an individual is eligible for treatment under the pilot treatment program (subsection (f)) include: criminal sexual conduct (1st, 2nd, 3rd, 4th and 5th degree); interference with privacy; obscene telephone calls; indecent exposure; use of minors in sexual performance; possession of child pornography. Also under this subsection, the act designates the types of areas in which the pilot programs should be placed.

A [public human services or community corrections agency] may apply to the [commissioner] for a pilot program grant. The application must be submitted in a form approved by the [commissioner] and must include:
(1) A proposal to increase treatment availability for sex offenders sentenced by the [district court] in the county;
(2) Evidence of participation by local correctional, human services, court, and treatment professionals in identifying the current treatment funding level in the county and unmet sex offender treatment needs; and
(3) Any other content the [commissioner] may require.

The [commissioner] may appoint an advisory task force to assist in the review of applications and the award of grants.

(g) By [insert date], the [commissioner of corrections] shall develop in-service training for state and local corrections agents and probation officers who supervise adult and juvenile sex offenders on probation or supervised release. The [commissioner] shall make the training available to all current and future corrections agents and probation officers who supervise or will supervise sex offenders on probation or supervised release.

After [insert date], a state or local corrections agent or probation officer may not supervise adult or juvenile sex offenders on probation or supervised release unless the agent or officer has completed the in-service sex offender supervision training. The [commissioner] may waive this requirement if the corrections agent or probation officer has completed equivalent training as part of a post-secondary educational curriculum.

After [insert date], when an adult sex offender is placed on supervised release or is sentenced to probationary supervision, and when a juvenile offender is found delinquent by the juvenile court for a sex offense and placed on probation or is paroled from a juvenile correctional facility, a corrections agent or probation officer may not be assigned to the offender unless the agent or officer has completed the in-service sex offender supervision training.

Section 3. [Juvenile Sex Offenders; Treatment; Confinement; Dispositions.]
(a) The [commissioner of corrections] shall provide a range of sex
offender treatment programs, including intensive sex offender treat-
ment, for juveniles within state juvenile correctional facilities and
through purchase of service from county and private residential and out-
patient juvenile sex offender treatment programs.
(b) If a juvenile sex offender committed to the custody of the [commiss-
ioner] is in need of secure confinement, the [commissioner] shall pro-
vide for the appropriate level of sex offender treatment within a secure
facility or unit in a state juvenile correctional facility.
(c) When a juvenile is committed to the [commissioner of corrections]
by a juvenile court, upon a finding of delinquency for a sex offense, the
[commissioner] may, for the purposes of treatment and rehabilitation:
(1) Order the child confined to a state juvenile correctional facility
that provides the appropriate level of juvenile sex offender treatment;
(2) Purchase sex offender treatment from a county and place the child
in the county’s qualifying juvenile correctional facility;
(3) Purchase sex offender treatment from a qualifying private
residential juvenile sex offender treatment program and place the child
in the program;
(4) Purchase outpatient juvenile sex offender treatment for the child
from a qualifying county or private program and order the child released
on parole under treatment and other supervisions and conditions the
[commissioner] believes to be appropriate;
(5) Order reconfine or renewed parole, revoke or modify any or-
der, or discharge the child under the procedures provided in [insert ci-
tation for appropriate section of state code]; or
(6) Refer the child to a county welfare board or licensed child-placing
agency for placement in foster care, or when appropriate, for initiation
of child in need of protection or services proceedings under [insert cita-
tion for appropriate section of state code].
(d) The [commissioner] may not place a juvenile in a correctional fa-
cility under this section unless the facility has met the requirements
of [insert citation for appropriate section of state code].

Section 4. [Standardized Evidence Collection; DNA Analysis Data,
Records.]
(a) As used in this section, “DNA analysis” means the process through
which deoxyribonucleic acid (DNA) in a human biological specimen is
analyzed and compared with DNA from another human biological speci-
men for identification purposes.
(b) The [bureau of criminal apprehension] shall develop uniform pro-
dcedures and protocols for collecting evidence in cases of alleged or suspect-
ed criminal sexual conduct, including procedures and protocols for the
collection and preservation of human biological specimens for DNA anal-
ysis. Law enforcement agencies and medical personnel who conduct
evidentiary exams shall use the uniform procedures and protocols in
their investigation of criminal sexual conduct offenses.
(c) The [bureau] shall adopt uniform procedures and protocols to main-
tain, preserve and analyze human biological specimens for DNA. The
[bureau] shall establish a centralized system to cross-reference data
obtained from DNA analysis.
(d) The [bureau] shall perform DNA analysis and make data obtained
available to law enforcement officials in connection with criminal in-
vestigations in which human biological specimens have been recovered.
Upon request, the [bureau] shall also make the data available to the
prosecutor and the subject of the data in any subsequent criminal prose-
cution of the subject.

Section 5. [Patterned Sex Offenders; Special Sentencing Provision.]
(a) A court may sentence a person to a term of imprisonment of not less
than double the presumptive sentence under the sentencing guidelines
and not more than the statutory maximum, or if the statutory maximum
is less than double the presumptive sentence, to a term of imprisonment
equal to the statutory maximum, if:
1. The court is imposing an executed sentence, based on a sentenc-
ing guidelines presumptive imprisonment sentence or a dispositional
departure for aggravating circumstances or a mandatory minimum sen-
tence, on a person convicted of committing or attempting to commit a
violation of [insert citations for sections of state code relating to crim-
inal sexual conduct], or on a person convicted of committing or attempt-
ing to commit any other crime listed in subsection (b) of this section if
it reasonably appears to the court that the crime was motivated by the
offender's sexual impulses or was part of a predatory pattern of behavior
that had criminal sexual conduct as its goal;
2. The court finds that the offender is a danger to public safety; and
3. The court finds that the offender needs long-term treatment or
supervision beyond the presumptive term of imprisonment and super-
vised release. The finding must be based on a professional assessment
by an examiner experienced in evaluating sex offenders that concludes
that the offender is a patterned sex offender. The assessment must con-
tain the facts upon which the conclusion is based, with reference to the
offense history of the offender or the severity of the current offense, the
social history of the offender, and the results of an examination of the
offender's mental status. The conclusion may not be based on testing
alone. A patterned sex offender is one whose criminal sexual behavior
is so engrained that the risk of re-offending is great without intensive
psychotherapeutic intervention or other long-term controls.
(b) A predatory crime is a felony violation of [insert citations for ap-
propriate sections of state code.]

COMMENT: Under the Minnesota act on which this draft is based,
"predatory crimes" include: murder (1st, 2nd and 3rd degree); man-
slaughter (1st and 2nd degree); assault (1st, 2nd and 3rd degree); sim-
ple robbery; aggravated robbery; kidnapping; false imprisonment;
criminal sexual conduct (1st, 2nd, 3rd and 4th degree); incest; tam-
pering with a witness; arson (1st degree); and burglary (1st degree).

(c) The court shall base its finding that the offender is a danger to pub-
lic safety on either of the following factors:
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(1) The crime involved an aggravating factor that would justify a
durational departure from the presumptive sentence under the sentenc-
ing guidelines; or
(2) The offender previously committed or attempted to commit a
predatory crime, including an offense committed as a juvenile that would
have been a predatory crime if committed by an adult.
(d) A sentence imposed under subsection (a) of this section is a depart-
ure from the sentencing guidelines.
(e) At the time of sentencing under subsection (a), the court may pro-
vide that after the offender has completed one-half of the full pronouned
sentence imposed, without regard to good time, the [commissioner of cor-
rections] may place the offender on conditional release for the remainder
of the statutory maximum period or for [10] years, whichever is longer, if
the [commissioner] finds that:
(1) The offender is amenable to treatment and has made sufficient
progress in a sex offender treatment program available in prison to be
released to a sex offender treatment program operated by the [department
of human services] or a community sex offender treatment and
reentry program; and
(2) The offender has been accepted in a program approved by the [com-
mmissioner] that provides treatment, aftercare and phased reentry into
the community.
The conditions of release must include successful completion of treat-
ment and aftercare in a program approved by the [commissioner] and
any other conditions the [commissioner] considers appropriate. Before
the offender is released, the [commissioner] shall notify the sentencing
court, the prosecutor in the jurisdiction where the offender was sen-
tenced and the victim of the offender’s crime, where available, of the
terms of the offender’s conditional release. Release may be revoked and
the stayed sentence executed in its entirety less good time if the offend-
er fails to meet any condition of release. The [commissioner] shall not
dismiss the offender from supervision before the sentence expires.
Conditional release granted under this subsection is governed by pro-
visions relating to supervised release, except as otherwise provided in
this subsection, or [insert citations for appropriate sections of state code].
(f) The [commissioner] shall pay the cost of treatment of a person
released under subsection (e) of this section. This section does not require
the [commissioner] to accept or retain an offender in a treatment pro-
gram.

Section 6. [DNA Analysis of Sex Offenders Required.] When a court sen-
tences a person convicted of violating or attempting to violate [insert
 citations for sections of state code relating to criminal sexual conduct],
or the juvenile court adjudicates a person a delinquent child for violat-
ing or attempting to violate [insert citations for sections of state code
relating to criminal sexual conduct], it shall order the person to provide
a biological specimen for the purpose of DNA analysis as defined in Sec-
Section 4. The biological specimen or the results of the analysis shall be
maintained by the [bureau of criminal apprehension] as provided in Sec-
Sex Offender Act

Section 7. [Admissibility of Results of DNA Analysis.]
In a civil or criminal trial or hearing, the results of DNA analysis, as defined in Section 4, are admissible in evidence without antecedent expert testimony that DNA analysis provides a trustworthy and reliable method of identifying characteristics in an individual’s genetic material upon a showing that the offered testimony meets the standards for admissibility set forth in the [rules of evidence].

Section 8. [Statistical Probability Evidence.] In a civil or criminal trial or hearing, statistical population frequency evidence, based on genetic or blood test results, is admissible to demonstrate the fraction of the population that would have the same combination of genetic markers as was found in a specific human biological specimen. “Genetic marker” means the various blood types or DNA types that an individual may possess.

Section 9. [Child Protection System Study Commission.]
(a) A child protection system study commission is created consisting of [five] members of the [house of representatives] appointed by the [insert appropriate authority] and [five] members of the [senate] appointed by the [insert appropriate authority]. The commission shall select from its membership a chair or co-chairs and other officers it considers necessary.

(b) The commission shall study:
   (1) The current structure and operation of the child protection system at the state and county level;
   (2) The current operation of the [child abuse reporting act], including whether the [reporting act] should be expanded to mandate reports of emotional harm and threatened harm, and whether its definitions of physical and sexual abuse should be expanded to include threatened harm;
   (3) The ways in which the child protection system can provide more effective intervention and prevention services for sexually aggressive and sexually abused children; and
   (4) Other ways in which the child protection system and the [child abuse reporting act] can be improved.
(c) The commission shall report to the legislature on its findings and recommendations not later than [insert date], and ceases to exist after
Section 10. [Evaluation of Sex Offender Treatment Funding]
(a) The [commissioner of corrections] and the [commissioner of human services] shall evaluate funding mechanisms for existing sex offender treatment programs. The [commissioners] must evaluate the funding of sex offender treatment programs for adults and juveniles and make findings concerning:
(1) The extent to which sex offender treatment programs are used on a statewide basis; and
(2) The effectiveness and adequacy of existing funding mechanisms.
(b) The [commissioner of corrections] and the [commissioner of human services] shall evaluate the pilot programs designated under Section 2(f) of this act, and include an analysis of the programs in the report required under this section.
(c) The [commissioner of corrections] and the [commissioner of human services] shall report to the legislature by [insert date], their findings and recommendations to improve funding equity and statewide availability of treatment programs, including recommendations to increase funding.

Section 11. [Effective Date] [Insert effective date.]
Vulnerable Adults Abuse and Exploitation Registry (Statement)

In 1987, Washington state enacted legislation directing the state patrol criminal identification system to provide criminal background information on prospective employees and volunteers who have unsupervised access to children and developmentally disabled persons (Chapter 486, Laws of 1987). The legislation described here, as enacted by that state in 1989, amends and expands the responsibilities of the identification system to include information about persons who were found by a court or disciplinary board to have abused or financially exploited a vulnerable adult.

Because of its length and tie-in to existing state statutes, this item is not presented in the standard format. However, the Committee on Suggested State Legislation approved the inclusion of the following statement summarizing the major provisions of the act. Readers interested in the text should consult ESSB 5107, 1989, or contact the Suggested State Legislation Program, The Council of State Governments, Iron Works Pike, P.O. Box 11910, Lexington, Kentucky 40578-1910, (606) 231-1939, for a copy of the complete text.

The 1989 act defines "vulnerable adult" as a person 60 years of age or older who is functionally, mentally or physically unable to care for himself or herself, or who is a patient in a state facility for the mentally disabled. "Financial exploitation" is defined as the illegal or improper use of a vulnerable adult or that adult's resources for another person's profit or advantage. Agencies entitled to information include all entities which receive, provide services to, house or otherwise care for vulnerable adults.

Upon the request of a business or organization providing care for vulnerable adults, the state patrol criminal identification system may disclose information regarding a prospective employee's record, including convictions for crimes relating to financial exploitation of vulnerable adults. The act allows law enforcement agencies, the office of the attorney general, prosecutors and the state department of social and health services to request this same information to aid in the investigation and prosecution of vulnerable adult abuse cases. The department of social and health services also may gain access to the information in hiring persons directly responsible for the care, supervision or treatment of vulnerable adults.

Applicants are required to disclose whether they have been convicted of crimes relating to the financial exploitation of vulnerable adults. Applicants also must disclose whether they had ever been found in any disciplinary board final decision, or found by a court in a protection proceeding, to have abused or financially exploited a vulnerable adult. Disclosure must be made in writing and signed by the applicant and sworn under penalty of perjury.

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Criminal History Record Check for Transfer of Firearms

This act, based on 1989 Virginia legislation, requires that purchasers of certain firearms consent in writing to have the dealer obtain criminal history record information. It further requires that upon receipt of a request for an information check, the state police must respond during the dealer's call or by return call without delay. If the record check indicates the prospective purchaser or transferee has a criminal record, the police have until the end of the dealer's next business day to advise the dealer as to whether the individual is prohibited by state or federal law from possessing or transporting a firearm.

Section 1. [Short Title] This act may be cited as the Criminal History Record Check for Transfer of Firearms Act.

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

(1) "Antique handgun or pistol" means any handgun or pistol, including those with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured in or before 1898 and any replica of such handgun or pistol if such replica

(i) Is not designed or redesigned for using rimfire or conventional center-fire fixed ammunition, or

(ii) Uses rimfire or conventional center-fire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(2) "Dealer" means any person licensed as a dealer pursuant to 18 U.S.C. section 921 et seq.

(3) "Firearm" means any

(i) Handgun or pistol having a barrel length of less than five inches which expels a projectile by action of an explosion, or

(ii) Semi-automatic center-fire rifle or pistol which expels a projectile by action of an explosion and is provided by the manufacturer with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or bayonet or equipped with a bipod, flash suppressor or folding stock.

Section 3. [Exemptions.] The provisions of this act shall not apply to:

(1) Transactions between persons who are licensed as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. section 921 et seq.;

(2) Purchases by or sales to any law-enforcement officer or agent of the United States, state or any local government;

(3) Antique handguns or pistols; or

(4) Transactions in any [unit of local government] that has a local ordinance adopted prior to [insert date], governing the purchase, possession, transfer, ownership, conveyance or transportation of firearms which is more stringent than this act.
Section 4. [Consent to Obtain Criminal History Record Information.]
Any person purchasing from a dealer a firearm as defined in this act shall consent in writing, on a form to be provided by the [department of state police], to have the dealer obtain criminal history record information.

Section 5. [Criminal History Record Check for State Residents.]
(a) No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other person who is a resident of [state] until he has
   (1) Obtained written consent as specified in Section 4, and provided
       the [department of state police] with the name, birth date, gender, race
       and social security and/or any other identification number, and
   (2) Requested and received criminal history record information by
       a telephone call to the [state police].
(b) Upon receipt of the request for a criminal history record information check, the [state police] shall
   (1) Review its criminal history record information to determine if the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law,
   (2) Inform the dealer if its record indicates that the buyer or transferee is so prohibited, and
   (3) Provide the dealer with a unique reference number for that inquiry.
(c) The [state police] shall provide its response to the requesting dealer during the dealer's call, or by return call without delay. If the criminal history record information check indicates the prospective purchaser or transferee has a criminal record, the [state police] shall have until the end of the dealer's next business day to advise the dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled the requirements of subsection (a) of this section may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or other circumstances beyond the control of the [state police], the dealer shall be advised immediately of the reason for such delay and be given an estimate of the length of such delay. After such notification, the [state police] shall, as soon as possible but in no event later than the end of the dealer's next business day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of subsection (a) of this section and is told by the [state police] that a response will not be available by the end of the dealer's next business day may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer.
(d) Except as required by [insert citation for appropriate state statute], the [state police] shall not maintain records longer than [30] days from any dealer's request for a criminal history record information check per
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taining to a buyer or transferee who is not found to be prohibited from
possessing and transporting a firearm under state or federal law. How-
ever, the log on requests made may be maintained for a period of [12]
months.

(e) Within [24] hours following the sale or transfer of any firearm, the
dealer shall mail or deliver the written consent form required by Sec-
tion 4 to the [department of state police]. The [state police] shall immedi-
ately initiate a search of all available criminal history record infor-
mation to determine if the purchaser is prohibited from possessing or trans-
porting a firearm under state or federal law. If the search discloses in-
formation indicating that the buyer or transferee is so prohibited from
possessing or transporting a firearm, the [state police] shall inform the
chief law enforcement officer in the jurisdiction where the sale or trans-
fer occurred and the dealer without delay.

Section 6. [Criminal History Record Check for Non-Residents.]
(a) No dealer shall sell, rent, trade or transfer from his inventory any
firearm to any person who is not a resident of [state] unless he has first
obtained from the [department of state police] a report indicating that
a search of all available criminal history record information has not dis-
closed that the person is prohibited from possessing or transporting a
firearm under state or federal law.
(b) The dealer shall obtain the required report by mailing or deliver-
ing the written consent form required under Section 4 to the [state po-
lice] within [24] hours of its execution. If the dealer has complied with
the provisions of this section and has not received the required report
from the [state police] within [10] days from the date the written con-
sent form was mailed to the [department of state police], he shall not be
deemed in violation of this section for thereafter completing the sale or
transfer.

Section 7. Nothing herein shall prevent a resident of this state, at his
option, from buying, renting or receiving a firearm from a dealer by ob-
taining a criminal history record information check through the deal-
er as provided in Section 6.

Section 8. [Buyer's Right to Review of Information.] If any buyer or
transferee is denied the right to purchase a firearm under this act, he
may exercise his right of access to and review and correction of crim-
inal history record information under [insert citation for appropriate
state statute] or institute a civil action as provided in [insert citation
for appropriate state statute], provided any such action is initiated with-
in [30] days of such denial.

Section 9. [Unlawful Use of Information.] Any dealer who willfully and
intentionally requests, obtains or seeks to obtain criminal history rec-
ord information under false pretenses, or who willfully and intention-
ally disseminates or seeks to disseminate criminal history record infor-
mation except as authorized in this act shall be guilty of a [Class 2 mis-
Section 10. [Regulations to Ensure Security of Information.] The department of criminal justice services shall promulgate regulations to ensure the identity, confidentiality and security of all records and data provided by the department of state police pursuant to this act.

Section 11. [Fees Assessed for Transactions.] All licensed firearms dealers shall collect a fee of $2 dollar for every transaction for which a criminal history record information check is required pursuant to this act, except that a fee of $15 dollars shall be collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the state treasurer on the 20th day of the month following the sale for deposit in a special fund for use by the state police to offset the cost of conducting criminal history record information checks under the provisions of this act.

Section 12. [Establishment of Toll-Free Telephone Number for Inquiries.] The superintendent of the department of state police shall establish a toll-free telephone number which shall be operational 7 days a week between the hours of 8:00 a.m. and 10:00 p.m. for purposes of responding to inquiries from licensed firearms dealers, as such term is defined in 18 U.S.C. section 921 et seq., pursuant to the provisions of this act. The department shall hire and train such personnel as are necessary to administer the provisions of this act.

Section 13. [Violations.]
(a) Any person willfully and intentionally making a materially false statement on the consent form required in Section 5 or 6 shall be guilty of a Class 5 felony.
(b) Any dealer who willfully and intentionally sells, rents, trades or transfers a firearm in violation of this act shall be guilty of a Class 1 misdemeanor.

Section 14. [Effective Date.] [Insert effective date.]
Cumulative Index, 1972-1991

The following cumulative index covers volumes of *Suggested State Legislation* since 1972 and includes the legislation through this current edition. This index uses extensive subject headings, subheadings 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.

All entries under subject headings are listed in the order in which they were published. An index to volumes before 1972 may be found in Volume 43 (1964).

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